

1927

Kenya

No. 10/33

CO-533/367.

SUBJECT

Native Lands in Kenya

Previous

H/c. 5931/26

Subsequent

15027/28

X 10133  
1927

X 10133  
1927

KENYA

From

WB 236

Date

Native Lands in Kenya

Previous paper	(Minutes within)		
J.C. 5031	Mr Bush	12	
	M. Bothwell	15	
	S. S. Sidi	16	
	Mr. Mwangi Juma	20/12	
Subsequent paper	Mr. Bothwell	24/12	
S. S. Sidi (Part 2)	S. S. Sidi	24/11	
X 115024/28	Mr. Mwangi Juma	25	
	Mr. Mwangi	27/12	
X 115024/28	Mr. Mwangi	(5)	
	Mr. Bothwell	24	
S. S. Sidi 2	S. S. Sidi	27/11/22	
S. S. Sidi 2/6	Mr. Mwangi Juma	27/12	
Mr. Mwangi Juma 2/6	Mr. Mwangi	27/11	
X 115024/28	Mr. Mwangi	27/11	
29056 (allotted)			
X 115024/28			
297			
X 115024/28			

1.

H. of Commons

10 Feb, 1927

Q. by Col. Wedgwood

(1/3 sent in sub file)

Put

W. Allen

(1/3) stand

Entry paper on sub file A.

1/3

Copy Q. & A to Gov - 2/1/27

1927 M/3 on sub file B.

3.

H. of Commons

1 March, 1927.

Q. by Col. Wedgwood

(1/3 sent in sub file)

Put

W. Allen

(1/3) stand

Entry paper on sub file A.

H

Hof Commons

8 March 27

Question by Col. Wedgwood

(1/3 sent in sub file)

Put

W. Allen

(1/3)

stand

Entry paper on sub file A.

5.

H. of Commons

15 March 1927.

Q. by Mr. Walter Baker

Entry paper on sub file A.

6.

Copy 2 + Q. (nos) to Gov - 29 March, 1927 M/3

X-10153/27  
7 — H of Commons — 25 March, 1927

in by Sir Robert Hamilton

4/3 on sub file

Put

written

373 at all

8 - m/s So Kenya - 31st March, 1927 - on sub-file  
"A"

9 - m/s So Kenya - 7 April, 1927 - on sub-file  
"A" (copies nos. 374)

10 — H of Commons — 18 May, 1927

in by Col. Wedgwood

11 — H of Commons — 19 May, 1927

in by Sir Robert Hamilton

13/6 248  
20 — H of Commons — 26 May 27. Cont  
(vide memo. on sub file 'A')

Entry proper on sub file A

Entry proper on sub file A

Entry proper on sub file A

X-10153/27

3/4

13 — Mr. P. Deaneham — 31st May, 1927  
tel.

Reports position with regard to individual native tenure within Native Reserves. Deap. follows.

Sir C. Strickland.

1. The question about the Native Land Trust Bill is not answered, but Sir Major Deaneham's letter would show that it is expected on June 20th.
2. All this about native land tenure shows that the question is under investigation. Especially see the statement that "much remains to be discovered" about Githobai. It is many years since the late Mr. Percy Breda got into touch with publishing his views on the subject.
3. The "Logue" of the end of the report shows that the bill has been copied too exactly from minutes I haven't checked. In the meantime I will look up A in the report to Major Deaneham's letter & see his remarks if it seems worth while.

X 10/33  
19

As proposed. It is surely quite unnecessary to delay the ~~land~~ bill by discussing such things as individual tenure. The views expressed in the C.A.G. telegram are quite sound.

2.6.27

P.H.C.  
8.6.27.

Copy of my reply to Mr. Butler on 5 "vesting" attached. When Mr. Martin called in discussed same & then generally - not too much attached.

Party ~~was~~ 15.6.27

1/4 Copy 10/11 to Gov. 21 June 1927. 1/3 in 'A' file

Printing charges in Sub. file A.

X 10/33  
27

15 ——— Mr. C. Denham ——— 10 June 1927  
State Native Land Trust Draft legislation was posted to Sir T. Grigg on 30 May.  
This has been kept.

The expediency of Party Bill  
177 of 1927 by Sir  
held in the  
to be  
Bill

Bill  
21.6.27  
at once

I attach papers relating to discussion with the Gov. in June. This amended record of the discussion of 30 June does not say much in other points of policy, but the two ~~should~~ be considered with the draft bill, which was being used at that very time. We are committed to dealing with it as rapidly as possible.

Party ~~was~~ 17.10.27

16 ——— H. of Commons ——— 8 Nov. 1927.

in by Col. Wedgwood.

in by Sir Robert Hamilton 9 Nov. 1927.

X. 10133/27

See minutes in sub file of the  
Ormsby Gons promise to make  
urgent enquiries.

off to & despatch with  
X. in case

J. Allen

17/11/27

18 to Gov. Tel. no. 17 Nov 27. 10133  
16/11 to Gov. G. B. (with copy of copy)

20 — H. of Commons — 21<sup>st</sup> November, 1927

in by Col. Wedgwood.

Despatch ofly no. 26

21 — Gov. Gigg — 31<sup>st</sup> October, 1927

Two, with comments two copies of ~~Bill~~  
the Native Lands Trust Bill, 1927, and asks that  
approval of its terms may be sent as soon as  
possible as it is desired that it should be  
passed at next Session of Legis. Ctl. which  
will take place in January.

— Gov. Gigg — 7<sup>th</sup> December, 1927

States us to Native Land Trust + adds that despatch  
follows on the case of Douglas's Mwangi.

entry paper in sub file A

X. 10133/27

23 — H. of Commons — 9<sup>th</sup> Dec, 1927

Question by Mr. Rennie Smith.

Despatch ofly no. 26.

24 — Gov. Gigg — 10 Dec, 1927

Seeks approval to immediate publication  
of Bill + introduction to Legis. Ctl. in January.

entry paper in sub file A

no. 26

I attach a minute dealing in detail with  
the Land Trust Bill sent home by the Governor in  
No. 21. This minute has been discussed carefully  
with Mr. Allen, and the minute embodies the agreed  
results of our deliberations. The paper has been  
held up by the time taken in dealing with Lord  
Olivier's motion in the House of Lords last week.

The minute deals with the Bill in (21) under  
the head of each particular section, and it is so  
arranged that minutes can be added in regard to  
each particular section beneath what I have written  
in my memorandum. I suggest that in order to avoid  
cross references on points of detail, it would be  
simpler if subsequent minutes could be added to  
the memorandum under the appropriate sections.

As regards No. 22, I don't think any further  
answer to the Parliamentary Question need now be  
made, and we must wait for further despatch regarding  
the case of Douglas Mwangi.

X. 10/33/17

As regards (24), it will be seen from reference to my minute that there are many very important questions raised by the proposed Draft Bill, and that amendment both of principle and in detail ~~will~~ <sup>will</sup> probably be required. The publication of the Draft Bill in its present form ~~will~~ <sup>would</sup> certainly raise hostile Parliamentary criticism in this country, even if it does not arouse serious apprehension among the natives in Kenya. I should therefore say that it is most undesirable for it to be published in its present form, but as the points raised require very close and careful consideration by the Secretary of State himself, it seems desirable to send interim reply to the Governor's telegram. When the reply has gone, the papers could be recirculated for further consideration.

R. Wilson

I can't go into this all in a minute - Noted on 8 Dec 1917 because it was recirculated.

(Delayed by Nat. (25 meetings))

Send off 2/12 tel. as advised & issue to me at once.

6.15.17

2.5 T. G. J. - 14<sup>th</sup> Dec 17

Sir S. Wilson  
The Secretary Genl.

This has come at a "rush" time, but we are committed to dealing with it as quickly as possible.

I have added notes to the Commission's very fine ~~analysis~~ analysis. But the main point is one of principle. We are dealing with a matter which touches the interests of "association" & of the S. of S. ultimate responsibility for the matter are closely involved. Upon the Commission has been left England.

Mr. Brichman's comments & views are based on the assumption that we must go slowly. And I do not see how any other thing can be defended in the House; which has to consider, later, the recommendations of the Commission.

6.15.17

Mr. Ramsay Lane

This is the draft Bill which we are going to discuss at

11.15 am tomorrow.

These discussed briefly with Mr. Battersley already & some further remarks.

Can all ~~for~~ "policy" and not attorney ourselves to be "ruled" by Sir & staff.

B.H.  
19.12.27

This subject was discussed with Mr. Smith, Gnr, Sir S. Wilson, Mr. B. Battersley, myself yesterday & I now send out draft for cms which has been drafted in consultation between Mr. Battersley & myself.

A telegram should be prepared to embody the major points in the draft despatch, when that despatch has been approved & copied for despatch.

R. W. S. 11.12.27  
B.H. 16.12.27

26 Copy nos. 16, 20 + 23 and answers to Gnr. Kenya - 15 Dec 1927  
26a To Gnr. 1054 (21 ansa) cms. 29 Dec. 1927  
29/12/28  
Mr Battersley  
8

At the meeting with Mr. Ormsby-Gore yesterday it was arranged that he should send a "Private and Personal" telegram to Sir E. Grigg to reach Nairobi on the latter's return there on the 22nd of December in order to warn him of our general attitude towards the terms of the Native Land Trust Bill. I send on draft herewith for this purpose.

R. W. S. 21.12.27  
S. S. G. 21.12.27  
Mr. Ormsby-Gore  
Wed. 21.12.27

B.H. 21.12.27

27 To Gnr. tel (private personal) cms 22 Dec, 1927

28 Gnr. Grigg 24<sup>th</sup> Dec, 1927  
tel (private personal)

Hopes proposed amendments will be telegraphed, will endeavour to secure acceptance of views of S. of S.

Send off the official tel. via K. Allen has typed. Then refer. to N° 28.

Wed 30.12.27  
since

29 Tel to Gov 30<sup>th</sup> Dec 1927

30 To Gov Sec Rya 2 JAN 1928 3pm

RFU

If a copy to the 20's thought necessary  
it might take the form of the  
acc: 876.

~~W. H. H. H.~~

3/8/28 LHW 5/1/28

Yes. There is much that they can  
do - on the basis of the telegram - to  
prepare for the ~~disposal~~

Gen. 4.1.28

876  
6/1/28  
1927-1-28

31. Let to Gen 9 Jan. 1928.

32 Letter from Mr Oldham addressed to  
Mr Ormsby Gore regarding Land  
Trust Boards.

This can now be put by  
at once done  
1/3/28

418

32

on Johnston 15/12/22  
Mr. B. B. ...  
This should go in  
the file + the Syf  
should see it into  
the committee  
on the report  
12.1.28

9

30th December, 1927.

The Right Hon. W. Ormsby-Gore, M.P.

Dear Ormsby-Gore,

I have thought a good deal about what you told me before I started about the Kenya proposal for Land Trust Boards. I agree with you that the proposed safeguards are inadequate, and the introduction of a political element into the boards seems to me a move in exactly the opposite direction to that which should be followed. I have not at present the least idea of the conclusions at which the commission collectively or I individually will arrive in the end. But with the light which I have at present the question of land seems to me fundamental in regard to the matters on which the commission has to report. Unless some means can be found of protecting adequately Native interests in land, mere political safeguards will be hardly worth the paper on which they are written. If a wrong step were taken in Kenya in regard to the land and an undesirable precedent set up, it might make impossible/

sible anything like an agreed solution of the questions on which the commission has to report. I earnestly hope that no irrevocable action may be taken in regard to the Kenya proposals before the commission gets back, which might have the effect of making the problem as a whole more difficult. The divergences of view are so wide that anything like general agreement regarding East African policy seems out of reach. But a genuinely national policy in regard to East Africa is so desirable that it would be a pity to do anything which might imperil the slender chances of agreement that exist. In saying this I am expressing only my personal view, since I have not so far had an opportunity of discussing the matter with any of my colleagues.

I am

Yours very sincerely,

*R. A. K. A. K.*

10133/27.

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

(Sent, 2.45 p.m., 9th January, 1928).

9th January.

Private and Personal.

Your telegram 24th December Although Chief amendments considered necessary have been indicated in my telegram of 30th December I think it will be better if you await arrival of despatch sent by mail of 29th December before proceeding further. In the meantime you will no doubt consider action to be taken on amendments proposed in telegram and consult me where you consider necessary.

72  
31

X. 10133/27  
Kevira

XRA

- Mr. V. H. Allen 3/2
- Mr. Maclean 4/1/28
- Mr. Bottomley 4.1.28
- Mr. E. J. Harding.
- Sir C. Strachey.
- Sir J. Shuckburgh.
- Sir G. Grindale.
- Sir C. Davis.
- + Sir S. Wilson. 6/1/28
- Mr. Ormsby-Gore. 7.1.28
- Lord Lovat.
- Mr. Amery.

~~Person~~

Sided sent -  
2.45 pm 9.1.28  
6.7

9 Jan

Private & Personal

Your letter 20 Dec

DRAFT. Tel cons:  
v. minute

Gavemon

Nairobi

although chief  
amendments considered  
necessary have been  
indicated in my letter  
of 30 Dec. I think  
it <sup>will</sup> ~~was~~ be better if  
you awaited arrival  
of draft sent by mail  
of 29 Dec before  
proceeding further.  
In the meantime you  
will need all consideration  
which the above  
amendments proposed  
in the plan and cover

the above you consider  
necessary.

10133/27

The Under Secretary of State for the Colonies presents his compliments to the Colonial Secretary of Kenya and is directed to request that the following corrections may be made in the Secretary of State's despatch No.1054 of the 29th December 1927 relating to the Native Land Trust Bill:-

Paragraph 15.

Line 6:- "represented" should be altered to "prescribed".

Line 12:- "Section 5" should be altered to "Section 57".

DOWNING STREET.

2 January, 1928.

X 10733/27

Kenya

30

14

Mr. [unclear] 30/12

Mr.

Mr.

Mr. E. J. Harding.

Sir C. Strachey.

Sir J. Shackburgh.

Sir G. Grindle.

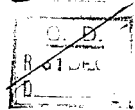
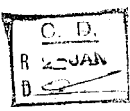
Sir C. Davis.

Sir S. Wilson.

Mr. Ormsby-Gore.

Lord Lount.

Mr. Amery.



2 JAN 1928

The list of [unclear] for the  
Kenya presents her  
complements to the [unclear]  
of Kenya & is directed to  
request that the following  
amendments may be made  
in the [unclear] to  
10524 of the 29 Dec 1927  
relating to the [unclear]  
Law Trust Bill  
Paragraph 10  
line 6 :- "represented"  
should be altered to  
"prescribed"  
line 12 :- "section 5"  
should be altered to  
"section 57"

DRAFT.

The [unclear]  
Kenya

296

10133/27.

① TELEGRAM from the Secretary of State for the Colonies to the Governor of Kenya.

(Sent 1.20 p.m., 30th December, 1927).

My telegram 14th December Native Land Trust Bill. I have dealt with the matter fully in my despatch No.1054 of the 29th December but following is summary of chief amendments which I consider to be necessary.

Section 3. For reasons explained in my despatch I do not consider that European Elected Members of Council as such should be appointed to Central Board and I am of opinion that Unofficial Members of Central Board should be selected to represent native interests as was agreed in your discussion with Secretary of State 30th June and there should be no such limitation of Governor's field of selection by nomination as contained in Bill. Question whether any special provision should be laid down to secure that particular native interests will be effectively represented on Board is matter for consideration and should be discussed with Chief Native Commissioner whose views should be reported to the Secretary of State.

Section 5. If possible provision should be made for representatives of Local Native Councils to be made permanent members of Local Boards. I leave it to you and your advisers to consider and report whether further statutory provision should be made to secure that remaining Unofficial representatives on Board are acceptable to local native opinion and in this case also I consider it undesirable that local European Elected Members of Council as such should be appointed.

Section 7. It should be made clear that mere fact that tribe will receive revenues from lease or licence should not in itself be regarded

regarded as conferring a benefit which justifies grant. There should be in addition a special benefit as indicated in Chief Native Commissioner's letter 19th January last.

Section 8. It should be provided that land leased is not likely to be wanted for requirements of and in particular for cultivation by tribe any time during currency of lease and cases in which proposed grant is objected to by natives concerned should be referred to Secretary of State for decision before grant is made. Provision should also be made that there should be specific notice to natives concerned of proposal to grant lease or licence see on section 16. Interests of natives will demand special caution in matter of grant of licences to take timber or common minerals and I consider that salt should be definitely excluded from description of common minerals.

Section 9. Provision should be included to effect that alienated land will revert when purpose of lease has been accomplished even if term of lease not expired and also to effect that leases for special purposes shall be transferable only with consent of Central Board and with same limitation of purpose. The words "after special enquiry" should be inserted after "certify" in proviso to Section 9(2).

Section 16. Apart from Gazette Notice it should be prescribed that special notice should be given to natives concerned of proposed exclusion and that if objection raised by them and not admitted by Central Board matter should be referred to Secretary of State for decision. You should consider whether Bill should not provide for addition to reserve if areas subtracted for public purposes on any one occasion exceeds particular limit say 200 acres. In this connection see Section 57 of Crown Lands Ordinance. I reserve my opinion on question of townships in native reserves which does not need immediate attention.

Section 17. On this and also on Section 16 it should be laid down that

17

that water shall not be taken away from the use of the natives without a certificate from the Chief Native Commissioner that it is not, and is not likely to be, wanted by them, and as regards exclusion of land in connexion with reservoirs, I consider that if natives are prejudiced by loss of land its exclusion must be conditional on its being possible to compensate by an equivalent area.

Section 21. Provision should be made for rules to be subject to disallowance by His Majesty and for publication in Gazette. Also all rules under sub-Section (b) should be submitted to the Secretary of State in draft before promulgation. In my despatch I have stated that subject to incorporation in Bill of these and other amendments indicated in my despatch there will be no objection to publication in Gazette, but that it should be made clear that measure will still be subject to consideration by Secretary of State on his return to London, and that it will not be introduced until he is personally satisfied that the position of the natives and their lands is adequately secured.

Mr. Allen 30/12

Mr. Bottomley 30.12.

Mr.

Mr. E. J. Harding.

Mr. C. Strachey.

Sir J. Shuckburgh.

Sir G. Grindle.

Sir C. Davis.

Sir S. Wilson.

Mr. Ormsby-Gore.

Lord Lovat.

Mr. Amery.

*Copy to Lord  
1.20 pm  
30<sup>th</sup> Dec 27.  
C.H.*

My telegram 14th December

Native Land Trust Bill I have dealt with the matter fully in my despatch No. 104<sup>5</sup> of the 29th December but following is summary of chief amendments which I consider to be necessary.

**DRAFT.** Tel.

Gov. Nairobi.

Section 3. Central Board For  
Reasons explained in my despatch I do not consider that European Elected Members of Council as such should be appointed to <sup>Central</sup> Board and I am of opinion that Unofficial Members of Central Board should be selected to represent native interests and there should be no such limitation of Governor's field of selection by nomination as contained in Bill. Question whether any special provision

*As was agreed in  
your discussion with  
S. H. 30th June*

*2/15*

provision should be laid down to secure that particular native interests will be effectively represented on Board is matter for consideration and should be discussed with Chief Native Commissioner whose views should be reported to the S. of S.

Section 5. Local Boards If possible provision should be made for representatives of Local Native Councils to be made permanent members of Local Boards. I leave it to you and your advisers to consider and report whether further statutory provisions should be made to secure that remaining Unofficial representatives on board are acceptable to local native opinion and in this case also I consider it <sup>an</sup> desirable that local European Elected Members of Council as such should be appointed.

Section 7 It should be made clear that mere fact that tribe will receive revenues from

please

lease or licence should not in itself be regarded as conferring a benefit which justifies grant. There should be in addition a special benefit as indicated in Chief Native Commissioner's letter 19th January last.

Section 8 It should be provided that land leased is not likely to be wanted for requirements of and in particular for cultivation by tribe any time during currency of lease and cases in which proposed grant is objected to by natives concerned should be referred to S. of S. for decision before grant is made. Provision should also be made that there should be specific notice to natives concerned of proposal to grant lease or licence. <sup>see in section 16.</sup> Interests of natives will demand special caution in matter of grant of licence to take timber or common minerals and I consider that salt should be definitely excluded from description

of

of common minerals.

Section 9 Provision should be included to effect that alienated land will revert when purpose of lease has been accomplished even if ~~period~~ <sup>term</sup> of lease not expired and also to effect that leases for special purposes shall be transferable only with consent of Central Board and with <sup>a</sup> ~~some~~ limitation of purpose. The words "after special enquiry" should be inserted after "certify" in proviso to Section 9(2).

Section 16 Apart from Gazette Notice <sup>it</sup> there should be <sup>prescribed that</sup> ~~provision for~~ special <sup>to be given</sup> notice to natives concerned of proposed exclusion and that if objection raised by them and not admitted by Central Board matter should be referred to S. of S. for decision. You should ~~also~~ consider whether Bill should not provide for addition to reserve if areas subtracted for public purposes on any one occasion exceeds

particular

particular limits say 200 acres. In this connection see Section <sup>57</sup> ~~58~~ of Crown Lands Ordinance. I reserve my opinion on question of townships in native reserves which <sup>will</sup> ~~does not arise~~ for immediate attention.

Section 17. On this and also on Section 16 it should be laid down that water shall not be taken away from the use of the natives without a certificate from the Chief Native Commissioner that it is not, and is not likely to be, wanted by them, and as regards exclusion of lands <sup>in connection with</sup> ~~for~~ reservoirs, consider that if natives are prejudiced by loss of land its exclusion must be conditional on its being possible to compensate by an equivalent area.

Section 21. Provision should be made for rules to be subject to disallowance by His Majesty and for publication in Gazette.

Gazette. Also all rules under sub-Section ~~315~~ (b)

should be submitted to the S. of S. in draft

before promulgation. In my despatch I have

stated that subject to incorporation of <sup>in Bill</sup> these ~~these~~ &

<sup>other</sup> amendments <sup>indicated in my despatch</sup> in ~~it~~ there will be no ob-

jection to publication in Gazette, but that it

should be made clear that measure will still

be subject to consideration by S. of S. on his

return to London, and that it will not be intro-

duced until he is personally satisfied that

the position of the natives and their lands

is adequately secured.

Gazette. Also all rules under sub-Section ~~2(1)~~ (b)

should be submitted to the S. of S. in draft  
before promulgation. In my despatch I have  
stated that subject to incorporation <sup>in Bill</sup> of <sup>these</sup> ~~these~~  
<sup>other</sup> <sup>amendments</sup> <sup>indicated</sup> <sup>my</sup> <sup>despatch</sup> in ~~it~~ there will be no ob-  
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the position of the natives and their lands  
is adequately secured.

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

Dated 24th December, 1927.

Received Colonial Office 5.10 p.m. 24th December, 1927.

Private and Personal. 24th December. Your telegram

of 23rd December Native Land Trust Bill. I particularly desire to introduce the Native Land Trust Bill in March and hope therefore that you will telegraph amendments you propose. I will endeavour to secure acceptance of all your views in order that the Bill may go through without controversy. I think I sufficiently understand your difficulty to appreciate the object of any criticism you may advance without detailed argument in despatch. I am sure that you on your side will not underestimate the importance of getting the Bill through in form which commands the general consent of moderate European opinion in the Colony. Failing that no safeguard can last.

air tel 9 Jan 1928

28  
21

10133/27

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

Sent 1.20 p.m. 22nd December, 1927.

-----

Private and Personal.

I am very much disappointed with the provisions of the Native Land Trust Bill. The proposed Boards do not seem sufficiently representative of native interests and there are also too many loopholes in the provisions of the operative Bill. In its present form I could not possibly defend it in the face of public opinion in this country. I am also very uneasy as to the proposed composition of the various bodies and particularly the ex-officio inclusion of Elected members. I shall be dealing with the matter in detail in a despatch which should go shortly after Christmas and main points of which will be telegraphed officially but in view of desire you have expressed for early publication of Bill in present form I have thought it desirable to let you know at once of my general attitude towards the Bill, and make it clear that considerable amendment will be necessary before I can possibly agree to publication.

X10133/27 Kenya B  
27

- Mr. Wiseman 24/12/27
- Mr.
- X Mr. Bottomley 21/12/27
- Mr. E. J. Harding.
- Sir C. Straachey.
- Sir J. Shuckburgh.
- Sir G. Grindale.
- Sir C. Davis.
- + Sir S. Watson. *E.H.K. 21.12.27*
- + Mr. Ormsby-Gore. *W.S. 22.12.27*
- Lord Lovat.
- Mr. Amory.

*Answer No. 26*  
*gc*

*Consistent 8.20 p. 22/10 J.S.*

Private and Personal.

I am very much disappointed

**DRAFT. Telegram.**

Governor, Nairobi.

with the provisions of the Native Land Trust Bill. The proposed Boards do not seem sufficiently representative of native <sup>interests</sup> ~~opinion~~ and there also <sup>are</sup> ~~are~~ <sup>too</sup> many loopholes <sup>in the</sup> for any operative provisions of the Bill. In its present

form I could not possibly defend it

*in the face of*

the public opinion in this country.

*I am also very uneasy as to the proposed composition of the various bodies and particularly the ex-officio inclusion of elected members. I propose to deal with the matter in detail in a despatch which should go*

*and main points of which will be telegraphed officially*

shortly after Christmas, but in view of the desire you have expressed for early

publication of Bill in present form I

have thought it desirable to <sup>let you know</sup> ~~inform you~~

at once of my general attitude towards

the Bill, and ~~make it clear that~~ <sup>considerable amendment will be necessary before I can agree to publication</sup>

Recd 15027 126  
6

KENYA

DOWNING STREET,

NO. 10511

29 December, 1927.

Sir,

I have the honour to acknowledge the receipt of your despatch No.709 of the 31st of October, enclosing copies of a Bill which has been prepared to set up a Native Land Trust in Kenya. I regret that it has not been possible for me to give the early consent to publication of the Bill in the Gazette for which you have asked but the Bill is of such fundamental importance in its relation to the duty of preserving for the natives the full use and enjoyment of their lands, as to make it necessary for me to give careful consideration to it in order to satisfy myself that it will fulfil that object.

2. You will have already learnt by the telegram which I am sending what are the chief amendments that I consider to be necessary. In this despatch I set out in more detail the alterations which I have in view. Subject to their incorporation in the Bill, I shall have no objection to its being published in the Gazette, but it should be made clear that the measure will still be subject to consideration by Mr. Amery on his return to London, and that it will not be introduced in the Legislative Council until he is personally satisfied that the

GOVERNOR  
LIEUTENANT COLONEL  
SIR E. W. H. CHIGG, K.C.M.G., C.B.E., D.S.O.  
etc. etc. etc.

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the position of the natives and their lands is adequately secured.

3. The matter was discussed between you and Mr. Amery on the 30th of June last, when it was generally agreed

(1) That there should be a Central Board with the Governor as Chairman to deal with matters of common interest and such matters as the Governor considers should properly be referred to it, as well as matters referred to it by the Local Boards. It was suggested that, besides the Governor, the Central Board might consist of one official and one unofficial member from each Local Board.

"There may be five Local Boards. The composition suggested was the Provincial Commissioner as chairman (perhaps with casting vote only), one official and two or three unofficials representing the interests of the natives".

(2) That the rights of acquiring land within the reserves for certain public and private purposes should be generally on the lines indicated in the Chief Native Commissioner's letter of the 19th of January 1927.

4. On the first point, I observe from the draft Bill that it is proposed, while maintaining the principle of equal numbers of official and unofficial members, that the latter should be mainly drawn from the European Elected Members of the Legislative Council. I have no doubt that in many cases the present Elected Members would be personally well qualified to uphold native interests, but, as their first duty is necessarily to the European constituents

constituents whom they represent, the natives could hardly regard them as ex officio representing the native interest in land, or as qualified to speak in this matter on the native behalf. It may well be that in the future Elections in the European constituencies in Kenya may turn on political issues which divide Europeans, and success in such elections may not necessarily qualify individuals to exercise responsible duties regarding land questions in the native reserves. Moreover your present proposal is not supported by the terms in which the discussion with Mr. Amery was recorded. It is true that, so far as the Central Board is concerned, the discussion does not specify the type of unofficial member to be selected from each Local Board, but as the only unofficials on the Local Board referred to are described as representing the interests of the natives, it must be assumed that the unofficial member to be appointed from each Local Board was contemplated as being one who could be regarded as representing native interests. The Bill should, therefore, provide that unofficial members of the Central Board should be selected to represent native interests, and there should be no such limitation on the Governor's field of selection by nomination as is contained in the draft Bill. Whether any special provision should be laid down in the Bill to secure that particular native interests will be effectively represented on the Board is, however, a matter for consideration, and I would suggest that you should discuss with the Chief Native Commissioner the extent to which he considers it desirable to incorporate any provisions

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provisions of this character in order to satisfy native opinion in the colony that their point of view will be adequately represented on the Board. In your reply I should be glad to be informed of his views in regard to the actual provisions which you desire to incorporate.

B. As regards the Local Boards, the method of securing native representation was not expressly taken up in the discussion with the Secretary of State, and you do not deal with this point in your covering despatch. The question of most importance in this connection is whether it would not be possible for representatives of the Local Native Councils to be made permanent members of the Local Boards. In cases where such a Board dealt with the land of more than one community such a provision might be impracticable, but I note from paragraph 18 of Sir Robert Coryndon's despatch ~~1923~~ of the 8th of January 1924 that, when he suggested the appointment of Advisory Boards, he thought that among the members of the Boards should be "such native representatives as the Government might appoint who should, if possible be members of the Local Native Council". The Government of Kenya does not seem, in the past, to have regarded the appointment of such native representatives as impracticable, and I consider that, if possible, provision should be made for such appointments to be made. Whether any further statutory provision should be made to secure that the remaining unofficial representatives on the Board are acceptable to local native opinion, I must leave it to you and your advisers to consider and report to me, but in this

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 this case also I consider it undesirable that the local European Elected Members of Council as such should be appointed to a Local Board. I would again emphasize my point that the Elected Members represent European constituencies demarcated with a view to the representation of Europeans rather than the native reserves which lie alongside or in the neighbourhood of their constituencies. I consider further that the native trust boards provide an excellent opportunity of bringing into public service individual Europeans who have not hitherto taken an active part in European politics in the Colony.

6. In view of the ~~number~~ of local boards which will now be constituted it might be desirable to amend Section 5 (ii) so as to allow the Chief Native Commissioner to nominate a deputy to represent him on such a Board.

7. Clause 2 (i) sets aside for the use of the natives the area gazetted on the 30th of October, 1926. Two modifications of areas so gazetted have since been made in the case of the Wandj Reserve and the Bigo Reserve. The sub-Clause will require amendment in order to cover these cases, and others, if any others exist, by reference to the Gazette in which the alterations were made.

8. On Clause 2 the question arises as to the circumstances in which the grant of a lease or licence of land in a reserve can be regarded as beneficial to the native

native tribe concerned. I am anxious that it should be made clear that the mere fact that the tribe will receive revenues from the grant of the lease or licence should not, in itself, be regarded as conferring on the tribe a benefit which justifies the grant of the lease or licence. There should, as indicated in Mr. Maxwell's letter of the 19th of January 1927, be, in addition, a special benefit, for example, by the establishment of trade or industries, by providing a market for native produce, by providing an exceptional opportunity to the natives of earning wages near their own homes, or, (in the case of mission stations) where any considerable section of the community desires the activities of the mission concerned.

9. Clause 8. This clause will now be governed by the alteration which I have indicated in clause 7, but read in conjunction with clause 9 it will still be a condition that the land, as a whole, is not occupied by natives of the tribe concerned. It should, I consider, also be provided that the land to be leased is not likely to be wanted for the requirements of and in particular for cultivation by the tribe at any time during the currency of the lease.

10. I consider that cases in which the proposed grant of the lease or licence is objected to by the natives concerned should be referred to the Secretary of State for his decision before the grant is made. This necessity will arise not only where the native community

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community or Council have themselves raised objection to the grant, but also where the Chief Native Commissioner has expressed the view that native opinion in the matter should be further heard, and steps have in consequence been taken to obtain the views of the community.

The Bill should further provide that there should be specific notice to the natives concerned of the proposal to grant a lease or licence over an area within the reserve.

11. As regards the grant of licences to take ~~timber~~ common minerals from the native reserve, I consider that the interests of the natives will demand especial caution in this matter, but I do not suggest any alteration of the Bill except that I consider that salt should be definitely excluded from the description of common minerals.

12. Under section 9 (i) (c) it should be provided that the stages at which the rent is to be revised shall be laid down in the Rules to be made under the Ordinance.

13. I shall also be glad if provision can be included in this clause to the effect that alienated land will revert to the Reserve when the purpose for which it has been leased has been accomplished even if the term of the lease has not expired, and also to the effect that leases for special purposes shall be transferable only with the consent of the Central Board and with the same limitation of purpose. A return of all leases or licences made under the section should be made and

forwarded

forwarded to the Secretary of state annually.

14. Section 9 (ii) which is taken from the legislation relating to the alienation of land outside reserves, is likely to give rise to criticism in the case of land which is situated within a reserve. I consider that it will be desirable to add the words "after special enquiry" after the word "certify".

15. Clause 16. The power of exclusion of land from the native reserve for public purposes is very wide, and, while it would not be practicable for all cases to be referred to the Secretary of State for prior approval, I consider that apart from the Cassette Notice, there should, as under Clause 8, be <sup>inserted</sup> (represented) that special notice should be given to the natives concerned of the proposed exclusion and that if objection is raised by them, and their objection is not admitted by the Central Board the matter should be referred to the secretary of state for his decision.

In section <sup>57</sup> 6 of the Crown Lands Ordinance it is provided that if it shall appear to the Governor in Council that the exercise of any power to exclude lands has reduced the area of the reserve below the area required for the use or support of the members of the tribes for whom it has been reserved the Governor shall add to the reserve an area equivalent to the land excluded. The Central Board will obviously not have the power under the bill to agree to an exclusion from the reserve which would have the effect referred to in that section

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section of the Crown Lands Ordinance, but I should like you to consider whether the Bill should not provide for an addition to the reserve if the area subtracted for public purposes on any one occasion exceeds a particular limit, say of 200 acres.

16. As regards 16 (j), you refer in your covering despatch to the Report of the Local Government Commission, but I observe that the Commission dealt with some diffidence with the question of townships growing up in native reserves, and expressed the hope that the solution of the problem would emerge out of the creation of the Trust. The solution proposed is that they should be treated ultimately in the same way as townships in settled areas. I feel it necessary to reserve my opinion on this question, which does not arise for immediate attention.

17. Clause 17. On this, and also on Clause 16, it should be laid down that water shall not be taken away from the use of the natives without a certificate from the Chief Native Commissioner that it is not, and is not likely to be, wanted by them. The power of excluding land for reservoirs under Clause 16 (b) raises the question of the land required for the collection of water and its clearance in order to prevent contamination. The exercise of this power in many cases might involve a large subtraction from the area of a reserve, and I consider that, if the natives are prejudiced by the loss of the land, its exclusion from the reserve must be conditional on its being possible to compensate them by an equivalent area of land.

18. Clause 21. The power to make rules under section 58 of the Crown Lands Ordinance 1915, is subject to disallowance by His Majesty. I am of opinion that rules made under the present Ordinance must similarly be subject to disallowance by His Majesty, and provision in the Ordinance should be made to that end. Provision should also be made for the publication of all rules in the Gazette.

Clause 21 (b) is very wide in form, and I shall be glad to learn its precise implication. In this case I consider that it will be desirable for the rules to be submitted to the Secretary of State in draft before promulgation.

19. In clause 21 (i and j) the word "reservation" should be "exclusion" as in Clause 16.

I have the honour to be,

Sir,

Your most obedient,

humble servant,

(for the Secretary of State)  
(Signed) W. ORMSBY GORE.

X.10133/1927 Kenya.

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Visum  
Mr. ~~Swanwick~~ 21/12.

Mr. ~~Bitterley~~ 21.12.27

Mr.

Mr. E. J. Harding.

Sir C. Strachey.

Sir J. Shackburgh.

Sir G. Grindle.

Sir C. Davis.

+ Sir S. Wilson. *Edle* 21.12.27

+ Mr Ormsby-Gore. *WJ* 22.12.27

Lord Lovat.

Mr. Amery.

for comment  
**DRAFT.**

KENYA  
NO. 1054

Gov. Grigg.

*Amad*  
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*Togohy mail*  
*129 Decemb*

Downing Street.

29 December, 1927.

Sir,

I have the honour to acknowledge the receipt of your despatch No.709 of the 31st of October, enclosing copies of a Bill which has been prepared to set up a Native Land Trust in Kenya. I regret that it has not been possible for me to give the early consent to publication of

the Bill in the Gazette for which you have asked, but <sup>and</sup> it is of fundamental importance in its relation to <sup>the</sup> our duty of preserving for the natives the full use and enjoyment of their lands, and <sup>as to</sup> it ~~has been~~ <sup>make it</sup> necessary for me to give careful

<sup>to it in order</sup> consideration to the matter, <sup>entirely myself</sup> that it will <sup>be</sup> helpful that <sup>to</sup> reject

2. You will have already learnt by the telegram which I am sending what

*the Bill*

*Recieve for telegram  
as soon as possible  
v. might be  
24/12*

are

<sup>that I consider (H)</sup>  
are the chief amendments necessary. In this  
despatch I set out in more detail the  
alterations which I have in view. Subject  
to their incorporation in the Bill, I  
have no objection to its being published  
in the Gazette, but it should be made clear that  
the measure will still be subject to ~~examination~~ <sup>consideration</sup>  
by Mr. Amery on his return to London, and  
that it will not be introduced in the Legislative  
Council until he is personally satisfied that the  
position of the natives is adequately secured.

3. The matter was discussed between you  
and Mr. Amery on the 30th of June last,  
when it was generally agreed <sup>that</sup> (1) "There should  
be a Central Board with the Governor as  
Chairman to deal with matters of common  
interest and such matters as the Governor  
considers should properly be referred to it,  
as well as matters referred to it by

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the Local Boards. It was suggested that, besides the Governor, the Central Board might consist of one official and one unofficial member from each Local Board.

"There may be five Local Boards.

The composition suggested was the Provincial Commissioner as Chairman (perhaps with casting vote only), one official and two or three unofficials representing the interests of the natives".

(2) That the rights of acquiring land within the reserves for certain public and private purposes should be generally on the lines indicated in the Chief Native Commissioner's letter

of

of the 19th of January, 1927.

4. On the first point, I would ~~would~~ <sup>draft</sup> observe from the Bill that it is proposed, while maintaining the principle of equal numbers of official and unofficial members, that the latter ~~shall~~ <sup>should</sup> be mainly drawn from the European Elected Members of the Legislative Council. I have no doubt that in many cases the present Elected Members ~~will~~ <sup>will</sup> be personally well qualified to uphold native interests, but, as their first duty is necessarily to the constituents whom they represent, the natives could hardly regard them as ex officio representing the native interest in land, or as qualified to speak in this matter on the native behalf.

*(written)*  
Such a solution  
is

*It may well be that in the future Elected Members in Kenya may form a political class which divide Europeans, and unless in such selection may not necessarily qualify individuals to exercise responsible duties regarding land questions the native reserves.*

is not supported by the terms in which the discussion with Mr. Amery was recorded. It is true that, so far as the Central Board is concerned, the discussion does not specify the type of unofficial member to be selected from each Local Board, but as the only unofficials on the Local Board referred to are described as representing the interests of the natives, it must be assumed that the unofficial member to be appointed from each Local Board was contemplated as being one who could be regarded as representing native interests. The Bill should, therefore, provide that unofficial members of the Central Board should be selected to represent native interests, and there should be no such limitation on the Governor's field of selection as is contained in the Draft Bill.

Bill. Whether any special provision should be laid down in the Bill to secure that particular native interests will be effectively represented on the Board is, however, a matter for consideration, and I would suggest that you should discuss with the Chief Native Commissioner *to the extent to which he* *deems* ~~how far he~~ considers it necessary to incorporate any provisions of this character in order to satisfy native opinion in the Colony that their point of view will be adequately represented on the Central Board. In your reply I should be glad to be informed of his views in regard to the actual provisions which you decide to incorporate.

As regards the local boards, the method of securing native representation was not expressly taken up in the discussion with the Secretary of State, and you do not deal

deal with this point in your covering despatch. The question of most importance in this connection is whether it would not be possible for representatives of the Local Native Councils to be made permanent Members of the Local Boards. In cases where such a Board dealt with the land of more than one community such a provision might be impracticable, but I note from paragraph 18 of Sir Robert Coryndon's despatch No. 28 of the 8th of January, 1954 that, when he suggested the appointment of Advisory Boards, he thought that among the Members of the Boards should be "such native representatives as the Government might appoint who should, if possible be Members of the Local Native Council". The Government of Kenya does not seem, in the past, to have regarded the appointment of such native representatives as impracticable, and I consider that, if possible, provision should be made for such

such appointments to be made. Whether any further statutory provision should be made to secure that the remaining unofficial representatives on the Board are acceptable to local native opinion, I must leave it to you and your advisers to consider and report to me, but in this case also I consider it undesirable that the local European Elected Members of Council should be appointed to

a local Board as such. *I would again emphasize my point that elected members represent European interests demarcated with a view to the representation of Europeans rather than the native reserves which lie alongside or in the neighbourhood of their constituencies. I consider that the local boards provide an excellent opportunity of bringing into public service individual Europeans who have not hitherto taken an active part in European politics in the colony.*

6. In view of the number of local boards which will now be constituted it might be desirable to amend Section 5 (ii) so as to allow the Chief Native Commissioner to nominate a deputy to represent him on such a Board.

7. Clause 2(i) sets aside for the use of the natives the area gazetted on the 30th of October, 1926. Two modifications of

of areas so gazetted have since been made in the case of the Nandi Reserve and the Digo Reserve. The sub-Clause will require amendment in order to cover these cases, and others, if any others exist, by reference to the Gazettes in which the alterations were made.

8. On Clause 7 the question arises as to the circumstances in which the grant of a lease or licence of land in a reserve can be regarded as beneficial to the native tribe concerned. I am anxious that it should be made clear that the mere fact that the tribe will receive revenues from the grant of the lease or licence should not, in itself, be regarded as conferring on the tribe a benefit which justifies the grant of the lease or licence. There should, as indicated in Mr. Maxwell's letter of the 19th of January, 1927, be, in addition,

addition, a special benefit, for example, by the establishment of trade or industries, by providing a market for native produce, by ~~providing~~ an exceptional opportunity to the natives of earning wages near their own homes, or, (in the case of mission stations) where any considerable section of the community desires the activities of the mission concerned.

9. Clause 8. This Clause will now be governed by the alteration which I have indicated in Clause 7, but it ~~will~~ <sup>shall</sup> still be a condition, ~~as laid down in Mr. Maxwell's letter,~~ that the land, as a whole, is not being beneficially occupied by natives of the tribe concerned. It should, I consider, also be provided that the land to be leased is not ~~likely to be wanted for the requirements of~~ <sup>likely to be wanted for cultivation</sup> <sup>in particular for cultivation</sup> of the tribe at any time during the currency of the lease.

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10. I consider that cases in which the proposed grant of the lease or licence is objected to by the natives concerned should be referred to the Secretary of State for his decision before the grant is made. This necessity will arise not only where the native community or Council have themselves raised objection to the grant, but also where the Chief Native Commissioner has expressed the view that native opinion in the matter should be further heard, and steps have in consequence been taken to obtain the views of the community.

The Bill should further provide that there should be specific notice to the natives concerned of the proposal to grant a lease or licence over an area within the reserve.

11. As regards the grant of licences to take timber or common minerals from the native reserve, I consider that the interests of the natives will demand

especial caution in this matter, but I do not suggest any alteration of the Bill except that I consider that salt should be definitely excluded from the description of common minerals.

12. Under Section 8 (1) ~~(a) & (b)~~ should be provided that the stages at which the rent is to be revised shall be laid down in the Rules to be made under the Ordinance.

13. I shall also be glad if provision can be included in this clause to the effect that alienated land will revert to the Reserve when the purpose for which it has been leased has been accomplished ~~for which it has been leased has been accomplished~~, even if the term of the lease has not expired, and also to the effect that leases for special purposes shall be transferable only with the consent of the Central Board and with the same limitation of purpose. Return of all leases or licences made under the section should be made and forwarded to the Secretary of State annually.

14. Section 9 (11), which is taken from the Legislation relating to the alienation of land outside reserves, is likely to give rise.

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rise to criticism in the case of land which is situated within a reserve. I consider that it will be desirable to add the word "After special enquiry" after the word "certify".

15. Clause 16. The power of exclusion of land from the native reserve for public purposes is very wide, and, while it would not be practicable for all cases to be referred to the Secretary of State for prior approval, I consider that apart from the Gazette Notice, there should, as under clause <sup>B</sup>, be ~~special~~ <sup>should give</sup> special notice <sup>that</sup> to the natives concerned of the proposed exclusion and that if objection is raised by them, and their objection is not admitted by the Central Board the matter should be referred to the Secretary of State for his decision.

In Section 5 of the Crown Lands Ordinance

it is provided that if it shall appear to the Governor in Council that the exercise of any power to exolude lands ~~has reduced~~ the area of the reserve below the area required for the use or support of the members of the tribe for whom it has been reserved the Governor shall add to the reserve an area equivalent to the land excluded. The Central Board will obviously under the bill to agree not have the power to an exclusion from the Reserve which would have the effect referred to in that section of the Crown Lands Ordinance, but I should like you to consider whether the Bill should not provide for an addition to the Reserve if the area subtracted for public purposes on any one occasion exceeds a particular limit, say of 200 acres.

16. As regards 16(j), you refer in your covering despatch to the Report of the Local Government Commission, but I observe that the Commission dealt with some diffidence with

with the question of townships growing up in native reserves, and expressed the hope that the solution of the problem would emerge out of the creation of the Trust. The solution proposed is that they should be treated ultimately in the same way as townships in settled areas. I feel it necessary to reserve my opinion on this question, which does not arise for immediate attention.

17. Clause 17. On this, and also on Clause 16, it should be laid down that water shall not be taken away from the use of natives without a certificate// from the Chief Native Commissioner// that it is not, and is not likely to be, wanted by them. The power of excluding land for reservoirs under Clause 16 (b) raises the question of the land required for the collection of water and its clearance in order to prevent contamination. The exercise of

of this power in many cases might involve a large subtraction from the area of a reserve, and I consider that, if the natives are prejudiced by the loss of the land, its exclusion from the Reserve, must be conditional on its being possible to compensate them by an equivalent area of land.

18. Clause 21. The power to make rules under Section 21 of the Crown Lands Ordinance 1915, is subject to disallowance by His Majesty. I am of opinion that rules made under the present Ordinance must similarly be subject to disallowance by His Majesty, and provision in the Ordinance should be made to that end, also Provision should be made for the publication of all rules in the Gazette.

Clause 21.(b) is very wide in form, and I shall be glad to learn the precise implication. In this case, I consider that it will be desirable for the rules to be submitted to the Secretary of State in draft before promulgation.

19. In Clause 21(i and j) the word "reservation" should be "exclusion" as in Clause 16.

I have,

(Signature)  
W. CRIMSBY GOHE  
(for the Secretary of State)

X.10133/27  
Kenya

Section 2 (1) of Native Lands Bill

This Section of the Bill sets aside for ever the use of the natives the areas gazetted on the 13th of October, 1926, and the Bill provides for additions to these areas, but not for any subtractions. Yet (e.g.) in the case of the Nandi Reserve, a subtraction has already been agreed, (see X.4523/26), and also a substantial subtraction from the Digo Reserve, (X.10097/27). Presumably, these subtractions have been, or will be, gazetted, and, in the circumstances, some amendment of Section 2(1) of the Ordinance appears necessary in order to cover them, and others if any.

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I agree. [The two cases mentioned are not in any way perfect].

W.C.S.

Sections 3 and 5. It will be convenient to take these two Sections together since the composition of the Central and Local Boards can hardly be separated at any rate so far as the leading principles are concerned.

It will be observed that under Section 4 of the Ordinance all lands and native reserves and all matters relating thereto are placed under the "management and control of the Central Board", and all such lands are to be administered for the use and benefit of the native tribes for which they have respectively been reserved. The duties of the Local Board are limited to advising the Central Board in regard to certain matters set out in Section 6.

The Central Board is composed of:-

- (a) The Governor.
- (b) The Colonial Secretary.
- (c) The Attorney General.
- (d) The Chief Native Commissioner.
- (e) The Commissioner of Lands.
- (f) The Unofficial Member of the Legislative Council *appointed to represent the interests of the African community*
- (g) Three European Elected Members.

The Central Board is given power from time to time to co-opt one or more Africans as Members of the Board for the purpose of the consideration of any particular matter.

The Local Board which is to be established in every Administrative District in which one or more Native Reserves may be situated is to consist of:-

- (a) The Provincial Commissioner.
- (b) The District Commissioner.
- (c) The European Elected Member of the Legislative Council for that Electoral Area

(d)

- (d) One Member appointed by the Governor from among the Europeans residing in the District.

For the consideration of any matter relating to a particular Native Reserve, the Governor may appoint as an additional Member of a Local Board a Representative of any Mission operating in such Native Reserve. The Chief Native Commissioner is ex officio a Member of every Local Board. A Local Board may from time to time co-opt one or more Africans as Members of the Board for the purpose of the consideration of any particular matter.

When Sir Robert Coryndon suggested the appointment of Advisory Boards, he thought that each Board should consist of:-

The Chief Native Commissioner as Chairman who could delegate his authority.

The Senior Commissioner.

A District Commissioner.

A Representative of the Land and Survey Department;

and

Such Native Representatives as the Government might appoint (should, if possible be Members of the Local Native Council - *Ch*)

Paragraph 18 of despatch No. 28 of 8.1.25. - 5856/25 Kenya).

When ~~Mr. Coryndon~~ <sup>Mr. Coryndon</sup> ~~recommended~~ <sup>was ruled out</sup> Sir Robert Coryndon's proposals in the Report of the East Africa Commission, ~~he recommended~~ <sup>was recommended</sup> that a single Trust Board ~~should be established~~ for the whole country, ~~and that it should~~ <sup>to</sup> consist of:-

- (a) The Governor *as* Chairman.
- (b) The Chief Native Commissioner.
- (c) The three Senior Commissioners of the first-class.

(d)

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- (d) Two Representatives of the Natives, who, in the first instance, might be Missionaries; and
  - (e) Two Representatives of the Non-Native Unofficial population.

These last four Members were to be nominated by the Governor. The Report added that Unofficial Non-Natives were suggested on the Board in order to secure the maximum possible co-operation and confidence among all sections of the community.

*White Flag I.*

In a Memorandum dated the 18th of May, 1926 paragraphs 18 to 20 (X.10133/27) the Chief Native Commissioner strongly urged that the Secretary of State might be asked not to allow Unofficial Non-Natives on the Trust Board for the present at any rate. He said: "The Natives would not understand why Unofficial Europeans should be given a voice in the disposal or control of Native land except upon the invitation of the Natives concerned. They would see no more reason why an Unofficial European should have a say in their land affairs than why Natives should have a say in the disposal or control of a European's farm..... At the same time it is quite likely that there may be Unofficial Non-Natives in whom specific Native Communities have a special trust and confidence and whom they would like to have as Co-Trustees of their Trust Board. In such cases the position is quite different. I suggest, therefore, that no Trust Board should include any Non-Native Unofficial unless appointed by the Governor at the request of the Natives concerned..... I submit that it would be preferable that there should be a Trust Board for each District and that it should consist of:-

- (a) The Chief Native Commissioner as Chairman.
- (b)

(b)

- (b) The Senior Commissioner of the Province if there is one.
- (c) The District Commissioner of the District.
- (d) Such Natives not exceeding two as the Governor may appoint.
- (e) ~~Such Non-Natives~~ not exceeding two as the Governor may appoint if requested by the Native Authorities concerned.

For the purpose of consulting local Native opinion, full use should be made of the Local Native Councils as contemplated in Section 6 (1) (d) of the Native Authority Amendment Ordinance 1924.

In his despatch No. 529 of the 10th of June, 1925, the Secretary of State said that he agreed <sup>with</sup> the recommendation in Mr. Crmsby Gore's Report that the presence of two Native <sup>Non-Native</sup> Representatives of the Unofficial population on the Trust Board was desirable in order to secure the maximum possible co-operation among all sections of the community, and on that point there is no need to challenge the principle laid down in paragraph 4 of Sir E. Grigg's despatch as to associating the European community with a share in the responsibility of the Trust. The above quotations are merely meant to illustrate the views which have been put forward from various quarters of the general balance of interests represented on the Board.

The whole subject was discussed with Sir E. Grigg in this country, and Mr. Bottomley's Minute of the 24th of June in this file sets out the results of a preliminary discussion. There it was agreed that there should be not one Board of Local Boards combined with the Central Committee, of which the Governor should be the Chairman to deal with any problems of common interest and questions referred to it by the Governor arising out of the advice of a particular Local Board. The Local

Local Board should consist of:

Four Official Members of whom one should be the Chairman with a casting as well as an original vote.

Two Native Representatives ("In the case of a Local Board there should be no difficulty at all in finding suitable Natives"); and,

Such Non-Native Unofficial persons not exceeding two in number, whom the Governor considers to be fit and proper persons to be Members of the Board.

Sir E. Grigg agreed that there should be no compulsion to appoint two Unofficial Members regardless of whether suitable men were available or not. <sup>N.P.</sup> On the 30th of June, Sir E. Grigg had a meeting with the Secretary of State, the results of which are recorded in an agreed Minute <sup>so far as</sup> this point is concerned. I quote as follows:

"The ownership of the Reserves as defined and gazetted should continue to be vested in the Crown. The land should be at the disposal of the Government for the benefit of the Natives subject to the advice and control of Members of Trustess.

There should be a Central Board with the Governor as Chairman to deal with matters of common interest and such matters as the Governor considers as well as matters referred to it could properly be referred to it, by the Local Boards.

It was suggested that besides the Governor the Central Board might consist of one Official and one Unofficial Member from each Local Board.

There may be five Local Boards. The composition suggested was:-

The Provincial (or District) Commissioner as Chairman (perhaps with casting vote only).

One Official; and,

Two or three Unofficials representing the interests of the Natives.

Unofficials

556/25

White flag in

\* reference to letter  
Littwood - see  
below.

White flag in H  
by last on 20/6/25  
made

Unofficials would be appointed for a term of years - not exceeding 10 was mentioned as suitable."

To my mind it is quite clear from the above that it was never intended that the Unofficial Representatives on the Board should be one Member of the Legislative Council representing African interests and three European Elected Members. After all, the main object of these Boards is to act as ~~boards~~ with definite obligations to the Natives whereas the paramount obligation of an Elected Member is necessarily to his constituents, and he would be failing in his duty if he did not so regard it.

The next that has hitherto been suggested has been 1. Two Unofficials representing Native interests and two representing Non-Natives.

This would have been the best proposal. ~~but as~~ The Governor has now proposed three European Elected Members, and he has already ~~shown~~ <sup>discussed</sup> with the Bill of European Elected Members, a position of parity might best be attained by putting two additional Members representing African interests. I would suggest that ~~in any case~~ whatever solution is finally thought best, we should on this point inform the Governor by telegram that his proposals are objectionable in principle, and he must provide for at least an equal number of persons on both Boards who are appointed specifically as representing Native interests, and that he should put forward proposals for securing this.

Here is ~~however~~ <sup>in addition</sup> the further point how far it could be appropriate to talk to him on a ~~board~~ <sup>board</sup> elected

\*Write [Aluminium - and the] 1011 of the draft bill = 1013/27 in this direction

was in fact included - 1011 of the draft bill = 1013/27

members or officers. ~~the~~ <sup>the</sup> local boards, which are the most closely associated with particular native interests, there is no choice as to the personality of the elected members, though this consideration would not necessarily apply to the Central Board.

On the whole having regard to the agreement with ~~the~~ <sup>the</sup> J. J. mentioned at ~~of~~ <sup>of</sup> (two page book) ~~and~~ <sup>and</sup> the ~~remains~~ <sup>remains</sup> of the Chief Native Com~~missioner~~, the bill will do more harm than good unless proposals substantially similar to those - 1011 of the draft bill - 1013/27 are adopted as regards unofficial representatives.

Flagg A. Rose  
Com~~missioner~~ <sup>Commissioner</sup> for the T. A.

(In answer to ~~the~~ <sup>the</sup> ~~question~~ <sup>question</sup> by A. Woodwood on 10th 5th November (No 16 A - sub file A) the Deputy Gov~~ernor~~ <sup>Gov</sup> stated that the matter was fully discussed with the Governor while on leave & it will therefore be everywhere assumed that the draft <sup>bill</sup> represents not only the Governor's but also the S of S's views) R.W.

Local Board. I prefer the proposal of 24.6.27, but that is ~~dead~~ <sup>dead</sup>. I adhere to the agreed minutes of 30.6.27 as to unofficial representatives - probably two unofficial Central Board as the agreed minutes of 30 June ~~allowed~~ <sup>allowed</sup> the position of African ~~unofficial~~ <sup>unofficial</sup> majority; I should accept the 3 Elected Members, but they should be chosen ~~to~~ <sup>to</sup> ~~represent~~ <sup>represent</sup> ~~the~~ <sup>the</sup> ~~native~~ <sup>native</sup> ~~interests~~ <sup>interests</sup>.

I would like to see the 3 for the ~~benefit~~ <sup>benefit</sup> of the ~~native~~ <sup>native</sup> ~~interests~~ <sup>interests</sup> ~~represented~~ <sup>represented</sup> by the ~~unofficial~~ <sup>unofficial</sup> ~~members~~ <sup>members</sup> of the ~~board~~ <sup>board</sup>.

Web

Sections (3) & (5)

There are one or two minor points on these  
Sections which I might mention. I would suggest  
that Sub-Section 2 of Section 3 <sup>(The words underlined are new)</sup> should run:-

"The Central Board may from time to time  
if it should deem it desirable co-opt one or more  
Africans either as Members of the Board for a  
(d) specified period or for the purpose of the consideration  
of any particular matter". A similar amendment should  
be made to Sub-Section 3 of Section 5.

In view of the number of Local Boards to  
be set up, Section 5 (2) might be amended to allow  
(3) the Chief Native Commissioner to nominate a Deputy  
from his Department to represent him on a Local Board.

Yes. J.H.K. | (d) This is proposed as a provision, in a  
permanent order, which may be useful  
later. I think we should be meeting  
to make if we suggested that visitors,  
at this stage, should be full  
members, even for a time.

(B) I.e., for a permanent meeting. Good  
if practicable.

C.H.

Section 8. This provides that if the Central Board is satisfied after reference to the appropriate Local Board that the grant of a lease or licence will be beneficial to the Native Tribe concerned the Governor may with the advice and consent of the Central Board lease any land in the Native Reserve and may grant licences and enter into contracts with Non-Natives relating to:

*1. Section*

- (1) The grazing of cattle in a Native Reserve;
- (2) The removal of timber or other forest produce from a Native Reserve.
- (3) The taking of sand, lime, stone and other common minerals from a Native Reserve.

In this connection I find that Sir R. Coryndon in his despatch of the 8th of January in 1886/25 - paragraph 16 - writes as follows:-

"It is the strongly expressed recommendation of the ~~Chief~~ Native Commissioner that the declaration of Native Areas..... should be strictly conditional on the recognition of the right of Government both to acquire land on payment of compensation for any public purpose and to execute temporary alienations of land where it is found that considerable tracts within a Native Area are not being put to any beneficial use and that their alienation would bring revenue to the tribal funds as well as other advantages to the community".

Consequently the principle of alienation may be regarded as advocated in the Natives' own interests. The only question arises as to the adequacy of any safeguards for it should be noted <sup>in</sup> the paragraph quoted above that ~~it is a benefit to the Native Area to get revenue for tribal funds is interpreted~~ <sup>interpreted</sup> by the Chief Native Commissioner <sup>as a benefit</sup> ~~there~~

*See rec. on 3 pages on*

*by the Chief Native Commissioner as a benefit this might be the sole consideration affecting the transfer*

There

There is consequently nothing whatever to prevent the Central Board under Section 8 of the Draft Ordinance from taking the view that a lease would be desirable, chiefly because it brought revenue to the Native Tribe, and this may also apply to the grant of licences. It may be noted that in Sir R. Coryndon's despatch of 8.1.25 - paragraph 18 - the Governor recommended that "all proposals involving the leasing of land exceeding a certain fixed acreage or value should be submitted to the Governor in Council, or exceeding a certain higher figure to the Secretary of State for approval. In the event of two or more of the Native Representatives on an Advisory Land Board being opposed to any disposal or alienation of land, and in all cases where the Chief Native Commissioner considers that Native opinion in the matter should be further heard, the case will be placed before the Governor in Council who shall appoint a Special Committee of Executive Council to consider the matter in detail, and take evidence if necessary. In all such cases, moreover, the proposed alienations will be referred to the Secretary of State for final approval. Unofficial Members of the Legislative Council.....have generally expressed their concurrence!"

In the reply to Sir R. Coryndon the Secretary of State said in his despatch of 14.6.25 - 5856/25 - as follows:-

"In paragraph 18 of his despatch Sir R. Coryndon recommended that all proposals involving

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involving the leasing of land exceeding a certain fixed acreage or value should be submitted to the Governor in Council, or exceeding a certain higher figure to the Secretary of State for approval. In forwarding your recommendations you should also furnish me with your views as to the figures at which these limits should be fixed.

X  
I agree that the Secretary of State's approval should be required in the cases referred to in paragraph 18 of Sir R. Coryndon's despatch, i.e., any proposed disposal or alienation of land in a Native Tribal Area or Reserve which is opposed by both the Representatives of the Natives on the Trust Board or where the Chief Native Commissioner considers that Native opinion in the matter should be further heard. I consider, however, that the Secretary of State's approval should also be required in all cases which present any special features. It will, of course, be understood that the Secretary of State's prior approval and not merely covering approval will be sought in every case to be referred to him. In paragraph 23 (5) of his Memorandum of the 18th of May, 1926, the Chief Native Commissioner states the following as the conditions which should be precedent to an alienation of land within a Native Reserve for other than public purposes:-

- (a) The consent of the Natives concerned and of the Trustees; or,
- (b) That the alienation would not involve any hardship to the Natives concerned but would be beneficial to such Natives as well as to the Colony in general by reason of the advantages that would accrue to the Colony by the development of such land or its use for

The safeguards at  
+ was in fact  
imported in  
29 of the draft  
will - X10(33/2)

for the purpose proposed, and a benefit to the Natives by reason of the rents received, and the general advantages which they would gain by the land being so utilised.

*White flag 14*

In a subsequent letter of the 19th of January, 1927, the Chief Native Commissioner recommended that in every case Native consent should be sought in the first instance, but the Trustees should have the right to override Native refusal if

- (a) The land as a whole is not being beneficially occupied by Natives of the Tribe concerned; and,
- (b) There is reason to consider that the Natives of the Tribes for whom the land has been reserved will derive a special benefit from alienation, e.g., by the establishment of trade or industries or by providing a market for Native produce or by providing an exceptional opportunity to the Natives of earning wages near their own homes or (in the case of Mission Stations) where any considerable section of communities desire the activities of the Mission concerned.

Actual Native holding should be protected as in Section 86 of the Crown Lands Ordinance Cap. 140. If there is any dispute as to whether the conditions (a) and (b) exist, the matter should be referred to the Supreme Court for declaration. As a matter of fact, the safeguards in Cap. 140 Section 86 are contained in substance in Section 9 of the Draft Ordinance, and it is not necessary to concern ourselves further with them. In his Minute of the 24th of June dealing with the Chief Native Commissioner's recommendations, Mr. Bottomley said that Sir E. Grigg saw no difficulty as to these proposals, but agreed to insert at the end of (a) above a further proviso that the land was not likely to be wanted for the requirements of the Tribe at any time during the currency of the lease.

*See 140*

*In regard to the further safeguards desired by the Chief Native Commissioner at (a) & (b) above*

(d)

On the question of the term of these leases Sir E. Grigg

Grigg had contemplated 30 years as a maximum but for special purposes requiring considerable capital expenditure on buildings etc. Mr. Bottomley thought that we should be driven to 99 years, in which case there must be revision of rent at the intervals applying to other leases.

I might add that in paragraph 2 of despatch on 17063/24 the S. of S. asked for an annual return of all leases to be rendered, thus providing a comprehensive report including all cases whether already approved by him or not.

If the Trust Boards are going to have their composition altered so as to contain at least two native representatives, which is what I have recommended under the sections dealing with them, it seems to me that all that is necessary to safeguard native rights under Section 86 is to incorporate the proposals already laid down in the Secretary of State's despatch of the 10th of June, 1925 on 5856/25. These safeguards are set out at "X" of my minute two pages back.

(5)

Whether anything further should be put into the Bill as regards cases which present special features is a matter for consideration, but I should have thought that the safeguard at "X" would really be sufficient. It is however also for consideration whether the condition (a) on the previous page as amended by Mr. Bottomley should not be embodied in the Ordinance as an indispensable prerequisite to alienation at all for private purposes.

"Beneficial": he showed plans for their benefit - use in cash.  
(A) - About: Put it in?  
(B) - I will  
Grigg

Minor Questions as regards Section 8.

It was agreed with Sir E. Grigg

(Mr. Bottomley's Minute of 24.6.27) that the Natives should retain their right to common minerals. This is no doubt the case, but it might be worth enquiry.

(A)

Section 8 (1) (b) The Central Board may fix the rent and may from time to time revise the rent in accordance with Section 11 of the Ordinance.

As this provision for revising the rent is statutory, I should have thought that the statutory period should also have been inserted when the rent would automatically come up for revision. This would be a safeguard for the lessees as well as for the lessors.

(B)

This Section might have a further

proviso that alienated land should revert to the

(C)

Reserve when the purpose for which it has been

leased has been accomplished, but this is a matter for the legal advice primarily. (See this point was made in para 2 of despatch no. 17063/24)

(d) ~~It~~ can only require that value <sup>RM</sup> should be considered before the loan is granted, & I submit, that oil is not a common mineral. It is vital to forward natives' state.

(B). Stages of revision to be stated in the lease

(F). I see no difficulty in inserting this (unless as to drafting). and loans for a special purpose must not be transferred without similar limitations. (we have suffered) WCB

Section 9. This being practically identical with Section 86 of Cap. 140 (present Crown Lands Ordinance) which was proposed by the Chief Native Commissioner seems to be all right; but I note that in Section 86 it is provided that either the lessees of the land or the Natives if dissatisfied with the decision of the Senior Commissioner may appeal to the Governor. There is now no appeal from the decision of the Central Board.

9(2). This is taken from (originally <sup>from</sup>) the Crown Lands Ord<sup>n</sup> 1402. It has been revised in the case of Crown Lands Ord<sup>n</sup> for more objectionable for Revenue Law. I think we must be content with the present of unist dress.

C. G. S.

Section 6

It has been recognised in the

correspondence that land should be excluded from a Native Reserve for certain public purposes. It seems to me that Sub-Section (g) gives rather a wide power, which, in the case of a small Reserve, might be exercised so as to nullify the whole object of the legislation. It would be difficult to find any satisfactory statutory provision as a safeguard against all contingencies which would not be too restrictive, and, I suggest that it would suffice if the exclusion from the Reserve were in all cases subject to the approval of the Secretary of State. It also appears desirable, however, that the decision to exclude lands from a Reserve for public purposes should only be taken after a public enquiry by the Central Board at which objections can be heard and considered. A record of such proceedings should be transmitted to the Secretary of State when his decision is asked.

In existing legislation (s. 57) of the Crown Lands Order the Governor is under an obligation to add to the reserve an area equivalent to any land excluded for public purposes which reduces the area required for the use or support of the tribe.

The powers are certainly very *RW*  
wide, but I don't think we can have all cases reported home. Apart from the Gazette notice, there should be specific notice to the natives concerned: if they object to their objection, and admitted, then there should be reference to the S. M.

§ 16 (f) Townships. Please see para. 8 of  
depl. App. No. 111 of Vol. 11 of the report of  
the Southern Commission. They have been

this matter of townships is  
under review with diligence,  
and hoped that the situation would  
emerge on the Trust. The  
situation is to deal then ultimately  
on townships as settled areas.

I don't like it, & I think the  
Govt should be left with the  
S. of L. reserves, his opinion as to  
the things which townships in  
the low areas should develop.

W. C. S.

Section 17 (1) (b). It hardly seems  
appropriate that these powers should be exercised  
for all time without the payment of compensation.  
I have, however, no definite suggestion to make in  
regard to this Section.

All rules should be required to be  
published in the Gazette as is provided in  
s. 17(2) of the original draft Bill - 10/13/27

W. C. S.

On this and § 16 it should be laid down  
that water shall not be taken away from the  
natives without a right from the Govt. that it  
is not & is not likely to be wanted by them.

As to land for collecting water, and  
clearance to prevent contamination.

We might say that if natives  
prejudiced they must be compensated  
by an equivalent area of land.

as to Rules, I agree.

W. C. S.

Section 21. The power to <sup>55</sup>  
make rules under s. 58 of the Crown Lands  
Ordinance is subject to disallowance  
by HM. under s. 151(3). It was originally  
~~intended~~ The amending Crown Lands  
Ordinance now to be referred (s. 23),  
provided that ~~the~~ the disposal of land  
in a native reserve by lease or licence  
should be regulated by Rules under s. 58  
of the Crown Lands Ordinance.

(d) The rules under sec. 21. should  
similarly be subject to disallowance or  
if the ruling in par 8 of our despatch  
5856/25 is upheld - <sup>substantive</sup> ~~substantive~~ <sup>and</sup> the  
prior approval of the S. of S. Personally I  
should think the former preferable.  
R.W.

(d) I prefer disallowance. We cannot  
fully appreciate the points here  
in advance.

W.S.

Section 21 (b). This is rather a wide power on which to make rules, and should, I think, be more fully explained by the Governor.

If the rules are subject to approval or disallowance however the section might stand.

RHW

? No objection - the rules must be within the Ordinance.

W.C.B.

Section 21 (1) and (1). Is the word  
"reservation" really suitable?

Row

It should be "exclusion" or "16

bed.

Memorandum.

The original intention was that there should be -

A(i) An Ordinance amending the Crown Lands Ordinance prohibiting any permanent alienation of land in the reserves - this Ordinance was passed last year, No.22 of 1926:

(ii) Rules relating to the disposal of land in the reserves to be passed under Section 58 of the Crown Lands Ordinance - no such Rules have yet been passed, but drafts were sent home in 17522/22 and 14130/23.

B. ~~The~~ second Ordinance setting up Advisory Native Land Boards, the land remaining vested in the <sup>Crown</sup> ~~Governor~~ as trustee for the natives. This is the Bill which has now come home.

It will be seen ~~that the~~ Bill now submitted proposes to repeal Part vi (i.e. Sections 54-58 of the Crown Lands Ordinance) which related to the reservation of land for the native tribes, and also the amended Ordinance No.22 of 1926 referred to above. As regards the repeal Sections of the Crown Lands Ordinance, Sections 54 and 55 are embodied in a different form in Section 2 of the Bill. Section 57 is included with additions in Section ~~55~~ 16 of the Bill which ~~does~~ <sup>does</sup> not, however, include the proviso as to the addition of Crown land to the reserve in certain cases. Section 58 of the Crown Lands Ordinance gives the power to make rules, and a similar power is given in much more detail in Section 21 of the Bill. With, however, this important exception that whereas any rules under the Crown Lands Ordinance are subject to disallowance

by

by His Majesty, the Bill makes no provision for such disallowance, or even for approval by the Secretary of State.

A The Draft Ordinance was prepared in the Colony earlier in the year, and a copy is flagged in 10133/27. The following is a comparison of its provisions with those of the Bill now submitted:-

Section 2. Reservation of land for Natives.

This Section also forms sub-Sections 2 and 3 of Section 2 of the Bill; ~~and~~ those sub-Sections corresponding with Sections 54 and 55 of the Crown Lands Ordinance.

Section 3. Power to alter Boundaries.

This Section is not included in the Bill.

Section 4. Power of Governor to cancel Reservation.

This Section corresponds to Section 56 of the Crown Lands Ordinance, but is not included in the Bill.

Section 5. Power to exclude land required for public purposes.

This Section corresponds to Section 57 of the Crown Lands Ordinance, and appears with certain additions to the description of public purposes in Section 16 of the Bill. But sub-Section 2 of the proviso, which also appeared in the Crown Lands Ordinance providing for additions to the reserves <sup>from Crown lands</sup> for grants in certain circumstances is not included in the Bill.

Section 6.

Section 6. Powers of Entry into Reserve Lands.

This appears as Section 17 of the Bill, but there is a change in the wording regarding compensation payable under sub-Section i(a).

Section 7. Disposal of Land.

This Section in an expanded form appears in Section 7 of the Bill.

Section 8. Establishment of Land Trust Board.

The corresponding Section of the Bill is Section 3 which contemplates a very different constitution.

As regards native representation, it merely provides for co-opting Africans for particular purposes. (See also Section 5(i) as to the composition of the Advisory Boards). The earlier draft also provided for the appointment of temporary substitute members, but this provision is not included in the Bill as now submitted.

Section 9. Central Board Control of Reserves.

The corresponding Section 4 of the Bill does not include the provision that no title to any land in a native reserve shall be valid without consent of the Board, nor the further provision that in the event of the opposition by the native representatives or if the Chief Native Commissioner considers the native opinion should be further heard, land shall not be disposed.

See para 8 B  
of a. 5324/25.

disposed of without the Secretary of State's prior sanction.

Section 10. Alienation or Other Disposal of Land in Native Reserves.

This corresponds to Section 8(i) of the Bill which, however, includes a proviso relating to the agreements of 1904 and 1911 with <sup>the</sup> Masai tribe.

Section 11(i). Form of Leases.

This Section contemplated leases for 30 years with the possible extension for another 30 years, but the <sup>Bill</sup> allows leases up to 99 years. The Bill, however, omits the provision that a lessee is bound to accept the ruling of the Board as to the amount of compensation.

Section 12. Principles as regards Rent.

This corresponds to Section 11 of the Bill.

Section 13. Forfeiture of Leases.

This corresponds to Section 13 of the Bill.

Section 14. Lessees not to alienate land without consent of Board.

These provisions are embodied in Section 12 of the Bill.

Section 15. Provision for Agricultural and Grazing areas.

This Section allowed the Board to survey such areas into farms of a limited size. It is not included in the Bill

Bill now submitted.

Section 16. Bringing of Actions.

This is Section 18 of the

Bill.

Section 17(i). Power to make Rules.

This is similar to Section 21 of the Bill except that the matters enumerated in the Bill omit (h) the Regulation of Transfers and add four other matters, *et*. (g) Procedure in regard to Application for Leases and Licences, (i) Reservations for Townships and Trading Centres, (j) Reservations for Schools, Churches, etc., and (m) Procedure for Assessment of allocation and compensation.

The Bill also omits the provision in the earlier draft that all Rules made in the Section shall be published in the Gazette.

Section 18. Saving of Existing Rights.

This appears with variations as Section 22 of the Bill.

Section 19. Repeal. The Bill includes the repeal of <sup>the</sup> recent Amending Ordinance 1926.

The following Sections in the Bill did not appear in the earlier draft :-

Section 5. Establishment of Advisory Boards.

It will be noted that the composition

composition does not include native representatives, but merely provides that Africans may be co-opted for particular purposes.

Section 6. Functions of Local Boards

Sections 14 and 15.

These are further Sections

in addition to Section 13 relating to forfeiture.

Section 2(i) of ~~the~~ Bill sets aside for ever for ~~the~~ use of the natives/areas gazetted on the 13th of October, 1926, and the Bill provides for additions to these areas, but not for any subtractions <sup>etc (eg)</sup> and in the case of the Nandi Reserve, a similar subtraction has already been agreed, (see X.4523/26), and also a substantial subtraction from the Dago Reserve, (X.10097/27). Presumably, these subtractions have been, or will be, gazetted, and, in the circumstances, some amendment of Section 2(i) of the Ordinance appears necessary in order to cover them, and others if any.

There are a number of small points which might be noted, though possibly they may not call for any action.

(i) It was suggested (memorandum of 30th June - 10133/27) that ~~the~~ Unofficials should be appointed to the Board for a term of years, perhaps not exceeding ten:

(ii) The same memorandum dealt with the question of survey rights requisite for the working of minerals: and

(iii) It also agreed to leases for agricultural and pastoral development, ~~but~~ in this connection

61  
connection reference might be made to par.7 of the despatch on 58756/20 as to limitation of acreage. In that despatch recommendations were asked for as to the limits. These questions of pastoral leases, and outspars were dealt with in the correspondence regarding the earlier draft Rules, see 17522/22 and 14130/23. As to this, see also Mr. Bottomley's minute 24th June on 10133.

There is the question of rent revision at intervals, see Mr. Bottomley's minute of 24.6.27 on 10133. The question of requiring reference to the S. of S. in cases where both native representatives objected to a proposed disposal of land, or where the Chief Native Commissioner thinks further enquiry is necessary, is dealt with in 5878/20.

An annual return of leases was required by par.2 of the despatch on 17063/24.

The same paragraph of that despatch also dealt with the question of the relinquishment of these areas which are no longer used for the purposes for which they are hypothecated.

There are also several points dealt with in par.8 of the despatch on 17063/24, and some of these are further referred to in Sir R. Coryndon's despatch in 5856/25.

There are numerous points arising out of the rules, drafts of which came home in 17522/22 and 14130/23. It will be seen from the latter paper that it was thought that the revised rules sent home might be approved, but that action was deferred for further developments.

*Re Gov. wants these dealt with by the Local Boards + they can be left till the next session - is passed by - R.A.W. (1/12)*

*J.W. Allen*

62  
25

Mr. Wiseman 12/12/27

X.10133/27 Kenya

Mr. Bushe 19/12

Mr. Botmanley 14.12 *atua*

Mr. E. J. Harding.

Sir C. Strachey.

Sir J. Shuckburgh.

Sir G. Grindle.

Sir C. Davis.

Sir S. Wilson.

Mr. Ormsby-Gore.

Lord Lovat.

Mr. Amery.

*Mr. de Kromer*

*sent 12/12 1.5/2*

**DRAFT.** Telegram

Governor, Nairobi.

Your telegram of 10th

December No.376 Land Trust

Bill will require <sup>*very careful*</sup> amendment in

*consideration*

~~several directions~~ and I do not

consider publication in present

form desirable at present. Will

<sup>*reply*</sup> ~~require~~ fully as soon as

possible.

RECEIVED  
12 DEC 1927  
COLONIAL OFFICE

10133/27

24  
/63

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

Dated 10th December

(Received Colonial Office 1.23 p.m. 10th December, 1927)

No. 376. 10th December

My despatch of 31st October No. 709

Native Land Trust Bill shall be grateful for approval of immediate publication of the Bill and introduction to the Legislative Council in January. Do not propose to discuss further in Executive Council until the Bill can be put forward for publication.

(Return reply) to Gov Sec 14/12

No. 21

L



5133 22  
64  
Telegram from the Governor of Kenya to the Secretary of State for the Colonies.

Dated 7th December, 1927.

(Received Colonial Office 10.35 a.m. 7th December, 1927.)

No. 373 of 7th December. Your telegram of 17th November. Native Land Tenure. This question is at present of special importance in a portion of the Kikuyu Reserve only. It requires especially close study of local Trusts about to be established under the Native Land Trusts Bill submitted for your approval vide my despatch No. 709 of 31st October, in view of which despatch was held up. Declaration of Policy even in regard to Kikuyu Reserve alone if based on a single incident may have unfortunate consequences. Trust that it will be sufficient answer to the parliamentary question in your telegram to state, that native claims to individual rights over land will be submitted to Boards of the Trustees concerned as soon as these boards are established. Despatch follows with statement on the case of Douglas<sup>S</sup> Mwangi.

21 55



KENYA.

GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

No. 709

RECEIVED  
25 NOV 1927  
COL.

3<sup>rd</sup> October, 1927.

Sir,

K/15

I have the honour to refer to the correspondence terminating with Kenya telegram No. 205 of June 10th last regarding the formation of a Native Land Trust and the preparation of legislation for that purpose.

2. My advisers have expressed agreement with the general lines of the record of the interview which I had with you and your advisers as set out in the Colonial Office Minute dated June 30th, and I enclose two copies of a Bill which has been prepared. This Bill was placed before Executive Council on the 21st instant. Council approved generally of the principles underlying it and agreed to its transmission to you. As, however, members had not had sufficient time to study the Bill in detail their approval was given on the understanding that it would be open to them to submit detailed criticisms after closer study of the various provisions and I gave them an assurance that their observations would receive full consideration and would be transmitted if necessary by telegraph to you. I have also discussed the objects and reasons of this Bill with the European unofficial members of Council. I explained to them that until the Bill had been before you and had received further consideration it would in my opinion be premature to publish it for general information. I consider that the Bill in its present form would be generally acceptable to Europeans and natives though there may be considerable discussion on details which should not, I think, necessarily

Bill.

29/10/27

Rec'd 10.5.27

cause/

THE RIGHT HONOURABLE  
LIEUTENANT COLONEL L. C. M. S. AMERY, P.C., M.P.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET, LONDON, S.W.

cause any material alteration in the Bill.

3. The areas of Crown Land described in Government Notice No. 394 do not, as you are aware, form a complete list of Native Reserves and I hope to be in a position to declare other areas before the present Bill is actually put to Legislative Council.

4. You will observe that the membership proposed both of the Central and Local Boards is on a more extensive scale than that suggested at our interview and that provision is specially proposed for the representation of Elected Members on those Boards. I do not need, I think, to elaborate the arguments in favour of their inclusion as you are well acquainted with my views on the desirability of associating the European community through their members elected to Legislative Council with a share in the responsibility of the Trust which the native administration imposes on the Government of the Colony. I feel sure ~~that the~~ present proposals will command your support.

5. Provision has also been made for co-opting both on the Central and Local Boards, if it is considered desirable, one or more Africans as members of the Board for the purpose of the consideration of any particular matter. It is felt that the door should not be closed in the Ordinance to African representation when a stage is reached at which Africans can be appointed to the Board and that this provision would give a further assurance to the native races that they would directly participate in the consideration of land questions affecting their Reserves.

6. In Section 5 of the Bill the number of local boards has also been increased very considerably beyond that contemplated in our conversation. After very full consideration I advocate this strongly on the following grounds: It is very important /

important that each tribe should feel itself represented by a board of its own, and that such local board should be composed so far as possible of men with intimate knowledge of the tribe and district. For securing the confidence of the natives this is an essential consideration. Individuals can very seldom be found with intimate or even accurate knowledge extending over a whole Province, especially where the tribes are mixed. Missionaries in particular usually know only that tribe or section of a tribe which inhabits the neighbourhood of their own particular Missions. The same consideration applies in some degree to all possible European members. By establishing local boards in every district it will be possible to secure members for each board who really know the district and who will command a far larger measure of native confidence than would be possible for any board representing a whole Province. On the other hand, there need, I think, be no fear that the number of local boards will lead to serious variations of policy as between districts, since the Chief Native Commissioner will be an ex-officio member of all local boards, able where necessary to attend any meeting and to present broad considerations of policy. The Provincial Commissioner in each Province will, moreover, be a member of the local boards in his Province. Finally the local Boards will only be advisory to the Central Board, and all their recommendations will be subject to review and confirmation or otherwise by the Central Board.

7. It will be seen that section 16 of the Bill amplifies section 57 of Chapter 140 in respect of public aerodromes, development of mineral resources, Government camps or stations and the establishment of townships. The category of purposes has been made complete and sub-section (7) of Chapter 140 has therefore been eliminated. It has further been considered that the general power given in Section 2(2) of the Bill renders unnecessary /

unnecessary the retention of the proviso to Section 57 of Chapter 140.

8. The question of the control of townships in Native Reserves was referred to in Chapter XII of the Local Government Commission's Report on the Settled Areas, and I would invite your attention to Section 16(j) and to Section 21(i) of the Bill. There are numerous small settlements which are gradually becoming townships in Native Reserves. These, with all petty "trading centres", will be left for the present in the Reserves and controlled under Rules as provided in Section 21(i).

The provision in Section 16(j) of the Bill is designed to allow of the removal of township control from the Board, subject to satisfactory financial arrangements, when a township becomes of sufficient importance to warrant the institution of Advisory Committees of local residents on the lines of Chapter XII of the Local Government Commission's Report.

9. I trust that you will be able to inform me of your approval of the terms of this Bill as soon as possible, as I should wish to introduce and pass it at the next session of Legislative Council which will take place in January. To make this possible the draft Ordinance should be published not later than the middle of December.

I have the honour to be,

Sir,

Your most obedient, humble Servant,

*Edward Gigg*

G O V E R N O R .

COLONY AND PROTECTORATE OF KENYA.



A Bill to Provide for the Reservation of Lands  
for the Use and Benefit of the Native Tribes  
of the Colony and for the Management and  
Control of Lands so Reserved.

**A Bill to Provide for the Reservation of Lands for the Use and Benefit of the Native Tribes of the Colony and for the Management and Control of Lands so Reserved.**

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

1. This Ordinance may be cited as "the Native Lands Trust Ordinance, 1927."

2. (1) The areas of Crown land described in Government Notice No. 394, published in the Official Gazette of the Colony dated the thirteenth day of October, 1926, are hereby declared to be Native Reserves and are reserved and set aside for the use and benefit of the native tribes of the Colony for ever.

Reservation of land for natives.

(2) It shall be lawful for the Governor from time to time to reserve for the use and benefit of the native tribes of the Colony such further areas of Crown land as in his opinion may be required for their maintenance and support. Any area so reserved shall be deemed for the purposes of this Ordinance to be a Native Reserve.

(3) Notice of every reservation under sub-section (2) shall be published in the Gazette and shall specify:

(a) the boundaries of the Native Reserve; and

(b) the tribe or tribal unit for whose use and benefit such reservation has been made.

(4) No reservation under this section shall confer on any tribe or member of any tribe the right to alienate any land in a Native Reserve.

3. (1) There shall be established a Native Lands Trust Board (hereinafter referred to as the "Central Board") which shall consist of:—

Establishment of Native Lands Trust Board

(a) The Governor as President;

(b) The Colonial Secretary as Vice-President;

(c) The Attorney General;

(d) The Chief Native Commissioner;

(e) The Commissioner of Lands;

(f) The Unofficial Member of the Legislative Council nominated to represent the interests of the African community;

(g) Three European Elected Members of the Legislative Council, to be nominated by the Governor.

(2) The Central Board may from time to time, if it should deem it desirable, co-opt one or more Africans as members of the Board for the purpose of the consideration of any particular matter.

Power to co-opt.

(3) The President or Vice-President and four other members shall form a quorum.

Quorum.

Procedure at Meetings

4. Questions before the Central Board shall be decided by a majority of votes of those present and voting, and, in the case of equality of votes, the President or Vice-President, as the case may be, shall have a second or casting vote.

Native Reserve to be under the control and management of the Central Board

4. Subject to the provisions of this Ordinance, all lands in Native Reserves and all matters relating thereto are hereby declared to be under the management and control of the Central Board, and all such lands shall be administered for the use and benefit of the native tribes for which they have, respectively, been reserved.

Establishment of Advisory Boards

5. (1) There shall be established in every administrative district in which one or more Native Reserves may be situated an Advisory Board (hereinafter referred to as a "Local Board") which shall consist of

(a) The Provincial Commissioner as Chairman;

(b) The District Commissioner as Deputy Chairman;

(c) The European Elected Member of the Legislative Council for the electoral area in which the administrative district is situated;

(d) One member to be appointed by the Governor, from among the Europeans residing in the district.

Provided that for the purpose of the consideration of any matter relating to a particular Native Reserve the Governor may appoint an additional member of a Local Board a native of the same tribe as operating in such Native Reserve.

(2) The Chief Native Commissioner shall, on behalf of the Governor, be a member of every Local Board.

(3) A Local Board may, from time to time, if it should deem it expedient, co-opt such Europeans as members of the Board to represent the local population of any particular Native Reserve.

(4) The Governor, the Provincial Commissioner and the other members shall form a quorum.

Functions of Local Boards

6. It shall be the duty of each Local Board to advise the Governor from time to time on the following matters relating to the Native Reserves situated in the administrative district for which the Local Board has been established

(a) Matters relating to the granting of leases or licences under this Ordinance;

(b) Matters relating to the carrying out of the exercise of the powers of the Governor under sections 16 and 17 of this Ordinance;

(c) Matters relating to the occupation rights of native individuals, families and communities;

(d) Matters relating to the management and development of any Native Reserve.

7. Notwithstanding anything in any other Ordinance contained, no land in any Native Reserve shall be leased or otherwise disposed of except under and in accordance with the provisions of this Ordinance, and no lease or licence shall be granted unless the Central Board is satisfied, after reference to the appropriate Local Board, that the grant of such lease or licence will be beneficial to the native tribe concerned.

Disposal of land in Native Reserves.

8. (1) Subject to the provisions of the last preceding section, it shall be lawful for the Governor, with the advice and consent of the Central Board:—

Alienation of land in Native Reserves

(a) To lease any land in the Native Reserve;

(b) To fix the rent payable in respect thereof;

(c) From time to time to revise such rent in accordance with the provisions of section 11 of this Ordinance;

(d) To grant licences to and to enter into contracts with non-natives relating to—

(i) the grazing of cattle in a Native Reserve;

(ii) the removal of timber or other forest produce from a Native Reserve;

(iii) the taking of sand, lime, stone and other common minerals from a Native Reserve.

Provided that in the case of a lease or licence relating to any lands reserved for the occupation of the Masai tribe by virtue of the agreements dated, respectively, the ninth day of August, 1901, and the twenty-sixth day of April, 1911, regard shall be had to the terms of the said agreements and any subsequent agreements.

(2) All rents, stand premia, grazing fees, and other profits whatsoever accruing from land in a Native Reserve, or from timber or 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, or, where there is no Local Native Fund, to the Natives' Trust Fund.

9. (1) Leases of land containing native villages or settlements may be granted under the last preceding section without specially excluding such villages or settlements, but land in the actual occupation of natives at the date of the lease shall, so long as it is actually occupied by them, be deemed to be excluded from the lease.

Leases of land in actual occupation of natives

(2) Any land within an area leased which has been in the occupation of natives shall, on ceasing to be so occupied, pass to the lessee.

Provided that the Chief Native Commissioner or such person as may be authorised by him for that purpose shall certify that the natives have ceased to occupy such land of their own free will and accord and without any duress on the part of the lessee.

(3) Any doubts that may arise as to whether any land is or is not included in any native settlement or village, or in lands allotted for that purpose, shall be decided by the Central Board whose decision shall be final.

10. (1) Leases under section 8 of this Ordinance may be for any period not exceeding ninety-nine years, and shall be granted subject to such terms and conditions as the Governor, with the advice and consent of the Central Board, may think fit.

Form of leases

Conditions implied in lease.

(2) Every such lease shall be deemed to contain provisions to the following effect:—

(a) That the lessee binds himself to pay the rent fixed by the Governor under section 8 of this Ordinance and any rent which may be fixed on revision;

(b) That the lessee binds himself to pay compensation for any damage caused to native individuals or communities in the exercise of the rights granted to him.

(c) It shall be lawful for the Chief Native Commissioner, subject to any general or special directions from the Governor, to execute for and on behalf of the Governor any lease granted under this Ordinance.

Chief Native Commissioner to execute leases

11. In determining the rent to be demanded for any land in a Native Reserve and upon any revision of rent, the Central Board shall take into consideration the rent obtained or obtainable in respect of any other land in the immediate neighbourhood and shall fix the rent at the highest amount that can reasonably be expected to be obtained for the land, and to be defrayed out of the use thereof.

Provision to be observed in fixing and revising rent

Provided that upon any revision of rent, the Central Board shall not take into consideration any value due to capital expended upon the land by the same occupier during his term of occupation, or any increase in the value of the land due to the improvement thereof.

12. Except as may be otherwise provided by Rules under section 10 of this Ordinance, it shall not be lawful for any person to let, or in any way to alienate the land comprised in a lease or any part thereof by sale, mortgage, transfer of possession, or lease, or otherwise howsoever without the consent of the Central Board first had and obtained, and any such sale, mortgage, transfer of possession, sub-lease, or other alienation shall be void without the consent of the Central Board first had and obtained.

Provision to be observed in letting or alienating land

13. If any part of any part thereof reserved in a lease under this Ordinance is at any time impounded for the purpose of the execution of any law, or if the same shall have become impounded, or if there shall be any breach of the lessee's covenants, and the Chief Native Commissioner is satisfied that the lessee has in writing, or by notice in writing, or by deed, or otherwise, failed to pay the rent in arrear or the covenant to be observed, or if at any time after the expiration of the term of the lease he commences an action in any court of law for the recovery of the premises; and if the court in such action shall, subject to relief in that behalf given, declare the land forfeited, or if the Chief Native Commissioner shall, subject to relief in that behalf given, declare the land forfeited, or if at any time after the expiration of the term of the lease he commences an action in any court of law for the recovery of the premises; and if the court in such action shall, subject to relief in that behalf given, declare the land forfeited, or if the Chief Native Commissioner shall, subject to relief in that behalf given, declare the land forfeited.

Provision to be observed in letting or alienating land

14. If the rent or any part thereof payable under a lease granted under this Ordinance shall at any time be in arrear for the period of twenty one days after the same shall have become due, or if the lessee shall fail to comply with, or shall commit any breach of, any of the conditions of his lease, the Chief Native Commissioner may cause an application to be made to a magistrate of the first class within whose local jurisdiction the land the subject of the licence is situate, to declare the licence forfeited.

Provision to be observed in letting or alienating land

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

(3) If upon the date fixed for the hearing of the application or to which such hearing has been adjourned it shall be proved to the satisfaction of the magistrate that rent is in arrear or that the licensee has failed to comply with or has committed a breach of any of the conditions of the licence, the magistrate shall, subject to relief upon such terms as may appear just, declare the licence forfeited.

15. No forfeiture under either of the two last preceding sections shall operate to extinguish any debt due in respect of any rent or other payment to be made by a lessee or licensee under a lease or licence forfeited.

Debt not extinguished by forfeiture

16. The Governor may at any time, with the advice and consent of the Central Board, by notice in the Gazette, exclude from a Native Reserve any land which may be required for any of the following purposes:

Power of Governor to exclude from Native Reserve land required for public purposes

- (a) Public roads or bridges;
- (b) Public reservoirs, aqueducts, canals, water-courses or water-pipe-lines;
- (c) Public quays, wharves or landing places;
- (d) Public railways or tramways;
- (e) Public aerodromes;
- (f) Development of electric power for public purposes from any lake, river or stream;
- (g) Development of the mineral resources of the Colony;
- (h) Government camps or stations;
- (i) Buildings or works in connection with any of the foregoing purposes;
- (j) The establishment of townships.

Provided that compensation shall be payable in respect of any buildings or crops destroyed or damaged, and may also, in the discretion of the Governor, be payable in respect of any disturbance or other loss to natives caused by such exclusion.

- 17. (1) It shall be lawful for the Governor
  - (a) at any time to enter upon any land in a Native Reserve and to take therefrom stone and other materials for the making or repairing of roads, railways, canals, water channels, or other public works whether of the like kind or not, without paying compensation except for buildings and crops destroyed or damaged;
  - (b) at any time to enter upon such land and to set up poles and carry electric lines across such land and to lay sewers, water pipes or electric lines, therein, without paying compensation but making good all damage;

Power of Governor in regard to land in Native Reserves

to at any time to enter upon such land and there do any work which he may consider necessary for maintaining or improving the flow of water in any river or stream on such land, and to construct dams, and to divert any river or stream, without paying compensation except for buildings and crops destroyed or damaged;

18. (d) by writing under his hand, to authorise officers of the Government and Government contractors, their servants and agents, to exercise any of the powers conferred upon him by this section.

(e) Whenever compensation is payable under this section, such compensation shall not in any case exceed, in the case of buildings and crops destroyed or damaged, the fair value of the buildings or crops.

(f) The powers conferred by this section may be exercised before the compensation of any is paid.

18. (1) All actions, suits and proceedings by or on behalf of His Majesty or by or on behalf of the Governor respecting land in a Native Reserve, or respecting any lease or licence relating thereto, or the breach of any covenant contained in any such lease or licence, or any trespass on such land, or any damages occurring by reason of such trespass, or for the recovery of any rents or relating to such leases or licences, whatsoever in respect of such land, may be so commenced, presented and carried on in the name of the Chief Native Commissioner, and he may be plaintiff or defendant, as the case may require, in any such action, suit or proceeding.

(2) In any such action, suit or proceeding, the Chief Native Commissioner may be represented by any advocate or by any officer of the Native Affairs Department or by any administrative officer or other person so directed by him in writing.

19. (1) It shall be lawful for the Governor or any person acting under his direct authority in the execution of his duty as an officer of the Government to enter upon any land leased or occupied under any lease or licence under this Ordinance.

(2) Any person who wilfully prevents or attempts to prevent any officer of the Government from so entering upon, or who obstructs or hinders any person in the execution of his duty, shall be liable to conviction before a magistrate, and to a fine not exceeding fifty pounds or to imprisonment of either kind for a period not exceeding three months or to both such fine and imprisonment.

20. Any person who wilfully obstructs or prevents any officer of the Government from so entering upon, or who obstructs or hinders any person in the execution of his duty, shall be liable, on conviction before a magistrate, to a fine not exceeding fifty pounds or to imprisonment of either description for a period not exceeding three months or to both such fine and imprisonment.

21. The Governor may, with the advice and consent of the Executive Council, issue licences, which may be subject to such conditions and regulations, for the purpose of carrying out the provisions of this Ordinance, and particularly with regard to the exercise of the powers conferred thereon.

22. (1) The members of the Executive Council, and members of meetings of the Central Board and of Local Boards, the procedure at such meetings, and the terms governing which unofficial members of the Executive Council, respectively, shall hold office, and the powers and duties in which such members shall be acting, shall be as follows:

Action to be brought in name of Chief Native Commissioner

Power to enter upon land leased or occupied under any lease or licence under this Ordinance

Obstruction of officers of the Government

Licences issued by the Governor

Members of the Executive Council and Local Boards

(b) The management and control of land in Native Reserves;

(c) The management and control of water, forest and timber in Native Reserves;

(d) The conduct of surveys and the erection and maintenance of boundary marks;

(e) The reservation of existing easements and of means of access to neighbouring lands, and the compensation, if any, to be paid therefor;

(f) The limitation of areas to be leased for building purposes;

(g) The procedure to be adopted in regard to applications for leases and licences under this Ordinance;

(h) The registration of leases granted under this Ordinance;

(i) The reservation of areas of land in Native Reserves for townships and trading centres, and the management and control of such townships and trading centres;

(j) The reservation of areas of land in Native Reserves for the purpose of establishing schools, churches, hospitals and other institutions of a charitable or religious character, and the management and control of such areas and institutions;

(k) The granting of occupation licences to individual natives or to families;

(l) The individual, family or communal rights of user and the settlement of all disputes arising therefrom between the members of a tribe or tribal unit for whose benefit a Native Reserve has been set aside;

(m) The procedure for the assessment and allocation of compensation payable under this Ordinance;

(n) The fees to be paid for any matter or thing done under this Ordinance.

22. Nothing in this Ordinance contained shall be deemed to affect the validity of any title to land within the area of a Native Reserve granted before the commencement of this Ordinance, and all such titles and the rights thereby conferred and the obligations thereby imposed shall continue to be governed by the Ordinances under which such titles were granted as if this Ordinance has not been enacted.

Provided, however, that all land comprised in any such title shall be deemed to be included in the Native Reserve in which it is geographically situated, and all rents accruing therefrom shall be paid to the credit of the Local Native Fund, or, where there is no Local Native Fund, to the Natives' Trust Fund.

23. Subject to the provisions of the last preceding section, Part VI of the Crown Lands Ordinance, as amended by the Crown Lands (Amendment) Ordinance, 1926, is hereby repealed.

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KENYA.

No. 968

DOWNING STREET.

21 November, 1927.

Sir,

M

With reference to my despatch No. 5 of the 21st June I have the honour to transmit to you copies of further questions and answers in the House of Commons regarding the case Douglas Morangi and others versus Chief Mwikuki and the Attorney General.

In view of my promise to make urgent enquiries I telegraphed to you on the 17th November asking when I might expect to receive the despatch promised in the telegram from the Officer Administering the Government of the 31st May No. 157 and stating that I was anxious to receive as soon as possible a report dealing fully not only with the general question of native land tenure but also in particular with the case referred to.

I have the honour to be

Sir,

Your most obedient  
humble servant.

(for the Secretary of State)  
(Signed) H. H. GORE.

GOVERNOR

LIEUTENANT COLONEL

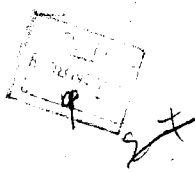
SIR E. W. M. ORRIG, K.C.V.O., C.M.G., D.S.O.

oto. . . . . oto. . . . . oto.

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X. 10133. 27  
Kenu  
(was filed)

- Mr. *Harvey 7/11*
- Mr. *Museum 17/11*
- Mr.
- Mr. E. J. Harding.
- Sir C. Strachey.
- Sir J. Shuckburgh.
- Sir G. Grindle.
- Sir C. Davis.
- Sir S. Wilson.
- Mr. Ormsby-Gore.
- Lord Lovat.
- Mr. Amery.



21. Nov. 1927

Sir,

DRAFT. Casan:

Kenu  
No 968.  
Engring

With ref. to my  
despatch (  $\frac{an}{3}$  ) of the  
21 June I have to  
transmit to you copies  
of further ~~inquiries~~ <sup>enquiries</sup>  
in the Shree 1 Case.  
Regarding his case Douglas  
Morangi others v. Chief  
Whichuki the Attorney,  
Gurvat.

Q. H. (including  
supplementaries) a.  
Nos 17 17 & in  
Sat file

2. In view of  
my promise to make enquiries  
I telegraphed  
to you on the 17 Nov.

2/12

asking when I might expect  
to receive the ~~post~~ dispatch  
promised in the tel from  
the DPA of the 9<sup>th</sup> May  
No 37 stating that I  
was anxious to receive  
as soon as possible a  
report <sup>fully</sup> not only with  
the names of the  
naval and marine Lt  
also in particular with  
the case referred to

I have to

... MORE.

10133/27.

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

(Sent 7.30 p.m. 17th November, 1927.)

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When may I expect despatch promised at end of your  
telegram 31st May No.197 native land tenure. Am anxious  
to receive by mail as soon as possible report dealing  
fully not only with general question but also in  
particular with case of Douglas Morangi referred to in  
Parliamentary question enclosed in my despatch M/3 21st  
June last.

X. 10733/27

78/8

Kenya  
(Main file)

Mr. H. Allen 17/11  
Mr. Wessman 17 above  
Mr.

Closed sent  
7.30pm 17/11/27  
H.H.

Mr. E. J. Harding.  
Sir C. Strachey.  
Sir J. Shuckburgh.  
Sir G. Grindle.  
Sir C. Davis.  
Sir S. Wilson.  
Mr. Ormsby-Gore.  
Lord Lovat.  
Mr. Amery.

9/10

inside  
no. 221

no. 13.

When may I expect dispatch  
promised at end of your  
letter 31 May 1927 which  
has been in the  
hands to receive a mail  
as soon as possible report  
dealing fully not only  
with General Guthrie but  
also in particular with case  
of Douglas Morrice  
referred to in the  
Parliamentary question  
enclosed in my dispatch  
of 13 21 June last

DRAFT. Tel:  
Cairns

Governor  
Nairobi

Room 19

L. d. f.

79

KENYA NATIVE LAND TRUST.

On June 30th, 1927, the Secretary of State had a meeting with Sir Edward Grigg, at which Sir S. Wilson, Mr. Ormsby Gore and Sir C. Strachey were present, to discuss the general lines of the procedure now required to settle satisfactorily the future of the Native Reserves. The Governor's intention is to have the necessary legislation drafted on his return to the Colony. The object of the discussion was to determine the general lines of such legislation, in order that the draft should not contain anything which departed in any important respect from principles accepted by the Secretary of State.

It was agreed generally that legislation by Ordinance rather than by Order in Council was preferable, Sir Edward Grigg suggesting that some provision for the security of the Reserves might be included in any Orders in Council establishing a closer union of the East African Territories. The Secretary of State observed that he reserved an open mind on that subject.

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The ownership of the Reserves as defined and gazetted should continue to be vested in the Crown<sup>x</sup>. The land should be at the disposal of the Governor for the benefit of the natives, subject to the advice and control of Boards of Trustees.

There should be a Central Board, with the Governor as Chairman, to deal with matters of common interest and such matters as the Governor considers should properly be referred.....

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<sup>x</sup> Under the Crown Lands Ordinance of 1915, "Crown Land" includes all lands reserved for the use of the members of any native tribe.

referred to it, as well as matters referred to it by the local boards. It was suggested that besides the Governor, the Central Board might consist of one official and one unofficial member from each local board.

There may be five local boards. The composition suggested was the Provincial Commissioner as Chairman (perhaps with casting vote only), one official and two or three unofficals representing the interests of the natives. The unofficals would be appointed for a term of years - not exceeding 10 was mentioned as suitable - It was agreed that the rights to acquire land within the reserves for certain public and private purposes enumerated in Mr. Maxwell's letter of January 19th, 1927, to the Attorney General, Nairobi, and the conditions of such acquisition were generally acceptable, but it is necessary to add the surface rights requisite for the working of minerals. It was also agreed that the Trustees should have power to lease land in the Reserves for agricultural or pastoral development, if they were satisfied that this would be to the advantage of the tribe. It was thought that leases should be for 99 years, no alienation of freehold to be allowed.

COLONIAL OFFICE,

30th June, 1927.

40.

81

Prepared with Mr. Kelly & Co. after discussion. L. J. sent to him on 2/11/27 in order that he might make any further amendments if necessary. He has sent none. This can be altered if possible.

KENYA NATIVE LAND TRUST.

see minutes marked X in below

On June 30th, 1927, the Secretary of State had a meeting with Sir Edward Grigg, at which Sir S. Wilson, Mr. Ormsby Gore and Sir C. Strachey were present, to discuss the general lines of the procedure now required to settle satisfactorily the future of the Native Reserves. The Governor's intention is to have the necessary legislation drafted on his return to the Colony. The object of the discussion was to determine the general lines of such legislation, in order that the draft should not contain anything which departed in any important respect from principles accepted by the Secretary of State.

It was agreed generally that legislation by Ordinance rather than by Order in Council was preferable, the Secretary of State observing that he reserved an open mind on the subject.

The ownership of the Reserves as defined and gazetted should continue to be vested in the Crown<sup>x</sup>. The land should be at the disposal of the Governor for the benefit of the natives, subject to the advice and control of Boards of Trustees.

There should be a Central Board, with the Governor

as

x Under the Crown Lands Ordinance of 1915, "Crown Land" includes all lands reserved for the use of the members of any native tribe.

as Chairman, to deal with matters of common interest and such matters as the Governor considers should properly be referred to it, as well as matters referred to it by the local boards. It was suggested that besides the Governor, the Central Board might consist of one official and one unofficial member from each local board.

There may be five local boards. The composition suggested was The District Commissioner as Chairman (perhaps with casting vote only), one official and two or three unofficals representing the interests of the natives. If possible, the official member should be a representative of the agricultural department, but Sir E. Grigg was doubtful whether this would be practicable in all cases. The unofficals would be appointed for a term of years - not exceeding 10 was mentioned as suitable. It was ~~agreed~~ that the rights to acquire land within the reserves for certain public and private purposes enumerated in Mr. Maxwell's letter of January 19th, 1927 to the Attorney General, Nairobi, and the conditions of such acquisition were generally acceptable, but it is necessary to add the surface rights requisite for the working of minerals. The subject of agricultural and pastoral rights should form a separate clause in the Ordinance. Only leasehold should be allowed. An essential condition before leasing would be that the land will not be required by natives during the currency of the lease. The term of lease will probably have to be fixed at 99 years, revisable at intervals in accordance with existing practice in the Colony.

COLONIAL OFFICE,

30th June, 1927.

Sir C. Sturges  
Sir S. Wilson  
Mr. Ormsby-Gore

X 57

NATIVE LAND TRUST IN KENYA.

Arrangements have been made for Sir E. Grigg to see the S. of S. and for Mr. Ormsby Gore to be present at 10.45 on the 30th of June to discuss this matter. He has already discussed it with me, but there were necessarily various points on which anything I could say was subject to decision by the S. of S. It is in order to get the matters as definite as possible before he returns to Kenya that Sir E. Grigg desires the further discussion.

Subject to that, he would propose to draft the necessary Ordinance immediately on his return to Kenya, and to send it home in time for us, using ~~any~~ <sup>all</sup> despatch, to enable him to introduce it at the December meeting of the Legislative Council. He is anxious that it should not be postponed further.

Sir E. Denham's letter, which arrived yesterday, has disappointed Sir E. Grigg, as it carries the matter no further and, indeed, overlooks much of what has been done, including the Governor's latest decisions before he left the Colony. The most important of these is probably that, <sup>on</sup> ~~of~~ Judge Feetham's advice, <sup>he decided</sup> to drop the idea of vesting native land in the Supreme Court. This was, I submit, a very wise decision. In the circumstances, he is anxious that Sir E. Denham's letter should be regarded not at all as a <sup>statement</sup> ~~settlement~~ of the attitude of the Govt. of Kenya, but simply as illustrating the points which have arisen.

The principal points are:-

- (1) In whom should the ownership of the land be vested? The despatch on Gov. <sup>5856</sup> ~~2503~~ /25 <sup>comes</sup> ~~bring~~ to my mind no doubt that the view then taken was that the land

land should actually be vested in the Trust. In Sir E. Grigg's view, this would confuse rather than relieve the mind of the native, and it would probably in a few years be generally dangerous, as we cannot say exactly how the Trust Board or Boards would be composed when Kenya is advanced further on the lines of self-government. It is quite possible, by limiting the Governor's power of action by the advisory functions given to the Board, or Boards, to secure the native against ill-considered action, and it is possible, of course, also to provide for the authority of the S. of S. to be retained for all alterations of the boundaries of lands to be reserved under the Ordinance. Sir E. Grigg is in favour of vesting in a Board of this sort the power in Colonial procedure.

I was inclined to agree with his view, and thought that the native can be fully secured with the land vested in the Governor or a representative of the Crown. But it should be the Governor and not the Governor in Council, as he cannot say what the Executive Council will do in a few years.

It would be provided by Ordinance or by Order in Council. The proposal to have an Order in Council was, I know, sent from Colonel Wedgwood, with a view of safeguarding the native from <sup>impulsive</sup> legislation in Kenya. But that safeguard is not being maintained if from the start the Government intend of veto of legislation will always be retained in connection with native matters, and will be actually exercised if any objectionable alteration of the Ordinance were attempted.

Legislation

Legislation by Ordinance has the advantage of not antagonizing local white opinion. Sir E. Grigg is confident that he can, without undue difficulty, get an Ordinance on this subject through the Council, and it is certainly very much better to have the unofficial element acting with us rather than to impose on them legislation which, not being their <sup>own</sup>, they will oppose. I should like to make the further point that the power of legislating by Order in Council should not be too freely used at this stage. If Kenya is to have a more liberal constitution, I attach the greatest importance to the Crown retaining <sup>the</sup> right of legislating by Order in Council, and it will be the more difficult to retain that right if it is unnecessarily invoked beforehand. Sir E. Grigg points out that the proper place for providing a general safeguard for native rights by Order in Council will be when the proposed central authority is set up.

I do not attach much importance to the argument that, because the Crown Lands Ordinance of 1915 coupled with the Kenya Order in Council of 1921 created a position which led to a judicial obiter dictum that the natives were <sup>more lenient</sup> more generous at will, ~~make~~ it necessary to protect the native by Order in Council. The Govt. of Kenya has a perfect right to legislate on lines not inconsistent with an Order in Council, and the delegation of the administrative exercise of the Governor's function in this matter seems to be perfectly consistent with the Order in Council.

(3) Constitution of the Board or Boards. Sir E. Grigg and I agree that there should be not one Board, but local Boards combined with a Central Committee (of which the Governor should, I think, be the Chairman) to deal with

*More, I think -  
I have seen no reasons worthy the name for an Order in Council.*

not share the Governor's faith in the impartiality of  
imperial residents and are looking forward to their  
legislation as rescuing the land from European greed.  
Action in this regard is obviously impossible.

Mr. Brown by fax.

See of plate.

I agree generally with the  
Ballamby. If you have no objection  
I think it would be as well if  
Sir C. Strachey & I were to be  
present at your meeting with  
Mr. Jeff on 30<sup>th</sup> inst.

A.H.

27-6-27.

I certainly regret that the proposals do  
not rest the land in the proposed trusts  
as suggested later by the East Africa  
Commission & Sir E. Frigg himself at  
an earlier date. I agree with Sir C. Strachey  
on this point. I wish Sir E. Frigg could see "what  
the land is like" etc.

Woy 28-6-27

SM 23

Woy 28-6-27

Woy 28-6-27

Woy 28-6-27



*M. C. Bottomley*

GOVERNMENT HOUSE,  
KENYA,  
EAST AFRICA.

31st May, 1927.

Dear Bottomley,

For your information, I send herewith,  
together with its enclosures, a letter which  
I have addressed to Sir Edward Grigg, by the  
current mail, in regard to the Draft Native  
Lands Trust Bill. *as it is possible it may mislead  
I think to be you to do the paper.*

Yours sincerely,

*Edward W. Denham*

W.C. Bottomley, Esq., C.M.G., O.B.E.  
Colonial Office,  
London.

COPY

GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

30th May, 1927.

Dear Sir Edward Grigg,

I am sending you by this mail various papers dealing with the Draft Native Lands Trust Bill. I was under the impression that you had copies of these papers with you and the matter was held up in view of the fact that an interpretation is needed of what the Secretary of State means by vesting the land in native reserves in a Trust Board. From a reply given to a question in the House of Commons, it was believed that this point would be raised by the Secretary of State with you. I am sorry if the material papers did not accompany you to England.

I was not fully aware what had happened in regard to this question while I was on leave. I put up a draft despatch, a copy of which I now annex, in December, 1925. You will remember that Colonel Watkins, who was then acting as C.N.C., raised the point that the Crown "never intended to acquire, never did acquire real property in native reserves". This position was discussed with the Senior Commissioners, who did not accept Colonel Watkins' view and agreed with the interpretation, which was put forward by me and by the Commissioner of Lands, that the lands were vested in the Crown and never ceased to be Crown Land.

You deferred taking any action on the despatch until after the Governors' Conference, when you wished to discuss the question with the other East African Governors.

The matter then appears to have been held over until May, when a memorandum was submitted by Mr. Maxwell, the Chief Native Commissioner, copy of which is annexed.

Mr. Maxwell, in this memorandum, raises the question as to the vesting of native lands and gives it as his opinion that it is the definite intention of the Secretary of State that land should be vested in the Trust Board. He also urges that unofficial non-natives should not be appointed to the Trust Board. He presses that legislation should be enacted by an Order-in-Council in preference to a Local Ordinance. He recommends that the ultimate decision as to whether any particular portion of native land in a native reserve should or should not be alienated be left to the Supreme Court, on the grounds that the Judiciary stands aloof and is not swayed by any political consideration.

Your Excellency expressed your complete disagreement with the C.N.C.'s reasoning and with the whole spirit of his argument, with the exceptions:-

1. As to the desirability of an Order-in-Council, on which you stated that you had an open mind.
2. The appeal to the Supreme Court, with which you were in agreement.

I annex a copy of your minute of the 25th June.

On the 20th July, the Acting C.S. minuted that he had discussed this question with the Attorney General, the C.N.C. and the Commissioner of Lands and that "All agreed that the control of Native Lands might usefully and safely vest in a Board of Kenya Judges who would act through a Registrar." He adds that "The proposition of the Trust Board in which

ownership should vest is abandoned" and that "ownership will remain with the Crown."

The question whether the enactment should be by Order-in-Council or Local Ordinance was raised but left open. The C.N.C. was to draft the Order-in-Council, for the Attorney General's consideration and for subsequent discussion with the Chief Justice, and then it was to be submitted to Your Excellency.

There is a note to the effect that the matter was to be brought up again in two months' time.

----- I enclose a copy of the Draft Native Reserves Bill as prepared  
 ----- by the Attorney General in April, 1926, with some notes  
 thereon from C.N.C. <sup>and</sup> correspondence with the Attorney  
 General's office.

Mr. Maxwell has adhered to his view that the land in native reserves should vest (in the legal sense) in a Trust Board and argues that the Secretary of State has so agreed. The Solicitor General stated that "It was and is submitted by this department that the intention of the Secretary of State is not that argued by Mr. Maxwell and that definite instructions on this point are desired."

The question as to whether an Order-in-Council or an Ordinance should be drafted also appears to be still under discussion.

On reference to the C.N.C. he stated that it would appear that these points were to be settled by Your Excellency with the Secretary of State. I was under the same impression and the matter has therefore, I regret, been left in abeyance. I sent you a telegram on the 25th

instant explaining the points at issue, which will, I hope, be useful in any discussion with the Secretary of State.

My own views are expressed in my draft despatch of December 1925. I do not interpret the Secretary of State's reference to the land being "vested" in the Trust Board as meaning that the Crown shall divest itself of its ownership and control of native lands. I do not think that the natives would understand for a moment the idea of their lands being vested in a Board. It is a question on the one side of Crown ownership and on the other of individual claims. Ownership by the Crown is recognised by the history and records of Europeans and Africans in East Africa. Private ownership was never recognised and is a new idea to the native mind. All, I imagine, that the Secretary of State meant was that these lands should be further protected by the appointment of a Trust Board, which would be directly responsible as guardians of the native lands and would prevent any alienation of these lands without the consent of the natives. That is to say that it is not the lands themselves which should be vested but that the control of the disposal of such lands should be vested in a definite Trust Board.

The composition of the Trust Board has already been suggested to the Secretary of State and is in accordance with the proposals put forward by me to Sir Robert Coryndon and which are referred to in the Report of the East African Commission.

The appointment of unofficial non-natives to the

Board undoubtedly raises a difficult question, but I do not share the C.N.C.'s fear that such appointments would be viewed with apprehension and disapproval by the natives. I cannot see how such representation can or should be avoided.

The position has always been taken up very strongly and is confirmed by the White Paper that the trusteeship of the natives is vested in the Government, but no European element in this country would be likely to interpret this to mean in the Governor as an individual or as an autocrat but in the Governor as advised by his legislature. The trusteeship to be really effective must be shared by all Europeans, official and unofficial. It would be impossible to avoid questions of alienation coming before Legislative Council, by questions or motions, and nothing is so likely to arouse distrust and suspicion among the white population in this country as to shut off means of communication or suggest that native lands are a sacrosanct subject which can only be discussed in the official world. Your Excellency, I am sure, concurs in this view.

I only emphasize these points here because I feel it is necessary to make it clear to the Secretary of State that these are the views held locally by the European population while, at the same time, the suggestion of the C.N.C. as to the native view should, I think, be largely discounted.

It must, of course, depend very largely on how European unofficial representation on the Trust Board is secured. Representatives must, I think, be nominated by Your Excellency and I suggest that one of them

should be a missionary.

Considering that there is unofficial representation of natives on Executive Council and Legislative Council, that there are unofficial representatives on the Advisory Committee on Native Education, on the Board of the Native Industrial Training Depot, and on the Board of the Alliance High School, there is strong precedent for affording unofficial representation on the Board dealing with native lands. I never heard the slightest objection voiced on behalf of the natives to their education, in regard to which they feel strongly, and other interests being discussed by unofficial representatives, appointed specially to consider such matters.

As regards legislation by an Order-in-Council, I think this is open to many of the objections to which I have referred above in connection with the proposed exclusion of the unofficial European. I think it is far more likely that legislation for a Trust Board with the strictest possible provisions for preventing the alienation of their lands by natives will receive the approval of Council if put before them in the ordinary way, through a legislative measure. Enveloped in an Order-in-Council, it would at once provoke suspicion and criticism. It would be suggested that the object in so incorporating it was to burke discussion and guillotine debate.

As regards the proposal to make the Supreme Court or a Board of Kenya Judges the court of appeal in respect of alienation of native lands, I am opposed to this suggestion. Once bring in the Bench, the Bar follows. Once lawyers

are retained to argue native land claims so soon will this country be faced with the land litigation which has become a vice indulged in to excess by and ~~is~~ the ruin of the native population in India and so many of our colonies.

Your Excellency is aware of the weakness of certain judges on the bench and I am afraid there is no guarantee that like perverse persons may not succeed them.

The points at issue will always be:-

- a. Are the natives as a body unanimously opposed to the alienation of the land in question?
- b. On what grounds is this opposition based?
- c. Is there any possibility of this land being required for native use in the native reserve?
- d. If not, to what use can it be put?
- e. If it can be proved that it can be put to no use by the natives themselves and that it is not required by them now or likely to be required hereafter, has a case been made out for the alienation of this land to a non-native or to the Crown?
- f. Are the considerations in favour of alienation so overpowering as to justify Government in over-riding native opinion in this matter and, if so, on what grounds are these considerations based?

It seems to me that the Governor in Executive Council or the Governor with the advice of the official members of Executive Council or the Governor alone should be in a better position to determine these issues than a Board of Judges, who must, by the nature of their training and duties, look upon these questions from the legal point of

view and who have not the intimate knowledge of the country required.

Be it noted, too, that the decision of the Governor will not be a final one, and that, as proposed in the Ordinance originally drafted, he will be obliged to refer the point to the Secretary of State, with whom the last word rests. Is it not far preferable that the Secretary of State, who is fully acquainted with all the considerations - political, historical and legal - should be the final court of appeal rather than a Privy Council, who will not have any of these special sources of knowledge?

The question of the alienation of the native lands is so crucial a one in the maintenance of contentment in the native reserves and in the general progress of the country that, in the interests of the natives, the Government, and the non-natives, I feel that it should not be left to judges to decide on the arguments of legal counsel. It is not decisions based on argument which are required, but decisions based on equity and broad common sense.

Once accept the position that the native would feel his interests to be better safeguarded by reference to judges, juries, Courts of Appeal for East Africa, and privy councillors rather than by appeal to the Governor and his chief advisers and the Secretary of State, and the foundations of Government are undermined.

More trouble has been caused amongst native races by the division of authority than by the excess of authority. It is indeed a case of rendering unto Caesar the things

that are Caesar's - to suggest other channels, other judges, other arbitrators in matters so important as the alienation of their lands will be to confuse the native mind and that, I feel sure, will be to confuse the issue in respect of those lands.

I hope the memorandum and the papers annexed will be helpful.

Yours sincerely,

(S. L. Denton)

His Excellency  
Lieutenant-Colonel Sir E. W. M. Grigg, K.C.V.O., etc.  
H.M. Eastern African Trade and Information Office,  
London.

COPY

DRAFT DESPATCH TO COLONIAL OFFICE.

Sir,

I have the honour to refer to paragraph 6 of your despatch No. 329 of the 10th June, which conveys an instruction for giving effect to Sir Robert Coryndon's proposals in respect of Native Reserves as detailed in his despatch No. 28 of 8th January.

2. Since the date of the late Governor's despatch departmental agreement in respect of the native reserves has enabled an official gazette to be published describing their boundaries and announcing that a final declaration of the limits of such reserves will be made in January after consideration of any objections which may be raised. My confidential despatch No. 202 of the 22nd October informed you that this step had been taken, which will, I trust, enable me to proceed to take the action required in your despatch under reference.

3. There remains the further matter of the legislation providing a statutory basis for these proposals and I therefore attach a draft Bill embodying them as modified by the recommendations of the East African Commission.

4. You will observe that this Bill is not in the form of an amendment of the Crown Lands Ordinance, 1918, but is drafted as a separate Native Lands Ordinance, in deference to the strongly expressed opinion of the Acting Chief Native Commissioner whose memorandum on the subject I also attach.

5. The Bill while preserving the essential provisions of enclosure No. III to Sir Robert's despatch gives statutory effect to the Commission's recommendations in respect of a Native Land Trust Board and also to your views

set forth in paragraphs 7 - 9 of your despatch dealing with references to and from the Board. As regards the figures at which limits to the authority of the Governor or the Board in leasing land should be fixed, I suggest that the precedent of the Crown Lands Ordinance, 1918, be followed, and that the Governor's powers be extended to 7,500 acres and the Board's (in place of the Land Officer's) to 5,000 acres. It may happen that experience will suggest a modification of these figures but as I do not gather that they have been found open to objection in respect of ordinary Crown Land alienations, I do not yet see any strong reasons to modify them in the present case, by adopting other limitations of either acreage or value.

6. You will, I hope, find that the clauses which vest in the Trust Board the administration of native lands sufficiently interpret your wishes in respect of the recommendations made in pages 30 - 31 of the Commission's Report. The actual words used in the Report are: "We have considered the Governor's proposals, but we fear that, as they stand, they would not completely allay the feeling of insecurity which now exists and that it is necessary to set up a definite Trust Board, in which all native lands should be vested." It would appear that the particular proposal of Sir Robert Coryndon which is objected to here is that comprised in Clause 55 (1) in the former draft Bill attached to his despatch which reads as follows:- "All native tribal areas and all rights over the same are hereby declared to be under the control and subject to the disposition of the Governor and shall be held and administered for the use and benefit of the natives; and no title to the occupation and use of any such lands shall be valid without the consent of the Governor". The new draft has in Clause II substituted a central Trust Board for the Governor in this vesting clause,

while...

while with regard to the remarks of the Commission on the subject of permanent alienation quoted by you, you will notice that the Bill only provides for a system of short leases.

7. The actual wording however used by the Commissioners appears, if read too literally, open to misunderstanding and has created a doubt in the mind of Lieutenant-Colonel Watkins as to whether the "vesting" of land recommended should not be interpreted technically, and include the definite repudiation by the Crown of its position as ultimate trustees, and the complete transfer of the property to the Board; a course which the Acting Chief Native Commissioner advocates on the ground that the reserves would then cease to be even technically Crown Land and native confidence would be increased by the abolition of that term in respect of their lands.

8. There are many reasons which convince me that such an interpretation is erroneous, and that such a course of action would be both impolitic and improper. In the first place I find it difficult to believe that so fundamental a change could have been suggested in a single phrase and no further reference to such a reversal of policy made in the remainder of the report. There appears in fact to be no specific recommendation for the transfer of the legal property away from the Crown, but only details of the delegation, subject to certain specified limitations, of administrative power.

9. The problem which seems, in this connection, to have most exercised the mind of the Commission was the necessity of defining more precisely than heretofore the attitude of the Crown in respect of its self-imposed trusteeship over native lands; in respect, that is, both of principles and their particular application. The Crown  
Lands

Lands Ordinance, 1918, is very vague in the matter, and nowhere else is there to be found any statement affecting the point. It was partly therefore for this reason that the following passage on page 29 of the Report appears to have been written: "In order to implement the White Paper of 1923, which so definitely affirms British trusteeship for natives, it seems necessary that a further instrument should be issued laying down the terms upon which the Crown holds native lands in Kenya, and the principles upon which the natives' estates should be managed on their behalf. As is pointed out in the judgment already quoted, the present position arises from the effect of Orders in Council, and it is a matter for legal consideration whether the new instrument which is required should not also have that form; but the exact form, whether an Order in Council or local Ordinance, can be considered later." It is my hope that you will find in the draft Ordinance hereto attached (particularly in Clauses 11 and 12 and such others as are modelled on the Nigerian Act) adequate provision to give effect to these proposals; but it is at least clear to me that they contain no suggestion whatever that the Crown should discontinue to hold native lands in Kenya and should transfer its ultimate possession elsewhere.

10. So much for the text which is perhaps open to some small doubt and misconstruction. From the point of view of good policy, however, I have no hesitation in submitting an opinion. If Kenya afforded a solitary example of its existing form of Crown trusteeship for native lands, I should still advance strong reasons why it should continue to do so.

11. Again from our purely domestic point of view, I strongly hold that the Crown must maintain its formal titular position of ultimate trustee for the native and his lands.

To give a comparatively minor reason first, it would appear by no means certain what legal difficulties might otherwise arise, not only in all our local Ordinances by an amendment of the definition of Crown Lands, but also in respect of future decisions of the Courts on questions of ownership and past and present responsibility, should a definite transfer by the Crown be attempted.

12. Again, a departure from the Crown's present position would suggest wide and improper speculations as to the reasons therefor, and would also probably impede any change of control or other action which a future occasion might require. But mainly from the point of view of the native mind, I feel sure that any such titular abdication would be deplorable, and would merely encourage manifestations of distrust which the whole object of our present proposals is to dispel. Much has been made of the native's capacity for appreciating the legally precarious position of his tenure in the past. But if he is thus keenly alive to such comparatively technical issues as these, still more can he be influenced by the proper presentation of the Crown's dignity, prestige and power, not as the cause of his apprehensions, but as the guarantor of his rights. In my view, if the native has, as it appears he has, been inspired to feel distrust in the matter of his lands, this is precisely the time when the Crown's trusteeship should be most unequivocally declared, its intentions most widely explained, and the new machinery for giving them effect most speedily set up. It should in fact be the duty of the native administration to see that both the source and the character of our present proposals are properly understood, and I believe, with my predecessor, (vide paragraph 25 of his despatch of 8th January) that they are adequate fully to inspire native confidence.

13. I have given much thought to this particular problem and am greatly strengthened in my own opinion by those of all the Senior Commissioners whom I summoned to advise me in the matter. They were unanimous in opposing any transfer of native lands from the Crown to the Trust Board and in emphasising rather the importance of a speedy and ceremonious declaration of native boundaries and the publication of the personnel and duties of the new Trust Board.

14. AS I have already informed you, descriptions of the reserves have now been prepared, but the final gasetting of them should, of course, be effected under the powers granted in the proposed new Ordinance. I should be grateful therefore if you would signify as soon as possible your approval, with such modification, if any, as you may require, of this draft Bill, to enable it to be introduced into the Legislative Council at some not far distant session; otherwise, it would be necessary to gasette the reserves under the Part of the Crown Lands Ordinance which it is proposed to repeal.

I have the honour to be,

etc.

NATIVE AFFAIRS DEPARTMENT  
NAIROBI  
18th May 1926.

MEMORANDUM.

NATIVE RESERVES BILL.  
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1. As the result of a conference between the Attorney General, the Commissioner of Lands and myself I have now received a revised draft of the Native Reserves Bill.
2. The Bill has been drafted in accordance with the terms of the Secretary of State's despatch No. 529 of the 10th June 1925, as interpreted locally by the Solicitor-General (Mr. Gower).
3. I desire however with the greatest respect to press as earnestly as I can for the re-consideration of certain principles embodied in the Bill.
4. The points that I desire to submit for further examination are:-
  - (a) Whether the legislation should not be enacted by an Order-in-Council in preference to a local Ordinance;
  - (b) Whether the land should not be actually vested in a Trust Board or Boards; as indicated in the recommendations of the East African Parliamentary Commission with which the Secretary of State expresses his entire concurrence - vide paragraphs 4 and 5 of his despatch of the 10th June.

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- (c) Whether unofficial non-natives should be included in the Trust Board unless and until their inclusion is asked for by the native authorities concerned.

Arguments for an Order-in-Council.

5. The aspect of the general native political situation which struck me most on my arrival in this country in 1921, which strikes every Administrative Officer and which struck the East African Parliamentary Commission, is the acute anxiety on the part of natives of every tribe with regard to the present insecurity of their land tenure.

6. The chief task which lies before Government at the present moment is to regain the confidence of the natives which Government has undoubtedly lost. There is no doubt that the natives as a whole feel strongly that Government has on many occasions broken definite pledges which have been publicly given to them, and more particularly with regard to the alienation of land. When the Crown Lands Ordinance of 1915 was under consideration attention was drawn in Parliament to the definition which provides that the expression "Crown Land" shall include "all lands occupied by the native tribes of the Protectorate and all lands reserved for the use of the members of any native tribe". Mr. Harvey, who raised the question in Parliament characterised this as "a monstrous theft". Assurances were given by Government that there was no intention whatever of depriving natives of their land under this provision. The special Committee of Legislative Council, which was appointed to consider the Bill, made the following explanation in paragraph 13 of its Report:-

" The extension of this definition so as to include "native reserves having been criticised in England... the Committee wish to record emphatically their opinion -

"opinion that the definition as drafted should stand.  
"It must be remembered that many if not most of the  
"native tribes have no individual or even tribal  
"tenure of land as tenure is generally understood  
"in England and it is of the utmost importance that  
"the land in reserves or occupied by native tribes  
"should be definitely vested by statute in the Crown  
"thereby giving the Crown power to afford the natives  
"protection in their possession of such land. At  
"present dealings in such land by individual members  
"of the tribe, who by native custom have no right so  
"to deal, and other unauthorised persons is not  
"uncommon and it is most desirable that the Crown  
"should have the right and power to stop such  
"practices. If such lands are vested in the Crown  
"it will be possible for the Crown to regulate their  
"occupation in the interests of the natives and finally  
"to evolve a system of tenure for the natives thereon  
"giving them real and definite right to the land".

7. Commenting on this, Sir Henry Belfield in his  
Confidential despatch No. 144 of the 25th August, 1914,  
said,-

" The views of the Special Committee on the  
"subject of the reservation of land for native tribes  
"are entirely sound and have my full support. Such  
"reserves are in almost all cases merely areas of  
"traditional and customary occupation to which no  
"form of title or tenure has ever been applied by  
"the occupants. The so-called right of possession  
"lasted only so long as the occupiers were able  
"to resist the intrusion of other tribes, and even  
"after years of undisturbed occupation no inclination

4.

"has been shown to formulate any system of  
 "tribal or communal tenure.  
 " The only effectual method of safeguarding their  
 "interests in ~~the land~~ is by placing it under the  
 "direct control of the Administration and by  
 "imposing upon the Government the duty of preserving  
 "for them the rights and privileges which they are  
 "unable to protect for themselves.  
 "This is effected in the simplest manner by defining  
 "the Reserves as Crown Land ~~and~~ those gentlemen in  
 "England who are anxious that the rights of the natives  
 "should remain inviolate need be under no  
 "misapprehension that the Government is actuated by  
 "any predatory instinct or is preparing to despoil  
 "the native for the benefit of the settler. On the  
 "contrary the arrangement proposed is the most  
 "effective means of placing the ~~barrier of~~ official  
 "authority between the desire of the settler to  
 "acquire and the temptation to the native to  
 "part with what is not his to dispose of".

6. In spite of this the local Government failed signally  
 to fulfil its pledges and large areas of land have since  
 the enactment of the Crown Lands Ordinance 1915, been taken  
 from natives, apparently on the ground that they were  
 "Crown Land", and given out as farms to settlers, (e.g. the  
 Lumbwa and Kipkarren (Nandi) farms).

9. There is no doubt that at the present moment natives  
 feel that the Kenya Government has, without justification,  
 taken land which rightly belonged to natives and in the  
 enjoyment of which Government had undertaken to protect them  
 and has given that land to members of the European community  
 and may at any time do the same sort of thing again.

10. Whether this view has been introduced by native opinion

5.

by propaganda from outside does not affect the question at issue. The point is that the natives do feel that and distrust Government accordingly. That being so, a law purporting to give them security of land tenure is not, if enacted by the local Legislative Council (which represents to them merely the Government which took their land and the Europeans to whom it was given) at all likely to allay their anxiety and distrust. They will feel that there is no more security in this Ordinance than was alleged to have been contained in the Crown Lands Ordinance of 1915, and moreover that an Ordinance passed by the local legislature can easily be repealed by it at any time. An enactment of the local legislature is in effect a mandate by the local Government to itself: an Order in Council under Clause XII of the Letters Patent of 11th September 1920 is a mandate from His Majesty the King in Council to the local Government.

11. There are three main communities in Kenya Colony, namely the European, the Indian and the Native. The European population is in round numbers 12,000, the Indian population 26,000 and the Native population is estimated at 2½ millions. It may be truly said that the powers of articulation and the influence on local politics of these communities respectively is in inverse ratio to the numbers. The European community is working unceasingly for the attainment of "self-government". Every native knows this and in his speech to the Convention of Associations on the 22nd February last, His Excellency the Governor alluded to the progress of the Colony towards self-government. It is equally well known that by "self-government" the European community does not mean merely government of the European community by representatives of that community, but government of the European, Indian and Native communities by the European community. Natives will naturally be apprehensive that if such a government were to come into

being the security of their native land tenure afforded by a local Ordinance would become extremely precarious, for the Ordinance, even if not actually repealed, might by degrees be so amended and varied as to become ineffective. Even with the apparent safeguard of the Royal veto *Reservation* an Ordinance is in effect until it is disallowed, and much might be done in the interval between enactment and disallowance, especially if there is delay in reporting the Ordinance to the Secretary of State.

12. The whole point is that we have got to do something that not only will ensure to natives security of land tenure but will inspire the people with confidence that the enactment giving them that security will be effective and inviolable. I am of opinion that nothing but an Order in Council will achieve this object, and until we have regained native confidence as to our bona fides and have given them a sense of security with regard to their land there will be no solution to many of our problems in this Colony, more especially the labour problem.

13. Finally, I submit that as the present legal position relating to native land, as interpreted by the Supreme Court, arises from the Kenya Colony Order-in-Council of 1921, it is inappropriate that any modification or variance of it should be effected by a lesser authority than that which made the Order-in-Council, and that the only suitable instrument for present purposes is a further Order-in-Council, particularly as the Order-in-Council of 1921 vests the land in the Crown, and the present proposal is to divest the Crown of the land, and vest it in Trustees, subject to certain special conditions.

The Vesting of Native Land.

14. In his despatch No. 529 of the 10th June 1925, the Secretary

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The Vesting of Native Land.

14. In his despatch No. 529 of the 10th June 1925, the

Secretary of State quoted verbatim certain portions of the East African Parliamentary Commission's report, including the following recommendation:-

" We have considered the Governor's proposals,  
 " but we fear that as they stand they would not  
 " completely allay the feeling of insecurity which  
 " now exists and that it is necessary to set up  
 " a definite Trust Board in which all native lands  
 " should be vested".

In paragraph 5 of the despatch, the Secretary of State expresses his entire concurrence.

15. From correspondence on my files which took place during my absence on leave, I gather that a discussion took place between the Law Officers of the Colony and the Acting Chief Native Commissioner, at which "the Solicitor-General (Mr. Gower) maintained that it was not the intention of the Secretary of State's despatch No. 529 of the 10th June 1925, that native lands should actually be vested in a Trust Board. He (Mr. Gower) considered that native interests would be adequately protected by leaving the lands as Crown Lands and putting them under the control of a Trust Board".

16. I regret that I must express my entire disagreement with Mr. Gower, and it seems to me clear that he has misinterpreted the despatch. That it is the definite intention of the Secretary of State that land should be vested in a Trust Board is confirmed by the answer given in the House of Commons on the 8th March to Colonel Wedgwood. In the course of his reply the Secretary of State said:- "It is intended to vest native lands in a Trust the detailed arrangements for which are now being considered by the Governor".

Later in reply to Mr. Morris, the Secretary of State said:-

"As I have already informed the House, I am awaiting  
"the detailed recommendations of the Governor of Kenya  
"on the creation of a Trust in which these native  
"reserves will be vested".

17. That being so, I submit that the Bill as drafted does not carry out the intentions of His Majesty's Government. The lands must be definitely vested in the Trust Board or Boards.

Unofficial Non-native representation on the Trust Board.

18. With the very deepest respect I would urge that the Right Honourable the Secretary of State for the Colonies reconsider his decision to include unofficial non-natives on the Trust Board, for the present at any rate.

19. In his despatch of the 10th June the reason assigned for the inclusion of unofficial non-natives is "to secure the maximum possible co-operation among all sections of the community". With that object I am in complete sympathy, but I have very grave doubts as to whether it would be achieved by including unofficial non-natives on the Native Lands Trust Board in the first instance. On the contrary, I fear that natives would not understand why unofficial Europeans should be given a voice in the disposal or control of native land except upon the invitation of the natives concerned. They would see no more reason why an unofficial European should have a say in their land affairs than why natives should have a say in the disposal or control of a European's farm. I submit that co-operation will not be achieved at the present juncture by unofficial non-natives being brought into the domestic affairs of natives, while at the same time natives neither have nor desire a voice in the domestic affairs of unofficial non-natives. At the same time it is quite likely that there may be unofficial non-natives

non-natives in whom specific native communities have especial trust and confidence and whom they would like to have as co-trustees of their Trust Board; in such cases the position is quite different. I suggest therefore that no Trust Board should include any non-native unofficial unless appointed by the Governor at the request of the natives concerned.

20. In order to facilitate dealings with land, I submit that it would be preferable that there should be a Trust Board for each district, and that it should consist of:-

- (1) The Chief Native Commissioner, as Chairman;
- (2) The Senior Commissioner of the Province, (if there is one).
- (3) The District Commissioner of the District;
- (4) Such natives, not exceeding two, as the Governor may appoint;
- (5) Such non-natives, not exceeding two, as the Governor may appoint if requested by the Native authorities concerned.

For the purpose of consulting local native opinion full use should be made of the Local Native Councils as contemplated in Section 6 (1) (d) of the Native Authority (Amendment) Ordinance 1924.

It should be added here that the Trustees could not possibly undertake to investigate disputes arising between natives as to cultivation or other rights. Machinery for this would have to be provided: vide paragraph 23(3) of this Memorandum.

21. As the result of a discussion with His Excellency and a subsequent discussion with Mr. Justice Pickering (the Chief Justice being away on Circuit), I recommend further that provision be made whereby the ultimate decision as to whether any particular portion of native land within a native reserve should or should not be alienated be left to the Supreme Court on the ground that Judiciary stands aloof and is not swayed by any political considerations. The Order-in-Council should lay down the conditions which must be precedent to an alienation of native

land and in any case in which the decision of the Trustees is unacceptable to the natives concerned or unacceptable to the Colonial Government the party desiring to have the decision of the Trustees over-ruled should be entitled to appeal to the Supreme Court for a declaration as to whether the conditions did in fact exist and for a mandamus to the Trustees accordingly. For this purpose two or more Judges should constitute a Bench, and appeal should lie, if desired, to the Court of Appeal for Eastern Africa and from that Court to the Privy Council.

22. On the Bill itself, as now drafted, I have the following comments to offer:-

Clause 3. For "sub-section 2" substitute "sub-section 2 (c)".

If the Governor could at any time alter the boundaries of the Native Reserve there would be no security whatever to the native and Native Reserves would mean nothing at all.

Clause 4. The same principle applies here.

If the Governor may at any time cancel a part of the Reserve and sell the land as Crown Land, the whole scheme of securing land to natives is completely defeated.

Clause 8. Please see paragraphs 18, 19 and 20 of this Memorandum.

Clause 9. For "no title to any land" substitute "no individual title to any land".

With regard to the proviso, please see paragraph 21 of this Memorandum.

23. The remarks in the preceding paragraph apply only if it is decided that there must be a local Ordinance. For the reasons given in paragraphs 5, 10, 13 of this Memorandum, I am very strongly of the opinion that the security of native land should be effected by an Order-in-Council, which should embody the following provisions:-

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- (1) Authority from the King to the Governor to set aside lands for native benefit and to declare them to be Native Reserves:
- (2) A direction that such native reserves are to be vested in Trustees:
- (3) Authority to the Governor, with the consent of the Trustees, to make Rules for the management and control of lands in native reserves.  
(N.B. The various reserves would require different Rules in accordance with variation of custom and general conditions).
- (4) A declaration of the conditions on which land in Native Reserves may be taken by the Crown for public purposes.
- (5) A declaration of the conditions which must be precedent to an alienation of land within a Native Reserve for other than public purposes, namely,-
  - (a) the consent of the natives concerned and of the Trustees, or
  - (b) that the alienation would not involve any hardship to the natives concerned, but would be beneficial to such natives as well as to the Colony in general by reason of the advantages that would accrue to the Colony by the development of such land or its use for the purpose proposed, and of benefit to the natives by reason of the rents received and the general advantages which they would gain by the land being so utilised.
- (6) The right of appeal to the Supreme Court, as indicated in paragraph 21 of this Memorandum.

24. I consider it to be of the utmost importance that the Native Reserves should be removed entirely from the scope of any local Ordinance relating to Crown Lands. Whether the necessary provisions as to protection from trespass, the

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registration of leases and all other incidental matters relating to Land Tenure should be embodied in the Order-in-Council, or be made the subject of a local Ordinance implementing the Order-in-Council, is a matter for the Government's legal advisers. Personally I should think that once the security of tenure has been effected by an Order-in-Council the minor provisions might be enacted by an ancillary local Ordinance.

25. I ask that a copy of this Memorandum be forwarded to the Right Honourable the Secretary of State for the Colonies.

G. V. MAXWELL

CHIEF NATIVE COMMISSIONER.

COPY

MINUTE

From H.E. The Governor to Hon. Colonial Secretary.

25th June, 1926.

After further discussion and another careful reading of 37 (i.e. Minute from C.N.C. to Hon. C.S. forwarding memorandum on Native Reserves Bill), I find myself in even more complete disagreement with the C.N.C.'s reasoning and with the whole spirit of his argument - with two exceptions:-

- a. I have an open mind as to the desirability of an Order-in-Council.
- b. I agree with his para 21, which embodies a proposal that originally emanated from myself.

2. In the despatch which I propose sending to the S/S, I must take much broader ground than this in two respects:-

- a. I must endeavour to show that the method pursued in South Africa of extending political power to the white man on the spot while reserving native affairs to the S/S and his representatives only creates a deep antagonism between the settler and the Imperial Government and ends disastrously for native interests. Fighting a long and losing rearguard action against the settler is the most shortsighted statesmanship. He will have complete power some day, and it is essential in native interests to secure his co-operation in a sound native policy by steady leadership here and now, not his antagonism to native policy because, however sound, it is imposed upon him as an untrustworthy minor by higher authority from without.
- b. It is useless to have a policy regarding native lands in Kenya unless it is also adopted by Uganda and Tanganyika Territory.

3. The .....

3. The C.N.C.'s para 25 is an example of the fallacy referred to in my preceding paragraph. Let us try to present the S/S with proposals to which all white opinion here that matters assents. If, nowever, the C.N.C really attaches importance to having his arguments as an individual submitted to the S/S, I will attach them as an enclosure to my despatch.

4. As soon as the meeting of Legislative Council is over, I should like a meeting with yourself, the A.G., the C.N.C., and Lord Francis Scott to discuss the heads of my despatch. I should then wish to discuss them in Executive Council, and with the next meeting of P.C.s.

5. An interim despatch should go to the S/S explaining what action we propose to take regarding the gazetting of the Reserves pending the passage of a new Order-in-Council or Ordinance. I have minuted on this in another file.

(Initialled) E.G.  
25/6.

WH/AP.

A B I L L

TO PROVIDE FOR THE REGULATION AND  
CONTROL OF LAND IN NATIVE RESERVES.

-----

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

Short title.

1. This Ordinance may be cited as the  
Native Reserves Ordinance, 1926.

Reservation  
of land for  
natives.

2. (1) It shall be lawful for the Governor from time to time to reserve for the benefit of members of the native tribes of the Colony such areas of Crown land as in his opinion may be required for their use. Any area so reserved is in this Ordinance referred to as a "Native Reserve".

(2) Notice of every such reservation shall be published in the Gazette and shall specify:-

(a) the tribe or tribal unit for whose benefit such reservation has been made;

(b) the boundaries of the Native Reserve; and

(c) the boundaries of sub-divisions (if any) of such Native Reserve.

(3) No reservation under this section shall confer on any tribe or member of any tribe the right to alienate any land in a Native Reserve.

Power of  
Governor  
to alter  
boundaries  
in Native  
Reserves.

3. The Governor may at any time, by notice in the Gazette, alter any of the boundaries referred to in sub-section (2) of the last preceding section.

1917 by 1911

Power of  
Governor  
to cancel  
reservation.

4. The Governor may at any time, if satisfied that the whole or any part of a Native Reserve is no longer required for the use of the tribe or tribal unit for whose benefit it was reserved and is not in actual occupation of the members of such tribe or tribal unit, by notice in the Gazette cancel the reservation in respect of the whole or part of such Native Reserve, and thereupon the land comprised in such Native Reserve may be sold, leased or otherwise disposed of as Crown land:

Provided that such notice shall not be published without the prior sanction of the Secretary of State.

22 CAD  
KSP B.L.

Power of Governor to exclude from Native Reserves land required for public purposes.

5. (1) The Governor may at any time by <sup>Proclamation</sup> ~~Proclamation~~ <sup>Notice</sup> in the Gazette exclude from any Native Reserve any land which may be required for any of the following purposes:-

- (a) Public roads;
- (b) Public reservoirs, aqueducts, canals or watercourses;
- (c) Quays, wharves or landing places;
- (d) Railways, tramways, railway sidings, and buildings and works in connection therewith;
- (e) Public buildings;
- (f) Trigonometrical stations;
- (g) Any other public purpose which the Governor may think fit whether similar to those above-mentioned or not;

Provided that compensation shall be payable in respect of buildings and crops destroyed or damaged, and may also, in the discretion of the Governor, be payable in respect of other injury or damage caused by such resumption.

(2) If it shall appear to the Governor that the exercise of the power conferred by the last preceding sub-section has reduced the area of a Native Reserve below the area required for the use of the members of the tribe for whose benefit such area was reserved, the Governor shall, from contiguous unalienated and unreserved Crown land, (if any), add to such Native Reserve an area equivalent to the area of the land excluded.

S. J. C. 16-11-11

Powers of the Governor in regard to land in a Native Reserve.

6. (1) If shall be lawful for the Governor:-

(a) at any time to enter upon any land in a Native Reserve and to take therefrom stone and other materials for the making or repairing of roads, railways, canals, water channels, or other public works, whether of the like kind or not, without paying compensation unless taken from cultivated lands;

A |

(b) at any time to enter upon such land and there set up poles and carry electric lines across such land and lay sewers, water-pipes or electric lines therein, without paying compensation, but making good all damage;

(c) at any time to enter upon such land and there do any work which he may consider necessary for maintaining or improving the flow of water in any river or stream on such land and construct drains or divert any river or stream without paying compensation except for buildings and crops destroyed or damaged;

217 Sec 11. R

(d) by writing under his hand to authorise officers of the Government and contractors their servants and agents, to exercise the powers conferred upon him by this section.

(2) Whosoever under this section compensation is payable, such compensation shall not, in any case, exceed in the case of buildings and crops destroyed or damaged, the market value of the buildings or crops.

(3) The powers given by this section may be exercised before the compensation (if any) is paid.

Disposal of  
land in  
Native  
Reserves.

7. Save as hereinafter provided, no land in any Native Reserve shall be loaned or otherwise disposed of.

*See sec 7 Act*

Establishment  
of Native Land  
Trust Board.

8. (1). There shall be constituted a Native Land Trust Board (hereinafter referred to as "the Board") which shall consist of:-

- (a) The Governor as Chairman;
- (b) The Chief Native Commissioner;
- (c) The Senior Commissioners of the first class; and
- (d) Two persons to represent the native population and two persons to represent the non-native unofficial population to be appointed by the Governor.

*Amended*

Evidence of  
appointment.

(2) The names of all members appointed to the Board shall forthwith be notified in the Gazette, and any number of the Gazette containing a notice of any such appointment shall be deemed sufficient evidence of such appointment for all purposes.

Quorum.

(3) The Board may act by any five of its number (provided that the Chairman shall always be present) and may so act notwithstanding a vacancy in its number: provided that the Governor shall as soon as possible fill up vacancies in the Board.

Absence of  
members.

*Amended*

(4) The Governor may appoint any person temporarily to act in the place of any member of the Board in case of the absence or inability to act of such member.

Procedure at  
meetings of  
Board.

(5) Questions before the Board shall be decided by a majority of votes of those present and voting and in the case of equality of votes the Chairman shall have a second or casting vote.

*3. 5/11*

Lands in Native reserves to be under control and management of Board.

*in d m*

9. Subject to the provisions of this Ordinance all lands in Native reserves, and all rights over the same, are hereby declared to be under the control and management of the Board, and shall be administered for the use and common benefit of the natives, and no title to any land in a Native reserve shall be valid without the consent of the Board:

*Directed*

Provided that if both native representatives are opposed to the disposal or alienation of any land in a Native Reserve, or if the Chief Native Commissioner considers that native opinion should be further heard, such land shall not be disposed of or alienated without the prior sanction of the Secretary of State.

*c. 24 Ball*

Powers of Governor over land in Native Reserves.

10. (1) It shall be lawful for the Governor, with the advice and consent of the Board and subject to the provisions of the last preceding section:-

- (a) To lease any land in a Native Reserve;
- (b) To fix the rent payable in respect thereof;
- (c) From time to time to revise such rent in accordance with the provisions of section 12 of this Ordinance; and
- (d) To enter into contracts with non-natives relating to -

- (i) the grazing of cattle on Native reserves;
- (ii) the removal of timber and other forest produce from such reserves; and
- (iii) the taking of sand, lime, stone and other common minerals from such reserves.

*Handwritten note:* Native Reserves

(2) All rents, and profits, grazing fees or other profits whatsoever <sup>accruing</sup> ~~accruing~~ from land in a Native Reserve or from timber or other forest produce or from sand, lime, stone or other material removed or taken from a Native Reserve, shall be paid to the Local Native Fund, or, where there is no Local Native Fund, to the Natives' Trust Fund.

28 5/11

99 in Bill 125  
+ Keweenaw  
W.D.

**Term of leases.**

11. (1) Leases under the last preceding section may be for any period not exceeding thirty years, and shall be granted subject to such terms and conditions as the Governor, with the advice and consent of the Board may think fit:

Provided, however, that any lease may contain a right of renewal exercisable by the lessee for a further period not exceeding thirty years subject to a revision of the rent.

Conditions implied in leases.

(2) Every <sup>such</sup> lease shall be deemed to contain provisions to the following effect:-

- (a) That the lessee binds himself to pay the rent fixed by the Governor under section 1(3) of this Ordinance and any rent which may be fixed on revision;
- (b) That the lessee binds himself to pay compensation for any damage caused to native individuals or communities in the exercise of the rights granted to him, and to accept the ruling of the Board as to the amount of such compensation.

Chief Native Commissioner to execute leases.

(3) It shall be lawful for the Chief Native Commissioner, subject to any general or special directions from the Governor, to sign for and on behalf of the Governor any lease granted under this Ordinance.

10 Bill

Principles to be observed in fixing and revising rent.

12. In determining the rent to be demanded for any land in a Native Reserve, and on any revision of rent, the Board shall take into consideration the rent obtained or obtainable in respect of any other land in the immediate neighbourhood, and shall fix the rent at the highest amount that can reasonably be expected to be obtained for the land having regard to all the circumstances of the case:

Provided that in determining the amount of rent, whether original or revised, the Board shall not take into consideration any value due to capital expended upon the land by the same or any previous occupier during his term of occupancy or any increase in the value of the land, due to the employment of such capital.

11/3/20

Forfeiture of  
lease for non-  
payment of rent  
or breach of  
covenant.

13. If the rent or any part thereof reserved in a lease under this Ordinance shall at any time be unpaid for the space of twentyone days after the same shall have become due, or if there shall be any breach of the lessee's covenants, whether express or implied, the Chief Native Commissioner may serve a notice upon the lessee specifying the rent in arrear or the covenant of which a breach has been committed, and at any time after one month from the service of the notice may commence an action in the Supreme Court for the recovery of the premises; and, on proof of the facts, the Court shall, subject to relief upon such terms as may appear just, declare the land forfeited, and may order that possession of the land be given by the defendant to the plaintiff, either forthwith or on or before such day as the Court thinks fit to name, and that the defendant do pay the costs.

13 Bill

Lessee not to  
alienate land  
without consent  
of Board.

14. Except as may be otherwise provided by  
rules under section 17 of this Ordinance, it shall  
not be lawful for any lessee under this Ordinance to  
alienate the land comprised in his lease or any part  
thereof by sale, mortgage, transfer of possession,  
sub-lease, bequest or otherwise howsoever without  
the consent of the Board first had and obtained, and  
any such sale, mortgage, transfer of possession,  
sub-lease, bequest or other alienation effected  
without the consent of the Board shall be null and  
void.

012 full

Provision for  
agricultural  
and grazing  
areas.

15. The Board may cause any land in a Native Reserve, which it considers available for agricultural or grazing purposes, to be surveyed and divided into farms which shall not, except with the consent of the Governor, exceed five thousand acres, or, except with the consent of the Secretary of State, exceed seven thousand five hundred acres.

*Native Bill*

Actions to be brought in name of Chief Native Commissioner.

16. (1). All actions, suits and proceedings by or on behalf of His Majesty or by or on behalf of the Governor respecting land in a Native Reserve, or respecting any lease relating thereto, or any breach of any such lease, or any trespass on such land, or any damages accruing by reason of such trespass, or for the recovery of any rents, or relating to any damages or wrongs whatsoever in respect of such land, may be commenced, prosecuted and carried on in the name of the Chief Native Commissioner, and he may be plaintiff or defendant, as the case may require, in any such action, suit or proceeding.

(2) In any such action, suit or proceeding the Chief Native Commissioner may be represented by any Advocate or by any officer of the Native Affairs Department or by any Administrative Officer.

*18 full*

Power to  
make  
rules.

131

17. (1) It shall be lawful for the Governor, with the advice and consent of the Board, to make rules for the purpose of carrying this ordinance into effect and particularly with regard to all or any of the following matters:-

- (a) The convening and holding of meetings of the Board, the procedure at such meetings, the term during which appointed members of the Board shall hold office, and the circumstances in which such members shall vacate office;
- (b) The management and control of land in Native Reserves;
- (c) The management and control of water, forest and timber in Native Reserves;
- (d) The maintenance of boundary marks;
- (e) The reservation of existing enclosures and of means of access to neighbouring lands, and the compensation, if any, to be paid therefor;
- (f) The limitation of areas to be leased for building purposes;
- (g) The registration of leases;
- (h) The regulation of transfers by sale or otherwise of land comprised in any lease;
- (i) The granting of occupation licences to individual natives or families;
- (j) The individual family or communal rights of user and the settlement of all disputes arising therefrom between the members of a native tribe or tribal unit for whose benefit a Native Reserve has been set aside;
- (k) The fees to be paid for any matter or thing done under this ordinance.

*Handwritten note:*  
P. H. All  
adding 2, 3, 4, 5  
in 1/2/10  
make 4/10/10

(2) All Rules under this section shall be published in the Gazette.

*Handwritten note:*  
S. H. B. 1/10/10

A

Saving of existing rights.

16. Nothing in this ordinance <sup>contained</sup> shall be deemed to affect the validity of any title to land within the area of a Native Reserve granted before the commencement of this Ordinance, and the said titles and the rights thereby conferred and the obligations thereby imposed shall continue to be governed by the Ordinances under which they were granted as if this Ordinance had not been enacted:

Provided, however, that all land comprised in any such title, whether excluded from a Native Reserve under section 5 of this Ordinance or not, shall be deemed to be included in such reserve, and, subject to agreement between the Commissioner of Lands and the Chief Native Commissioner, all rents accruing from such lands shall be paid to the credit of the local Native Fund concerned, or, where there is no local Native Fund, to the Natives' Trust Fund.

o 22 file  
pages

Repeal.  
(No. 12 of 1915)

19. Subject to the provisions of the last preceding section, Part VI of the Crown Lands Ordinance, 1915, is hereby repealed.

Bill  
23 added  
Speaker also  
Anandji Prasad

THE NATIVE RESERVES BILL.

134

Present Bill.	Corresponding provisions of previous draft.
Clause 1.	Clause 1.
Clause 2.	Cf. Clauses 2 and 3.
Clause 3.	New. Provision for alteration of boundaries.
Clause 4.	Cf. Clause 5.
Clause 5.	Cf. Clause 6.
Clause 6.	Cf. Clause 20.
Clause 7.	Cf. Clause 4.
Clause 8(1) to (4) (Sub-clause (5) is now.)	Cf. Clauses 7, 8, 9 and 10.
Clause 9.	Cf. Clause 11(1) sub-clause (2) omitted.
	Clause 12 omitted.
Clause 10(1)(a)(b)(c). (Sub-clause 1(d) and sub-clause (2) are now.)	Cf. Clause 13.
Clause 11.	Cf. Clauses 14, 17 and 16.
Clause 12.	Cf. Clause 19.
Clause 13.	Cf. Clause 23.
Clause 14.	Cf. Clause 18.
Clause 15.	Cf. Clause 15.
Clause 16.	Cf. Clause 24.
Clause 17(1) (Sub-clause (1)(i) and (j) and sub-clause (2) are now.)	Cf. Clause 22.
Clause 18.	Cf. Clause 21.
Clause 19.	Cf. Clause 25.

COPY

5  
125  
ATTORNEY GENERAL'S OFFICE,  
NAIROBI.

No.M.462/27.

7th March 1927.

The Hon'ble Ag.Colonial Secretary,  
NAIROBI.

re Land in Native Reserves.  
Ref. Your No.S/C.Lnd.1/4/1/27 of 1.10.1926.

I have had various conversations with the Hon'ble Chief Native Commissioner on this matter and recently correspondence passed, copies of which I enclose. I would also refer to his Memorandum forwarded under cover of his No.A.58/5/11/1 of the 18th May last, on which, so far as I am officially aware, no action has been taken. In this Memorandum, Mr Maxwell raises various points and sets out his arguments for the necessary legislation being effected by Order in Council. There is also the further point as to whether the land in Natives Reserves should vest (in the legal sense) in a Trust Board. Mr Maxwell argues that the Secretary of State has agreed that the land should so vest. It was and is submitted by this department that the intention of the Secretary of State is not that argued by Mr Maxwell and definite instructions of this point are desired. Details of the constitution of the Trust Board are also desired.

Possibly you may consider it necessary to obtain further instructions from the Secretary of State, or at least to discuss the matter in Executive Council. In the absence of definite instructions it is difficult to proceed with drafting the desired legislation.

(Sgd) F.Gordon Smith.

SOLICITOR GENERAL  
for Attorney General.

Copy forwarded to the Hon'ble Chief Native Commissioner,  
Nairobi, for his information.

A.58/5. Vol.II/28.

2nd March 1927.

The Honourable  
The Attorney General,  
N A I R O B I.

LAND IN NATIVE RESERVES  
Reference your No.M.378/27 of 26th February.

I am afraid that I do not agree with your second paragraph. My proposal is that the Order-in-Council should enable the Governor-in-Council to declare land to be native reserve, and should then set out the conditions which must be precedent to any diminution of or alienation from any reserve. I can see no reason why a description of the limits and boundaries of native reserves should be embodied in the Order-in-Council.

2. With regard to your last paragraph, I am of course not in a position to give any instructions in the matter. These can only come from the Governor through the Colonial Secretary.

3. I hope that you will forward your request for instructions as early as possible, for I regard this legislation as being of urgent and vital importance, and the matter has come to a standstill.

(Sgd) G.V. MAXWELL,

Chief Native Commissioner.

K.378/27.

26th February 1927

The Hon'ble Chief Native Commissioner,  
NAIROBI.

re Land in Native Reserves.  
Ref. Your No.A.58/5/11/26 of 19.1.1927.

1. I am obliged for your suggestions as to the reservations to be embodied in the proposed Order in Council (or Ordinance). In this respect, the draft Ordinance forwarded to you under cover of Ho.M.630/26 of the 15th April last will not need very much alteration. It appears to me however that the principle of whether the land is to be vested in a Board of Trustees or management, or whether the land is to remain vested in the Crown, has not been settled. The same applies also to the point of whether the necessary legislation is to be by Order in Council or Ordinance. It seems superfluous to attempt to draft the necessary legislation at the moment until these points have been settled. I should also like further instructions as to the constitution of the Board and their powers and duties.

2. I understand that your argument in favour of an Order in Council is, briefly, that Natives would feel more definitely secured in their tenure of the land and that such tenure would not be subject to the whims of the local legislature. In such cases it would be necessary to define in the Order the limits and boundaries of the Native Reserves and every subsequent alteration in such limits would necessitate an amending Order in Council.

The disadvantages...

M.378/27.

26th February 1927

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NAIROBI.

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The disadvantages...

The disadvantages of this are obvious. If power is reserved by the Order in Council to some subordinate authority to alter the limits of a Native Reserve, then the argument in favour of an Order in Council rather falls to the ground.

3. As regards the vesting of the land in the Board of Trustees or Management, I do not see the advantage to be gained by so doing and it seems to me that if such Trustees have full powers of management and one or more of them is authorised to execute the necessary documents, as occasion requires, on behalf of the Crown, this is all that is necessary or desirable.

4. Before, therefore, proceeding with the draft legislation, I shall be glad to have definite instructions on the points mentioned.

(Sgd) F. Gordon Smith,

SOLICITOR GENERAL, for  
Attorney General.

A.58/5.11/26.

19th January 1927

The Hon'ble  
The Attorney General,  
NAIROBI.

With reference to our conversation in which you asked me to send you suggestions as to the reservations which should be embodied in the Native Reserves Order-in-Council to enable the Trustees to expropriate land in Native Reserves in certain circumstances, I have the following suggestions to offer :-

2. A. There should be the right to acquire land for the following public purposes :-

- (1) Public Roads and bridges.
- (2) Public reservoirs, aqueducts, canals, water-pipe lines or watercourses:
- (3) Public quays, wharves or landing places:
- (4) Public railways or tramways:
- (5) The development of electric power for public purposes from any lake, river or stream:
- (6) Public aerodromes:
- (7) Government camps or stations:
- (8) Buildings or works in connection with any of the foregoing:
- (9) Townships.

In the cases of (1) to (8) compensation should only be payable for buildings and crops destroyed, removed or damaged.

In the case of (9) the land should be purchased at a fair valuation preferably on a quit-rent.

B. Private Purposes.

Leases or Temporary Occupation Licenses only to be granted, no permanent alienation.

- (1) Factories for treating raw material produced by natives:

- (2) Trading centres:
- (3) Sites for requirements of trade or transport:
- (4) Agricultural purposes:
- (5) Mission stations.

In every case native consent should be sought in the first instance, but the Trustees should have the right to over-ride native refusal if (a) the land as a whole is not being beneficially occupied by natives of the tribe concerned; and (b) there is reason to consider that the natives of the tribe for whom the land has been reserved, will derive a special benefit from alienation, e.g. by the establishment of trade or industries, or by providing a market for native produce, or by providing an exceptional opportunity to the natives of earning wages near their own homes, or (in the case of Mission stations) where any considerable section of natives desires the activities of the Mission concerned.

Actual native holdings should be protected as in Section 86 of the Crown Lands Ordinance; ~~Capt. 140.~~ If there is any dispute as to whether the conditions (a) and (b) exist, the matter to be referred to the Supreme Court for declaration.

6. I would suggest further that the right be given to the Trustees to dedicate suitable areas of land for special uses, e.g. for hospitals or schools for the surrounding natives

without....

without actual alienation from the Reserve.

D. Government should reserve the right to take timber, bushwood, also sand, stone or other common minerals for public purposes, where it is shown that such taking will not involve hardship on the natives, and upon payment of a reasonable fee.

Fees can be fixed under the Fees and Royalties Ordinance (Cap.65).

In the case of timber or bush-wood, the Trustee should be careful to see that no hardship is involved. The present difficulty in getting natives to consent to wood being cut for the Railway arises from the wanton destruction that has been perpetrated by Railway Fuel Constructors.

(Sgd) G.V. MAXWELL,

Chief Native Commissioner.

RECEIVED

11 JUN 1927

COL. OFFICE

142  
15

Telegram from the Officer Administering the Government of Kenya to the Secretary of State for the Colonies.

Dated 10th June.

(Received Colonial Office 4.56 p.m. 10th June, 1927)

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No. 12

No. 205 10th June Your telegram 26th May Native Land Trust draft legislation posted to Governor 30th May.

Downing Street.

143

3 June, 1927.

Dear Major Dutton,

I have your letter about the Native Lands Trust.

The Secretary of States reply to Sir Robert Corymion's despatch quoted from the East Africa Commission Report :-

"..... we fear that ..... it is necessary to set up a definite Trust Board, in which all native lands should be vested ....."

The despatch then continued:-

"I have given careful consideration to these recommendations, in which I entirely concur ....."

That is, so far as I can trace, the last word on the question of "vesting", and, of course, any variation could only be made on the authority of the Secretary of State himself.

Subject

MAJOR DUTTON.

Subject to that, I shall be glad to have a  
talk with Mr. Martin to (whom I ~~am~~ writing *shall see on Tuesday*)  
before the Bill arrives on the 20th.

*John King*

*Over*

c/o  
H.M. EASTERN AFRICAN TRADE & INFORMATION OFFICE,  
ROYAL MAIL BUILDING  
34, COCKSPUR STREET,  
LONDON, S.W. 1.

30th May 1927.

Dear Mr. Bottomley,

Sir Edward has now had a telegram from Kenya to say that a Natives Land Trust Bill and the papers with regard to the Leave and Passage Conditions are on their way home and will arrive here on the 20th June, together with Memoranda by the Acting Governor.

I understand there has been some difficulty over the Natives Land Trust Bill, which Mr. Denham hopes you will be able to discuss while the Governor is still in England. I have had a telegram to this effect, a copy of which I enclose.

If any useful purpose will be served by your having a preliminary discussion on both these subjects with Mr. Martin, Sir Edward Grigg would be very grateful to you if you would arrange it.

Yours very truly,

*E. A. J. Sutton*

W.C. Bottomley. Esq.  
C.B., C.M.G., O.B.E.  
Colonial Office.  
Downing Street.  
S.W. 1.

COPY.

146

Decode of telegram received from the Acting  
Governor, Nairobi, through the Crown Agents.

-----  
Dated 26th May 1927.  
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"Following for Grigg begins. Native  
"Land Trust Bill was held up on account of Chief  
"Native Commissioner's contention that the Secretary  
"of State had ruled that Native land should vest in  
"Trust Board. A view not accepted by legal advisers.  
"It is believed that this point was being discussed  
"between you and the Secretary of State. Other  
"points for consideration whether legislation should  
"be effected by the Order-in-Council unofficial  
"European representation on board and appeal to  
"Judge of Supreme Court. Full memoranda on these  
"points go to you by mail of 31st May I trust it may  
"be considered before final decision. Message ends.

ACTING GOVERNOR."

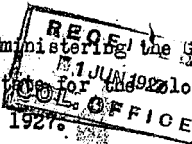
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COPY

TELEGRAM from the Officer Administering the Government  
of Kenya to the Secretary of State for the Colonies.

Dated 31st May 1927.

(Received Colonial Office 6:40 p.m. 31st May 1927).



13

147

No. 12

197. 31st May. Your telegram of 26th May. No individual title to native land is recognised by this government. Native custom in various parts of the Colony recognises tenure ranging from merely beneficial occupation up to Gethaka ownership which appears to be a family tenure conveying certain rights against occupation by persons not belonging to the family but in regard to which much remains to be discovered. There has been a tendency on the part of the natives to ask for titles on European model but the liabilities and restrictions attending such system are in no way comprehended by them. Individual tenure which normally only results from over density of population should be allowed to evolve on natural lines and any endeavours to promote it artificially will probably take the wrong direction. In the view of the administration it would be unwise to unsettle the native attitude in regard to their land by premature investigation into individual tenure which might prejudice the excellent effect produced by recent gazetting of native reserve boundaries but in all districts Administrative Officers are being encouraged to make study of the question of native disputes. I agree Despatch follows.

X 10133 *A* *Henry*

C. D.  
R 27 MAY  
D 30

Mr. *Assomany* 26/57  
Mr. *atone*

*Calcutt & Co*  
4.30 pm 26.5.14  
*James* *FWW*

- Mr. E. J. Harding.
- Sir C. Strachey.
- Sir J. Stuckburgh.
- Sir G. Grindall.
- Sir C. Davis.
- Sir S. Wilson.
- Mr. Ormsby-Gore.
- Earl of Clarendon.
- Mr. Amery.

*Amson*  
NO 13  
& 15

*Telegraph when I may*

*expect to receive draft*

*legislation Native Land*

**DRAFT.**

*Code etc.*

*Governor*  
*Rainbow*

*Trust @ Report briefly by*  
*telegram to more fully by*  
*despatch shall be written*  
*regarding question of*  
*native*  
*individual tenure within*  
*Native Reserve*