

1933

KENYA

1933

3006/111

3006/111

C0533/429

Goldfields in the Lamondi Districts.

Participation by Indians in development.

Previous

*Open file*

Subsequent

<i>Reg 297</i>	<i>13/4</i>
<i>MacChesnut</i>	<i>15</i>
<i>De Wood</i>	<i>19</i>
<i>Room 309</i>	
<i>298</i>	<i>24/4</i>
<i>297</i>	<i>24/4</i>
<i>Room 311</i>	<i>24/4</i>
<i>299</i>	<i>24/4</i>
<i>297</i>	

was contemplated, by again bringing it to the notice of those actually concerned.

22. When a lease is finally determined the land will be at the disposal of the Crown which as a general rule would presumably dispose of it by sale or otherwise to the Local Native Council or to individual natives.

23. If it is considered that these proposals could not be carried through under existing legislation we recommend that the amending law should provide for temporary exclusions from and additions to a reserve; if that be done, we recommend that the exclusion and addition of land to the reserve in respect of mining activities in North Kavirondo should take effect only during the currency of mining leases.

24. It will be observed that if our recommendations be followed the addition to the reserve would be an addition of native forest reserve and that as the dispossessed natives would be accommodated on land in the reserve and not in the area added to it, no disturbance as regards native occupation would be caused when the additional area of native forest reserve reverted to the Crown at the expiration of the mining leases.

25. We desire to emphasize that the above recommendations apply only to mining leases which may be granted in the North Kavirondo mining area prior to any action which Government may take after consideration of our report, and that they are made after taking into account the conditions regarding that area and the circumstances which exist at the present time.

We have the honour to be,

Your Excellency's most obedient, humble servants,

(Signed) WM. MORRIS CARTER.  
R. J. HEMSTED.  
F. G'B. WILSON.

.....aw  
natives likely to be concerned, and when any particular lease  
difficultly might be overcome by bringing it to the notice of  
the time which natives would be concerned, we suggest that the  
tax payable to Section 15 (1) as it would not be known at the  
been brought to the notice of the natives concerned under the  
It might be argued that the proposal would not have  
subject of mining leases.  
all 1,500 acres in the lakemba mining area as might become the  
Section to the exclusion of such areas of land not exceeding in  
Board had advised and consented under sub-section (1) of that  
Governor under Section 15 of the 1930 Ordinance, after the Central  
Reserve. Such an addition could, we presume, be made by the  
permanently to the North Kavirondo Reserve, as native forest  
we recommend that the land in the Biron Forest Reserve be added  
having regard to the comparatively small areas of land involved.  
20. Therefore, in all the circumstances of the case, and  
is no machinery under it to provide for a temporary addition.  
Ordinance but unless the law be again temporarily amended there  
addition would be in accordance with the spirit of the 1930  
As we have stated above, we consider that a temporary  
currency of mining leases.  
of the reserve should be added permanently or only during the  
21. The question then arises whether the land to be added  
the presence of mining areas and the loss of amenities.  
having regard to the inconvenience of working the land caused by  
operations during the lease, and the loss of amenities.  
in respect of land which had been permanently designated by mining  
at the expiration of the lease, a permanent addition of such land  
with that of a mining lease would meet the case together.  
Therefore an addition of land for a period of time considered  
concerning additions were also of a temporary character.

corresponding addition were also of a temporary character. Therefore an addition of land for a period of time coincident with that of a mining lease would meet the case, together with, at the expiration of the lease, a permanent addition of such land in respect of land which had been permanently destroyed by mining operations during the lease; assessed on a generous basis having regard to the inconvenience in working the land caused by the presence of ruined areas and the loss of amenities.

18. The question then arises whether the land to be added to the reserve should be added permanently or only during the currency of mining leases.

19. As we have stated above, we consider that a temporary addition would be in accordance with the spirit of the 1930 Ordinance but unless the law be again temporarily amended there is no machinery under it to provide for a temporary addition.

20. Therefore, in all the circumstances of the case, and having regard to the comparatively small area of land involved, we recommend that the land in the Elgon Forest Reserve be added permanently to the North Kavirondo Reserve, as native forest reserve. Such an addition could, we presume, be made by the Governor under Section 15 of the 1930 Ordinance, after the Central Board had advised and consented under Sub-Section (1) of that Section to the exclusion of such areas of land not exceeding in all 1,500 acres in the Kakamega mining area as might become the subject of mining leases.

21. It might be argued that the proposal would not have been brought to the notice of the natives concerned under the first proviso to Section 15 (1) as it would not be known at the time which natives would be concerned. We suggest that the difficulty might be overcome by bringing it to the notice of natives likely to be concerned, and, when any particular lease

10. Soon after beginning to give this subject detailed consideration we came to the conclusion that as respects the  
 Ordinance in no wise relieves us of our duty to do this.  
 we feel that the amendments  
 and to make recommendations without involving any departure from  
 review the working of the Native Lands Trust Ordinance, 1930,  
 Under the several terms of reference we are asked to  
 Kavirondo should be settled.  
 which we propose that the question as respects mining in North  
 which has since been obtained to state the general lines upon  
 8. We are now in a position in the light of the evidence  
 was discovered.  
 then would be the case with a European upon whose property gold  
 was in fact be as generally, if not more generally, treated  
 as if it were to be treated in a perfectly fair manner and  
 Ordinance and raised on objection to it as a temporary measure,  
 to be considered before the passing of the mining  
 Ordinance, 1930, was passed.  
 take upon our recommendations, The Native Lands Trust (Amendment)  
 or any action which the Government might subsequently decide to  
 and without prejudice to any recommendations which we might make  
 9. In these circumstances, as a purely temporary measure  
 to be left as was felt that further difficulties would arise in practice  
 it is felt that the Government should be provided for by the Ordinance  
 merely an extension as long as the lease is maintained;  
 11. No permanent law had been laid down as regards the  
 comprised in such leases from the reserve.

begun in the Kakamega area before our Commission had been  
 appointed, and that as it was taking place in a well populated  
 part of the North Kavirondo Reserve, any land taken for mining  
 purposes should as far as possible be taken strictly in accord-  
ance with any principle, major or minor, of the Native Lands  
Trust Ordinance, 1930, which could conceivably be held on any  
reasonable grounds to underlie or be embodied in that Ordinance;  
 in that category we must place the provision that, if land is  
excluded from a reserve, an area of land equal in extent and as  
far as possible equal in value be added to that reserve.  
 11. We therefore consider that an addition should be made  
to the reserve of an area equal in value and extent to the sum  
of the areas likely to be excluded in the near future by mining  
leases.  
 12. We have made enquiries as to whether any land is  
available contiguous to the reserve which might be added to it;  
 the choice is limited, and we are of opinion that the best  
 solution of the problem would be the following:-  
 13. There is in the reserve close to the North Kavirondo  
 mining area a native forest reserve of approximately 58,000  
 acres, and after consultation with the Conservator of Forests  
 we recommend that a portion of this land be taken out of that  
Reserve and made available for any natives in the North Kavirondo  
area who may be dispossessed by mining leases, and that in lieu  
thereof a portion of the Elgon Forest Reserve, which is a Crown  
forest, be added to the North Kavirondo Reserve.  
 14. It is anticipated that at the maximum ten mining leases,  
 in no case exceeding fifty acres, are likely to be taken out  
 during the next year, involving at the most some five hundred acres  
 we recommend.....

*The Government's own estimate*

22ND MARCH, 1933.

Your Excellency,

We have the honour to acknowledge the receipt of Your Excellency's letter No. LND 1/1/3/6 of the 20th instant asking whether we could see our way to making an interim pronouncement with regard to land which may be taken for mining purposes in Native Reserves.

2. In reply thereto we are prepared to make the following intimation of our recommendations concerning the area at present open to prospecting in North Kavirondo, but should prefer at the moment to limit such an intimation to that area only, and to leave it to our report to deal with mining questions so far as they relate to land in the country generally. A consideration of the whole subject has led us to believe that different considerations apply to different areas; and that consequently the arrangements which may be best for one area will not necessarily be the best for another; we hope that we shall be able to make recommendations in our report which will enable some elasticity in procedure to be provided which will in our opinion in no wise prejudice the interests of the natives.

3. If other areas are thrown open to prospecting in the immediate future we do not anticipate that any question of mining leases will arise until our report has been received.

4. When the question of the grant of mining leases in native reserves arose, it was found impracticable to grant such leases under the provisions of the Native Lands Trust Ordinance, 1930, with regard to leases, and it was therefore decided that the only practicable course would be to exclude any areas  
comprised.....

PRIVATE AND PERSONAL.  
BY AIR MAIL.

18

GOVERNMENT HOUSE  
KENYA  
EAST AFRICA

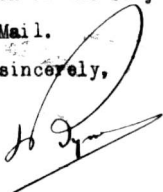
23rd March, 1933.

Dear Sir Philip,

In my personal and private letter to you of the 15th March I informed you that I was approaching Morris Carter on the subject of the suggestion you made in your letter of the 7th March. I am glad to be able to send you herewith a copy of a letter I have just received signed by the three Members of the Commission.

I am having the proposals examined departmentally and a formal despatch on the subject will be sent to you by an early Air Mail.

Yours sincerely,



MAJOR THE RT. HON. SIR P. CUNLIFFE-LISTER, P.C., G.B.E., M.C.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET, S.W.1.

Noting

No 15

3006/33

ansd. (?)

and desirable. If they were to  
reject proposals, position would of  
course be made more difficult

C. O.

Mr. Weston 4/4

Mr. Hood 4-4

Mr. Parkinson.

Mr. Tomlinson.

X Sir C. Bottomley.

Sir J. Shuckburgh

X ~~Permt. U.S. of S.~~ *S. H. H.* 4-4 03

Party U.S. of S

X Secretary of State

NOT SENT!

DRAFT. Tal. (comm).

For Nandi

Private & personal. Your letter  
 23<sup>rd</sup> March private & personal.  
 Carter Commission, proposals seem  
 to me on first reading to be  
 eminently sensible from  
 political point of view all  
 criticism would be effectually  
 stopped if you could assure  
 me when submitting forwarding  
 proposals officially that they  
 have been explained to and  
 accepted by North Kavirondo  
 Local Native Council. Please  
 consider whether such reference  
 to Council would be practicable

Ordinance under that Ordinance is for  
 period of three & procedure will be  
 under 'S 15 of N. S. P. Ord as amended.  
 I should have thought perhaps that  
 all that was needed was the permanent  
 addition of the ~~State Forest Land~~ to  
~~the Provincial Forest Land~~ as suggested  
 by the Commission.

SECRET



23

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

Dated 10th April, 1933.

(Received Colonial Office 4.15 p.m. 10th April, 1933)

-----  
Private and Personal.

Your telegram of 7th April Private and Personal and the last paragraph of your telegram of 7th April No. 95 Secret. My confidential despatch of 7th April No. 41 despatched by Air Mail 9th April may make you consider that it would be inadvisable to publish any interim pronouncement at the present time. I shall accordingly await further instructions from you.

No 2

No 20  
3006/13

No 14

additional area of native forest reserve reverted to the Crown at the expiration of the mining leases.

25. We desire to emphasize that the above recommendations apply <sup>only</sup> to mining leases which may be granted in the North Kavirondo mining area prior to any action which Government may take after consideration of our report, and that they are made after taking into account the conditions regarding that area and the circumstances which exist at the present time.

We have the honour to be

Your Excellency's most obedient,  
humble servants,

(signed) WM. MORRIS CARTER.

R.W. HEMSTED.

F.O'B. WILSON.

Central Board had advised and consented under Sub-section (1) of that Section to the exclusion of such areas of land not exceeding in all 1,500 acres in the Kakamega mining area as might become the subject of mining leases.

21. It might be argued that the proposal would not have been brought to the notice of the natives concerned under the first proviso to Section 15 (1) as it would not be known at the time which natives would be concerned. We suggest that the difficulty might be overcome by bringing it to the notice of natives likely to be concerned, and, when any particular lease was contemplated, by again bringing it to the notice of those actually concerned.

22. When a lease is finally determined the land will be at the disposal of the Crown which as a general rule would presumably dispose of it by sale or otherwise to the Local Native Council or to individual natives.

23. If it is considered that those proposals could not be carried through under existing legislation we recommend that the amending law should provide for temporary exclusions from and additions to a reserve; if that be done, we recommend that the exclusion and addition of land to the reserve in respect of mining activities in North Kavirondo should take effect only during the currency of mining leases.

24. It will be observed that if our recommendations be followed the addition to the reserve would be an addition of native forest reserve and that as the dispossessed natives would be accommodated on land in the reserve and not in the area added to it, no disturbance as regards native occupation would be caused when the  
additional ...

instead of one at a distance from it.

17. As we have seen above, the Native Lands Trust Ordinance appears only to contemplate permanent exclusion from a reserve, and is silent as to temporary exclusion. But, we are of opinion that if land is only temporarily excluded from a reserve it would be a full compliance with the spirit of the Ordinance if the corresponding addition were also of a temporary character. Therefore an addition of land for a period of time coincident with that of a mining lease would meet the case, together with, at the expiration of the lease, a permanent addition of such land in respect of land which had been permanently destroyed by mining operations during the lease; assessed on a generous basis having regard to the inconvenience in working the land caused by the presence of ruined areas and the loss of amenities.

18. The question then arises whether the land to be added to the reserve should be added permanently or only during the currency of mining leases.

19. As we have stated above, we consider that a temporary addition would be in accordance with the spirit of the 1930 Ordinance but unless the law be again temporarily amended there is no machinery under it to provide for a temporary addition.

20. Therefore, in all the circumstances of the case, and having regard to the comparatively small area of land involved, we recommend that the land in the Elgon Forest Reserve be added permanently to the North Kavirondo Reserve, as native forest reserve. Such an addition could, we presume, be made by the Governor under Section 15 of the 1930 Ordinance, after the

which is a Crown forest, be added to the North Kavirondo Reserve.

14. It is anticipated that at the maximum ten mining leases, in no case exceeding fifty acres, are likely to be taken out during the next year, involving at the most some five hundred acres; we recommend therefore that an area of fifteen hundred acres be made available in the North Kavirondo Forest Reserve to provide against all contingencies which can reasonably be foreseen, and that the area added to the reserve from the Elgon Forest Reserve should be of not less extent and as far as possible of equal value to that taken from the North Kavirondo Forest Reserve.

15. The land from this latter forest area, thus made available for dispossessed natives, would be in their own native reserve and not far from the land which they would be leaving and would be good agricultural land; no natives other than those dispossessed should be allowed to use this land but as and when a mining lease is granted, any native dispossessed by such lease should be given an area equal in size to that which he had lost and should enjoy the same rights over it which he enjoyed under native law and custom over the land which he occupied before the grant of the lease. In addition he should receive full compensation for his huts and other buildings, for any crops which he was unable to reap, for disturbance, and also a sufficient sum to enable him to purchase food for his family until he was able to reap crops from his new land.

16. We consider that the above proposals both compensate the natives for any loss which it might be thought to have suffered, and also the individual native, who gives up the use of an area close to his home ...

vice relieves us of our duty to do this.

10. Soon after beginning to give this subject detailed consideration we came to the conclusion that as prospecting had begun in the Kakamega area before our Commission had been appointed, and that as it was taking place in a well populated part of the North Kavirondo Reserve, any land taken for mining purposes should as far as possible be taken strictly in accordance with any principle, major or minor, of the Native Lands Trust Ordinance, 1950, which could conceivably be held on any reasonable grounds to underlie or be embodied in that Ordinance; in that category we must place the provision that, if land is excluded from a reserve, an area of land equal in extent and as far as possible equal in value be added to that reserve.

11. We therefore consider that an addition should be made to the reserve of an area equal in value and extent to the sum of the areas likely to be excluded in the near future by mining leases.

12. We have made enquiries as to whether any land is available contiguous to the reserve which might be added to it; the choice is limited, and we are of opinion that the best solution of the problem would be the following :-

13. There is in the reserve close to the North Kavirondo mining area a native forest reserve of approximately 52,000 acres, and after consultation with the Conservator of Forests we recommend that a portion of this land be taken out of that Reserve and made available for any natives in the North Kavirondo area who may be displaced by mining leases, and that in lieu thereof a portion of the Elgon Forest Reserve,

which ...

it was therefore decided that the only practicable course would be to exclude any areas comprised in such leases from the reserve.

5. No permanent exclusion of such land was required but merely an exclusion so long as the lease existed; exclusions of a temporary nature were not provided for by the Ordinance, and it was felt that further difficulties would arise in practice in adding a small piece of land to the reserve each time a lease was granted.

6. In these circumstances, as a purely temporary measure and without prejudice to any recommendations which we might make or any action which the Government might subsequently decide to take upon our recommendations, The Native Lands Trust (Amendment) Ordinance, 1932, was passed.

7. We were consulted before the passing of the amending Ordinance and raised no objection to it as a temporary measure, as it appeared to us that if any action were taken under it the natives affected would be treated in a perfectly fair manner and would in fact be as generously, if not more generously, treated than would be the case with a European upon whose property gold was discovered.

8. We are now in a position in the light of the evidence which has since been obtained to state the general lines upon which we propose that the question as regards mining in North Kavirondo should be settled.

9. Under our seventh term of reference we are asked to review the working of the Native Lands Trust Ordinance, 1930, and to make recommendations without involving any departure from the principles of that Ordinance; we feel that the amending Ordinance in no

22ND. MARCH, 1935.

Your Excellency,

We have the honour to acknowledge the receipt of Your Excellency's letter no. LND. 1/1/3/6 of the 20th instant asking whether we could see our way to making an interim pronouncement with regard to land which may be taken for mining purposes in Native Reserves.

2. In reply thereto we are prepared to make the following intimation of our recommendations concerning the area at present open to prospecting in North Kavirondo, but should prefer at the moment to limit such an intimation to that area only, and to leave it to our report to deal with mining questions so far as they relate to land in the country generally. A consideration of the whole subject has led us to believe that different considerations apply to different areas; and that consequently the arrangements which may be best for one area will not necessarily be the best for another; we hope that we shall be able to make recommendations in our report which will enable some elasticity in procedure to be provided which will in our opinion in no wise prejudice the interests of the natives.

3. If other areas are thrown open to prospecting in the immediate future we do not anticipate that any question of mining leases will arise until our report has been received.

4. When the question of the grant of mining leases in native reserves arose, it was found impracticable to grant such leases under the provisions of the Native Lands Trust Ordinance, 1930, with regard to leases, and

it ...

Under the Commission's proposals an individual who does not choose to migrate to Kakamega Forest will receive no compensation at all for the loss of his land, while the tribe will receive through the Local Native Council nothing but the very problematic profits from a part of Elgon Forest and possibly grazing rights in a few glades in the Forest.

7. The Chief Native Commissioner, while thinking it improbable that any natives will be dispossessed before the Commission's Report is signed, feels very strongly that any natives who may be dispossessed should be given the option of receiving full value for their lost land or taking up land in Kakamega Forest, whichever suits them best. The Forest may suit those living near it but may not appeal at all to those living at a distance. In this view he is supported both by the Provincial Commissioner, Nyanza, and the Conservator of Forests. A further contention of the Chief Native Commissioner and the Provincial Commissioner, Nyanza, is that excised land should, when no longer required for mining, revert to the Native Reserves.

✓ ✓

8. With these views I am in complete agreement and I trust that, on consideration of these points, you will agree that the Interim Pronouncement of the Land Commission should not be published.

9. I have been asked by Sir Morris to inform you that in making the recommendations contained in that Pronouncement his Commission was actuated by a desire to adhere closely to the provisions of the Principal Ordinance, the Native Lands Trust Ordinance, 1950, so that there could be no criticism on the grounds that any departure from the principles of that Ordinance was contemplated.

I have the honour to be,  
Sir,  
Your most obedient humble servant,

H. J. V.

BRIGADIER-GENERAL.

G. O. M. S.

Sir Morris informed me that he is opposed to any such additional statement and I am therefore of the opinion that it would be preferable that the Interim Pronouncement should not be published at all.

3. In order to acquaint you with my reasons for coming to this conclusion I feel it desirable to set out at some length the grounds of probable native dissatisfaction if no option is given.

4. The Commission's recommendations are briefly as follows:-

No monetary compensation for land excised.

Individuals may migrate if they choose to Kakamega Forest.

The tribe to be compensated for the loss of the excised land by the addition of a part of Elgon Forest.

Excised land to be the property of the Crown, who at the end of the lease could sell to any one.

5. Under the Amending Ordinance, 1932, conditions are as follows:-

Full monetary compensation for land excised.

Excisions to be temporary and the excised land to return to the Reserve (i.e. to the right-holding family) on expiration of the leases.

Dispossessed individuals to be accommodated as best they could among their own people. This could of course include accommodation in Kakamega forest if desired. This Forest is Native Reserve and a decision of the Native Lands Trust Board could without any difficulty alter the boundaries to allow of occupation by dispossessed natives.

6. In other words under the Amending Ordinance an individual native could have had the choice of

- (a) full monetary value for land lost and arranging for his own accommodation in the Reserve (or possibly elsewhere) or
- (b) new land in Kakamega Forest, in which case the Local Native Council would have retained the purchase price of the excised land.

KENYA.

No. 41

**CONFIDENTIAL**

AIR MAIL.



GOVERNMENT HOUSE  
NAIROBI.  
KENYA

RECEIVED  
18 APR 1933  
COL. OFFICE

yt April, 1933.

Sir,

I have the honour to enclose three copies of an Interim Pronouncement by the Land Commission on the subject of land which may be taken for mining purposes in Native-Reserves, which, if so desired, the Commission would be prepared to make.

2. I have had an interview with Sir Morris Carter on the subject in which I informed him that I felt that a publication of the Interim Pronouncement on the lines proposed might do more harm than good in that the natives would certainly resent the recommendation that leased land on the termination of the lease should be sold and that if an option were not given to individuals affected of accepting the full cash compensation envisaged in the Amending Ordinance or of taking a holding in the added land with smaller compensation, there might be a fresh outcry of breach of faith which, in my opinion, would not be without justification. I informed Sir Morris that it was my intention when forwarding the Interim Pronouncement to acquaint you of these facts and to suggest that, if the Interim Pronouncement were published, I was of the opinion that a statement should be added to the effect that, in view of the particular circumstances and without creating a precedent, this Government proposed to give the natives concerned the option to which I have referred above.

- Sir Morris -

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

*Ans. Tel. 6*

13

general prospecting on 1st June. It is not possible to indicate on what date area 2 can be opened. The provisions of the abovementioned if enacted will apply also to areas 2 and 5. Area 2 includes country westward and southwestward of Kakamega goldfields mainly in Central Kavirondo District; and is approximately 1,005 square miles in area. Area 5 comprises country between Cori River and Tanganyika Territory border in south Kavirondo District. It extends over an area of 485 square miles. A full description and map of these areas is to be found in Sir Albert Kitson's published report which is obtainable from Government press Nairobi price one shilling.

Some notes on geological and mineralogical features of this terrain made by Sir Albert Kitson are published also for general information. ends.

Presume that you no longer wish any reference made to Carter Commission recommendations. Propose publication in press on 1st May and glad to know whether you approve form of communique. Date for opening of area 5 may be revised and will telegraph on this point next week.

*Copy Original on 30.06/33* 512  
Telegram from the Governor Kenya to the Secretary of State  
for the Colonies

Dated 21st April Received 1.19.p.m. 21st April 1933

No. 82. Secret.

Your telegram of 7th April No. 95 Secret.

Communique proposed reads as follows begins. It is intimated for public information that recommendation made by Sir Albert Kitson in his report on application of Tanganyika Concessions Limited for an exclusive prospecting licence under Mining Ordinance of 1931 in respect of an area of 5,900 miles approximately in Nyanza Province Kenya Colony have been accepted by Government of Kenya and by the Secretary of State for the Colonies. Briefly these recommendations were that two areas areas 2 and 5 should be thrown open to general prospecting by individuals; and that three areas areas 1, 3 and 4 should be prospected by companies syndicates or individuals protected by grant of exclusive prospecting licences. Over one or any part of one of those three areas the Tanganyika Concessions Limited is to have an option for grant of an exclusive prospecting licence.

As soon as Tanganyika Concessions Limited has exercised its option the remainder of areas will be divided into units and applications will be invited for grant of exclusive prospecting licences. Such licences as may be granted will be subject to special fees indicated in schedule to Mining in Proclaimed Areas Bills which was published in Official Gazette of 18th April for introduction into Legislative Council.

Special staff arrangements are required to deal with areas 2 and 5. The latter area will be opened for

General

11

Forest land to the Reserve when you  
begin to grant mining leases, if you  
find it convenient to be able to offer  
land as alternative compensation.

Please express my thanks to  
the Carter Commission for the care and  
trouble they have taken ~~in~~ this matter,  
and explain view I take and the reasons  
for it.

SEER

measure of compensation which natives  
are entitled to receive under the

~~Amending~~  
Ordinance.

On merits, I still believe that

the simplest and most practical course  
would be <sup>as</sup> suggested in my telegram of

7th April to add 1,500 acres from Elgen

Forest Reserve, which can be done by

administrative action, <sup>but</sup> I assume the

only reason for not doing this is that

Carter Commission might object to adoption

of their general recommendation without

accepting the particular conditions to

which you and I take exception. In the

circumstances, I agree that their Interim

Report should not be published, but I think

you may find it desirable to add the Elgen

Forest

(No 2 on this file)  
Omit It was printed  
✓ present

C.O.

6 10

3006  
28/13/33 Kenya

Coded & sealed  
Q.D. 30  
R 5 MAY  
D 5 4/5/33  
that

Secret

- Mr.
- Mr.
- Mr.
- Mr. Parkinson.
- Mr. Tomlinson.
- Sir C. Bottomley.
- Sir J. Shuckburgh.
- Permt. U.S. of S.

Dictated by  
Secretary of State. 4/5/33  
(See Minutes)

Ph  
4/5

**DRAFT.** Dictated by  
Secretary of  
State.

GOVERNOR.

NAIROBI  
KENYA.

I agree with arguments advanced in your despatch 7th April. I have consistently stated that land leased for mining purposes will revert to Reserve at expiry of lease. This principle must be maintained, nor can I see in practice what possible advantage there would be for the Government to retain a power of selling isolated parcels of land within Reserve when no longer required for mining purposes. It appears to me this would be both impracticable and contrary to spirit of Lands Trust Ordinance.

I am equally clear that it is impossible to reduce the benefits or

the pronouncement as it stands might excite suspicion, there can be no question but that it is better to withhold it for the present. ? Reply as Mr. Freeston proposes.

J. E. G. Flood

24.4.33

Sir M. Carter no doubt feels that the Governor's personal board stamp the Commission as illiberal before their Report is issued.

If the natives had been induced to take for money they must no doubt have it, but on general grounds I should prefer the Carter course, as I doubt if there is going to be any money available from the gold. Is that so? W. C. 24.4.33

Lord Plymouth.

I think we can but telegraph as proposed by Mr. Freeston

I agree with you  
24.4.33 25.4.33

J. E. G.

Mr. Freeston  
Mr. Flood  
L. C. Hartley

The L. C. has considered this today, & has now drafted the draft of a rather fuller telegram to Sir Joseph Agnew. It would be grateful to you visit on ~~the draft~~. (This is in view of the fact that the L. C. was drafting)

Ed. Boyd

4/5/33

W. C.

Mr. Freeston has suggested two alterations, the first substituting 'amending' for 'mining' at the top of page 2 is all right. The Mining Ordinance prescribes compensation for crops etc. not for simple disturbance.

The second is to omit reference to the telegram of 7 April (N° 2 on file), because it is private. I suppose this is necessary though it seems over cautious. Still this telegram will perhaps have to be published in Kenya some time or other so it is well to leave out references to private correspondence.

J. E. G.

Otherwise we have no views on the telegram

J. E. G. Flood  
4.5.33

W. C. 4.5.33

Sec of State

J. E. G.

J. E. G.

4.5.33

Tel. to Gov. No 111. Secret - 4<sup>th</sup> May, 1933

6  
P

dispossessed is to be given full compensation for huts, crops, etc. for disturbance, and in addition a sum to keep him going until he can get crops out of his new land. They then point out that the 1930 Ordinance did not contemplate temporary exclusion, and that it would be in full compliance with the spirit of that Ordinance if land temporarily excluded were made good by a temporary addition (para.17). They then point out (in para.19) that there is no machinery for a temporary addition, and go on to say that they recommend that the land should be added permanently. I do not think that anybody can cavil at this. The Commission, however, then go on to say in para.22 that when a lease is finally determined the land will not revert to the Reserve (which will have already been compensated fully by the permanent addition previously mentioned) but will be at the disposal of the Crown.

The Governor thinks that this would not do because the natives would resent the recommendation that leased land should be at the disposal of the Crown for sale at the end of the lease and also that individuals affected should be given an option of taking full cash compensation as provided in the Amending Ordinance for 1932, or of having a plot in the added area with some smaller compensation. The Commission does not envisage any monetary compensation for the land excised, apart from compensation for

loss of improvements and disturbance.

It must be admitted that the Governor's proposals give the natives the best of both worlds, but I think there can be no doubt that on general principles the Governor and his Advisers are right, and that if his proposal is adopted there will be no ground for any accusation of a breach of faith. The Native Reserve will have been made up to its full area and more, and, in addition, the natives will be eligible for monetary compensation, while further the small area excised will revert to the Native Reserve when finished with. It is quite obvious that a series of scattered plots of about 50 acres in the middle of a Native Reserve would be of no use to Government, which could only sell the land back to the Local Native Councils, and in view of the fact that the said land will probably have been fairly well damaged by mine works, heaps of tailings, and so forth, the price that could be received for such land would not be very great. In the circumstances it seems the reasonable thing to do to behave as generously as possible and let the land return to the Reserve as soon as it is done with.

That being so, I think it would be inadvisable, as the Governor suggests at the end of para.2, to publish the pronouncement at all. I don't quite know why Sir Morris Carter objects to the Governor's suggestion, but as he does and since the Governor thinks that the publication of

the

*I have  
promised  
this*

the Native Forest Reserve.

Paragraph 21 of the Commission's letter means that, since it is not possible to say which particular plots will be required, the proposed exclusion cannot be brought to the notice of the natives concerned. It is obvious that this is the case, and they suggest that the difficulty might be overcome by bringing it to the notice at once of natives likely to be concerned (i.e. in practice to inform the natives of a district where it is possible that mining leases will be wanted, that some of their land may be taken for this purpose) and again, when it is found out which precise areas will be wanted, informing the persons affected.

Mr. Freeston's suggestion is that the general proposal should be brought to the notice of the Local Native Council as well as the inhabitants of the most likely districts. He thinks, and I am inclined to agree with him, that if the Local Native Council was consulted and accepted, it would be a complete answer to the criticisms which have frequently been expressed that a pledge has been broken by removing the thing from the purview of the Local Native Council.

It follows therefore that paragraph 21 does not involve any departure from the course which the Governor can pursue if he wishes, and we have only suggested consulting the Local Native Council as an additional measure of precaution.

If natives do prefer to stay where they are then, as the Secretary of State says, there will be no need to move them unless their land

Commissioner that the natives concerned should enjoy the maximum benefits possible under both Ordinances.

It is unfortunate that this difference of opinion should have arisen. Not only is the Secretary of State's intention frustrated, and the opportunity missed of contending the verge critics here, but the relations between the Government and the Commission can hardly have been improved. Mr Morris Carter and his colleagues may, not unreasonably, feel that they are being regarded less as an impartial tribunal than as an administrative convenience whose advice is accepted only when it is politically palatable.

*ask Governor to*  
? The Secretary of State can only thank the Commission for the care and trouble which they have taken, and say that in the light of the Governor's comments he proposes to reserve his decision upon their pronouncement (to which meanwhile no publicity should be given) until he is in possession of their complete report.

*the issue of*  
**A**

*APR 24/4*

The point of difference between the view expressed by the Governor and the view of the Morris Carter Commission seems to be this. The Commission recommend that a permanent addition of 1500 acres be made to the Native Reserve taken from the present Native Forest Reserve, and that a corresponding area of 1500 acres should be taken from the Eigon Government Forest Reserve and added as Native Forest Reserve to the existing Reserve. Any native who is dispossessed

3. Governor Byrnes Tel (P.P.) 10 April 33  
States despatch sent by Air Mail may make it  
undesired inadvisable to publish interim pronouncement  
& awaits further instructions.

4. Governor Byrnes H 1 Conf (19th April) 4 April 33  
Encs. three copies of an Interim Pronouncement by  
the Land Commission which the Commission of 1930 desired  
would be prepared to make, & furnishes reasons why  
this Pronouncement should not be published.

5. Governor Byrnes Tel 82 Secret 21 April 33  
Presumes that it is no longer desired that reference  
be made to Carter Commission recommendations in Interim pronouncement.  
(Original on 7/5/33 - copy attached).

One could very much have wished that the  
Governor and his Advisers had seen their way to  
accept the Carter Interim Pronouncement as it stands.

It is based on the theory that the spirit  
of the Native Lands Trust Ordinance of 1930 is to  
be adhered to as closely as possible - this is in  
accordance with the Commission's seventh term of  
reference. The amending Ordinance is regarded - as  
the Secretary of State intended it to be - as merely  
an interim device to operate during the few months  
preceding the Carter recommendations; these having  
now been formulated (so far as North Kavirondo is  
concerned) logic demands as close an approximation  
to the status quo ante as practicable.

The Governor, however, anticipates that a  
reversion to the procedure of the principal Ordinance  
will dissatisfy the natives, who have been led to  
hope for more generous treatment. He is "in complete  
agreement" with the view of the Chief Native

Commissioner

Sir C. Bottomley  
S.S.S. (S of S. parcel minute attached)  
Sec of State

The position is as follows:-

Under Section 15(1) of the original Ordinance  
the Governor has power with the advice and consent of  
the Central Board to exclude from a Native Reserve land  
required for development of the mineral resources of  
the Colony. By the proviso to that Section it is  
laid down that no land shall be excluded under this  
Section unless the Central Board is satisfied that  
the proposed exclusion has been brought to the notice  
of the Local Native Council and of the natives concerned.

By the amending Ordinance it was enacted  
that where land is excluded from a Native Reserve  
temporarily for the purpose of granting a lease for  
the development of the mineral resources of the Colony  
it shall not be necessary for the Central Board to  
bring the proposed exclusion to the notice of the  
Local Native Council or the natives concerned.

The amending Ordinance thus removes the  
obligation but leaves it quite open to the Governor  
to proceed as laid down in the original Ordinance  
if he thinks fit.

The proposal put forward by the Commission  
is that, since it is impossible to say at present  
how much land will actually be required, or in which  
areas it will be wanted, for mining leases, the  
consent of the Central Board should be asked to the  
exclusion of an area which is considered to be  
about three times as large as the possible require-  
ments; this area being replaced, in the immediate  
neighbourhood, by land taken from the Native Forest  
Reserve which in turn involves compensation by the  
addition of 1500 acres of the Government Reserve as

the

is actually required for a mining lease; <sup>if then,</sup> and they can be settled among their neighbours, and the tribe as a whole will have been compensated by <sup>the</sup> ~~any~~ addition of the 1500 acres to the total area of the Reserve.

J. I. W. Hall

If the local Native Council <sup>5-4-33</sup> agreed, we should have established the location that, while consultation on ~~the~~ <sup>the</sup> ~~land~~ <sup>land</sup> was impracticable there had been no impairment of <sup>in respect of</sup> ~~any~~ <sup>the</sup> ~~State~~.

If however they

(a) refused

(b) said "You have already made up your mind - why consult us?" or

(c) said - "Go west other land - if the alienated farms to the East"

we should look rather foolish.

The draft leaves it to the Governor to decide on the usefulness of the suggestion - without, & come out, & boss it or him.

L.S. 5.4.33

B.H.K.  
6.4.33

2. To Governor Sec. P.P. — com —

4. A.H. 33

Does para 21 involve any departure from course Governor promises under new Ordinance?

What is the point of consulting the N. Kavirondo Council?

? If natives (& their neighbours) prefer to stay where they are, there will be no need to move them, though land will have been added to the Reserve.

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will be no need to move them, though  
land will have been added to the  
Reserve.

Mr. Flood

I send on a draft telegram, very much  
for comment.

R. A. Smith  
2/4.

Sir C. Bottomley

The telegram can do no harm and may be  
useful.

It will be noted that the Commission do not expect  
that more than 500 acres will be wanted, which is  
a pretty ~~good~~ anti climax to all the fuss.

The Commission's views seem eminently sane and practical,  
but I fear there will still be misunderstandings.

S. C. Flood  
4.4.

(In red, as, as to catch the Governor before he puts his  
despatch in the mail)

W. C. S.  
4.4.33.

Sec of State

James

R. A. S.

4.4.33