1960 No. 2202

The Kenya (Land) Order in Council, 1960

Made - - - -	30*th November*, 1960
Laid before Parliament	6*th December*, 1960
Coming into Operation	7*th December*, 1960

At the Court at Buckingham Palace, the 30th day of November, 1960

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in this behalf by the British Settlements Acts, 1887 and 1945(a), and the Foreign Jurisdiction Act, 1890(b), or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I—INTRODUCTORY

Citation and commencement

1.—(1) This Order may be cited as the Kenya (Land) Order in Council, 1960.

(2) (*a*) This Order, except as otherwise provided in this subsection, shall come into operation on such day, not being earlier than the 7th day of December, 1960, as the Governor may, in his discretion, appoint by proclamation published in the Kenya Gazette.

(*b*) Part IV of this Order shall come into operation on such day, not being earlier than the appointed day, as the Governor may, in his discretion, appoint by proclamation published in the Kenya Gazette.

Interpretation

2.—(1) In this Order, unless the context otherwise requires—

"agricultural land" has the meaning assigned to it in section 2 of the Agriculture Ordinance, 1955(c);

"the appointed day" means the day appointed by the Governor under paragraph (*a*) of subsection (2) of section 1 of this Order;

"Central Land Advisory Board" means the Central Land Advisory Board established by section 12 of this Order;

(a) 50 & 51 Vict. c. 54 and 9 & 10 Geo. 6. c. 7.
(b) 53 & 54 Vict. c. 37.
(c) Kenya Ordinance No. 8 of 1955.

" Council of Ministers " means the Council of Ministers established by section 11 of the Kenya (Constitution) Order in Council, 1958, as amended(a) ;

" Crown land " means all land in Kenya which is neither private land nor Trust land ;

" Governor " means the Governor and Commander in Chief of Kenya, and includes every person for the time being administering the Government thereof ;

" Kenya " means the Colony and Protectorate of Kenya ;

" Minister " means a member of the Council of Ministers ;

" Native Lands Trust Board " means the Native Lands Trust Board established by section 6 of the Kenya (Native Areas) Order in Council, 1939, as amended(b) (hereby revoked) ;

" Ordinance " means an Ordinance of Kenya ;

" prescribed " means prescribed by regulations made by the Governor under this Order ;

" private land" means any land in Kenya the freehold title to which has been granted to any person by or on behalf of the Crown, or in respect of which a claim to an estate in fee has been made and a certificate of ownership has been granted or such claim has not been disallowed or refused under the Land Titles Ordinance(c), or the freehold title to which has been registered under the Land Registration (Special Areas) Ordinance, 1959(d) ;

" public officer " has the meaning assigned to it in section 2 of the Kenya (Constitution) Order in Council, 1958, as amended ;

" Special Areas " means the areas of land the boundaries of which are from time to time set out in the First Schedule to the Trust Land Ordinance(e) ;

" Trust land " means any land, other than private land, within the Special Areas ;

" Trust Land Board " means the Trust Land Board established by section 6 of this Order.

(2) In this Order, unless the context otherwise requires, references to any Ordinance are references to that Ordinance as from time to time amended (whether by this Order or otherwise) and include references to any Ordinance replacing that Ordinance.

(3) Save as in this Order otherwise provided, or required by the context, the Interpretation Act, 1889(f), shall apply for the purpose of interpreting this Order as it applies for the purpose of interpreting an Act of Parliament.

(a) S.I. 1958/600, 1959/1302; 1960/703, 1960/2201 (1958 I, p. 961; 1959 I, p. 982; 1960 I, pp. 1218, 1219).
(b) S.R. & O. 1939/516; S.I. 1948/2061, 1958/1049 (Rev. XI, p. 685: 1939 II, p. 1820; 1948 I, p. 1667; 1958 I, p. 993).
(c) Laws of Kenya, 1958, Chapter 159 (Vol. II, p. 2127).
(d) Kenya Ordinance No. 27 of 1959.
(e) Laws of Kenya, 1948, Chapter 100 (Vol. II, p. 1110).
(f) 52 & 53 Vict. c. 63.

Part II—Land in Kenya

Categories of land in Kenya

3. All land in Kenya is hereby declared to be either Crown land or private land or Trust land.

Governor's powers with respect to Crown land

4. All rights of Her Majesty in or in relation to any Crown land shall vest in the Governor in trust for Her Majesty and, subject to the provisions of any law for the time being in force in Kenya, may be exercised by him in his discretion in Her Majesty's name and on Her Majesty's behalf.

Special Reserves etc. and responsibilities of the Trust Land Board therefor.

5.—(1) The areas of Crown land the boundaries of which are set out in the Fourth, Fifth, Sixth and Ninth Schedules to the Crown Lands Ordinance(a) shall respectively be Special Reserves, Temporary Special Reserves, Special Leasehold Areas and Special Settlement Areas, and the Trust Land Board shall have and may exercise such powers and duties in relation to the same, and in relation to any communal reserve declared to be such under the said Ordinance, as may be conferred or imposed upon it by this Order or any other law for the time being in force in Kenya.

(2) The Special Reserves, Temporary Special Reserves, Special Leasehold Areas, Special Settlement Areas and communal reserves (if any) shall be subject to the provisions of the Crown Lands Ordinance.

Part III—The Trust Land Board and the Special Areas

Trust Land Board

6.—(1) There is hereby established in Kenya a Board which shall be known as the Trust Land Board.

(2) The Trust Land Board shall consist of the following members—

(*a*) the person for the time being lawfully discharging the functions of Chief Commissioner, who shall be chairman;

(*b*) two Africans who are elected members of the Legislative Council of Kenya, appointed by the Governor;

(*c*) one European who is an elected member of the Legislative Council of Kenya, appointed by the Governor;

(*d*) two other persons appointed by the Governor.

(3) The names of the persons appointed under subsection (2) of this section shall be published in the Kenya Gazette.

(4) Any member appointed by the Governor under subsection (2) of this section may, by writing under his hand addressed to the Governor, resign his membership of the Board.

(5) Where at any time the Legislative Council is dissolved, the elected members who are members of the Board by virtue of paragraphs (*b*) and (*c*) of subsection (2) of this section shall, notwithstanding such dissolution, continue to be members of the Board until new members are appointed under those paragraphs.

(a) Laws of Kenya, 1948, Chapter 155 (Vol. II, p. 2015).

(6) Where the seat in the Legislative Council of an elected member appointed under paragraph (*b*) or paragraph (*c*) of subsection (2) of this section becomes vacant for any reason other than the dissolution of the Council, the Governor shall fill the vacancy so caused by appointing another duly qualified person to be a member of the Board in his place.

(7) The Governor may revoke the appointment of a person appointed by him under paragraph (*d*) of subsection (2) of this section.

(8) The Trust Land Board shall not be disqualified from acting by reason of any vacancy among its members.

(9) At any meeting of the Board a quorum shall be constituted if the chairman and two other members of the Board are present, and the Board may regulate its proceedings as it thinks fit; and on any matter upon which the votes of the Board are equally divided the chairman shall have a second or casting vote.

(10) The powers conferred upon the Governor by paragraphs (*b*), (*c*) and (*d*) of subsection (2) of this section shall be exercised by him in his discretion.

Incorporation of the Trust Land Board and transfer to it of property and liabilities

7.—(1) The Trust Land Board shall, by the name of the Trust Land Board, be a body corporate having perpetual succession and a common seal, and may in its corporate name sue and be sued, and, for and in connexion with the purposes of this Order, may purchase, hold, manage and dispose of movable and immovable property and enter into such contracts as may be necessary or expedient.

(2) The seal of the Trust Land Board shall be authenticated by the signatures of the chairman and the secretary of the Trust Land Board or of any two of the members thereof authorized by the Trust Land Board in that behalf.

(3) All documents, other than those required by law to be under seal, executed by, and all decisions of, the Trust Land Board may be signified under the hand of the secretary of the Trust Land Board.

(4) Subject to the provisions of section 9 of this Order, there is hereby vested in the Trust Land Board all the movable and immovable property which, immediately before the appointed day was vested in the Native Lands Trust Board, and all the debts and other liabilities of the Native Lands Trust Board existing immediately before the appointed day are hereby transferred to and shall henceforth be those of the Trust Land Board.

Secretary of the Trust Land Board

8. The Governor may appoint a public officer to be secretary of the Trust Land Board.

Trust land

9.—(1) All land that is for the time being Trust land is hereby vested in the Trust Land Board.

(2) Trust land shall be administered in accordance with the provisions of the Trust Land Ordinance, and shall be subject generally to the provisions of that Ordinance.

(3) Trust land shall be subject at all times to all such rights in respect of land as are or may be enjoyed by tribes, groups, families or individuals by virtue of existing native law and custom, or any

subsequent modification thereof, in so far as such rights are not repugnant to any law for the time being in force in Kenya.

Land units

10. The Special Areas shall be divided into the land units named in the Second Schedule to the Trust Land Ordinance, and the boundaries of such land units shall be those respectively specified in relation thereto in the First Schedule to that Ordinance, and the Trust Land Board shall hold the respective areas comprised in the said land units, other than private land, in trust for the persons ordinarily resident in those areas.

Functions of the Trust Land Board

11.—(1) It shall be the function of the Trust Land Board—

(*a*) to protect the interests of the inhabitants of the Special Areas, the Special Reserves, the Temporary Special Reserves, the Special Leasehold Areas, the Special Settlement Areas and any communal reserve, and in particular to make representations to the Governor when, in the opinion of the Trust Land Board, anything in relation to the administration, management, development or control of the land in the said Areas or Reserves is not in the best interests of such inhabitants;

(*b*) to advise the Governor upon any matter relating to any of the said Areas or Reserves which he may refer to the Trust Land Board;

(*c*) to exercise any power or perform any duty conferred or imposed upon the Trust Land Board by the Trust Land Ordinance, the Crown Lands Ordinance or any other law for the time being in force in Kenya.

(2) The Trust Land Board may, in any matter in regard to which the Trust Land Ordinance or the Crown Lands Ordinance so provides, delegate its powers and duties to the Chief Commissioner.

Part IV—The Central Land Advisory Board

Central Land Advisory Board

12.—(1) There is hereby established a Board, to be known as the Central Land Advisory Board, which shall consist of—

(*a*) the Minister for the time being responsible for land, who shall be chairman;

(*b*) the Commissioner of Lands, who shall be deputy chairman; and

(*c*) (i) eight Africans;
(ii) five Asians;
(iii) one Arab; and
(iv) six Europeans;

all of whom shall be appointed by the Governor, in his discretion.

(2) Members of the Board, other than the chairman and deputy chairman, shall be persons who are not public officers and are not members of any authority that may be established under regulations made under this Order for the determination of applications for consent to deal in land or stock or shares of private companies which own, lease or occupy land.

(3) (*a*) At any meeting of the Board a quorum shall be constituted if the chairman, or in his absence the deputy chairman, and ten other members are present; and if a quorum is present the Board shall not be disqualified for the transaction of any business by reason of any vacancy among its members.

(*b*) If upon any question before the Board the votes of the members are equally divided the chairman, or in his absence the deputy chairman, shall have a second or casting vote.

(4) The Minister may appoint a public officer to be secretary of the Board.

(5) The procedure of the Board shall be such as the Board may determine.

Functions of the Central Land Advisory Board

13.—(1) The functions of the Central Land Advisory Board shall be—

(*a*) to advise the Governor, at his request, regarding any appeal that may be made to him under the provisions of any regulations made under this Order ; and

(*b*) to advise the Governor on policy respecting land generally in Kenya.

(2) The Governor may, when seeking advice under paragraph (*a*) of subsection (1) of this section, instead of consulting the Board as a whole consult two or more particular members thereof, but the members so consulted shall be of the same respective races as the parties to the dealing in land or stock or shares in respect of which the advice is sought.

PART V—REGULATIONS

Regulations

14.—(1) Subject to the provisions of this Order, the Governor, in his discretion, may by regulations make provision for all or any of the following matters, that is to say—

(*a*) enabling the lessee of agricultural land granted by or on behalf of the Crown for a term of 999 years (and for any term of a lesser length in respect of which approval has, before the appointed day, been given for the conversion thereof into a term of 999 years) to apply for and be granted the conversion of his lease into a freehold estate, in such cases and on such terms and conditions, as to payment and otherwise, as may be prescribed ;

(*b*) governing generally the development and use of land, including the subdivision of holdings in land ;

(*c*) providing, for the purposes of promoting and maintaining efficient agriculture, for the control, in such manner as may be prescribed, of dealings in land or in any estate or interest in land and of dealings in the stock or shares of private companies which own, lease or occupy land ;

(*d*) providing for the registration of title to, and of transactions in, land ;

(*e*) such other matters as are incidental or supplemental to the foregoing matters or are otherwise necessary or expedient for giving effect to the foregoing matters ;

(*f*) providing such penalties, not exceeding imprisonment for a term of one year or a fine of ten thousand shillings, or both such imprisonment and such fine, for the breach thereof.

(2) Regulations made under this Order may empower a Minister to make rules thereunder for the purpose of carrying into effect the intent and provisions of this Order and of such regulations.

(3) Regulations and rules made by virtue of this Order shall be published in the Kenya Gazette, and shall come into operation on the day of publication or on such other later day as may be specified in such regulations or rules.

Validity and effect of regulations

15.—(1) Any regulations made under this Order which are inconsistent with or repugnant to the provisions of section 64A of, and of the Fourth Schedule to, the Kenya (Constitution) Order in Council, 1958, as amended shall, to the extent of such repugnancy or inconsistency, but not otherwise, be void and of no effect.

(2) For the avoidance of doubt it is hereby declared that regulations made under this Order shall have effect notwithstanding anything inconsistent therewith in any Ordinance for the time being in force in Kenya or any rules or regulations made under any such Ordinance.

(3) Regulations made under this Order may repeal or suspend any such Ordinance and make such amendments to any such Ordinance as may be necessary to give effect to such regulations.

(4) Subject to the provisions of subsections (2) and (3) of this section, nothing in subsection (1) of section 14 of this Order shall be construed as limiting the exercise of the powers conferred by section 31 of the Kenya (Constitution) Order in Council, 1958.

PART VI—MISCELLANEOUS

Racially restrictive covenants not to be capable of creation in future

16. Where, at any time after the 13th day of October, 1959, any land in Kenya is subjected to any covenant, condition or restriction created after that date whereby persons who are members of a particular race or who are not members of a particular race are prevented from owning or from occupying such land or from acquiring an interest therein, such covenant, condition or restriction shall be void :

Provided that this section shall not apply to a covenant, condition or restriction imposed by any written law, nor to a covenant, condition or restriction imposed upon land since the said date where—

(*a*) the land is a plot of land forming part of an estate laid out for sale in lots subject to like restrictions to be imposed on all the lots as part of a general scheme of development and for the mutual benefit of the owners and occupiers of the lots generally ; and

(*b*) before the said date at least two of the lots had been subjected to a like covenant, condition or restriction.

Alteration of boundaries of Special Reserves etc. and of Special Areas

17. Except as provided by the Crown Lands Ordinance and the Trust Land Ordinance, the areas of land in, and the boundaries of, the Special Reserves, the Temporary Special Reserves, the Special Leasehold Areas, the Special Settlement Areas and the Special Areas (including the land units therein) shall not be altered.

Where Governor need not consult the Council of Ministers

18. Where under this Order any power is conferred on the Governor that he is empowered or required to exercise in his discretion the Governor shall not be obliged to consult the Council of Ministers in the exercise thereof.

Vesting of minerals and mineral oils and saving in respect of water

19.—(1) Notwithstanding any other provision of this Order, the property in and control of all minerals and mineral oils in, under and upon any land in Kenya shall, save in so far as rights in respect of the same have by or under any law in force in Kenya been expressly granted to, or recognised as vested in, any other person before the appointed day, be vested in the Governor in trust for Her Majesty, and, subject to the provisions of any law for the time being in force in Kenya, the rights vested in the Governor by this subsection may be exercised by him in his discretion in Her Majesty's name and on Her Majesty's behalf.

(2) Nothing contained in this Order shall affect the provisions of the Water Ordinance, 1951(a), whereby the property in water is vested in the Crown.

Savings in respect of the boundaries of Kenya

20. Nothing in this Order shall affect the provisions of the Kenya (Annexation) Order in Council, 1920(b), the Kenya Colony and Protectorate (Boundaries) Order in Council, 1921(c), and the Kenya Colony and Protectorate (Boundaries) Order in Council, 1926(d), whereby the territories forming the Colony of Kenya were annexed to and made to form part of Her Majesty's dominions, and the boundaries of the Colony and Protectorate defined.

Amendment and construction of Kenya laws

21.—(1) The short titles of the Ordinances specified in the first column of the First Schedule to this Order are amended in the manner specified in the second column of the said Schedule.

(2) For the purpose of giving effect to this Order, any expression used in this Order and specified in the second column of the Second Schedule to this Order shall, where the context admits, be construed in relation to any law for the time being in force in Kenya as if it were the expression respectively specified in the first column of the said Schedule ; and any expression used in any law for the time being in force in Kenya and specified in the first column of the said Schedule shall, where the context admits, be construed in relation to this Order as if it were the expression respectively specified in the second column of the said Schedule.

Revocation of Orders in Council

22. The Orders in Council set out in the Third Schedule to this Order are hereby revoked:

Provided that the persons who, immediately before the appointed day, were members of the Native Lands Trust Board shall, on that day, be deemed to be members of the Trust Land Board and shall continue as such until they cease to be members by virtue of, or under, the provisions of this Order.

W. G. Agnew.

(a) Kenya Ordinance No. 56 of 1957.
(b) S.R. & O. 1920/2342 (Rev. XI, p. 673: 1920 II, p. 1611).
(c) S.R. & O. 1921/1134 (Rev. XI, p. 681: 1921, p. 260).
(d) S.R. & O. 1926/1733 (Rev. XI, p. 682: 1926, p. 569).

FIRST SCHEDULE Section 21 (1)

AMENDMENT OF SHORT TITLES OF ORDINANCES

First Column	*Second Column*
Native Lands Trust Ordinance.	Trust Land Ordinance.
Native Lands Registration Ordinance, 1959.	Land Registration (Special Areas) Ordinance, 1959.
Land Control (Native Lands) Ordinance, 1959(a).	Land Control (Special Areas) Ordinance, 1959.

SECOND SCHEDULE Section 21 (2)

CONSTRUCTION OF LAWS

First Column	*Second Column*
Native Lands Trust Ordinance.	Trust Land Ordinance.
Native Lands Registration Ordinance, 1959.	Land Registration (Special Areas) Ordinance, 1959.
Land Control (Native Lands) Ordinance, 1959.	Land Control (Special Areas) Ordinance, 1959.
Native Reserves.	Special Reserves.
Temporary Native Reserves.	Temporary Special Reserves.
Native Leasehold Areas.	Special Leasehold Areas.
Native Settlement Areas.	Special Settlement Areas.
Native Lands.	Special Areas.
Native land unit.	Land unit.

THIRD SCHEDULE Section 22

REVOCATION

The Kenya (Native Areas) Order in Council, 1939(b).
The Kenya (Native Areas) (Amendment) Order in Council, 1948(c).
The Kenya (Native Areas) (Amendment) Order in Council, 1958(d).
The Kenya (Highlands) Order in Council, 1939(e).

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

This Order revokes and replaces the Orders in Council set out in the Third Schedule, and establishes a Central Land Advisory Board. The Order empowers the Governor to make regulations affecting the tenure, use and control of all land in Kenya and prohibits certain racial restrictions on the ownership or occupation of land.

(a) Kenya Ordinance No. 28 of 1959.
(b) S.R. & O. 1939/516 (Rev. XI, p. 685: 1939 II, p. 1820).
(c) S.I. 1948/2061 (Rev. XI, p. 685: 1948 I, p. 1667).
(d) S.I. 1958/1049 (1958 I, p. 993).
(e) S.R. & O. 1939/517 (Rev. XI, p. 689: 1939 II, p. 1825).