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SESSIONAL PAPER

No. 6 of 1959/60

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

1960

PRINTED BY THE GOVERNMENT PRINTER, NAIROBI

Price: Cents 50

LAND TENURE AND CONTROL OUTSIDE THE NATIVE LANDS

1. On 10th November, 1959, His Excellency the Governor, in his communication from the Chair at the opening of the first session of the eleventh Legislative Council, said that ample opportunity would be given to interested bodies to make clear to Government their views on the details of the proposals concerning land tenure and control outside the native lands which were set out in Sessional Paper No. 10 of 1958/59. The views so received have been carefully studied and, in the light of the points made, certain modifications to the contents of Sessional Paper No. 10 of 1958/59 are now proposed.

2. The chief modifications provide for—

- (i) a change in the financial basis of conversion from leasehold to freehold tenure (paragraph 4);
- (ii) an extension of the period during which the option to convert to freehold may be exercised (paragraph 7);
- (iii) the abandonment of the powers of the Governor in Council to resume land for public purposes (paragraph 12);
- (iv) revised terms on which new grants of Crown land for agricultural purposes will be made (paragraph 16);
- (v) a change which brings within the scope of the control machinery the subdivision of agricultural land, and all transactions in land comprising holdings of 20 acres or above, except land zoned for purposes other than agriculture, and land below this acreage which is designated by the Minister of Agriculture as agricultural land in accordance with the Agriculture Ordinance, 1955 (paragraph 17);
- (vi) changes in the membership, powers and functions of Divisional and Regional Boards (paragraphs 23 to 31);
- (vii) an amendment to the proposals concerning the control over share transactions (paragraph 26);
- (viii) new proposals in respect of mortgage transactions (paragraph 27);
- (ix) a withdrawal of the proposals for the establishment of a Land Trust Corporation and restrictions on inter-racial transfers of freehold (paragraph 35).

3. These modifications affect the proposals set out in paragraphs 18 to 51 of Sessional Paper No. 10 of 1958/59 which deal with Government's proposals in respect of agricultural land tenure and the control of subdivision and land transactions, and the paragraphs which follow set out Government's revised proposals in these respects. The other proposals contained in the Sessional Paper remain unchanged. The paragraph numbers shown below in brackets relate to paragraphs in Sessional Paper No. 10 of 1958/59.

GOVERNMENT'S PROPOSALS IN RESPECT OF AGRICULTURAL LAND TENURE

4. *Conversion of Leasehold to Freehold Tenure* (Paragraph 18).—It is proposed 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 be restricted by law to agricultural user only.

5. *Financial Basis of Conversion* (Paragraph 19).—Government recognizes that the conversion of a leasehold title into freehold results in the disposal of an asset from which it would otherwise derive a regular source of annual income. It is considered that the capital sum which, on actuarial considerations, the Crown should expect to receive in consideration of the abandonment of such anticipated revenue is a sum amounting to 18 years' purchase of rent. This sum may be paid either in a lump sum or over a period of 20 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 cease to be payable but interest will be charged at 6½ per cent per annum. Repayment of capital and interest will be by equal annual instalments.

6. *Rental at Time Option to Convert is Exercised* (paragraph 20).—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.

7. *Period During which Option to Convert from Leasehold to Freehold Tenure may be Exercised* (Paragraph 21).—The period during which the option to convert to freehold tenure may be exercised will be five years commencing on 1st January, 1961.

8. *Issue of Title* (Paragraph 22).—In the case of titles which are unencumbered the titleholder will be entitled, if he so wishes, to convert his leasehold title to freehold immediately on payment of the first instalment of the purchase price. Where the existing title is encumbered the titleholder may elect to convert his title immediately on a similar basis provided that the existing encumbrancers consent. In such a case, the Crown's statutory charge would take priority over the existing encumbrances. Statutory provision will be made for the new title to be subject to the existing encumbrances in order to save the expense which would otherwise be involved in discharging them and creating fresh charges against the new title. Alternatively, if the titleholder so desires, or cannot obtain the consent of his existing encumbrancers, the freehold title will not be issued until payment of the purchase price has been made. Meanwhile the titleholder would be free to deal with his existing leasehold title. Express provision will also be made to allow transfer of the existing leasehold title before the purchase price for the freehold has been paid in full; the transferee will be entitled to complete the payment of the freehold purchase price and to receive then the freehold title.

9. *Default Without Consent* (Paragraph 23).—Provision will be made for the Crown to have a statutory charge over land in respect of which the freehold title has been issued when the purchase price is being paid by instalments; this charge will also secure the interest payable on that price. This charge will give to the Crown all the ordinary powers and remedies of a mortgagee in case the purchaser fails to pay any instalment on the due date.

10. If a person who has opted to purchase his freehold but has not obtained his title, defaults in respect of his payments of the purchase price, the option to convert will lapse. Payments already made will, however, be credited against his liability for annual rental which will 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 this provision on grounds of hardship.

11. *Entry and Resumption Powers of the Crown* (Paragraph 24).—The right of the Crown to enter upon land for public purposes as described in section 106 of the Crown Lands Ordinance will be continued in respect of the new freehold title. This section provides that the Governor in Council may enter upon any land sold, leased or occupied under a licence under the Crown Lands Ordinance and there set up poles and carry electric lines across such land and may lay sewers, water pipes or electric lines therein, without paying compensation, but making good all damage.

12. The Ordinance will, however, be amended to remove from the Governor in Council his present power to resume land for public purposes. All land required for such purposes will be acquired under the Land Acquisition Act, 1894, of India, and compensation will be paid as provided in the Act.

13. *Change of User* (Paragraphs 25 and 26).—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 re-grant 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 19 to 34.

14. 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 town and country planning legislation.

15. *Machinery of Conversion* (Paragraph 27).—The existing leasehold title will be surrendered and a 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.

16. *New Grants of Crown Land* (Paragraph 28).—New grants of Crown land for agricultural purposes will take the form of an initial lease the term of which will be coterminous with the period during which the grantee is required to carry out specified development conditions. A grant in freehold will be issued when the development has been carried out in accordance with the conditions of the lease. The Governor will have power to extend both the period for fulfilment of the development conditions and the term of the lease. Where the conditions are not carried out within the period, or any extension thereto which the Governor might grant, the lease will automatically determine.

CONTROL OF SUBDIVISION AND LAND TRANSACTIONS

17. (Paragraphs 29 and 30).—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 form part of the control exercised by Divisional and Regional Boards. Under the proposed town and country planning legislation, land will be zoned for particular purposes and every application for the subdivision of land zoned for agriculture will be examined by a Divisional Board and either recommended for approval, or refused. Subdivision of non-agricultural land will not be the concern of the Divisional Boards. A recommendation of approval will be made to the planning authority under the town and country

planning legislation and a Divisional Board will be required to consult the relevant local authority, where no local planning authority exists, before making a recommendation that an application be approved. A refusal by a Divisional Board to an application to subdivide will be subject to an appeal to a Regional Board whose decision may be the subject of a further appeal to a Board of Appeal composed of Ministers appointed by the Governor at his discretion. Appendix "A" (Town and Country Planning) to Sessional Paper No. 10 of 1958/59 is modified by this change.

18. *Geographical Scope of Proposed Control of Land Transactions* (Paragraph 31).—It is intended that the machinery of control should eventually be widely applied but in the first instance, in order to gain experience of its working, its application will be limited to land in the Highlands comprising holding of 20 acres or above except land zoned for purposes other than agriculture. Where any land below this acreage is designated by the Minister for Agriculture as agricultural land in accordance with the Agriculture Ordinance, 1955, the control machinery will apply to transactions in such land. The definition of agricultural land in section 2 of the Ordinance will be redrafted to put beyond doubt the Minister's powers in this respect.

19. *Machinery for Proposed Control* (Paragraph 32).—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. Each Divisional Board will have jurisdiction over approximately the same area as that 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 in so far as its advice, or that of certain of its members, may be sought by the Governor in respect of appeals made to him.

20. (Paragraph 33).—In broad outline the control machinery will operate in the following manner. An application for consent to a subdivisational proposal or a land transaction will be considered in the first instance by a Divisional Board. In the case of a land transaction it can only refuse its consent for certain specified reasons, detailed in paragraph 24 below, 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 save where the transaction is between persons of different races, when there will be a final right of appeal to the Governor. In the case of a subdivisational proposal the Board can either recommend approval or refuse the application when there will be a further right of appeal as described in paragraph 17 above.

21. (Paragraph 35).—An application for approval to the transfer of shares in a private company owning land in an area to which the control machinery applies will be considered in the first instance by the Commissioner of Lands who will either approve it, or submit it to the appropriate Divisional Board for examination and decision as described in paragraph 26 below.

(Note: Paragraphs 34 and 36 of Sessional Paper No. 10 of 1958/59 will no longer apply).

22. (Paragraph 37).—The composition, functions and powers of these Boards are described in greater detail in the paragraphs which follow.

DIVISIONAL BOARDS

23. *Composition* (Paragraph 38).—A Divisional Board will be composed of a District Commissioner and an Agricultural Officer (and, where thought necessary, a Veterinary Officer) together with the Chairmen of Agricultural Committees and Subcommittees (or such member of an Agricultural Subcommittee as may have been appointed a member of an Agricultural Committee in lieu of the Chairman of the Subcommittee) appointed under the Agriculture Ordinance, 1955, and functioning within the area of the Divisional Board, and two further members nominated by the County, or Counties, concerned. A Divisional Board will also have powers to co-opt additional members but these will not have voting powers. Each Divisional Board will elect its own Chairman and five members will form a quorum.

24. *Duties and Functions* (Paragraph 39).—A Divisional Board will have power to—

- (a) 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 and, where an application is referred to it by the Commissioner of Lands, to transactions involving shares;
- (b) refuse to give its consent to transactions in land or shares when in its opinion—
 - (i) the applicant already has sufficient land or interest therein, or shares in a company, or companies, having an interest in land; or
 - (ii) the area of land is such as to be unlikely to be 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) recommend, to the appropriate planning authority, applications for the subdivision of agricultural land;
- (d) refuse to give its consent to any subdivision of agricultural land;
- (e) examine and refer for decision to a Regional Board any application for consent to a transaction;
- (f) advise on such matters relating to transactions in land 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.

25. (Paragraph 40).—In the event of a Divisional Board refusing to give its consent to a subdivision of land or a share or a land transaction it will inform the applicant, in writing, of the reasons for its refusal. An appeal will lie to a Regional Board.

26. (Paragraph 41).—An effective control over share transactions in public companies is not considered to be practicable and the control of share transfers will be limited to those occurring in private companies where the possibilities of speculative transactions in land are considered to be greater. Applications in respect of transactions in shares in private companies will accordingly 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 the series of transfers, might

result in a change in the control of the company, submit the transaction to the appropriate Divisional Board which will be required to give or refuse to give its consent to the transaction. An appeal will lie against refusal to give consent, to a Regional Board, and thereafter, in the case of transactions involving parties of a different race, to the Governor.

27. Mortgage transactions will be specifically excluded from the scope of the control machinery and will not be examined by Divisional or other Boards. Provision will however be made in the control legislation to ensure that a mortgagee can only exercise his powers of sale or foreclosure, or his power to appoint a Receiver or Manager, after gaining consent through the control machinery.

28. *General* (Paragraph 42).—(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

29. *Composition* (Paragraph 43).—A Regional Board will consist of two persons appointed by the Minister for Lands in his discretion, three persons nominated by the Board of Agriculture, and a person nominated by the County Executive Committee of the Association of Local Government Authorities of Kenya. 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. Four members of the Board will form a quorum.

30. *Duties and Functions* (Paragraph 44).—A Regional Board will have power to—

- (a) decide appeals lodged against a refusal of a Divisional Board to consent to a subdivisinal proposal or a land or share transaction; and
- (b) 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 or application which is referred to it by a Divisional Board for decision, or to any application submitted direct to it because of the failure of a Divisional Board to notify its decision within 60 days of the date of its submission to the Board;
- (c) refuse to give its consent to any transaction or application on the grounds stipulated as appropriate in the case of a Divisional Board.

The Board will be empowered to seek from a Divisional Board any further information which it requires but it must convey its decision within the time limit imposed by paragraph 31.

The decision of a Regional Board will be final and conclusive in the case of transactions in land and shares, save where the parties to a proposed trans-

action are of different races when there will be an appeal to the Governor. In the case of the subdivision of land the refusal of a Regional Board to approve an application will be subject to a final appeal to a Board of Appeal composed of Ministers appointed by the Governor at his discretion. If a Regional Board rejects an appeal, or refuses to give its consent to a transaction or application submitted direct to it, and an appeal lies either to the Governor or to the Board of Appeal described in paragraph 17, 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.

31. *General* (Paragraph 45).—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

32. *Composition* (Paragraph 46).—The Central Land Advisory Board will be composed of six Africans, six Asians (including Arab representation) and six 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.

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

34. (Paragraph 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

35. (Paragraphs 49 to 51).—The Government has accepted representations that, subject to the control machinery, there should be no inhibition against the transfer of freehold between parties of different race and the proposals made in Sessional Paper No. 10 of 1958/59 in this respect are withdrawn.