



COLONY AND PROTECTORATE OF KENYA

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**SESSIONAL PAPER**

**No. 10 of 1958/59**

**Land Tenure and Control  
Outside the Native Lands**

1959

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**Telegram No. 975 of 5th October, 1959, from the Governor to the Secretary of State.**

"I wish to seek your formal approval to detailed proposals for carrying out our declared policy for ensuring that basis of tenure and management of agricultural land will be similar throughout Kenya regardless of race or tribe as far as local economic and agronomic factors will permit. These proposals are contained in Sessional Paper on Land Policy which you have already seen and closely studied in draft.

2. If approved, the new policy will entail legislation by Order in Council to set up the new Central Advisory Board and Land Trust Corporation and to alter composition and functions of Native Lands Trust Board.

3. New policy will also involve a decision to enact amendments to Agriculture Ordinance a new Town and Country Planning Bill and legislation to regulate landlord and tenant relations. You are aware already of summary of these proposed measures which if you approve will be published with Sessional Paper.

4. Grateful for your views and for your agreement to early publication of Sessional Paper and introduction to Legislative Council."

**Telegram No. 238 of 6th October, 1959, from the Secretary of State to the Governor.**

"I warmly welcome your detailed proposals on land and give my formal approval to their early publication. They will demonstrate your determination which I fully share to encourage the growth of an attitude to land based on principles of the economic use of land and sound agricultural development good husbandry and most advantageous employment of natural resources. I hope they will command wide support in Kenya.

2. I note and agree further agricultural landlord/tenant and town country planning measures will be necessary to ensure policy is properly carried out. I endorse your proposals for these measures but note that they will require to be carefully worked out in detail. Grateful if you can send me copies of draft Bills in due course."

## LAND TENURE AND CONTROL OUTSIDE THE NATIVE LANDS

1. It is the declared policy of the Government to ensure that the basis of tenure and management of agricultural land will be similar throughout Kenya, regardless of race or tribe, as far as local economic and agronomic factors will permit.

2. The proposals set out in this Sessional Paper provide for the application of this policy outside the native lands. The implementation of the Native Lands Registration Ordinance, 1959, and the Land Control (Native Lands) Ordinance, 1959, will place the tenure of land and the control of land transactions in certain areas of the native lands on a new basis.

### EXISTING SYSTEM OF TENURE AND CONTROL

3. In order that the proposed changes in the tenure and control of agricultural land outside the native lands may be more easily understood the following description of past and present practice is provided.

4. *Tenure.*—The Crown Lands Ordinance, 1902, provided that land could be sold by the Crown on freehold tenure and a number of freehold grants were, in fact, made. Leases were also granted for 99 years upon payment of a premium and an annual rent. Under the Crown Lands Ordinance, 1915 (now Cap. 155), agricultural land was leased by the Crown for 999 years, with provision for the revision of rents on certain specific dates, and thereafter every 30 years. The rent for the first period was fixed at 20 cents an acre and for the second period, which now commences on 1st January, 1961, at 1 per cent of the unimproved value of the land. At intervals thereafter the rent increases to 2 per cent and then 3 per cent of the unimproved value. The lessee of farm land is obliged to comply with conditions in his lease expressly setting out the nature and amount of the minimum development to be achieved within a stated period. The Crown Lands Ordinance, 1915, also empowered the Governor to accept the surrender of any lease granted under the Crown Lands Ordinance, 1902, and to grant to the lessee a fresh lease of the area for 999 years. The general acceptance of such surrenders was terminated on 31st December, 1953, but individual applications are still considered and, if approved, new 999 year leases are issued, subject to development conditions where appropriate. Apart from a comparatively small acreage held in freehold, land in the Highlands is almost entirely held on 999 year leases.

5. In the Coastal strip many persons already had rights in the land before the British Government concluded its agreement with the Sultan of Zanzibar in 1895 and the occupants were not disturbed. The Land Titles Ordinance (Cap. 159), provides for recognition and registration of a freehold title to such land. Land in respect of which no claim has been made or to which a claim has been disallowed is Crown land, and may be alienated under the Crown Lands Ordinance, 1915, on leases for agricultural purposes for 999 years.

6. It will be seen, therefore, that agricultural land outside the native lands may be held on any one of four different kinds of tenure. Under the Crown Lands Ordinance, 1902, agricultural land might be held in freehold or under a 99-year lease. Under the Crown Lands Ordinance, 1915, agricultural land is leased for a term of 999 years. All land at the Coast registered under the Land Titles Ordinance is held in freehold.

7. *Control of Land Transactions.*—Although by virtue of the Crown Lands Ordinance, Cap. 155, transactions in agricultural land outside the boundaries of the Highlands (as described in the Seventh Schedule to that Ordinance) are liable to control in certain circumstances, this power has rarely had to be exercised. Transactions in respect of land within the Highlands are, however, strictly controlled by the provisions of the Land Control Ordinance (Cap. 150) and the Crown Lands Ordinance (Cap. 155).

8. Subject to the exceptions described below, all applications in respect of transactions concerning land in the Highlands are considered by the Land Control Board, established by the Land Control Ordinance, after consultation with the local authority concerned.

9. The Board's powers of control are set out in section 8 of the Land Control Ordinance (Cap. 150) and, subject to any special or general directions of the Governor made after consultation with the Highlands Board, which was established by the Kenya (Highlands) Order in Council, 1939, the Board has power to consent to any land transactions specified in section 7 of the Ordinance or to refuse to give its consent on grounds which are detailed in paragraph 12. Section 7 also provides that the Board has power, in respect of any transaction relating to land, to tender advice to the Governor in connexion with the exercise of his powers under section 88 of the Crown Lands Ordinance. Section 88 provides that the consent of the Governor to dealings in land in the Highlands is necessary, and the Governor may give his consent or refuse it in his discretion.

10. The Board also has power to impose, when giving its consent to a transfer of land by sale or gift, specific conditions that improvements of a nature and to a minimum value specified should be effected on the land within a specified time.

11. The transactions specified in section 7 of the Land Control Ordinance cover the sale, lease, assignment or mortgage of, and the acquisition of, rights, title or interest in, land in the Highlands, as well as the transfer of shares in companies possessing an interest in such land. Gifts of land by testamentary disposition and transactions made by or in favour of the Crown are excluded from the Board's control. Equitable mortgages with certain specified bodies may also be effected without the consent of the Board.

12. The grounds on which the Board may refuse to give its consent to a transaction are when—

- (a) in its opinion the applicant already has sufficient land or interest therein or sufficient shares in the company in question; or
- (b) the area of the land is thought to be likely to prove uneconomic for the purpose for which it is intended; or
- (c) the terms and conditions upon which the sale is to take place are onerous.

13. There are, however, some cases in which the Land Control Board does not consider that an application received by it should be approved, but in which the circumstances do not entitle the Board to refuse its consent. In such cases the Board advises the Governor that he should withhold his consent to the transaction under the provisions of the Crown Lands Ordinance.

14. Under the terms of the Kenya (Highlands) Order in Council, 1939, the Governor is required to consult the Highlands Board, and seek its advice, on all matters relating to the disposition of land within the Highlands and, accordingly, recommendations from the Land Control Board are considered also by the Highlands Board who submit their views on the proposed transaction to the Governor.



15. The Highlands Board consists of the Chief Secretary as President, the Commissioner of Lands as Vice-President, four European Elected Members of Legislative Council appointed by a majority of the European Elected Members, and one person nominated by the Governor.

16. In addition to its right to be consulted by the Governor on the matters described above, the Board is given the primary function of protecting the interests of the inhabitants of the Highlands in the land situate in the Highlands and in particular is required to make representations to the Governor when, in its opinion, anything in relation to the administration, management, development or control of the land in the Highlands is not in the best interests of the inhabitants of the Highlands. It is therefore empowered to give or withhold its consent in relation to certain specific matters described in the Crown Lands Ordinance (Cap. 155) and the Native Lands Trust Ordinance (Cap. 100). Its consent is required, for example, before the boundaries of the Highlands can be altered, or before the Governor can set aside Crown land in the Highlands as a native reserve or a temporary native reserve, or issue a permit to a tribe to occupy Crown land which is in the Highlands and adjacent to a Native Land Unit. Although many of the matters referred for the advice of the Board have concerned proposed transfers of land from Europeans to non-Europeans, transfers of shares in companies holding land from Europeans to non-Europeans and the use of land involving occupation by non-Europeans (other than farm labourers), for example, for community and religious centres, the Board has also advised the Governor to withhold his consent to suspected speculative transactions in land between parties of the same race. In considering such matters the Board has frequently been confronted with transactions with racial implications and in most, though not in all, cases this factor has weighed heavily in the formulation of its advice to the Governor. While the Governor is not bound by law to accept the advice submitted by the Highlands Board, unless its consent is required in respect of matters specifically prescribed by law, it will be apparent that if the Governor rejects that advice his decision in a particular case will be regarded as indicative of a change in the broad policy, pursued up to that time, of the reservation of land in the Highlands for European ownership and occupation.

17. The proposals set out in paragraphs 29 to 58 will ensure that the determining considerations governing the ownership or occupation of land in the Highlands will be those of the economic use of land, sound agricultural development and good husbandry only, and not race.

#### GOVERNMENT'S PROPOSALS IN RESPECT OF AGRICULTURAL LAND TENURE

18. *Conversion of Leasehold to Freehold Tenure.*—It is proposed, in pursuance of the general policy stated in paragraph 1, that where land is leased for agricultural purposes for a term of 999 years, or for a term of 99 years and approval by Government has been given for conversion to 999 years, the lessee will be given the option of converting from leasehold to freehold. The new title will, in accordance with English practice, be unencumbered with restrictions, other than in respect of third party rights legally created and subsisting at the time of conversion, e.g. a charge on the land or a land preservation order: the new title will, however, be subject to existing overriding interests, e.g. rights of way and wayleaves. The title will, however, be restricted by law to agricultural user only.

19. *Financial Basis of Conversion.*—Government recognizes that the conversion of a leasehold title into freehold results in the disposal for all time of an asset from which it would otherwise derive a regular source of annual income.

It is considered that the capital sum which it is reasonable for the Crown to expect to receive in consideration of the abandonment of such anticipated revenue should be a sum amounting to 20 years' rent, such sum being paid either in a lump sum or over a period of ten years, provided that at any time the lessee may pay the balance of the purchase money. During any period in which payment of the freehold price by instalments is being made, rent will continue to be payable but at half the prevailing rate.

20. *Rental at Time Option to Convert is Exercised.*—The rental on which conversion will be based is that which will be applicable in accordance with section 33 of the Crown Lands Ordinance from 1st January, 1961, i.e. 1 per cent on the unimproved value of the land as established in the year 1960.

21. *Period During which Option may be Exercised.*—Bearing in mind that the passage of time, if no terminal date is placed on the exercise of the option, will render the 1960 basis of valuation of individual farms increasingly out-dated, and would also bring nearer the date for the next statutory revision of rents, the option to convert will only be exercisable for a period of three years, commencing on 1st January, 1961, and there will be no provision for extension.

22. *Issue of Title.*—Since the title-holder will be in no way inhibited in the utilization of his existing leasehold title should he wish to use it as security for any transaction, and since in many, although not in all, cases there may be subsisting financial encumbrances on the title which would rank in precedence to that of the Crown (for it would clearly be essential for the unpaid balance of the freehold purchase price to be secured by a charge on the land), the freehold title will not be issued until the payment of the purchase price has been completed in full. Provision will also be made to allow the transfer of the title to the existing leasehold before the purchase price of the freehold has been completed; the new lessee will be entitled to complete the payment of the freehold purchase price and to receive then the freehold title.

23. *Default Without Consent.*—If a lessee defaults in respect of his payments of the purchase price, the option to convert to freehold tenure will lapse; but payments already made will be credited against his liability for annual rental, which would revive at the full rate and with effect from the date when the option to convert was exercised. The Governor will have power to waive, on grounds of hardship, this condition on application by the lessee.

24. *Resumption Powers of the Crown.*—The right of the Crown to resume land for public purposes as described in the Crown Lands Ordinance will be continued in respect of the new freehold title.

25. *Change of User.*—If an application for a change of user in respect of agricultural land held on a new freehold title is approved, the title to that portion of the land concerned will have to be surrendered to the Crown and a regrant will be made on leasehold terms at a new rental and subject to conditions appropriate to the new use. Such land will then fall outside the scope of the control machinery described in paragraphs 32 to 51.

26. A change of user in respect of land granted in freehold under the Crown Lands Ordinance, 1902, or in respect of which a certificate of ownership has been issued under the Land Titles Ordinance (Cap. 159), is not required now and will not be required in future except in regard to planning consent under the town and country planning legislation which is referred to in paragraph 29 below.

27. *Machinery of Conversion.*—The existing leasehold title will be surrendered and a fresh freehold grant made in accordance with the Registration of Titles Ordinance (Cap. 160). It is not anticipated that any new survey will be required where re-surveys have been carried out on conversion of the leasehold title from 99 to 999 years, or in respect of land already granted on a 999-year leasehold. New grants made upon the conversion to freehold of 999-year leases will be exempted from the payment of stamp duty.

28. *New Grants of Crown Land.*—New grants of Crown Land made before 31st December, 1963, for agricultural purposes will be issued in the form of a short lease and will include an option to convert to freehold title within three years of the commencement of the term of the lease, but this option will be exercisable only after any initial development conditions imposed in the lease have been carried out. Any such new grants will require reference to a Divisional Board which will form part of the control machinery which it is proposed should be established. Details of this machinery follow.

#### CONTROL OF SUBDIVISION AND LAND TRANSACTIONS

29. Under section 39 of the Crown Lands Ordinance the Commissioner of Lands, by virtue of powers delegated to him by the Governor, gives or withholds his consent to subdivisional proposals submitted in respect of leasehold agricultural land. These powers will cease to be exercised and the control of subdivisional proposals, both in respect of leasehold and freehold agricultural land, will be carried out by the Ministry of Agriculture under the provisions of the Agriculture Ordinance, 1955, where subdivisions into areas of 100 acres or more are proposed, and by the Ministry of Local Government and Town Planning, and planning authorities, under town and country planning legislation in the case of subdivisions below 100 acres. Subdivisions into areas of between 20 and 99 acres will, however, require the consent also of the Ministry of Agriculture. Any change of use of agricultural land will be controlled under the town and country planning legislation, with the consent of the Ministry of Agriculture. It is envisaged that these functions could well be exercised by appropriate technical officers of the Ministries concerned, but in any event an avenue of appeal to the Governor in Council of Ministers will be provided against their decisions. A summary of the relevant provisions of the proposed town and country planning legislation is contained in Appendix A and a summary of the proposed amendments to the Agriculture Ordinance, 1955, to provide for the control of subdivision and other matters described in paragraphs 53 and 54 below, is contained in Appendix B.

30. The control of subdivisional proposals will accordingly not form part of the control exercised by Divisional and Regional Boards, details of which are given below.

31. *Geographical Scope of Proposed Control of Land Transactions.*—At the present time the Land Control Ordinance applies only to the Highlands. The machinery of control which will be established will apply to agricultural land in the Highlands, but will not at present be applied to other agricultural areas.

32. *Machinery for Proposed Control.*—The Land Control (Native Lands) Ordinance, 1959, establishes Divisional and Provincial Boards for the control of transactions in land in the native lands, the title to which is registered under the Native Lands Registration Ordinance, 1959. It is proposed that the Highlands Board and the Land Control Board shall be replaced by a system of Divisional and Regional Boards for the purpose of controlling land transactions: it is expected that each Divisional Board will have jurisdiction over approximately the same area as that now covered by an Agricultural Committee under

the Agriculture Ordinance, 1955. A Central Land Advisory Board will also be established which will be responsible for advising the Governor on the overall land policy to be applied throughout the Colony. This Board will not be concerned with the individual land transactions examined by the Divisional and Regional Boards, except insofar as its advice, or that of certain of its members, may be sought by the Governor in respect of appeals made to him.

33. In broad outline the control machinery will operate in the following manner, though modified in relation to transfers of freehold between persons of different races as set out in paragraph 34. An application for consent to a land transaction will be considered in the first instance by a Divisional Board, which will have power to give its consent to the transaction or to refuse its consent for certain specified reasons (*see* paragraph 39), which would not include power to refuse consent to a transaction on the ground of the race of the proposed transferee. An appeal against a refusal by a Divisional Board to consent to an application will lie to a Regional Board, whose decision will be final in all cases except where the transaction is between persons of different races, when there will be a final right of appeal to the Governor.

34. It is also necessary to consider the question of proposed transfers of freehold between persons of different races. For this purpose it is proposed to establish a Land Trust Corporation which will, however, not be concerned with applications for approval of leases. In the detailed proposals which are set out in paragraph 49 it will be seen that the transfer of freehold title between persons of different races will be permitted in certain circumstances. Where these circumstances do not exist it is proposed that, if the intending vendor and purchaser so desire, the title to the land will be conveyed to the Corporation which will act as a repository of the freehold interest and itself grant a long-term lease of the land, at a peppercorn rental, to the intending purchaser.

35. An application for approval to the transfer of shares in a company owning land in an area to which the control machinery is applied will be considered in the first instance by the Commissioner of Lands who will either approve it, or submit it to the appropriate Ministries for examination and decision. (*See* paragraph 41.)

36. The Native Lands Trust Board will continue to act as the repository of title in the native lands where land is not held in individual ownership and its functions under the Native Lands Trust Ordinance will remain unchanged except insofar as they may be taken over by the Central Land Advisory Board. It will, however, be re-constituted to provide a parallel to the Land Trust Corporation. It will act in the same manner as the Corporation in respect of transfers of the freehold title to land between persons of different races.

37. The composition, functions and powers of these Boards, and of the Land Trust Corporation, are described in greater detail in the paragraphs which follow.

#### DIVISIONAL BOARDS

38. *Composition.*—A Divisional Board will be composed of a District Commissioner and an Agricultural or Veterinary Officer, with seven other persons appointed by the Minister for Lands and selected from a panel of 12 names submitted by the Agricultural Committee or Committees functioning in the area of jurisdiction of the Board, after consultation with their Sub-Committee. Each Divisional Board will elect its own Chairman and five members will form a quorum.

39. *Duties and Functions.*—The functions of a Divisional Board will be—
- (a) to give its consent, subject to any direction of the Governor as to classes of cases in which consent is to be withheld, to transactions in land;
  - (b) to refuse to give its consent to transactions in land when in its opinion—
    - (i) the applicant already has sufficient land or interest therein; or
    - (ii) the area of land is such as to be unlikely to prove economic for the intended purpose; or
    - (iii) the terms and conditions of the proposed transaction are onerous; or
    - (iv) the information before the Board, including any proposals for development submitted by the applicant, indicates that the proposed transferee is unlikely, for any reason, to be a good farmer of the holding;
  - (c) to examine and refer for decision to the Regional Board any application;
  - (d) to advise on such matters relating to transactions in land, or transfers of shares, as may be referred to it.

The giving of consent will be final and absolute and no appeal, for example by a third party, against such consent will be possible.

40. In the event of a Divisional Board refusing to give its consent to a transaction it will inform the applicant, in writing, of the reasons for its refusal. An appeal will lie to a Regional Board.

41. It is considered impracticable for all applications concerning transfers of shares to be examined in accordance with the control machinery proposed for other transactions in land and such applications will be submitted to the Commissioner of Lands who will, subject to any special or general directions by the Governor, either approve them or, where in his opinion the transfer, or the cumulative effect of a series of transfers, might result in a change in the control of the company, submit the transaction to the appropriate Ministries. These Ministries will examine, jointly, the proposed transfer and either give their consent or refuse their consent when, in their opinion, such a transfer might result in a change of the control of the company inimical to the efficient use of land as described in paragraph 17. The decision of the Ministries on any such application will be final and absolute and no appeal against their decision will be possible except in cases where the parties to a proposed transaction are of different races, when there will be an appeal to the Governor.

42. *General.*—(a) In order that there should not be undue delay in considering applications for consent to land transactions, provision will be made for the parties concerned to be at liberty to submit any proposed transaction direct to the appropriate Regional Board, for its decision, if a Divisional Board fails to notify its decision on an application within 60 days of the date of its submission to the Board.

(b) All applications will be required to be submitted to the appropriate Divisional Board through the Commissioner of Lands. The object of this requirement is to enable the application to be scrutinized to ensure that it is legally in order and accurate in respect of information which is unlikely to be, or will not be, in the possession of the Divisional Board, e.g. for confirmation that the intending vendor is in fact the registered owner of the land. In order to make the provision described in subparagraph (a) effective, the Commissioner will be required to inform both parties of the date upon which he forwards the application to the Board.

## REGIONAL BOARDS

43. *Composition.*—A Regional Board will consist of not more than four persons appointed by the Minister for Lands in his discretion and seven persons appointed by him from a panel submitted by the Board of Agriculture of 12 names of persons acquainted with conditions in the area of jurisdiction of the Board. Each Regional Board will elect its own Chairman and in no case will a member of a Regional Board be a member of a Divisional Board also. Seven members of the Board will form a quorum.

44. *Duties and Functions.*—The powers of a Regional Board will be similar to those conferred by sections 11 and 12 of the Land Control (Native Lands) Ordinance, 1959, and its functions will be—

- (a) to decide appeals lodged against a refusal of a Divisional Board to consent to a land transaction; and
- (b) to give its consent, subject to any direction of the Governor that it should not give its consent to any particular class of transaction, to any transaction which is referred to it by a Divisional Board for decision, or to any application submitted direct to it in terms of paragraph 42 (a);
- (c) to refuse to give its consent to any transaction or application on the grounds set out in paragraph 39 (b) but not otherwise.

The decision of a Regional Board will be final and conclusive, save in cases where the parties to a proposed transaction are of different races when there will be an appeal to the Governor. If a Regional Board rejects an appeal, or refuses to give its consent to a transaction referred to it by a Divisional Board or to an application submitted direct to it, and an appeal to the Governor is possible by virtue of the fact that the parties to the proposed transaction are of different races, the Regional Board will inform the appellant, or applicant, in writing, of the reasons for its decision. As in the case of Divisional Boards, the giving of consent will be final and absolute and no appeal against such consent will be possible.

45. *General.*—As in the case of Divisional Boards, a Regional Board will be required to give its decision on any application referred to it within 60 days of receipt, failing which the applicants will be able to refer the application to the Governor who will be empowered to deal with it by exercising the powers of the Board.

## CENTRAL LAND ADVISORY BOARD

46. *Composition.*—The Central Land Advisory Board will be composed of one-third Africans, one-third Asians (including Arab representation) and one-third Europeans, with the Minister responsible for lands as Chairman and the Commissioner of Lands as Deputy Chairman. The members, who will not be members of Divisional or Regional Boards and will not be members of the public service, will be appointed by the Governor.

47. *Duties and Functions.*—The declared objective of the Government is the progressive disappearance of racial land barriers. Bearing this in mind, the general functions of the Board will be to advise the Governor on all land policy and it will exercise this function in relation to all land in the Colony and not only to the land which is the immediate concern of this Sessional Paper.

48. A particular function of the Board will be to advise the Governor, at his request, in relation to appeals made to him. The Governor will be free to consult any member or members, as he sees fit, but he will be required to obtain the advice of those members of the Board who belong to the same races as the parties concerned in the appeal.

## INTER-RACIAL TRANSFERS OF FREEHOLD

49. *Inter-racial Transfers of Freehold and the Vesting of Land in a Land Trust Corporation and a Reconstituted Native Lands Trust Board.*—It is not intended that there should be any prohibition in law on the transfer of freehold from a person of one race to a person of another race. If a landowner wishes to transfer his freehold interest to a person of another race, he will have first to obtain consent through the control machinery already described. The proposed transaction will then be referred to and considered by a body to be known as the Land Trust Corporation. This body, whose members will be nominated by the Governor, will consist of a Chairman, who will be a Government official, two European Constituency Elected Members, and two Europeans, one African and one Asian who are not members of the public service, and will be empowered to approve an inter-racial transfer of freehold only by unanimous decision. Where such unanimity is absent, the Corporation will be required, as an alternative and subject to the agreement of the parties concerned, to accept a conveyance of the freehold title to itself, and thereafter to grant a 999-year lease, at a peppercorn rental, to the intended purchaser, the necessary payment for the land being made by the purchaser to the vendor. The Corporation will thus become the repository of the freehold interest in such cases and will itself be the lessor in law. In the absence, therefore, of the unanimous approval of the members of the Corporation, a transfer of freehold from a person of one race to a person of another race will not be possible.

50. It is emphasized that a lease of land by a person of one race to a person of another race will not be examined by, or require the consent of, the Land Trust Corporation, but will be examined by Divisional Boards, and Regional Boards if necessary, in the manner described. The procedure outlined in paragraph 49 for the conveyance of a freehold title to, and subsequent grant of a 999-year lease by, the Corporation, is intended to provide a practical alternative to a freeholder who wishes to transfer his title to a person of another race but whose application does not receive the unanimous consent of the members of the Corporation.

51. In the native lands, where the Native Lands Trust Ordinance applies, the Native Lands Trust Board will retain its present powers and in the area to which the Native Lands Registration Ordinance, 1959, applies, the Board will become the owner of land registered in its name, and the ultimate body to which registered land without an owner will escheat. The Board will, however, be reconstituted to consist of a Chairman, who would be a Government official, two African Constituency Elected Members and two Africans, one European and one Asian who are not members of the public service, all nominated by the Governor. The Board will be divested of its present advisory function, which will be transferred to the Central Land Advisory Board, but will retain its other functions.

## MISCELLANEOUS

52. *Control of Succession to Land on Death.*—The transmission of land on the death of a landowner or leaseholder, whether such transmission takes place by will or on intestacy, will be subject to the control machinery described in paragraph 33, and to the provisions of paragraph 49 in appropriate circumstances.

53. *Obligations Relating to Development and Good Husbandry.*—Obligations relating to development and good husbandry will be imposed under the Agriculture Ordinance, 1955, and not under land control legislation; see Appendix B.

54. The Government recognizes, also, that landlord and tenant legislation will be required in order to regulate more comprehensively the rights and obligations of landlords and tenants in agricultural tenancies, and to improve the position of both parties—the landlord, to recompense him for improvements which he makes and to protect him from bad farming; and the tenant, to give him security of tenure and to provide compensation for disturbance so that he will be encouraged to improve the holding. A summary of this proposed legislation is contained in Appendix C. The Agriculture Ordinance, 1955, will also be amended in order to give the Minister for Agriculture increased powers to insist on, and to enforce, good estate management and good husbandry, as defined in the landlord and tenant legislation: *see* Appendix C. The Agriculture Ordinance will enable the Minister, as a final sanction, to obtain an order to dispossess any person who fails to comply with orders or rules relating to the preservation, utilization or development of agricultural land. The landlord will have a remedy against a tenant who fails to comply with the requirements of good husbandry by suing through the courts for breach of covenant.

55. *Transactions in Non-agricultural Land Outside the Urban Areas.*—The City of Nairobi, municipalities, townships and trading centres are specifically excluded from the Highlands. Although the proposals set out in this Sessional Paper are primarily concerned with agricultural land, it is necessary to consider also land used for non-agricultural purposes in the Highlands.

56. At the present time transactions in such land require the consent of the Governor and of the Land Control Board as described in paragraphs 13 and 14.

57. It is proposed that transactions in non-agricultural land in the Highlands will not be subject to the proposed control machinery. Land, which was agricultural but in respect of which a change of user has been sanctioned as indicated in paragraph 25, will also be excluded from its scope.

58. Control over land utilization in such areas will be effected by the town and country planning legislation.

#### RACIALLY RESTRICTIVE COVENANTS AND CONDITIONS

59. In the case of non-agricultural land in urban and peri-urban areas, particularly land used for residential purposes, restrictive covenants or conditions sometimes exist which limit occupation to persons of a particular race. At the present time when the Crown takes the surrender of land containing such restrictions, for example, when a landowner wishes to proceed with a subdivisional scheme, the restrictions are reimposed in the new grants. Under a policy pursued since 1st June, 1958, subject to the exceptions detailed below, all new grants of land in municipalities, townships and trading centres contain a condition that the grantee shall not impose on any dealings whatsoever with the land a restriction against the ownership or occupation thereof by members of any particular race. The exceptions in question are grants issued in consequence of a surrender and grants issued in certain areas where the Crown, in the opinion of the Law Officers, has established a "building scheme" (*see* paragraph 60) and is therefore committed to impose identical conditions when alienating plots within the area affected by that scheme. This policy is, as stated above, applicable only to land in urban areas. The removal of control from transactions in non-agricultural land will mean that the only remaining deterrent to free inter-racial transfers will be that provided by the existence of a restrictive covenant or condition imposed between private persons.



60. A "building scheme" is a scheme by which an area of land is developed by division into plots, which are then sold or leased to a number of persons, each deriving his title from the one landowner. If the landowner imposes the same restrictive covenants in each sale or lease, then these covenants may be enforced not only by the landowner but also by one purchaser or lessee or his successors against another purchaser or lessee or his successors. To constitute a "building scheme" there must be (a) a common landowner; (b) a defined area laid out for sale or lease in plots subject to restrictive covenants; (c) a general similarity between these restrictive covenants into which the different purchasers or lessees of land within that area enter, consistent only with a general scheme of development; and (d) evidence that the landowner and the purchasers or lessees intend that the covenants should be for the benefit of all.

61. Government has considered carefully whether all existing racially restrictive covenants or conditions should be rendered unenforceable by the enactment of legislation for this purpose, and has examined also the associated question of whether the creation, in future, of such restrictions should be rendered null and void.

62. It has been decided that legislation to render unenforceable existing racially restrictive covenants or conditions will not be introduced. It is not, however, the intention of the Government to enforce any racially restrictive covenant or condition imposed by it in any grant or lease of Crown land, or to which it may otherwise have become a party; but neither will the Government interfere with the enforcement of any such covenant or condition by any other person who may enjoy the benefit thereof, whether by virtue of a building scheme or otherwise, in cases in which the Government is also a party to that covenant or condition.

63. Government proposes, however, to take steps to prevent the effective imposition of racially restrictive covenants or conditions by private persons in future. The policy, which is described in paragraph 59, will be extended to apply to all new Crown grants and not merely those in urban areas. When a change of user of agricultural land is approved and a new grant issued, the terms of that grant will exclude racially restrictive covenants or conditions and will prohibit their inclusion in any further dealings in the land, unless the original title to the land contained a racially restrictive covenant or condition when the restriction in question may continue to be included.

#### LEGISLATION NECESSARY TO IMPLEMENT THE FOREGOING PROPOSALS

64. In order to carry into effect the proposals set forth in this Sessional Paper it will be necessary for the Kenya (Highlands) Order in Council, 1939, and the Kenya (Native Areas) Orders in Council, 1939 to 1958, to be revoked and replaced by a new Order in Council establishing the Central Land Advisory Board and the Land Trust Corporation, continuing the existence of the Native Lands Trust Board, prescribing the composition of these bodies and conferring upon them their several powers and duties. Legislation in Kenya will be needed to repeal the Land Control Ordinance and Parts VIII and IX of the Crown Lands Ordinance and to replace them by new legislation providing the control machinery. It will also be essential at the same time to enact the town and country planning legislation, to regulate more precisely the relationship of landlord and tenant in the case of agricultural tenancies and to amend the Agriculture Ordinance, 1955 (see paragraphs 29 and 54).

65. In addition, as stated in paragraphs 61 to 63, legislation will be introduced to prevent the creation of any future restriction against ownership or occupation on the ground of race in assignments or conveyances in respect of land, freehold or leasehold, agricultural or other, including tenancy agreements, except in the case of—

- (a) land already comprised within existing building schemes containing racial restrictions; and
- (b) grants made in consequence of a surrender of a title containing a racial restriction.

This legislation will be so drafted as to give it retrospective effect to the date on which this Sessional Paper is laid before the Legislative Council.

## TOWN AND COUNTRY PLANNING

Paragraph 29 of this Paper deals with the control of subdivision and the change of use of agricultural land and states that it is intended to effect this control in the future by town and country planning legislation (and by the Agriculture Ordinance, 1955, as amended: *see* Appendix B).

2. The ultimate aim of the Town and Country Planning Bill, at present in draft, is to provide for planning to be done by means of development plans prepared as a result of detailed planning surveys, and approved by the Minister responsible for town planning. This is a long term task which will be entrusted to local planning authorities appointed by the Minister. In municipalities and in areas for which there is a County Council, the Bill provides for the Municipal Council or Board, or the County Council, to become the planning authority. In other areas the appropriate local authority will become the planning authority. Planning authorities will be required to prepare development plans within a specified period of being appointed and provision will be made for interim control.

3. The Bill provides for the necessary control of change of use of all land whether agricultural or not. In the case of areas of agricultural land of 20 acres or more, the consent of the Ministry of Agriculture will be required. The Bill also controls the subdivision of land into plots of less than 100 acres in area. In the case of agricultural land the consent of the Ministry of Agriculture will be required in respect of subdivision into plots of between 20 and 99 acres.

4. The control of subdivision of land into plots of less than 20 acres, at present exercised under the Public Health (Division of Lands) Ordinance (Cap. 131), will be exercised under the Town and Country Planning Bill.

## APPENDIX B

THE AGRICULTURE ORDINANCE, 1955  
PROPOSED AMENDMENTS

Section	Subject	Nature of Amendments
26 (1)	Constitution of Agricultural Subcommittees.	Three members to be elected by registered owners and occupiers and two to be appointed by the Minister.
26 (2)	Constitution of Agricultural Subcommittees.	
39 (1)	Constitution of Agricultural Committees.	District Commissioner to be added to <i>ex officio</i> members.
39 (1)	Constitution of Agricultural Committees.	Ministerial appointments not to be subject to the "concurrence of the members".
57-72	Preservation of Soil and Fertility (Scheduled Areas).	To be incorporated in General Rules: <i>see below</i> .
82	Development Orders.	To provide that a Land Development Order shall cease to have any effect if the person on whom the Order has been served satisfies the Minister that he has not adequate moneys, or access to adequate moneys, to meet the expenditure which would be incurred in complying with the Order.
158	Preservation of Land (Non-Scheduled Areas).	To be incorporated in General Rules: <i>see below</i> .
New	Dispossession (Scheduled Areas).	To empower the Minister to apply to the court for an order to sell land in cases where the owner has persistently failed to comply with orders or rules concerning the preservation, utilization or development of agricultural land.
New	Subdivisional Control.	To provide the necessary powers to implement the proposals set out in paragraph 29 of this Paper.
New	Rules for the Preservation, Utilization and Development of Agricultural Land (All Areas).	To empower the Minister, on the advice of the Board of Agriculture (Scheduled Areas) and the Land Development Board (Non-scheduled Areas), to make General Rules for all areas, for the preservation, utilization and development of agricultural land, including "good husbandry" and "good estate management" as defined in the landlord and tenant legislation: <i>see Appendix C</i> .

## AGRICULTURAL LANDLORDS AND TENANTS

## GENERAL

1. Legislation is required to define relationships between landlord and tenants in respect of agricultural land.

2. The main purpose of the legislation will be to lay down conditions which will apply to all agricultural leases in all areas to which the Ordinance is applied by the Minister responsible for agriculture.

3. Whenever agricultural land is leased in any such area, the parties will be required to enter into a lease in accordance with the provisions of the legislation.

## GOOD ESTATE MANAGEMENT

4. The United Kingdom Agriculture Act, 1947, defines "good estate management" as follows:—

"(1) For the purposes of this Act, an owner of agricultural land shall be deemed to fulfil his responsibilities to manage it in accordance with the rules of good estate management in so far as his management of the land and (so far as it affects the management of that land) of other land managed by him is such as to be reasonably adequate, having regard to the character and situation of the land and other relevant circumstances, to enable an occupier of the land reasonably skilled in husbandry to maintain efficient production as respects both the kind of produce and the quality and quantity thereof.

(2) In determining whether the management of land is such as aforesaid, regard shall be had, but without prejudice to the generality of the provisions of the last foregoing subsection, to the extent to which the owner is providing, improving, maintaining and repairing fixed equipment on the land in so far as is necessary to enable an occupier of the land reasonably skilled in husbandry to maintain efficient production as aforesaid.

(3) The responsibilities under the rules of good estate management of an owner of land in the occupation of another person shall not, in relation to the maintenance and repair of fixed equipment, include an obligation to do anything which that other person is under an obligation to do by virtue of any agreement."

5. The principles contained in the definition will be embodied in the legislation, subject to such modifications as may be found to be required in the context of agricultural conditions in Kenya; in particular, provision will be made for greater flexibility than is contained in the United Kingdom Act in respect of acceptance by the tenant of responsibility for good estate management.

6. A covenant will be expressed in all leases that the landlord shall manage the land in accordance with the principles of good estate management, but if so expressed in the lease, and with the agreement of the tenant and the consent of the Minister, this obligation may be passed by the landlord to the tenant.

7. Rules will be made by the Minister under the Agriculture Ordinance, 1955 (as amended: *see* Appendix B), to cover any matter relating to good estate management, and they will be enforced against the landlord (or against the tenant where that obligation has been passed to him as provided in paragraph 6), under that Ordinance at the instigation of the Minister. This will not, however, prejudice the right of the tenant or of the landlord, as the case may be, to sue for breach of the covenant in the lease.

8. The Minister will, however, be empowered under the landlord and tenant legislation to exempt the landlord from the operation of the Rules, or any part of them, if he is satisfied that, in cases where the land is underdeveloped, enforcement would cause hardship. In such event, it will be obligatory upon the landlord to agree to reasonable improvements being carried out by the tenant for which compensation will be paid by the landlord at the termination of the tenancy.

#### GOOD HUSBANDRY

9. A definition of "good husbandry", based upon that in the United Kingdom Agriculture Act, 1947, will be included in legislation. This definition will provide that, in determining whether the occupier of an agricultural unit shall be deemed to fulfil his responsibility to farm it in accordance with the principles of good husbandry, regard will be paid, *inter alia*, to the following—

- (a) that permanent pasture and ranching land is being properly managed and maintained in a good and clean state, in good fertility and in good condition;
- (b) that the manner in which arable land is being cropped is such as to maintain that land clean and in a good state of cultivation and fertility and in good condition;
- (c) that necessary soil conservation measures or practices are being applied and maintained at all times, including when necessary the preservation of vegetation and the planting and maintenance of trees;
- (d) that a unit is properly stocked where a system of farming requires the keeping of livestock, and that an efficient standard of management of livestock is maintained where livestock are kept and of breeding where the breeding of livestock is carried out;
- (e) that the necessary steps are being taken to secure and maintain crops and livestock free from disease and from infestation by insects and other pests;
- (f) that the necessary steps are being taken for the protection and preservation of crops and grassland at all times;
- (g) that the necessary work of maintenance and repair is being carried out;
- (h) that subletting of the whole or any part of the property without the consent of the landlord be not permitted.

10. A covenant will be expressed in all leases that the tenant shall manage the land in accordance with principles of good husbandry, notwithstanding anything to the contrary contained in the lease.

11. Rules to cover matters relating to good husbandry will be made by the Minister under the Agriculture Ordinance, 1955 (as amended: *see* Appendix B), and enforced under that Ordinance, but without prejudice to the right of the landlord to sue for breach of the covenant in the lease.

#### SECURITY OF TENURE

12. In the interests of good husbandry security of tenure is essential and the legislation will provide that all tenancies will be for a minimum specified period. The Minister will, however, be empowered to consent to shorter terms.

## IMPROVEMENTS

13. With the exception of such improvements as may be required by rules relating to good estate management (*see* paragraphs 6 and 7), stipulations in respect of improvements, whether permanent or otherwise, will be on the basis of agreement between the landlord and the tenant, with a right of appeal on the part of the tenant if the landlord should refuse to agree to the carrying out of reasonable improvements by the tenant.

14. At the termination of the tenancy the tenant will be entitled to be compensated for essential improvements which he has carried out, and for any non-essential improvements which he has carried out with the agreement of the landlord.

15. Essential improvements will be defined by regulations to be made under the landlord and tenant legislation.

16. The landlord will be entitled to increase the rent in respect of any improvements carried out by him, or in respect of any work, other than an essential improvement, which he may be required to do, or which may be done, by any outside authority.

17. Leases will provide that, in addition to compensation for improvements, an out-going tenant will be compensated for growing or planted crops or be given the opportunity of reaping and removing them. Permanent crops such as coffee will, however, be treated as improvements.

## FURTHER PROVISIONS

18. The provisions set out above are directly or indirectly related to the proposals in the Sessional Paper. Consideration will have to be given to further provisions dealing with the following matters—

- (a) compensation for disturbance;
- (b) dilapidations;
- (c) rent;
- (d) disputes;
- (e) death of landlord or tenant;
- (f) crop records;
- (g) access to holdings.

