

—RS
p→270

MAR 29 2000

ABSTRACT

THE POLITICS OF LAND: THE KENYA LAND COMMISSION (1932-33) AND ITS EFFECTS ON LAND POLICY IN KENYA

By

Rita Mary Breen

This study examines the complex factors involved in the formation and implementation of the recommendations made by the Kenya Land Commission (1932-1933). The exigencies of late nineteenth century European imperialism had left Britain in control of Kenya, an East African colony of little intrinsic value. To make the colony self-supporting, the British Government introduced white settlers. However, only a small proportion of Kenya's land was capable of being developed, making it the object of political and economic conflict between the settlers and the Africans they dispossessed. Although the settlers were in a minority, they were supported by the British Government which excluded non-Europeans from the areas they claimed. The racial restriction of the "White Highlands" was a source of profound grievance among Africans and an object of protests for their political organizations.

Britain's second Labour Government (1929-1931) professed a greater concern for Kenya's Africans than its predecessors and planned to appoint an independent commission to investigate their land claims and needs. However, when the Labour Government fell, the nature of

the land investigation was altered. The terms of reference and personnel appointed to the commission insured that African land needs would remain subject to settler requirements.

Although the Kenya Land Commission conducted a very thorough and painstaking investigation of African land matters, it accepted settler thinking and blamed Africans for their own problems. It charged that these difficulties derived from poor agricultural and pastoral practices and ill-adapted land tenure systems. While the commission portrayed Africans as lazy despoilers of the land or unscrupulous and greedy connivers, the settlers emerged in their report as virtual paragons of virtue whose very presence uplifted Africans. The commission's recommendations made a sham of justice, for its settlement of African land needs and claims had no substance. Furthermore, it advocated the legalization of racial territorial segregation in Kenya, thereby condemning Africans to an inferior position in their own country.

Africans reacted to the commission's recommendations with dismay and opposition. These feelings were strongest among the Kikuyu, the most politically sophisticated people in Kenya in the 1930's. Much of their political activity was directed toward contesting the commission's report, especially its recommendation to end Kikuyu land rights on settler farms in the Kiambu area. With the support of all factions of Kikuyu society, these right holders organized a campaign of passive resistance against their removal. Although successful in winning better terms of resettlement, the right holders were unable to prevent the moves. The unrest created among the Kikuyu by the moves was indicative of the long range effects of the Kenya Land Commission. It exacerbated, rather than solved African land problems.

**THE POLITICS OF LAND:
THE KENYA LAND COMMISSION (1932 -33)
AND ITS EFFECTS ON LAND POLICY IN KENYA**

By

Rita Mary Breen

A DISSERTATION

Submitted to
Michigan State University
in partial fulfillment of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

Department of History

© Copyright by
RITA MARY BREEN
1976

ACKNOWLEDGMENTS

In the process of researching and writing this dissertation, I have had the cooperation, assistance and support of many people in the United States, Britain and Kenya. In most cases their contributions far exceeded the bounds of ordinary kindness and generosity. I want to thank them all again for their help. Of these people I must make particular mention of those in my personal life whose emotional support sustained me through the good and bad times of my work. My mother; my husband, William F. McKay; his mother; and our friends Arselia and Al, must be singled out for special thanks. As in all my other endeavors, my mother's constant encouragement and understanding were invaluable. I was also especially lucky to have the professional typing services of my mother-in-law for this final copy. My gratitude to her is only surpassed by my indebtedness to my husband. Unhampered by the usual stereotypes of sex roles, he typed two earlier drafts of this dissertation. Having a Ph.D. in African History himself, he was able to offer productive comments on the texts of those drafts. For these things, but most of all for his love and support, I would like to dedicate this work to my husband Bill.

TABLE OF CONTENTS

CHAPTER I – INTRODUCTION	1
CHAPTER II – KENYA'S LAND PROBLEMS	17
CHAPTER III – THE KENYA LAND COMMISSION	52
CHAPTER IV – THE REPORT OF THE KENYA LAND COMMISSION	81
CHAPTER V – REACTIONS TO THE REPORT OF THE KENYA LAND COMMISSION	113
CHAPTER VI – THE IMPLEMENTATION OF THE KENYA LAND COMMISSION REPORT	139
CHAPTER VII – THE KIKUYU RIGHT HOLDERS	171
CONCLUSION	201
APPENDIX	204
SELECT BIBLIOGRAPHY	205
MAPS	
DIVISION OF LAND IN KENYA (1934)	16
DIVISION OF LAND IN SOUTHERN KIAMBU (1934)	31

CHAPTER I

INTRODUCTION

This study will examine the complex factors involved in the formation and implementation of recommendations made by the Kenya Land Commission in 1932-33.¹ The introduction of European settlers into Kenya made land a major focal point for political and economic conflict between the settlers and the African community. The Kenya Land Commission attempted to resolve this conflict by settling African land claims and providing for current and future African land needs. It was, however, a creature of its times and its solutions were determined by the prevailing racial views and by the belief in the necessity of white settlement in Kenya.

Since the objective of the commission was the resolution of conflict, it did not give priority to economic and ecological considerations in its recommendations. This failing has drawn heavy criticism, particularly from post-World War II economic developmentalists.² Though it is just, it ignores the fact that all policy making, even on essentially economic matters, is primarily political in nature. This has even greater validity for Kenya where land was the primary political issue. It is therefore necessary to examine the commission in the context of the political realities of colonial Kenya in the inter-war years.

¹The findings of the Kenya Land Commission (KLC) were issued as Report of the Kenya Land Commission, Cmd. 4556 (1934), referred to as Report hereafter. Three volumes of evidence were published, Kenya Land Commission: Evidence and Memoranda, Col. 91 (1934), referred to as Evidence, hereafter.

²The best summary of these criticisms is found in East Africa Royal Commission 1953-55 Report, Cmd. 9475 (1955), Chapter 6.

Though African interests in Kenya were theoretically paramount,¹ indigenous peoples were generally ignored in favor of the Europeans and Indians who had immigrated to the colony. Most of the real power in the colony rested with the European settlers. Land policy was not only subordinated to their needs, but was also used by the settlers to determine land allocations, and, in the process to secure some of the best lands for themselves. They protected their holdings by persuading the government to exclude non-Europeans from land ownership or tenancy in European areas which became the "White Highlands." This restriction, known as the Elgin Pledge,² was the basis of the segregated economic, social and political structure of colonial Kenya.

Despite the extent of their power, there were some checks upon the settlers in Kenya. Their authority was never formalized by the granting of self-rule, as in Southern Rhodesia. Kenya was technically administered directly by the British Colonial Office, which was subject to many pressures from non-settler sources. The complex interactions between settlers, the Colonial Office, Africans, the Kenya Government and pressure groups in Britain, Kenya, and India acted as a brake on settler goals.

While Africans, as a subject people, were excluded from the process of policy making in Kenya, they still played a role in its implementation. British policy makers often viewed Africans in Kenya as an amorphous group of people who would passively accept most policies

¹ Indians in Kenya: A Memorandum, Cmd. 1922 (1923) contains the first exposition of this theory by the British Government. It is usually referred to as the Devonshire Declaration.

² M. P. K. Sorrenson, Origins of European Settlement in Kenya, (Nairobi, 1968), pp. 159-167.

imposed upon them. However, as the local administrator usually discovered, there was little truth in this assumption, especially when land was concerned. Land policy decisions were too vital to African existence to be passively accepted. Although viewed with suspicion because they were being imposed by the government, they were not automatically rejected. Africans discriminated between potentially beneficial policies and those which were against their interests.¹ Unfortunately, in settler-dominated Kenya most land policies fell in the latter category and they became the object of almost universal African opposition. This opposition took many forms but was most effective when channeled into passive resistance. Then it sometimes, though infrequently, succeeded in changing aspects of the policy being imposed.

The contrast between policy decided upon and that which is implemented offers important insight into the functioning of a colonial government and its relations with its subject people. This study will examine the Kenya Land Commission from its inception through the implementation of its recommendations. It will concentrate on issues which have a general importance for land policy in Kenya as well as on those which best illustrate the factors involved in making and implementing that policy. The Colonial Office provides a natural focus for policy making; implementation, however, will be approached from the perspective of Kenya and its competing communities. Land policy will be used primarily to refer to those decisions which determined the guidelines, goals,

¹The Kikuyu were continually pressing the Kenya Government to register their land titles, which many administrators had recommended. This was hardly a traditional custom, but the Kikuyu realized the benefits of having European-style titles to their land.

and recipients of land allocations in Kenya. Policies concerning the actual use of land will only be treated as they relate to allocation, since this was the Kenya Land Commission's main concern.

In most of the studies of British policy in Kenya,¹ the African perspective has been ignored for the interwar years. The apparent belief was that because African influence on formation of policy was minimal, African interest in it was almost non-existent. This general conclusion is contradicted by a simple and apparent fact: it was the interest and involvement of Africans that made land one of the principal issues in Kenya during the colonial period. They refused to accept the loss of their land and exerted whatever influence they had to secure its return. Their post-World War II opposition on land issues was only an extension of a profound dissatisfaction which had its roots in the first land alienations.

By the 1930's Africans had realized the futility of appeals to the settler-oriented Kenya Government and were directing their protests to London. Working through sympathetic members of the Labour Party, they were able to obtain the attention of the British Parliament on a number of occasions. Though their influence may have been slight, they were attempting to operate as a pressure group in British politics. Their activities against the implementation of the Kenya Land Commission's most controversial recommendation, the legal ending of all African land rights in the "White Highlands," will be explored in detail.

¹Marjorie Ruth Dilley, British Policy in Kenya Colony, (New York, 1937); M. P. K. Sorrenson, Land Reform in the Kikuyu Country, a Study in Government Policy, (London, 1967); Robert G. Gregory, Sydney Webb and East Africa. Labour's Experiment with the Doctrine of Native Paramountcy, (Berkeley, 1962).

BACKGROUND TO KENYA LAND PROBLEMS

The inherent potential of land in Kenya differs greatly because of the country's wide range of land forms, altitudes, rainfall, soils and incidence of disease. It has the hot, humid tropical areas which might be expected in a country which straddles the Equator, as well as arid areas with near desert conditions. However, because of its altitude variations, Kenya also has areas of temperate climate, highland forests and moorlands, and even glaciers on its highest mountain peak. Rainfall is perhaps the most important determinant of the value of land, since there are vast areas of arid waste land. Land with good rainfall and a high enough altitude to keep the incidence of disease low is the most valuable.

Kenya has six distinct physiographic regions:¹ the coastal plains, the foreland plateau, the northern plains, the Nyanza low plateau, the central highlands, and the eastern Rift Valley. The coastal plains run from the Somalia border in the north to Tanzania in the south. The coastline is paralleled by an extensive coral reef which is broken by a number of creeks, such as those that form Kenya's most important harbor, Mombasa.

The coastal plains vary in width and offer a variety of soils of mixed agricultural potential. Rainfall is good, though it decreases north of Malindi. Malaria and trypanosomiasis are endemic and have retarded the development of the area. The immediate coastal region is

¹National Atlas of Kenya, 3rd ed., (Nairobi, 1970), is the chief source, together with personal observation, for the geographic description which follows.

occupied by Swahili and Arab peoples, whose culture and Muslim religion make them part of the Indian Ocean cultural complex. In pre-colonial times their economy was based upon slaves, and slave-run plantations were common, especially in the area from Mombasa north to Lamu. Further inland, the coastal plains are the home of the Bantu speaking Miji Kenda peoples. Since their land is of poor quality and their cattle keeping is limited by the presence of trypanosomiasis, they are forced to practice a subsistence agriculture. Though an African people, the Miji Kenda have been greatly influenced by the Arab-Swahili culture. As a result the coastal area has a cultural identity very distinct from inland Kenya.

The foreland plateau extends in a vast belt from the hinterland of the coastal plains to the gradually rising plateaux of the central highlands. An arid area with a high incidence of disease, it acted as a barrier to coastal-highland communication until construction of the Mombasa-Nairobi-Kampala Railway at the turn of the century. In southern Kenya this nyika, or "wilderness," of the European explorers, is broken by the Taita Hills, the Chyulu Range, and the Yatta Plateau. The last two are extensive lava formations which are as arid and barren as the surrounding countryside. The Taita Hills, however, have sufficient rainfall and fertility to sustain an agricultural people. The remainder of the foreland plateau, except for an agricultural area along the Tana River, can barely support its pastoral Maasai and wild game.

In the north of Kenya the foreland plateau extends westwards to the edge of the eastern Rift Valley at Lake Rudolph and is usually referred to as the northern plains. Conditions are, if anything, more harsh than

in the southern foreland plateau. With an annual rainfall of less than ten inches, the northern plains can only support a low density nomadic population. Furthermore, adequate communications have never been established between the northern plains and the rest of Kenya. Known as the Northern Frontier District during the colonial period, this area has always evaded effective administration. Since these plains are bordered on the north by Ethiopia and on the east by Somalia, they have been the scene of frequent migrations and raiding. The area is the traditional homeland of pastoral peoples, such as the Turkana and Samburu. Before they were forced to move south by the government in 1911-1912, the Maasai also inhabited the area.

Lake Victoria to the west of the central highlands is part of the lake system of inland Africa. The Nyanza Plateau on its eastern shore in Kenya is a fertile lowland with good rainfall, much like the neighboring area in Uganda. It is densely populated by agricultural Bantu and Nilotic speaking peoples, the most important of whom are the Nilotic Luo and the Bantu Baluhya. These people practice a form of mixed farming with maize as the staple food.

Kenya's most striking physiographic feature is the series of plateaux which form an extensive highlands area in the center of the country. These highlands are divided by the Eastern or Great Rift Valley which is a fault system extending from southern Africa through the eastern portion of the continent to the Red Sea. With their temperate climate, fertile soils, and low incidence of disease, the highlands and the part of the Rift Valley which they flank offer land with some of the highest agricultural potential in Kenya. During the colonial period, it was this land which attracted the British and South African whites who

eventually laid claim to much of it and attempted to make Kenya a "White Man's Country."

The highlands to the east of the Rift Valley are dominated by the Aberdare Range, with altitudes of up to 12,000 feet, and by the volcanic peak of Mt. Kenya. Below the moorlands and the thick forested areas of the Aberdares and Mt. Kenya are the lands occupied by the Kikuyu, Embu and Meru.¹ These people traditionally practiced a form of shifting agriculture in fertile and well-watered areas cleared from the forest.

In pre-colonial times the Kikuyu were concentrated on the eastern and southern slopes of the Aberdares which contain numerous small river valleys and ridges. These ridges are very important in Kikuyu economic and communal life and provided a route for expansion. Although Kikuyu expansion to the south and west of the Aberdares was retarded by the presence of the Maasai in the open country of this area, their pioneers were firmly established on the southwestern slopes of the Aberdares by the beginning of European rule.²

Mt. Kenya lies to the east of the Aberdares and is known to the Kikuyu, to whom it is sacred, as "Kerenyaga."³ The Kikuyu occupy its lower slopes on the south and southeast and the related Embu and Meru cluster on the northeast, east and south. The Nyeri-Nanyuki corridor lies between Mt. Kenya and the Aberdares and was formerly a Maasai grazing area. During the colonial period most of this land was alienated

¹The Embu and Meru are closely related to the Kikuyu and were at times treated as part of the Kikuyu by the colonial government.

²Godfrey Muriuki, "A History of the Kikuyu to 1904," (unpublished Ph.D. dissertation, University of London, 1969), Chapters 2 and 3.

³Jomo Kenyatta, Facing Mount Kenya, (London, 1938), pp. 233-36.

to Europeans for huge ranching estates. The settlers also claimed the Laikipia Plateau to the north but it remained occupied by the pastoral Samburu.

The Kamba live on the hot, dry land on the lower altitude plateaux southeast of the Aberdares Range. These people are agricultural but cattle keeping is an important part of their economy. The Mombasa-Nairobi Railway and Road divide the Kamba from the Maasai, their traditional enemies. The Mua Hills have the best watered and most fertile land in Kamba country but these were lost to European settlement, as were considerable other areas. Most of the land left to the Kamba was on the arid Yatta Plateau.

The Mau Escarpment and the Cherangani Hills are the summits of the western escarpment of the Rift Valley. To the west of them the highlands continue in a series of plateaux, mostly over 6,500 feet, where the most densely forested land in Kenya is concentrated. North of the Mau Escarpment is the extensive Uasin Gishu Plateau where most of South Africa's Afrikaners settled. It is a good farming area, though its soils are not so rich as those of the Transzoia which lies to the west and north of it. On the western edge of these highlands is Mt. Elgon through which the Uganda-Kenya border passes.

Before colonial rule the Kalenjin¹ peoples were the main inhabitants of the western highlands and have given their names to many of its physiographic features, such as the Nandi Hills, Elgeyo Escarpment

¹"Kalenjin" is a political as well as cultural term which has come into use since World War II and refers to a group of related peoples, classified as Highland Nilotes.

and Tugen Hills. Primarily a pastoral people, the Kalenjin offered the strongest resistance to European rule of any group in Kenya. Their lives were fundamentally changed when they suffered the loss of much of their best land for European farms, tea estates, cattle ranches and forest concessions.

The Eastern or Great Rift Valley which divides the highlands of Kenya varies in width from thirty to eighty miles. In northern and southern Kenya it is an arid and nearly desert area. Throughout its length the floor of the Rift Valley is broken by volcanoes which, in Kenya, are now extinct. However, the presence of steam and sulphur ducts points to recent volcanic activity in the Rift Valley. Also on the floor of the Rift is an extensive system of alkaline and fresh water lakes, including Lake Magadi, Lake Naivasha, Lake Nakuru, Lake Baringo and Lake Rudolph in the north. Because of its good rainfall, the central section of the Rift Valley in Kenya, which is flanked by the Aberdares and the Mau escarpment, contains the best land. The floor of the Rift reaches its highest altitude of about 6,000 feet in the Nakuru area. The land north of Nakuru is good for agriculture while that to the immediate south is excellent grazing land. Before colonial rule, the central portion of the Rift Valley was the home of the Maasai. They were moved into its southern and more arid area when it was alienated for European settlement.

During the colonial period, those regions of Kenya with the highest agricultural potential and which were not densely settled by Africans were subject to alienation by Europeans. Land in the foreland plateau, the northern plains and the northern and southern sections of the Rift Valley was arid, unproductive and inhabited by nomadic pastoralists.

Its value was too low in most places to attract settlers and therefore land policy in these areas largely aimed at preserving the status quo by limiting people to their traditional grazing grounds and waterholes and later by establishing game reserves.

The low altitude of land in the Nyanza plains and its dense settlement and cultivation also made this land unattractive for large scale European alienations. Small alienations were made for townships, Christian mission stations and sugar cane plantations in Kibos. When the discovery of gold made land around Kakamega valuable in the early 1930's, it was quickly alienated to Europeans despite its high population density and African objections.¹ Colonial land policy in the Nyanza Plains, apart from these few alienations, was aimed at containing its African inhabitants to the land they occupied by establishing African Reserves.

The colonial government also established Reserves for the Miji Kenda of the coastal plains. However, huge estates for sisal, sugar cane, coconut and rubber plantations were alienated from Swahili, Arab and Miji Kenda in the early days of colonial rule. Many of these failed and the land reverted to local inhabitants. Even where they succeeded, they did not bring a European settler population of any consequence to the coast. The entire matter of land ownership and occupation on the coast was never effectively sorted out by the colonial government. The coastal area, as a former province of the Sultanate of Zanzibar, remained a protectorate during the colonial period while the rest of Kenya

¹The Native Lands Trust Ordinance, 1930, supposedly prohibited such alienations but it was easily bypassed.

was a British colony. This status had little real meaning except in the matter of land claims, for the government had to acknowledge the individual land tenure rights which the Arabs and Swahili had held under the Sultan of Zanzibar. Most land policy on the coast during the colonial period was directed at ascertaining these rights and settling conflicting land claims among Arabs and Swahilis, so that government land rights in the area could be firmly and legally established.¹

The highlands and the central portion of the Rift Valley were the priority areas in colonial land policy formation, since this was the land deemed most suitable for European settlers. Land in these areas was systematically taken from Africans until a "White Man's Country" had been established in the heart of Kenya. There was little governmental or settler concern for the dispossessed Africans, except as a possible labor force. Those Africans remaining in the non-European areas of the highlands were confined to Reserves.

Britain had not acquired Kenya because of its prospects for European settlement.² Settlement was an afterthought, to make a strategically important area economically viable. Britain's original interest in East Africa was the suppression of the slave trade in the western Indian Ocean in the nineteenth century. Whitehall generally was loathe to annex more non-western people into the empire and tried to maintain its interests in East Africa by acting informally. By using the Sultan of

¹ Colonial land policy toward the coast is not treated in this study. Since its position was unique in Kenya, the KLC only made a pretense at investigating coastal land problems.

² This thesis is fully developed in R. Robinson, J. Gallagher, and A. Denny, Africa and the Victorians, (New York, 1961).

Zanzibar, who claimed sovereignty over the coastal section of the East African mainland, Britain hoped to establish a sphere of influence over the area.

Britain's reliance upon its connection with the Sultan of Zanzibar to fulfill its goals in East Africa had drawbacks, primarily because the sultan's rights for much of the coast were nebulous and, in the interior, non-existent. The British sphere of influence worked only as long as there was no real European threat to their position in East Africa. When other European powers became involved in the area, the British were challenged and eventually forced to declare protectorates over Uganda and Kenya. Britain's response may also be explained by East Africa's strategic importance in the complex network of territories needed to secure access to India.

To strengthen Britain's hold in East Africa and facilitate its economic development, a railway was built from Mombasa to Kampala soon after the beginning of colonial rule. The British Treasury, which was especially influential in the administration of British colonies and protectorates, demanded that Kenya become self-sufficient as well as pay the expenses of the railway's construction. The Foreign Office¹ believed that there was little possibility of African agriculture advancing quickly enough to assume this financial burden, and decided to encourage European settlement as a way to develop the land and pay the expenses of the colony.² It was assumed that this settlement, like European rule, would benefit Africans by lifting them out of their "uncivilized" state.

¹The Colonial Office did not take over jurisdiction of the "East Africa Protectorate," as Kenya was then known, until 1906.

²Sorrenson, Origins, Chapters I, II.

The Foreign Office and later the Colonial Office offered European settlers extensive areas of land in Kenya on very generous terms. The most important of these terms was the informal commitment of the Kenya Government that the highlands and the intervening area of the Rift Valley would be restricted to European settlement. This guarantee was originally directed against the Indians¹ who were migrating to Kenya without the encouragement of the Kenya Government. Later it was extended to Kenya's own African inhabitants, who were thereby excluded from even buying back the land which had been taken from them for European settlement.

Kenya's settlers originated from two distinct stocks – British from the United Kingdom and from the Union of South Africa and Afrikaners from South Africa. The Afrikaners were in the minority and remained culturally segregated and politically unimportant throughout the colonial period. They settled on the Uasin Gishu Plateau and maintained their South African way of life and their tradition of disdain for government.²

The Union of South Africa also served as a model for non-Afrikaner settlers in Kenya.³ They adopted its beliefs that Africans existed only

¹ I will use the term "Indian" in this study because it was the one accepted during the period under discussion. It refers to all individuals from the Indian sub-continent. Only after independence and formation of the separate nation of Pakistan (1947) was the term "Asian" adopted in Kenya to refer to these people.

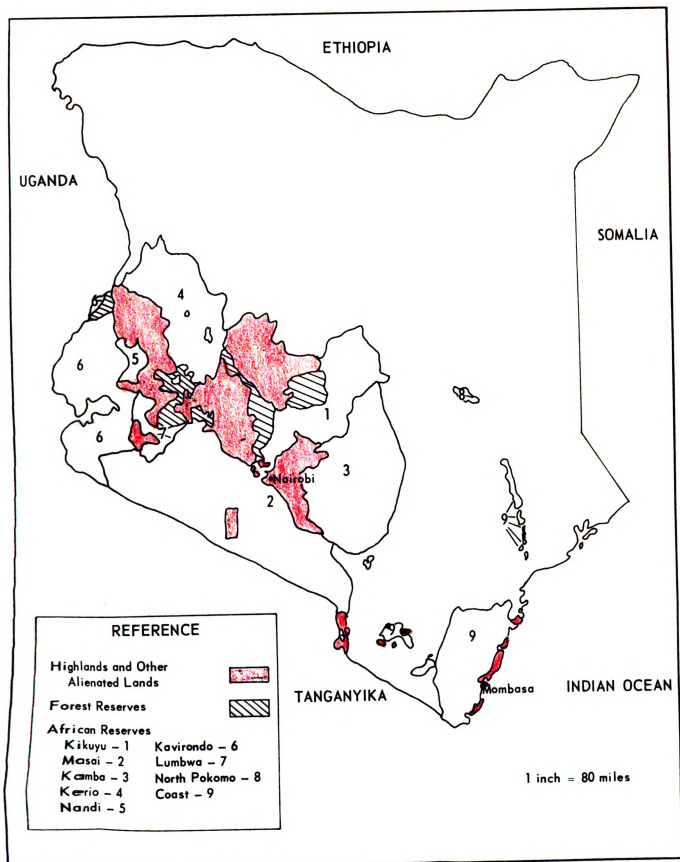
² Sorrenson, Origins, Chapter IV.

³ It also served as a model for colonial administrators in Kenya, many of whom frequently took their leaves in South Africa and tried to adapt South African policies to Kenya. See S. H. Fazan, "A Report on a Visit made to the Union of South Africa for the purpose of Comparing the Methods of Land Tenure in the Native Reserves there with the System Obtaining in Kikuyu Province," undated, Kenya National Archives Library.

as a labor force and that strict racial segregation, the confining of Africans to Reserves, and the limitation of African political power were essential. The settlers dreamed of copying their model and achieving self-rule and economic and political control over Kenya. These concepts structured the thinking of almost all Europeans in Kenya and were quickly absorbed by newcomers from the United Kingdom and other places.

The earliest, and up to 1923 the most important, opposition to the application of the South African ethic in Kenya, came from the Indians. They were far more numerous than the European settlers, who used all means at their disposal to curtail potential Indian power. Besides excluding Indians from the "White Highlands," they severely limited Indian political power by forcing the adoption of the communal roll for voting. The settlers were able to do this because they had the support of the Colonial Office and because of the disunity of the Indian community. Despite settler successes, the mere fact that the Indian community was a force to be reckoned with, especially with a growing nationalism in India, kept the settlers from achieving their goal of total self-rule. But it was left to Kenya's Africans to offer the most direct and successful challenge to the settlers and their South African ethic.

DIVISION OF LAND IN KENYA (1934)



CHAPTER II

KENYA'S LAND PROBLEMS

"There is no white man who brought land with him to Kenya"¹

The above statement contains the essence of Kenya's colonial land problems. With arable land being a very limited resource in Kenya, the introduction of settlers caused a competition in which Africans were at a severe disadvantage. Huge tracts of land were lost to actual or potential African occupation. "Potential occupation" is an important aspect of the land issue because the African land tenure system recognized rights on land not in current occupation but still needed in the shifting agricultural system and pastoralism practiced before European rule. These rights were denied under the Western form of tenure and these "unoccupied" lands were alienated to Europeans. The Kenya Government and the settlers denied that this caused the "Native land problem," claiming this had resulted from Africans' inability to exploit fully the land they occupied. African land claims were attributed to greed, not to the basic injustice which had been perpetrated upon them by the confiscation of some of their best lands.

Africans received little help from the British Government in their land problems. Its initial reaction had been disinterest, especially when it concluded that the African population could not pay the expenses of the colony and the railway. Furthermore, to establish a settler economy, large acreages of arable land had to be made available. As

¹Kenya. Land Office (L. O.) 26193, Marius N. Karatu to J. Angaine, Oct. 12, 1965.

much of the best land was already claimed by Africans, it became expedient to ignore indigenous land rights.

Such expediency required very little justification. The prevailing Social Darwinism applied "survival of the fittest" and "natural selection" to the social order, which, when combined with late-nineteenth century racism and ethnocentrism, led the British to deny the status of civilization to Africans. Britain could therefore, deny that Africans enjoyed land rights as valid as those recognized in western polities. Because they were not deemed worthy of consideration, ignorance of African rights was not seen as a barrier to land alienation. Though Africans were frequently physically removed from their holdings, the Kenya Government later claimed that unjust alienations only occurred because of ignorance of African land rights. Yet neither the Foreign nor Colonial Offices bothered to conduct any comprehensive study of African land tenure systems or the extent of the areas claimed by Africans before they allowed lands in Kenya to be opened for alienation. Furthermore, they ignored the settler practice of searching out land occupied by Africans because occupation usually meant it was good land, upon which there would be a convenient labor supply. Government's only stipulation was the payment in some areas of a nominal disturbance compensation to the Africans involved, and even this regulation was not effectively enforced.

Africans could do little to protect their lands because the British could deploy overwhelming force against them. Africans also frequently misjudged European intentions by assuming that the settlers would only be tenants on their land. In their own systems of land tenure, land could not be alienated, and only the rights to cultivation were

subject to negotiation. When Africans did realize that their lands were being taken on a permanent basis, they could not prevent it.

The power to alienate land was never ceded by any African authority to the Kenya or the British Governments, for no African had this power. Instead the British used arbitrary legislation and legal decisions to erode African sovereignty over the land.¹ Initially they based this right on the treaties which the Imperial British East Africa Company had made with Africans in Kenya and which were assumed by the British Government when it declared its protectorate in 1895. However, the validity of these treaties remains suspect because of the unrepresentative nature of the Africans who signed them and the lack of any clear definition of the rights or jurisdiction being ceded in the treaties.

The Royal Charter of the IBEA Company had been granted with the stipulation that "careful regard shall always be had to the customs and laws of the class and tribe or nation to which the parties respectfully belong, especially with regard to the holding, possession, transfer and disposition of lands and goods. . . ." ² However, when the British Government took over the protectorate its land legislation was not designed to protect the land rights of Africans, but to set the rules by which land could be alienated to Europeans. Any protective clauses in the legislation were incidental and usually inserted to satisfy officials in the

¹Krishan M. Maini, Land Law in East Africa (London, 1967), p. 27, footnote 35, gives the "classical example" of the British "practice of spreading the Crown umbrella over a territory and staking a claim in all its shadow," using a case from Swaziland. Viscount Haldane declared in reference to this, "The Crown had power to make laws for the peace, order and good government of Swaziland and of all persons therein. Any native title had therefore been effectually extinguished."

²Quoted in Evidence, Vol. I, p. 195.

Foreign or Colonial Office who anticipated difficulty from Parliament if they were omitted.

The British extended their right to alienate land in Kenya through the evolution of the concept of Crown land. By a number of Orders in Council and legal decisions, by 1902 all "waste land" in Kenya had officially become the property of the Crown and could be alienated, if the Crown's representatives agreed. In the Crown Lands Ordinance of 1902, African lands were not included in the definition of Crown lands but African lands were defined as only those in actual African occupation. African ownership rights to land were denied on the grounds that their forms of tenure did not constitute ownership under the British definition of the concept.

It was only a small step for the British Crown to assume the rights of land ownership denied to Africans. This was done by the Crown Lands Order in Council of 1915. Though it provided for the gazetting of African occupied land into protected Reserves, this land became Crown land. In 1920 Kenya changed its status from a protectorate to a colony under the Kenya Annexation Order in Council. In this Order in Council, African lands were not excluded from those annexed to the Crown.

The effects of the two Orders in Council on the actual land rights of Africans were put to the test in 1921 in a case involving conflicting Kikuyu claims to a piece of land in Kiambu.¹ In a controversial decision, Supreme Court Justice Barth dismissed this case on the grounds that the Orders in Council made all African-occupied land the property

¹Original Civil Case 626/1921. Colony and Protectorate of Kenya, Law Reports, Vol. IX, Part II, 1923, p. 102.

of the British Crown and Africans "tenants at will of the Crown" on this land. Africans were left without any land rights recognizable in a British Court and were dependent upon the Crown even to maintain a subsistence existence. Therefore, not only had Africans suffered substantial land losses, but as a result of the Barth decision, they were also left without rights to the land which they still occupied.

The Barth decision acknowledged legally what had been the plight of Africans in Kenya since the beginning of white settlement. They had no security on their lands and no way of obtaining justice from the Kenya or British Governments. As a consequence, two themes dominated African political agitation throughout the colonial period: the return of lost lands and the acquisition of legal titles of ownership for lands occupied under their own tenure systems. Africans believed that only by having titles which were valid in the courts could they be guaranteed any security to their lands. They realized that the Reserves set up for their supposed protection could be manipulated easily to serve the goals of white settlement.

Africans had experienced the effects of the weakness of the Reserves many times and had few illusions about the security the Kenya Government claimed it provided. Three of the most significant violations of the Reserves occurred after there had been legislation enacted to guarantee their integrity. They were the movement of the Maasai out of their Northern Reserve in 1911-12,¹ the alienation of the Kipkarren block from the Nandi Reserve in 1919 for a Soldier Settlement Scheme, and the removal of the Kakamega area from the Kavirondo Reserve in 1933 because gold was discovered there.

¹Norman Leys, Kenya, (London, 1925), presents the Maasai land case.

In 1904 a treaty had been signed with the Maasai under which they were removed from the central area of the Rift Valley so that the land could be opened to white settlement. The Maasai were allowed to remain in two separate Reserves to the north and south of this alienated section of the Rift Valley, with their rights to these areas being guaranteed "for all time" under the treaty. "For all time" lasted seven years, when the Kenya Government decided to remove them from the Northern Reserve because it included the Laikipia Plateau desired for European settlement. A second treaty was signed with some of the leaders of the Maasai and those groups in the Northern Reserve were moved into an enlarged Southern Reserve.

Maasai opposition to their removal from the Northern Reserve was expressed in the first organized attempt by Africans in Kenya to deal with the loss of their lands through the legal machinery which was part of European colonial rule. With the help of a few concerned Europeans, most notably Norman Leys, certain leaders of the northern Maasai groups filed suit against the government to prevent the move to the south on the grounds that it was illegal. Though they had been parties to the first agreement, they had not signed the second revised treaty. However, the legal machinery which the Maasai had thought was available to them for the redress of their grievances was summarily withdrawn and their case dismissed. The courts decided that they were "protected persons" under the treaty and therefore aliens unable to bring suit in a British Court.¹ The lesson of the unfortunate

¹ Judgment of the High Court in the Case brought by the Masai Tribe against the Attorney-General of the East Africa Protectorate and others dated 26 May 1913, Cd. 6939 (1913).

Maasai was quickly understood by other Africans, particularly their neighbors, the Kikuyu.

The second example of gross violation of an African Reserve occurred at the end of the First World War. In complete disregard of the treaty of 1910 with the Nandi guaranteeing their perpetual rights of occupation on their land, and without any reference to them, the Kenya Government made the huge Kipkarren block available for Europeans under a Soldier Settlement Scheme. No land compensation was made available to the Nandi.¹

The Kipkarren loss had a profound effect upon Africans because many of them had also fought in the First World War and they saw this continued alienation as a betrayal by the British Government whom they had served. One member of the Carrier Corps who later became a militant nationalist found that "the Europeans who had been to the war with us were highly rewarded by their counterparts in the Government machinery. They were given very large and fertile farms which were taken from us. As for us Africans who had been to the war too, we didn't get anything. . . and furthermore we lost our lands!"²

The final example of the failure of the Reserve system achieved the most notoriety. In 1933 Kakamega area was excised from the Kavirondo Reserve because of the discovery of gold there. This was in flagrant and admitted violation of the detailed legislative measures enacted under the Native Lands Trust Ordinance of 1930 to prevent just

¹Report, Chapter X and Evidence, Vol. II, Chapters 11 and 12.

²Ng'ang'a Goro, June 15, 1970.

such an occurrence. It was the Chief Native Commissioner, whose duty it supposedly was to protect African interests, who actually introduced the legislation which eliminated the prescribed procedure of obtaining the assent of the Africans involved before an excision from their Reserve could occur. The audacity and injustice of the Kenya Government's bypassing existing law for its own ends drew the attention of many concerned groups in Britain. They previously had been assured by the British and Kenya Governments that the Reserves gave Africans absolute security to their lands.

Though the Crown Lands Ordinance of 1915 had provided for the extension of the Reserve system to include most African-occupied lands, the Kenya Government was very slow to implement it. The settlers were opposed to the exclusion of any areas in Kenya from possible future alienation and the Kenya Government did not want to anger them further by too quickly establishing African Reserves. It was 1926 before there was a general proclamation of African Reserves in Kenya, and many were not demarcated for another four and five years. Even the Colonial Office found this delay intolerable.¹

While Africans themselves were disillusioned with the Reserve system and devoted most of their efforts to obtaining security through the legal recognition of their ownership rights, their supporters in Britain² continued to believe in the protection it gave to Africans. The

¹Great Britain, Public Record Office, Colonial Office (C. O.) 533/395, 16010/30, Minute on file.

²The most prominent of these groups in Britain were the International Missionary Society, the London Group on African Affairs (predecessor to the Fabian Colonial Bureau), the Anti-Slavery and Aborigines Protection Society, and the Labour Party's Advisory Committee on Imperial Questions.

overwhelming concern of these people was the reinforcement of the system to eliminate the loopholes which might threaten African lands. They accepted the premise that territorial segregation was a necessity, if African lands were not to be lost to Europeans. Many of them also approved of the system because in its ideal it minimized the possibilities of those contacts between Africans and Europeans which they considered unbeneficial to Africans.

The tenacity of the conviction that Reserves were a panacea for African land problems, despite evidence to the contrary, betrays the bankruptcy of ideas on the future of Africans which afflicted missionaries, humanitarians and Labourites in the inter-war period. They almost universally accepted the necessity of white settlement in Kenya, interpreting their main task as the vitiation of its worst excesses. Because they had also supported territorial segregation in the other areas of white settlement in Africa such as the Union of South Africa and the Rhodesias, the Reserve system seemed the most logical way to protect Africans in Kenya. They refused to recognize that territorial segregation was unfeasible in Kenya as well as these other areas and, because of the settler demand for African labor, was never really practiced. Even the meager efforts of pro-African groups to reinforce the Reserves met strong opposition from the settlers and the settler-oriented Kenya Government. With such powerful opponents, it is not so surprising that their goals were so limited.

In the 1920's the efforts of African activists and the pro-African groups publicized African dissatisfaction, and the Colonial Office and Labour M. P. 's began to experience greater doubts about the ability of the Kenya Government to provide just treatment for its African trustees.

A series of commissions¹ sent out from Britain during that decade to examine various aspects of the East African territories also warned of the potentially explosive nature of the problem of African land grievances. As the Parliamentary Commission of 1924 reported "there is probably no subject which agitates the native mind today more continuously than the question of their rights in land, both collectively as tribes and individually as owners or occupiers."²

Land grievances differed in each of Kenya's African societies due to the varying effects of the land losses. These effects were not solely related to the amounts of land lost, since each society's social structure, land tenure system, population density, political organization and a number of other factors determined the extent of the stress caused by land alienations. It was the pastoral peoples such as the Maasai and the Kalenjin who suffered the greatest loss of land in Kenya and to whom the losses were probably the most detrimental. The Maasai, in particular, were very badly hit and most of them resisted those changes which would have enabled them to cope better with their altered economic and social situation. While the Kalenjin also lost some of their most valuable lands, this loss seems to have hastened their transformation from a pastoral to an agricultural society. Today they are better adapted to an independent and economically developing Kenya than the more "traditional" Maasai.

¹ Commissions were sent out under Ormsby-Gore, 1924 and Hilton Young, 1927; there was a one man study by Sir Samuel Wilson in 1929.

² Report of East Africa Commission, 1924, Cmd. 2387 (1925), quoted in the Hilton Young Report.

Land losses, although smaller among agriculturalists than pastoralists, had far more serious political effects. There was greater economic and social commitment to a specific piece of land among agriculturalists, and because population densities were naturally higher, alienation caused greater population displacements. The political significance of land losses caused by European settlement was greatest among the agricultural Kikuyu, particularly those resident in the Kiambu area. Throughout the colonial period, Kiambu land problems plagued the government and overshadowed its policy toward all other African lands. In Kiambu itself these problems were central to the early development of a political consciousness which was unmatched in the rest of Kenya. From the formation of Harry Thuku's Young Kikuyu Association in 1921 and its successor, the Kikuyu Central Association in 1924, until independence, the Kikuyu of Kiambu presented the strongest challenge to European settlement in Kenya.

Like the two other Kikuyu areas of Murang'a (Fort Hall) and Nyeri, Kiambu was seriously affected by the loss of lands with the resulting overcrowding, the lack of title to land within the Reserve, the uncertain position of Kikuyu tenants,¹ and the failure of the government to provide effective machinery for the resolution of land conflicts. However, in Kiambu these problems were more severe. Nairobi had been established on Kiambu land, more land had been alienated there than in the other two districts, and the consequences had been worse for individual Kikuyu. Furthermore, during the period of Kiambu

¹Kikuyu tenancy was very sophisticated and included many different classes of tenants. However, during the colonial period these classes were generally grouped together under the Kikuyu category of ahoi.

alienations, land policy had not been finalized. It was not until the Colonial Office took over from the Foreign Office in 1906 that a beginning was made on establishing a uniform land policy.¹ During the Foreign Office period, land was even alienated in Kiambu on freehold, a practice condemned by the Colonial Office and very much at variance with the procedure in other British colonies and protectorates.

At the time of the first alienations, Kiambu was the frontier area of an aggressive and expanding Kikuyu society. Its residents were pioneers engaged in clearing the land which they had bartered from its previous occupants, the Wandorobo or Athi.² These pioneers were acquiring land in Kiambu on an individual basis, but under the traditional Kikuyu land tenure system this land would eventually have become the communal property of their descendants.

The githaka or land tenure system of the Kikuyu was based upon the communal ownership of a unit of land called a githaka (pl. ithaka).³ The communal ownership stemmed from membership in an mbari,⁴ all of whose members descended from an original land owner who had

¹Sorrenson, Origins, Chapter V.

²Evidence, Vol. I, contains many Kikuyu accounts of this process.

³The Kikuyu land tenure system has received much attention from various administrators and scholars. One of its most accurate and detailed descriptions is found in the works of H. E. Lambert, The Systems of Land Tenure in the Kikuyu Land Unit, (Cape Town, 1950), Kikuyu Social and Political Institutions, (London, 1956), and the Lambert MSS, University of Nairobi.

⁴The term mbari is most prevalent in Kiambu and it seems to be used with decreasing frequency by Kikuyu as the distance from Kiambu increases. However, despite the different terminology, the same basic land owning unit seemed to exist throughout the Kikuyu area in pre-colonial times.

pioneered the land. This man had lived within the living memory of the group and the mbari bore his name. An mbari could contain only a few individuals or many thousands, but it was the usual practice for some members of a very large mbari to break away, pioneer new areas, and form their own mbari, thus repeating the cycle. Through the mbari system, the Kikuyu were continually expanding the land in their possession, as well as renewing their system of land tenure.

The mbari system was in the initial phase of its cycle in many areas of Kiambu when European rule was established in Kenya. Land was still individually owned by many of the founders of the mbaris and had not evolved to the communal ownership common in Murang'a and Nyeri.¹ When alienations occurred in Kiambu, they interrupted the mbari cycle at a very crucial stage and caused more hardships to individuals than if these Kikuyu had had the protection of mature mbaris. Under a mature mbari system, such as was found in the more settled Kikuyu areas, any individual would have a recognized right to other lands owned by the mbari, if the one he was occupying was taken for European settlement.

In addition to lacking the protection of the developed mbari system, the Kiambu Kikuyu had suffered a series of natural disasters in the last decade of the nineteenth century. Famine, rinderpest and smallpox decimated their numbers and forced them to retreat temporarily from many areas of Kiambu.² However, their presence on the land was still very obvious when the alienations began, although the government was

¹It may also be effectively argued that the land tenure system in Kiambu was unique and perhaps would not have evolved into communal ownership.

²Evidence, Vol. I.

perhaps misled on the extent of their claims. Rather than determining the nature and extent of these claims, the government indiscriminantly alienated land in Kiambu. Kikuyu "temporary occupancy" rights were terminated after the fact by a theoretical payment of "disturbance compensation" of two rupees per acre.¹ It was assumed that the Kikuyu "occupiers" would move elsewhere without much difficulty. If the government had bothered to explore the matter, it would have discovered that these Kikuyu "owned" the land being alienated and that there was no other unclaimed land to which they could move in Kiambu.

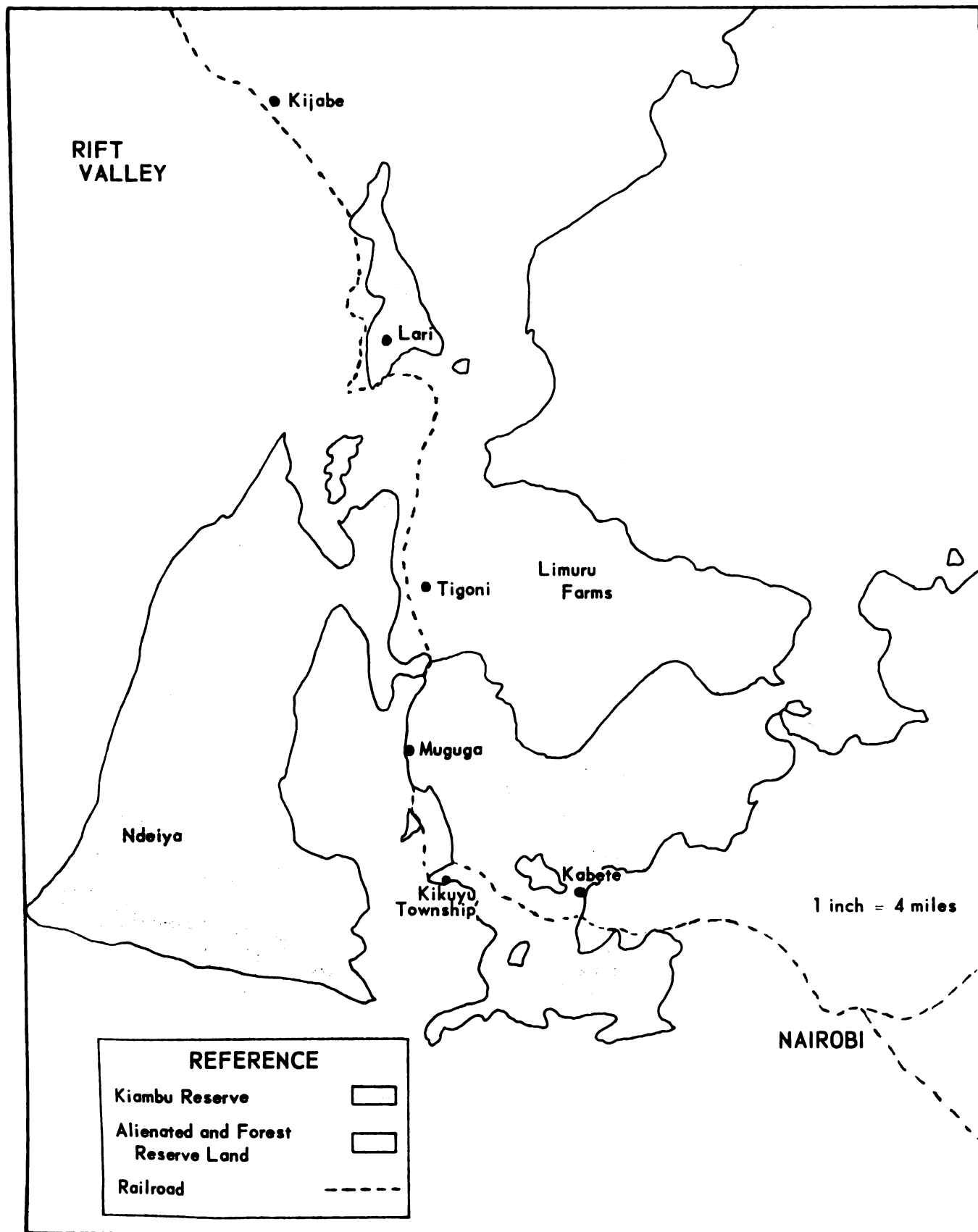
Most Kikuyu who lost their land in Kiambu usually did not even get the pittance of "disturbance compensation" due them. There were only spasmodic efforts by the government to force settlers to compensate displaced Kikuyu. Often these payments went astray, for lacking any understanding of the Kikuyu form of land tenure, settlers frequently mistook Kikuyu tenants for mbari owners and compensated the wrong individuals.

Land grievances in Kiambu were further aggravated by a checker-board pattern of alienations which interspersed areas of African Reserve and alienated land.² This pattern was the result of policy decisions by Sir Charles Eliot, Governor of Kenya from 1901 to 1904. He encouraged European settlement in areas contiguous to African lands, with the

¹Kenya, Kenya National Archives (KNA) DC/KBU/13/2 contains some of the early forms used by the Government District Collector by which Africans gave their occupation rights to Europeans for the payment of a small compensation.

²For administration purposes the Reserve land was within Kiambu District, and the European land within Nairobi District. However to clarify matters, Kiambu as used in this study refers to the geographical area of Kiambu exclusive only of the area within the Nairobi city limits.

DIVISION OF LAND IN SOUTHERN KIAMBU (1934)



justification of "civilizing" Africans by exposing them to European settlers. This policy of interpenetration was repudiated by Eliot's successors, who believed that geographical separation of the races was necessary in order to minimize potential trouble. However, many of the alienations in Kiambu occurred during the period when Eliot's philosophy held full sway, leaving Kiambu in the 1920's and 1930's with a legacy of geographically interspersed African and European lands.

Although the African and European areas in Kiambu were separated administratively, their residents were continually involved in disputes over right of way and trespass.¹ The settlers were adamant about keeping Kikuyu and their stock off the lands which they considered to be theirs. The Kikuyu themselves claimed the "European" land and viewed their incursions as being well within their rights. The Kikuyu sense of loss was increased by literally living next to the land they claimed, if not on it as a "squatter" laborer. Those Kikuyu, not left landless by alienations, were also upset by the European presence. In particular, in their European neighbor's field, the Kikuyu of Kiambu could see the lucrative coffee crop which the government would not allow them to grow.

The intermixture of African and European areas in Kiambu, especially the presence of African "islands" within European areas caused the Kenya Government great anxiety. Its officials complained that they were unable effectively to control Africans who were isolated from the rest of the Kikuyu Reserve. They showed little concern about the activities

¹Interview, Ex-Senior Chief Josiah Njonjo, Aug. 16, 1972, for vivid examples of African reaction to charges of trespass.

of isolated Europeans or the problems of European trespass on African lands. After identifying the problem as one of African "islands," the government decided in the 1920's and 1930's to move Africans from the most contentious of these areas.¹ As might be expected, the Kikuyu viewed these moves as part of the continued violation of their lands in order to satisfy European demands. The attempts at relocation became the focal point in the late 1930's for Kiambu frustrations on land issues.

These frustrations were exacerbated by the "squatter" and the right holder issues. Both of these involved groups of Africans resident upon European farms. Although the status of the right holders was very different from that of the "squatters," their special position only became known as a result of the worsening of the position of these "resident native labourers."² The special status of Kikuyu right holders resident on European farms was based in the Crown Lands Ordinance of 1902. Section 31 (1) stated that

The Commissioner [of Lands] may grant leases of areas containing native villages or settlements without specially excluding such villages or settlement, but land in actual occupation of natives at the date of the lease shall, so long as it is actually occupied by them, be deemed to be excluded from the lease.

This assurance of African rights on alienated land was reiterated in the Crown Lands Ordinance of 1915, section 86. The Kikuyu who held these rights became known collectively as the "Kikuyu right holders."

¹KNA, Ministry of Lands and Settlement, Deposit 1, Files 3, 4, 5, 6.

²As they were designated in the related government legislation, the most important being the Resident Native Labourers Ordinances of 1933 and 1937.

Although they had legal rights dating from 1902, the right holders were not given any special recognition until the late 1920's. Up to that time they were not differentiated from other "squatters" on European land. The right holders themselves did not realize that they were protected in the statute books until the 1920's. And if the settlers and administrators were any better informed, it was not evident in their actions.

All Africans living on alienated land, whether they were right holders or not, were treated as "squatters" who could remain on the land only at settler discretion. In practice this usually means for the duration of their employment by the settler. When the settlers were hard hit by the post World War I agricultural depression, their need for such "squatters" fell sharply and huge numbers of them were turned off alienated lands.

The settlers had long feared that the tenancy aspects of the "squatter" arrangements might strengthen African claims to alienated lands and the drop in need for African labor in the 1920's prompted them to act. Under a Resident Native Labour Ordinance all Africans on European land were given the legal position of laborers on contract. When the government tried to enforce this ordinance in Kiambu, many of the "squatters" protested that they had occupancy rights which were independent of their relationship with the settlers. Most of the administrators were at first incredulous about the legitimacy of this so-called "right holder" status. However, by the late 1920's the Kenya Government had to acknowledge that there were Kikuyu living on European farms in Kiambu who were protected under the Crown Lands Ordinance.

In the "Annual Report on Kikuyu Province" for 1929,¹ the provincial commissioner reported that there were serious complications in Kiambu. He wrote that "numbers of these squatters [on farms and mission plots] now claim a right to reside and occupy land there under the Crown Land Ordinance on the ground that they were already settled there at the time of the grant of the lease." He claimed that this recourse to the Crown Lands Ordinance had been made originally by certain Kikuyu on Kiambu farms as a justification for not entering into squatter contracts.

It is significant as an indication of the government's attitude toward African land rights that it had ignored the special status of the right holders and was unprepared when people in Kiambu claimed this special status. The fact that it was the Kikuyu themselves who brought their rights to the notice of the government is also important for it underlines the increasing political awareness and organization of the Kikuyu, especially in Kiambu and the adjacent area of Murang'a.

Although the Kenya Government was finally forced to recognize the legality of the right holder's position, it did very little to enforce these rights. Not above ignoring laws which they found disagreeable, the settlers in Kiambu on several occasions illegally and forcibly evicted Kikuyu right holders. However, the government tried to restrain the settlers when in the 1930's, the Kikuyu Central Association succeeded in publicizing the evictions and even bringing them to the notice of the

¹"Annual Report on Kikuyu Province," 1929, KNA Library.

British Parliament.¹ The Kenya Government and the settlers for their part were pressuring the Colonial Office to solve the problem of the right holders.

Despite the ability of some Kikuyu in Kiambu to claim right holder status, the problem of the returning squatters was particularly acute in all three Kikuyu districts. Many Kikuyu who had lost their land or were unable to find good land because of the overcrowding in the Reserve had become "resident native labourers," particularly on the European farms and ranches of the Rift Valley. When they were dismissed, there was no room to accommodate them in the Reserve. In the 1920's and 1930's, the government and the settler leaders believed that the return of almost all of the squatters was imminent. It was estimated that this would mean the return of 110,000 Kikuyu to their Reserve.² The government and the Kikuyu chiefs were alarmed at the possible consequences of an influx of such a huge number of landless people into an already congested and politically sensitive area. The social and economic effects of the return of small numbers of squatters were already being felt in Kiambu in the 1920's, and they aggravated an already tense situation.

Kikuyu land grievances were also aggravated by the government's demarcation of their Reserve in 1928 and 1929. Many Kikuyu viewed this as their last chance to acquire the lands which they claimed by having them included in the Reserve, but most of these areas were not

¹ Arthur Creech-Jones, Labour M. P., brought the matter of these evictions before Parliament a number of times in the 1930's. His main source of information was Marius Karatu in Kenya. (Oxford University Library, Rhodes House, A. Creech-Jones MSS.)

² Report, sections 498 and 499. The KLC got these figures from Fazan's memo which he presented in evidence.

within the demarcated area. As a result of the inaccuracy of previous surveys, the Kikuyu also lost some small areas which they believed were unequivocally theirs and which had previously been included in their Reserve. Therefore, when the government proposed an appropriation of land from the Kikuyu Reserve for the Maragua-Tana electric power project, the Kikuyu opposition was vehement.¹

Since they had little confidence in the ability of the Reserve system to provide for the security of their lands, the Kikuyu wanted legal title to the lands they still possessed. Then even if their Reserve was violated, they believed they would still have the protection of European recognized rights defensible in a court of law.² Titles would also help to ameliorate conflicting internal Kikuyu land claims. This was one of the matters explored by the Kenya Government in 1929 in an attempt to regularize Kikuyu tenure on land in the Reserve. It instructed a Committee on Native Land Tenure in Kikuyu Province³ to investigate Kikuyu land tenure and make recommendations on governing rules for "occupation rights" which were in keeping with Kikuyu laws and customs.

The Land Tenure Committee was appointed in September of 1929 and gave its report in November, leaving it only seventeen days to examine records and take evidence. Its members, S. H. Fazan, a district

¹ C. O. 533/422, 18073/32, Kenyatta to Secretary of State for the Colonies (S/S), Feb. 24, 1932.

² Kenyatta claimed that for the Kikuyu, title deeds were "more important and urgent... than any other question." C. O. 533/395, 16010/A, Kenyatta to Passfield, April 15, 1930.

³ Report of the Committee on Native Land Tenure in Kikuyu Province, November 1929, (Nairobi, 1929). A similar committee was appointed in North Kavirondo Reserve. See Report of Committee on Native Land Tenure in the North Kavirondo Reserve, October 1930, (Nairobi, 1931).

commissioner in Kikuyu Province, L. S. B. Leakey, the archaeologist, and G. V. Maxwell, the Chief Native Commissioner, who acted as chairman, admitted that they had to rely heavily on their own backgrounds. Leakey, the son of one of the first Church Missionary Society's missionaries in Kiambu, had grown up there and done anthropological work among the Kikuyu. Fazan was an intellectually oriented administrative official with a special interest in land matters. In May of 1929 he had authored a paper for the government on "Tribal System of Land Tenure --with special reference to the Kikuyu."

The committee examined at length the "Githaka Question," which it believed had become an acute problem as early as 1912. Kikuyu evidence on land matters was taken in barazas¹ rather than on an individual basis, and it was confined to the issue of land tenure. The first part of the resulting report examined Kikuyu land tenure at length and the remainder provided recommendations for regulating their land rights. While recognizing only Kikuyu occupancy rights, the committee acknowledged the githaka as the basic unit of Kikuyu land tenure. It rejected any suggestion to freeze Kikuyu land tenure at its current state or to set rules for its development, but recommended the registration and demarcation of the boundaries of the ithaka and the settlement of Kikuyu land disputes by elders or independent "Native Tribunals." However, despite Kikuyu interest, no system of ithaka registration was started in Kikuyu Province and the Kikuyu were left with their feelings of insecurity.²

¹ Baraza is a Swahili word used to refer to tribal public meetings generally called under the auspices of a government official.

² The committee's report and that on Kavirondo were quietly shelved by the Kenya Government when the Joint Select Committee on Closer Union in East Africa was appointed.

In addition to the unrest among the Kikuyu over land in the late 1920's, the female circumcision crisis also caused considerable political and social discontent.¹ The crisis originated in the attempt of Church of Scotland and African Inland missionaries to suppress this Kikuyu practice among their followers. Faced with what they believed to be a choice between European values and the tenets of their own society, many Kikuyu decided to remain Christian, but to do so in independent churches. These independent churches flourished among the politically disaffected and the landless. Though the circumcision controversy was an internal Christian matter, its effects were widespread. In particular, it was the catalyst for the formation of schools among the Kikuyu which were independent of the government as well as the missionaries.² These schools served as the training ground for those Kikuyu who later opposed the very presence of the British in Kenya.

The female circumcision controversy came to symbolize the Kikuyu rejection of European values and the development of a form of Kikuyu social nationalism. However, it was the Kenya Government's land policies which caused the most widespread and enduring dissatisfaction among the Kikuyu. Even Kikuyu who had lost no land felt an acute sense of grievance and an intense insecurity about their own land rights. These feelings and the opposition they generated were best voiced by the Kikuyu Central Association.³

¹ KNA, DC/KBU/3/2, Pol Rec. Book, 1927-34.

² Two organizations of independent schools were established, the Kikuyu Independent Schools Association and the Kikuyu Karing'a Educational Association which operated mainly in Kiambu.

³ However, they were also expressed by government chiefs and such conservative organizations as Senior Chief Koinage's Kikuyu Association, which later became the Kikuyu Loyal Patriots.

The Kikuyu Central Association (KCA) was the successor organization to Harry Thuku's Young Kikuyu Association.¹ Formed in 1921, Harry Thuku's group was the first organization to mobilize large sections of the Kikuyu masses in protest against government policies. Though the Kenya Government proscribed it in 1922, it reemerged in 1924-25 when most of its old leadership, minus Harry Thuku who was in government detention, formed the KCA. Joseph Kang'ethe was its leader and by the late 1920's, Johnstone Kenyatta its general secretary. The KCA was originally a Murang'a organization but it found early support among the land discontented Kikuyu of Kiambu.

The KCA protested such things as the government's land policies, forced labor, the kipande,² and the lack of African representation on the Legislative Council, but its methods were moderate. At first it attempted to bring these grievances to the notice of the Kenya Government through petitions, evidence before commissions and personal representations. However, the Kenya Government branded the KCA a radical group, discredited its activities and ignored its petitions. The organization was told to refer its grievances to the Local Native Councils and other "legitimate channels," such as the chiefs and district commissioners, where they were usually dismissed. Frustrated in their attempts to get a hearing before the Kenya Government, KCA leaders by the late 1920's had adopted a policy of personal correspondence with interested people in Britain. They were helped in writing their petitions and in establishing

¹The name was later changed to East African Association. Harry Thuku, an Autobiography, (Nairobi, 1970), pp. 11-35.

²The kipande was an identity card which African adult males were compelled to carry. It was introduced in 1920.

contacts in Britain by a number of Indians who were also disaffected with the Kenya Government.¹

In 1929 members of the KCA collected money and sent Kenyatta to Britain to represent personally their case to the British Government.² His initial efforts were unsuccessful, primarily because the Kenya Government had discredited him and the KCA on the grounds that neither represented the Kikuyu people. However, Kenyatta was able to gain the support of several Britons sympathetic to the African cause. The most important of these was McGregor Ross, a former Director of Public Works in Kenya and one of the foremost critics of settler domination in Kenya.³

With McGregor Ross' help, Kenyatta drafted a series of letters to the Colonial Office which outlined Kikuyu grievances, particularly on land issues.⁴ Through his Labour connections, McGregor Ross was also able to arrange a meeting on Jan. 23, 1930 for Kenyatta with Dr. T. Drummond Shiels, Labour's Parliamentary Under-Secretary of State.⁵ Although the meeting was by "pre-arranged accident," this interview was symbolic of the Labour Government's exposure to non-settler viewpoints. During the first part of its tenure in office it had

¹ Isher Dass, M. A. Desai, and Pio Gama Pinto were the most prominent Indians who assisted Africans during the colonial period.

² Kenyatta's exploits in London from 1929-1930 are discussed in Jeremy Murray-Brown, Kenyatta (London, 1972), pp. 133-154.

³ W. McGregor Ross, Kenya from Within, a Short Political History, (London, 1927); Ross's papers are in Rhodes House.

⁴ Acting on behalf of the KCA, Kenyatta later published these as Correspondence between the Kikuyu Central Association and the Colonial Office, 1929-1930, (London, n. d.).

⁵ McGregor Ross' minutes of the meeting are in C. O. 533/395, 16010/A.

acted to settle Kenya's land problems by insuring the integrity of the African Reserves. Against settler and Governor Sir Edward Grigg's opposition, the Secretary of State, Lord Passfield (formerly Sidney Webb),¹ had ordered the strengthening of the Native Lands Trust Ordinance.² A more elaborate procedure for alienating land in the African Reserves was added to it, as well as the proviso that the alienation of any such land was to be compensated by land of equal value and extent. This proviso, known as the "Passfield Pledge," became the cornerstone of Labour and humanitarian efforts to strengthen the Reserve system.

Labour's opening of tentative channels of communication with representatives of Kenya's African population, such as Kenyatta, convinced Passfield and his colleagues that their land problems would not be totally resolved by the "Passfield Pledge." Only a policy of making African interests dominant in Kenya would do them justice. "African Paramountcy" had been proclaimed as the official British policy in Kenya in 1923,³ but the opposition of the Government of Kenya and the settlers had prevented it from ever being implemented. Passfield's attempt to resurrect it also failed for the same reason but it had a very important effect on land policy. In the White Paper⁴ which explained the return to "African Paramountcy," Passfield underscored the need "to provide enough land for present and future African needs." In addition to Reserves, he suggested the establishment of special areas where Africans

¹For a discussion of Lord Passfield's actions in the Colonial Office, see Gregory, Sidney Webb.

²C. O. 533/395, 16010/30.

³Indians in Kenya, a Memorandum, Cmd. 1922 (1923).

⁴Memorandum on Native Policy in East Africa, Cmd. 3573 (1930).

could fulfill their needs by taking up land on an individual basis. This brought up the question of what African land needs were in Kenya. Up to this time the Colonial Office had accepted the Kenya Government's evaluation of those needs, and only acted to strengthen the Reserves. Now, it was more sceptical of the justice of those evaluations. The issues uncovered in Kenyatta's petitions to Lord Passfield eventually crystallized the Colonial Office's scepticism into plans to appoint its own commission to investigate African land claims and needs in Kenya.

In a petition of Feb. 14, 1929,¹ Kenyatta referred to the land unjustly alienated on freehold in the Kiambu area.² He requested its return and the payment of compensation for the years it had been alienated. The Colonial Office did not know what land Kenyatta was referring to and sent Grigg a copy of the petition with instructions to explain the issue. Kenyatta was given an interim reply that the matter would be investigated. No full fledged investigation was contemplated, although Kenyatta appears to have believed that one had been promised.³ However, Grigg's answer⁴ put the matter in a different perspective by acknowledging that many of the alienations in Kiambu, whether on leasehold or freehold, had been unjust. Furthermore, in the matter of compensation, he revealed a situation which was a flagrant violation of the "Passfield

¹ C. O. 533/403, 16333/30, Extract from petition from Johnstone Kenyatta, Feb. 14, 1929.

² Kenyatta also made the point in a later letter that, so far as the Kikuyu were concerned, a 999 year lease was the same as freehold. C. O. 533/395, 16010/A.

³ "We are extremely pleased with Your Lordship's promise that enquiry will be made as to the loss of our tribe of lands granted to non-natives in freehold..." Kenyatta to S/S, April 15, 1930, C. O. 533/395.

⁴ C. O. 533/403, File 16333/30, Governor to S/S, Nov. 14, 1929.

Pledge." Although Grigg claimed that some monetary compensation had been paid and that "it was not realised that any particular hardship was inflicted" on the Kikuyu, he also admitted that "in the light... of complete knowledge of their system of land tenure it would seem that some of them may have a genuine grievance in being removed from their own family holdings and forced to seek new homes on land to which they had no enforceable rights."

After Grigg's letter, the Colonial Office no longer could view allegations of unjust land alienations in Kenya merely as the complaints of a small group of "natives" and their sympathizers. These allegations had been verified by a governor whose known sympathies lay with the settlers and not with Africans. Passfield expressed his anxiety about the Kiambu situation to Grigg and directed him to investigate the matter further. He believed that it was "most undesirable that individuals or families who have admittedly been deprived of their land and homes should remain without equitable compensation."¹

Grigg did not respond to Passfield's instructions until six months later, in July of 1930. He then argued that though land claimed by the Kikuyu had been alienated, it was impossible to determine the nature and extent of those land claims; furthermore, the colony could not bear the financial burden of compensation. These arguments were valid, but Grigg's use of them as a justification for not trying to rectify past wrongs betrays an attitude which was very different from that of the Labour-controlled Colonial Office.

¹C. O. 533/403, File 16333/30, S/S to Governor, Jan. 2, 1930.

The African evidence before the Joint Parliamentary Select Committee on Closer Union in East Africa had shown the extent of African land grievances in Kenya and added further urgency to the Colonial Office's desire to resolve the land problems causing increased unrest among the Kikuyu. It was also receiving pressure from other sources. The settlers wanted the expulsion of the right holders on the Kiambu farms and Grigg was pushing for more land for white settlement. Even Canon Leakey, the African representative on the Kenya Legislative Council, was telling the Colonial Office of the injustice done by the alienations in Kiambu and the inability of the Reserves to accommodate the landless people who had become "squatters" but were now being thrown off the farms.¹

By March 1931 the Labour Government was becoming convinced of the need to investigate African rights and needs in land outside of the Reserves. In a minute of March 4, 1931, Shiels wrote, "In view of Sir E. Griggs' pressing for more white settlement, it is well to get on with the consideration of the adequacy of the reserves. I do not know how it is proposed to be examined so that we can rely on the correctness of the conclusions... I would not like a Kenya unofficial [settler] commission to advise us."² He suggested that Sir J. Byrne, the new governor, be contacted on the matter. A few weeks later, one of the Colonial Office staff, C. G. Eastwood, wrote an internal memorandum which gave his department's thinking about an investigation of African

¹C. O. 533/403, File 16333/303, Extract from the record of a discussion with Canon Leakey. (No. 1 on 17083/31.)

²C. O. 533/495, 16010/A, Shiels' Minute of March 4, 1931.

land rights. It also elaborated Labour's land policy as stated in the Memorandum on Native Policy and outlined what were to become the major guidelines of the Kenya Land Commission.¹

Eastwood pointed out that while the Native Lands Trust Ordinance set up Reserves for Africans, there remained many other questions about African lands which had not been settled. The Kenya Government was investigating African land tenure systems but there had been no attempt to determine African claims to land outside of the Reserves. Eastwood believed that African extra-Reserve claims should receive the Colonial Office's attention, especially since the Labour Government was committed to reversing the effects of the unjust Barth decision. He suggested that the best manner of dealing with most of them was to treat them on the basis of equity and subsume them under the issue of African land needs.

Eastwood cautioned that it was not possible also to dismiss Kikuyu claims "lightly" by treating them under land needs. They had been brought to the attention of the Secretary of State by the KCA and he had promised an enquiry. Furthermore, as a result of the almost individual form of land tenure in Kiambu, land alienations had hurt individual Kikuyu more than other Africans. Eastwood suggested that the Governor of Kenya be advised to hold an enquiry on Kikuyu and other African land claims and devoted the rest of his memorandum to a discussion of the solutions an enquiry might recommend.

¹C. O. 533/403, 16333/30, "Memorandum on Native Rights to and Needs for, Land Outside Reserves" by C. G. Eastwood, March 23, 1931.

On the issue of the Kikuyu right holders, Eastwood proposed two alternatives. If they were to remain on the land, their rights would have to be defined and given a status which could be upheld in a court of law. The other alternative was the forfeiture of these rights in return for adequate land added to the Reserve and the payment of disturbance compensation. He preferred the latter choice and thought it necessary to explore further the whole issue of adding land to the Reserves, especially the Kikuyu and Kavirondo Reserves which had little room for expansion. Eastwood also believed that the special purchase areas for Africans first proposed in the Memorandum on Native Policy would be a viable solution to some of Kenya's land problems.

The Eastwood memorandum solidified the Colonial Office's thinking on the need for a land enquiry in Kenya. His ideas met the approval of both Passfield and Shiels and were incorporated into a despatch from Passfield to Governor Byrne of Kenya. This despatch requested that the governor appoint a special commission of enquiry to examine African land questions, so that the principles of African land policy laid down in the Memorandum on Native Land Policy could be applied in Kenya.¹

Governor Byrne was receptive to the idea but asked that political and economic matters in Kenya be more settled before an enquiry was begun. He told Passfield that he expected considerable settler opposition to such an enquiry, since they considered the question of African lands settled with the passage of the Native Lands Trust Ordinance. Byrne feared that the proposed enquiry would "throw the country into a

¹ C. O. 533/403, 16333/30, S/S to Governor, April 30, 1931.

blaze at a most unsuitable time,"¹ and that it would falsely raise African, and especially Kikuyu, hopes.

For the remainder of 1931 and the beginning of 1932 the Colonial Office and Governor Byrne carried on an extensive correspondence on the enquiry and its proposed terms of reference and personnel.² The Labour Government fell during this period and the National Government which replaced it had no commitment to the Memorandum on Native Policy in East Africa.³ Although the proposal for an enquiry into land matters in Kenya was not dropped, its nature was changed. This was primarily accomplished through the modification of Eastwood's suggested terms of reference and the selection of personnel who reflected the Kenya Government's views rather than those of the Labour Party.

The most important of the changes in the terms of reference were in the instructions to define the area in which Europeans had exclusive land rights, and the addition of the instruction to re-examine the Native Lands Trust Ordinance which had strengthened the Reserves. The changes were instigated by the Kenya Government which also wanted the adequacy of the Reserves to be dropped from the investigation's terms of reference. The Colonial Office refused, for despite the British change of government, many civil service personnel in the Colonial Office had serious doubts about the integrity of the Kenya Government in its handling of African land problems. This lack of confidence was deeply resented by Governor Byrne, his advisors, and, of course, the settlers.

¹C. O. 533/416, 17312/31, Sir J. Byrne to Sir C. Bottomley, June 15, 1931 (Extract).

²C. O. 533/416, 17312/31-32.

³The National Government under Ramsay MacDonald replaced Lord Passfield with a Conservative, Phillip Cunliffe-Lister (1931-1935).

Byrne believed that the African evidence before the Joint Select Committee had eroded the credibility of the Kenya Government. He demanded that the officially publicized rationale for the appointment of the proposed commission be the British Government's desire to remove this mistrust. The Colonial Office found a suggestion in the report of the Joint Select Committee¹ to which the proposal for a commission could be attributed and used this to satisfy Byrne's request. The only remaining sources of conflict were the nature of the enquiry and its personnel.

Faced with a choice between a judicial commission and one representative of the interests concerned, the Colonial Office opted for a combination of the two concepts. Not only was this impossible in theory as well as in practice, it also further damaged the credibility of an enquiry which would have been controversial under any circumstances. In the end the commission was justly criticized for a lack of the impartiality incumbent upon a judicial body, as well as for failure to represent one of its interested parties, the Africans of Kenya.

The National Government's inconsistency on the proposed enquiry can be attributed to its desire to return the responsibility for African land problems to the Kenya Government. The new Secretary of State for the Colonies, Phillip Cunliffe-Lister, believed that the Colonial Office had assumed too much of this responsibility under the Labour Government. To reverse this he wanted the commission to reflect a Kenya point of view. Sir William Bottomley, Assistant Under-Secretary, expressed Cunliffe-Lister's opinion when he suggested that what was

¹Report of the Joint Select Committee on Closer Union in East Africa. H. C. Paper No. 156 (1931).

needed in the land enquiry was for "Kenya men to have a hand in considering this essentially Kenya matter."¹ Needless to say, Africans were not included in this category of "Kenya men."

Both the Colonial Office and the Kenya Government agreed on the selection of Sir Morris Carter as the chairman of the commission. His position as a judge and his previous experience as the chairman of a similar commission in Southern Rhodesia made his choice seem appropriate. However, agreement did not extend to the other members of the commission. Governor Byrne and his advisors in the Kenya Government wanted to maintain the judicial nature of the enquiry by having Carter as its only member. However, the Colonial Office wanted two other Kenya men who were neither officials nor partisan, in order to encourage settler cooperation in the "difficult administrative problems" of the colony. Byrne's reaction to the Colonial Office's suggestion was very revealing. He answered that it would be "difficult if not impossible to find two fairminded and unprejudiced local men whose recommendations would command confidence."²

The Colonial Office insisted upon a three man commission and suggested that Rupert Hemsted and F. O. B. Wilson be the other two members. Byrne agreed to Hemsted, who was a retired Kenya provincial commissioner. However, while making no specific remarks about Wilson, a settler, he claimed that it would be difficult to find an unbiased settler to balance Hemsted. In the end Byrne was forced to accept a

¹ C. O. 533/416, 17312/32, Bottomley's minute of December 19, 1931.

² C. O. 533/416, 17312/32, Governor to S/S, Jan. 19, 1932.

three man commission of Carter, Hemsted and Wilson. He had shown much more concern with the objectivity of the proposed enquiry than had the Colonial Office. As governor, he realized that an enquiry had at least to appear impartial, if it were not to exacerbate Kenya's problems.

CHAPTER III

THE KENYA LAND COMMISSION

There seems to have been little doubt in the Colonial Office that the appointment of a commission was the best method of solving the land problems of Kenya. For hundreds of years it has been a common practice of the British Government to appoint commissions to study its problems at home and in the colonies.¹ During the 1920's and 1930's, when the British Government was confronted with seemingly insoluble social, economic and political problems, this penchant for commissions reached its most extreme stage. The Kenya Land Commission was only one of the many commissions which acted as expected panaceas for these problems.²

To understand the decision to appoint the land commission, it is necessary to explore the reasons for the traditional British reliance upon commissions. They are appointed in Britain "when Government is unable, or unwilling, to assume sole or immediate responsibility for a decision."³ This unwillingness may be due to uncertainty or disagreement over a policy decision or the lack of necessary support to implement it. By appointing a commission to study the matter, government can avoid prematurely committing itself to a policy while satisfying competing groups that something is being done. The assumption is that a commission,

¹For a discussion of British Commissions, see: Charles J. Hanser, Guide to Decision: The Royal Commission (London, 1965); Hugh McDowall Clokie and J. Williamson Robinson, The Significance of Investigations in British Politics (Stanford, 1937).

²Examples of these commissions or committees which studied Kenya include: East Africa Commission, 1924; Commission on Closer Union for the Dependencies in East and Central Africa, 1929; Joint Select Committee on Closer Union in East Africa, 1930-1931.

³Hanser, Guide to Decision, p. 141.

because it is outside of the normal administrative machinery, will escape the onus of being partisan.

Aside from the well-intentioned uses of commissions, they have also proven valuable as an end in themselves, for the very fact of their existence may effectively quell opposition. Furthermore, the long delay between the appointment of a commission and the publication of its findings,¹ though it may not be deliberate, often results in the demoralization of the opposition. Commissions also lend themselves to political manipulation since they are powerless to implement their own recommendations. The actual task of implementation rests with the government and it can decide to reject any or all of a commission's recommendations. Thus by turning problems over to commissions, policies which would have caused great controversy when first suggested, are sometimes put into effect after a number of years with only token opposition. By the same method, popular policies which the government does not support can be quietly shelved, often without the public realizing it.

The British Government was not as concerned with the results of commissions on colonial matters as those on domestic issues. The greater political importance of a domestic commission and the distance and communication factors involved in the colonial commission made this inevitable. However, it was also a consequence of the Colonial Office's policy of deferring to the local colonial government or administrator.²

¹Harold J. Laski estimates in his Parliamentary Government in England (New York, 1938), p.117 that it takes an average of nineteen years for the recommendations of an unanimous report to assume statutory form.

²Sir Donald Cameron believed that the Colonial Office deferred to the "man on the spot" because of its tendency to take the line of least resistance and because its staff often lacked someone with expertise on the subject. See Sir Donald Cameron, My Tanganyika Service and Some Nigeria (London, 1939), pp. 255-58.

The Colonial Office, especially in Africa, was usually trying to assume less rather than more responsibility for colonial situations and the "man on the spot" policy fulfilled its needs. However, it did not always do justice to a commission's recommendations. In most cases the colonial governments were very conservative and when not adequately supervised, they would dilute recommendations, with which they did not agree. Commissions on East Africa were particularly prone to this kind of treatment during the 1920's and 1930's and the Kenya Land Commission was no exception.

Although the Colonial Office was aware of the ineffectiveness of the East African commissions which had pre-dated the Kenya Land Commission, it did not question the value of commissions per se. In fact many of its staff seem to have seen the Kenya Land Commission as a sort of "commission to end all commissions," the one that would dispose of Kenya's land problems for all time. Only Governor Byrne questioned the value of another commission and made the alternative suggestion that one administrator be given sufficient power and resources to investigate the land issue.¹ Since the Colonial Office wished to avoid immediate responsibility for policy decisions, it decided against Byrne.

The announcement of the commission's appointment was made in a House of Lords debate² sparked by Lord Olivier's question on what steps the government had taken to implement the recommendations of the Joint Select Committee. He was particularly concerned about what was being done for those Africans whose lands had been appropriated without

¹ C. O. 533/416, 17312 (1931), Governor Byrne to S/S, Aug. 5, 1931.

² Great Britain, Parliamentary Debates (House of Lords), Vol. 83 (1932), cc. 999-1040.

compensation. The debate which followed provided the most complete exposition of Kenya's land problems in Parliament in the 1930's. Lords Lugard and Passfield joined Olivier in questioning the government and demanding that full consideration be given to African needs in Kenya. Their fear was that Africans in Kenya would suffer the same fate as those in South Africa. Lugard made the most effective presentation in a detailed historical and legal analysis which emphasized the British Government's violation of its responsibility for Africans in East Africa.

The government did not defend its land policy in Kenya during the Lords debate. Instead, it chose this occasion to announce its intention to appoint a land commission. The terms of reference were given, but the identity of the commission's members was not revealed.¹ The strategy worked well, for Olivier and many others were convinced that they had won a major victory and that the commission would right the wrongs committed against Africans in the past.² Lord Olivier was convinced that the commission was a true departure from past policy. Similar optimism was echoed in the editorials and letters found in the Manchester Guardian and the New Statesman and Nation where the opinions of the Kenya critics usually found their way into print. Even Kenyatta thanked the British Government in print for sending out a land commission with such wide terms of reference,³ though he warned that Africans wanted

¹One of the reasons the personnel were not announced in the Lords' debate of March 23 was that Wilson was standing for election to the Legislative Council at that time. Only after his defeat did Governor Byrne agree that he was eligible. C.O. 533/416, 17312 (1932), Governor Byrne to S/S, April 1, 1932.

²Lord Olivier, "African Native Rights – An Important New Departure," Manchester Guardian, March 31, 1932.

³J. Kenyatta, "Land in Kenya – The African Demand for Title Deeds," Manchester Guardian, March 31, 1932.

deeds and not just promises of justice. The general feeling, as expressed by the editors of the Manchester Guardian, was that "there is no reason why this Commission should not lay the foundations of a land policy... which will serve the needs of Kenya for many years to come."¹

The initial hopes of Africans and their supporters for the proposed land enquiry did not survive the announcement of its personnel in the House of Commons in April of 1932.² The Manchester Guardian had reasoned that because of the large number of people available who had expertise on East African problems, it would not be difficult to constitute a commission which would have "great authority." However, they were proven wrong and the first public controversy on the Kenya Land Commission was begun. Only the chairman, Sir William Morris Carter, commanded anything close to the "authority" expected of the members of an impartial commission. Neither of the other members, Rupert Hemsted, nor to a greater extent, F.O.B. Wilson, had the prestige, nor the impartiality necessary for membership in a commission which was to investigate African land claims and needs. Both had been compromised by the fact that they were settlers themselves.

As a former Chief Justice in East Africa, Carter had the prestige of the court. He also had a first hand knowledge of East Africa, of African land problems and of the functioning of commissions, having first served in East Africa as early as 1902 as Registrar of the East African Protectorate. In 1906 he had been on a commission to study

¹"The African and His Land," Manchester Guardian, March 31, 1932.

²Great Britain, Parliamentary Debates (House of Commons) Vol. 264 (1932), c. 1798.

African land tenure in Uganda and five years later was president of that colony's Native Land Settlement Committee. From 1912 to 1920 he had served as the Chief Justice of Uganda and had had the same position in Tanganyika from 1920 to 1924. During an interim period of seven months in 1920 he had been acting Governor of Uganda and from 1921 to 1924, President of the Court of Appeal for Eastern Africa. Although Carter retired in 1924, the Colonial Office continued to call upon him to serve on commissions. In 1925 he was picked to chair a land commission in Southern Rhodesia¹ and in 1929 a Cotton Inquiry Commission in Uganda.

The chairmanship of the Southern Rhodesia Land Commission was the most significant of Carter's activities before he was named the chairman of the Kenya Land Commission. It was this commission which recommended territorial segregation in Southern Rhodesia and inspired the Land Apportionment Act of 1930, one of the cornerstones of white minority rule in that colony. Despite Carter's experience and undoubted integrity, his participation in the Southern Rhodesia Land Commission had left him committed to the concept of territorial segregation of the races in colonies with a white settler population. In common with almost all of his countrymen, he also exhibited the racist attitudes of his times and a reluctance to harm white settlement in Africa. It was a measure of Carter's integrity that he at least tried to overcome his own biases and those of his fellow commissioners in a few of the commission's recommendations.

¹ Land Commission, 1925, Report (Salisbury, 1926).

Whatever their personal attributes, Hemsted and Wilson could not command the respect of a man like Carter. Their selection had been based on the Colonial Office's insistence that "local men" participate, even though Governor Byrne and his advisers had warned of the impossibility of finding impartial men in this category. The Colonial Office had willingly accepted men of lesser caliber to make the commission more acceptable to the settlers in Kenya.

Of the two men chosen, Rupert William Hemsted was the least objectionable. He was a former colonial administrator in Kenya who had settled in the colony upon his retirement. He had joined the service of the East African Protectorate in 1899 and after a period in Somaliland had returned to Kenya in 1904. Most of his service had been among the Maasai, and, in 1924, he had become their provincial commissioner. This experience led to the rather dubious rationalization that he would represent African interests on the commission.

Captain Frank O'Brien Wilson was an ex-naval officer who had settled in Kamba country near Ulu, in 1910, first operating an ostrich farm and then going into dairy farming. He was politically active, having served on the Executive of the Convention of Associations, the settler's political party. Wilson had acted as a substitute for Lord Francis Scott on the Legislative Council in 1926 and 1931 and on the Central Native Land Trust Board and like many settler leaders, he had good contacts with British M. P. s. Under no circumstances could Wilson have been called impartial. When his appointment was criticized, Cunliffe-Lister's only defense¹ was that Wilson was a "local man" and

¹"The East Africa Dinner in London," East African Standard, July 16, 1932.

the "best settler" in Kenya. He claimed that the critics would have been convinced Wilson was a good man, if they were only able to witness how he ran his estate. Despite such left-handed testimonials, Wilson's appointment damaged the commission from the outset. Without an effective African representative to balance his championship of the settler cause, the commission lost all appearance of impartiality.

Kenyatta was among the first to voice his displeasure with the way the commission had been constituted. In an April 15, 1932 letter to the *Manchester Guardian*¹ he criticized the commission as "one-sided," since its members were either ex-officials or settlers. He argued that, as a settler, Wilson had a personal interest in the land "which had been taken from our people without payment or compensation." Kenyatta concluded that the commission should have been composed of members with no stake in Kenya and with no involvement in government. Others concurred in this belief, although it was several months before Kenyatta's charge that Wilson had conspired in the unjust occupation of African land was considered.

In an attempt to balance the commission, Lord Sanderson asked the government² to appoint one or more Europeans who had no land or financial interests in Kenya and also one or more Africans, if not as full members, as assessors.³ The government refused, answering that the commission was intended to act as a judicial body, not as a representative body, and that Hemsted and Wilson had been selected because they

¹ *Manchester Guardian*, April 19, 1932.

² Great Britain, *Parliamentary Debates* (House of Lords), Vol. 84 (1932), cc. 305-309.

³ Assessors traditionally take no part in the findings of a commission but because of their specialized knowledge act as cross-examiners of the witnesses.

"combine local knowledge with expert experience." It also repeated the Kenya Government's claim that no African was advanced enough to represent general indigenous interests in Kenya because he would only consider the needs of his own ethnic group to the detriment of other Africans. However, the fear expressed unofficially among Europeans in Kenya was not that an African would fail to represent African interests adequately. On the contrary, their fear was that he would do it too well and challenge their own position in the process.

Cunliffe-Lister continued to reject arguments against the commission's personnel, but he did drop his claim that the commission was judicial in nature. On June 8, 1932, he countered another demand for a representative for Africans with the assertion that Hemsted was "by common consent one of the ablest commissioners and representatives of native interests there has ever been in Kenya."¹ Meanwhile, Wilson was coming under additional attack because it had been discovered that when his land had been alienated, the Kamba living on it had not been compensated. The New Statesman and Nation² argued that Wilson should be disqualified because he was a member of the class which benefited from the dispossession which the commission was to investigate. Cunliffe-Lister disregarded this argument with the assertion that Wilson was not among the original Europeans to whom land had been alienated and that there were no current Kamba claims to his land. Despite protests, therefore, the original membership of the commission remained unchanged.

¹Great Britain, Parliamentary Debates (House of Commons). Vol. 266 (1932), cc. 1914-1915.

²"The Kenya Land Committee," New Statesman and Nation, May 21, 1932.

There was little public interest in the man chosen to act as the commission's secretary, S.H. Fazan. He was seconded from his position as Kiambu's District Commissioner because of his special expertise in Kenya's land problems. An Oxford University man, his interests lay in applied anthropology and the economics of African life, rather than in the practice of colonial administration.¹ Fazan had served on the Kikuyu Native Land Tenure Committee (1929) and in 1930 had been sent by the Kenya Government to study the system of African land tenure in South Africa.² He had also escorted Africans to Britain, where they appeared as witnesses before the Joint Select Committee. He was a very bright and capable man who applied himself to his secretarial responsibilities with vigor and an exceptional commitment to thoroughness.

More than any other individual, Fazan was responsible for the nature of the report which the commission submitted. He wrote the extensive precis which determined the specific problems the commission would examine. He also drafted most of the report and collated the evidence to be published.³ These duties fall within a secretary's usual scope of action, but Fazan went beyond his specific responsibilities by providing two lengthy memoranda based upon his own research into Kenya's land problems.⁴

While there was considerable debate on the commission's members, its terms of reference escaped close public scrutiny.⁵ Few critics of the

¹KNA, PC/Coast 2/40, Fazan's personnel file.

²S.H. Fazan, "A Report on a Visit Made to the Union of South Africa," undated. KNA Library.

³Interview, S.H. Fazan, Sept. 28, 1972. Fazan drafted most of the report except for the sections on the Rift Valley which were done by his assistant, J.F.G. Troughton, and the chapter on destocking written by Wilson.

⁴KLC, Evidence, Vol. I.

⁵See Appendix I.

Kenya and British Governments appear to have examined them closely and noticed the contradiction implicit within them. While the commission had been constituted to investigate African land claims and needs, two of its terms of reference had been included in an attempt to appease the settler community. These terms seriously impinged on the commission's duties to determine African rights.

It was instructed to "define the area, generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923." This instruction meant that one of the chief concerns of the commission was to be the entrenchment of special European land rights, a rather curious task for a commission on African land rights. It directed the commission to give legality to territorial segregation and it structured the recommendations which the commission could make.

The other term of reference included to appease the settlers further circumscribed the limits of the commission's objectivity. To fully appreciate this, it must be seen in the context of the controversy which attended the reluctant passage of the Native Lands Trust Ordinance at Passfield's insistence. With the fall of the Labour Government, the Kenya Government hoped to weaken the ordinance. The commission was therefore instructed

To review the working of the Native Lands Trust Ordinance, 1930, and to consider how any administrative difficulties that may already have arisen can best be met whether by supplemental legislation or otherwise without involving any departure from the principles of said Ordinance.

The inclusion of this instruction guaranteed that certain loopholes would be found in the legislation to eliminate the government's "administrative

difficulties"¹ with the ordinance. These "difficulties" had been purposely included in the ordinance by the Labour Government and had acted as the only substantial deterrents to the alienation of additional African lands. But as it developed, the Kenya and British Governments did not wait for the commission to eliminate these restrictions. They decided to expropriate Reserve land in Kakamega where gold had been discovered, and went ahead to amend the Native Land Trust Ordinance to allow this.² The commission was then left with an accomplished fact upon which it was to make its recommendations.

As originally intended by the Labour Government, the commission's remaining five terms of reference sought to examine African land needs and claims. Without the restrictions imposed by the terms of reference on the "White Highlands" and the Native Lands Trust Ordinance, the commission might have recommended a just and workable solution to them. The original emphasis which the Labour Government gave to the question of present and future land adequacy suggested such a possibility. The commission was directed to examine the current and anticipated land needs of African tribes, communities, and individuals and the possible reservation of land for so-called "detribalized" Africans. In accord with these instructions, the commission could possibly have recommended that huge areas outside of the Reserves be opened to Africans on the basis of need, if not on the legitimacy of historical claims.

¹These "administrative difficulties" were the provisions to consult the local Africans and Local Native Councils about excisions from the Reserves and to add land of equal value and worth to the Reserve for that taken, i.e., the "Passfield Pledge."

²The Native Lands Trust (Amendment) Ordinance, 1932, was passed in December, and shortly thereafter received the approval of the Secretary of State for the Colonies.

However, such a decision would have contradicted the maintenance of European exclusivity in the "White Highlands."

Most of the commission's activity was aimed at fulfilling its instructions to investigate the legitimacy of African land claims and to examine the methods for settling them. The terms of reference identified three types of African land claims which were to be studied: claims to alienated land, claims to land which could be alienated in the future, and claims to special occupancy rights on alienated land held under section 86 of the Crown Lands Ordinance. The vast majority of the evidence presented to the commission dealt with land claims, with the Kikuyu claims receiving the most attention.

Although the settlers were pleased that the commission would define their "Highlands" and maybe remove the objectionable Native Lands Trust Ordinance, they protested its instructions to examine African land claims and needs. These, they argued, had been settled by the establishment of African Reserves. Most of them also maintained that the "death of Delamere," "the economic blizzard" and "the locust invasion" were good enough reasons to put aside consideration of African land problems.¹ The March 23rd debate in the House of Lords was covered in great detail in the East African Standard,² and prompted much letter writing by the settlers and editorializing. Despite their objections to an African land enquiry, most of the settlers realized that they would gain from legalization of their "privileged position." When the personnel of the commission was announced, any fears they may have had

¹ Great Britain, Parliamentary Debates (House of Lords), Vol. 83 (1932), cc. 1032-1033.

² East African Standard, March, April, and May, 1932.

of losing land was assuaged. The major settler goal became the expansion of the area of the "White Highlands" by persuading the commission to include such areas as the "promised land" of the Leroki Plateau within its boundaries.¹

The moderation of the settler resistance to the commission was also prompted by the realization that African grievances could no longer be ignored, for they were being aired in influential circles in Britain. The commission offered an easy way out, since it was committed to "local" solutions. African grievances would again be considered within a Kenya and not a British context. The settlers and the Kenya Government had been very irritated by Africans bringing their grievances to Britain. They maintained that "streams of criticism which have their source in Kenya and flow through subterranean channels to the Houses of Parliament and back again to the Colony tend dangerously to erode and undermine the prestige and authority of Government and destroy faith and confidence in its sense of justice and fair-dealing."² The lack of justice and fairness for Africans in Kenya and the fact that these "subterranean channels" had been hewn and were continually used by the settlers themselves were conveniently ignored by these critics.

Because of the inability of Africans to obtain justice from the settlers and the Kenya Government, they were very hopeful about the prospective commission. Most Africans, unaware of the political implications of the commission's personnel and terms of reference, retained

¹ The settlers claimed that they had been promised this land by the government when the Maasai were moved out of it in 1912-13.

² Editorial, East African Standard, April 14, 1932.

this hope throughout most of its tenure.¹ It was, after all, the first official body from Britain to examine their land claims and hear evidence from all concerned Africans and not just government selected representatives. Africans thought that their claims were at least no longer being ignored.

Since the commission would be taking written as well as verbal evidence, Africans, settlers, Indians, missionaries and other concerned groups realized the need to organize in order to strengthen their claims. Prior to the commission's arrival in Kenya, they marshalled evidence to support their interests and assisted their individual members in the preparation of memoranda.

The original plan was for the commission to begin its work when Carter arrived in Kenya.² This would have ignored the possible evidence from ex-settlers, administrative officials and missionaries with Kenya experience and knowledge who were living in Britain. McGregor Ross pointed out this oversight to Carter,³ who agreed to collect evidence in Britain before his departure. He also used the added time to study the records of the Colonial and Foreign Offices.⁴ As a result of his decision, the evidence given in London added an unique dimension to the information collected by the commission. In London, most of the early British administrators of Kenya provided recollections useful not only to the commission, but also to future scholars. Carter also took the

¹KNA, DC/KBU/4/5, Fazan to D. C., Kiambu, Oct. 5, 1932. Fazan told the D. C. to warn the people not to form "extravagant expectations" about the commission.

²Carter was originally to have sailed for Kenya on June 3, 1932.

³C. O. 533/424, 18117/2.

⁴C. O. 533/424, 18117, "Memorandum on the Kenya Land Commission."

unprecedented step, while in Britain, of taking evidence from an African representative not acknowledged by the Kenya Government, Johnstone Kenyatta.¹

Even before Carter began taking evidence in London, the work of the commission had begun in Kenya. In order to assist Fazan in his preparation of a precis of the issues to be covered, the Chief Native Commissioner had instructed all provincial and district administrators on April 2, 1932, to submit outlines of the outstanding land disputes in their areas.² They were to give the history of the disputes, their own opinions, and detailed expositions of the African claims. On the basis of this information and his study of the official files and records, Fazan was able to supply the commission with a concise but exhaustive precis in which the specifics of the issues to be investigated were explored and the relevant aspects isolated.³ With the background investigation complete, and a grueling itinerary laid out, the commission embarked upon its activities in Kenya in August 1932.

The commission heard evidence from 736 witnesses in forty-two places throughout Kenya from August 1932 through March 1933 and received 507 memoranda, 212 statements and 400 letters and documents.⁴

¹ A few months earlier Kenyatta had been accused in Kenya of being a "partially sophisticated African" whose "dissemination of ill balanced and mischievous criticism" in the Houses of Parliament should be stopped for the good of both Africans and Europeans in Kenya. "Embarrassing the Government," East African Standard, April 23, 1932.

² KNA, PC/RVP/6A/15/47, Circular No. 19, Native Affairs Department, April 2, 1932.

³ The Kenya National Archives has volumes two and three of the precis. Excerpts from all three volumes of precis preface the discussions of issues in the commission's Evidence.

⁴ Report, sections 5 and 6.

Evidence was taken from government officials, administrators, settlers, missionaries and various associations, and most of these individuals and groups also submitted written memoranda. Although this material was of differing value, most of it was later published as part of the commission's printed evidence.

Throughout, the commission relied heavily upon the cooperation of district and provincial administrators. Not only were they required to give verbal and written evidence themselves, but they also had to arrange the presentation of the evidence of other witnesses in their areas, oversee the barazas at which most African evidence was taken, authenticate the written version of African oral evidence, accompany the commission while it was in the area, provide it with any additional required information and often arrange accommodations for the commissioners. When there was little information on a land issue, and no available expertise, the local administrator's knowledge was crucial to the final decision reached by the commission. Because of this, Fazan requested, in August 1932, that they submit detailed written memoranda on their areas. They were directed to give a brief historical survey indicating the history of local populations and explaining their land tenure system and its current significance. They were also to provide an economic survey of the area, a list and examination of specific land claims, and a summary of the issues with their own recommendations.

Fazan also devised a questionnaire for the provincial commissioners which provided guidelines for their verbal testimony before the commission.¹ Government officials not directly concerned with African

¹KNA, PC/RVP/6A/15/47, "Kenya Land Commissioners - Evidence of Provincial Commissioners," Feb. 27, 1933.

administration were also asked to give evidence. Of particular importance were the memoranda submitted by Charles Mortimer, the Lands Secretary,¹ since they gave the historical background of land policy in Kenya, as derived from old Land Office Records. The memoranda of C. G. Fannin,² District Surveyor, Coast Province, were significant, for he decided what coastal matters the commission would investigate. However, in general the commission had little interest in coastal land issues, because of their special nature and the additional time it would have needed to examine them fully.³

As expected, the land issues of the Kikuyu dominated the commission's attention. The heart of Kenya's land problems, as perceived by the government, settlers and Colonial Office, remained with the Kikuyu. Their political awareness, the complexity of their land problems and the potential trouble they might cause reinforced the commission's pre-occupation with their land claims and needs. It was among the Kikuyu that the commission generated the most African interest.

Before the commission had begun its work in Kenya a member of the House of Lords had expressed the fear that Africans in Kenya would be prevented by district commissioners from holding meetings to discuss their problems.⁴ District commissioners were therefore instructed to facilitate meetings and to assist the people in the preparation of their cases.⁵ Few district commissioners seem to have taken their instructions

¹ Evidence, Vols. I and II.

² Ibid., Vol. III.

³ KNA, PC/Coast 2/242. S. H. Fazan to Fannin, Nov. 2, 1932.

⁴ Great Britain, Parliamentary Debates (House of Lords), Vol. 84 (1932), cc. 308-309.

⁵ KNA, PC/RVP 6A/15/47, Circular No. 33, Native Affairs Department, May 31, 1932.

literally, and most Africans were left to their own resources in the preparation of their claims. In these circumstances the Kikuyu, with their previous experience in dealing with the government and other commissions and with their intense land consciousness, fared the best of all African groups.

The Kikuyu heard of the appointment of the commission before being notified by their district commissioners because some of their educated young men could read the English newspapers.¹ Kenyatta had also sent the Kikuyu Central Association a letter about the commission from Britain,² advising that his fellow Kikuyu prepare for the commission. Such advice seems to have been unnecessary, since news of the commission had caused a great flurry of activity to prepare claims and evidence. Many Kikuyu saw the commission as the answer to their previous petitions and a response to Kenyatta's activities in Britain.

At the time of the Kenya Land Commission's appointment, there were a number of associations among the Kikuyu,³ reflecting a wide range of attitudes and opinions, except in land matters. All the organizations produced memoranda which expressed frustration at the injustices of land alienations and the inadequacy of the land left to them. Of the groups, the KCA was the most active in preparing for the commission.⁴ Most of the KCA leaders were from Kiambu and a neighboring section of

¹ Interview, Justus Ng'ang'a Ruinge, June 28, 1972.

² Interview, Ng'ang'a Goro, June 24, 1972.

³ Besides the Kikuyu Central Association, the major ones were the Loyal Kikuyu Patriots of the Southern District of Kiambu and the Progressive Kikuyu Party in South Nyeri.

⁴ The following information about the activities of the KCA and its Kikuyu Land Board Association was obtained in interviews with Ng'ang'a Goro, (June 15, 24, and Aug. 2, 1972); Justus Ng'ang'a Ruinge, (June 28, 1972, July 31, 1972) and Marko Kambui, (July 15, 1972).

Murang'a, the areas hardest hit by European alienations. The coming of the commission had a personal significance for them and they intended to present their own claims or those of relatives. However, if Kikuyu claims were to have any credence, they realized that they would have to be presented in an organized manner.

The task of organizing individual and mbari claims for submission to the commission went beyond the KCA's function and abilities. It was decided to form a subsidiary organization which became known as the Kikuyu Land Board Association (KLBA) to do the organizing. The KLBA acted as a sub-committee of the KCA¹ and these "two bodies worked together as if they were one."² Prominent KCA men from the Limuru-Kabete-Kikuyu township area provided the leadership for the KLBA. This section of Kiambu had lost some of the most valuable land in Kenya during the alienations and was also the area where Kikuyu were claiming right holder occupancy rights on European farms.

The KLBA's President, Ng'ang'a Goro, its Treasurer, Marko Kambui, and its Secretary, Justus Ruinge, worked with other KCA leaders in Kiambu to prepare a form which the mbaris could use to file their claims. "Those whose lands had been taken away bought maps [from the Land Office] and prepared memoranda which would be handed to the commission."³ The KLBA assisted in the preparation and typing

¹ During the period when the KLBA was most active, the KCA was undergoing fierce internal strife. The controversy centered around Harry Thuku, who after his release, had become President of the KCA. However, he had become pro-government in his attitudes and his leadership was soon challenged. This rivalry was responsible for his disavowal of the KLBA in Nov. 1932. (KNA, PC/CP/9/9/2, Harry Thuku, President of KCA to Secretary of Kenya Land Commission, Nov. 25, 1932.)

² Interview, Ng'ang'a Goro, June 15, 1972.

³ Interview, Ng'ang'a Goro, June 24, 1972.

of memoranda and encouraged each mbari claiming land to chose a "leader" to act as spokesman before the commission. Through the efforts of the KLBA, the commission was swamped with mbari claims too numerous to appear in its printed evidence.

The KCA was also concerned that non-Kikuyu Africans be prepared for the commission. Letters were sent to other ethnic groups to warn them to appraise the commission of their land grievances or face the danger of more land losses.¹ The KCA's contacts were best with the Kamba and Teita peoples but they were also in touch with the Maasai and others. Apart from the Kikuyu and associations such as the Kavirondo Taxpayers Welfare Association, few Africans prepared written memoranda for the commission. Most African land claims were made by chiefs and other elders in verbal testimony at barazas convened by the commission.²

Since the Kenya Government only recognized its appointed chiefs and Local Native Councilors as legitimate African representatives, their testimony overshadowed other African evidence to the commission. However, the Kikuyu chiefs and councilors were just as vociferous as the KCA and KLBA in condemning the injustices of past government land policy. One of their number, Senior Chief Koinage of Kiambu, emerged

¹One example of these letters seems to have survived. It is addressed to the Giriama and exhorts them to prepare so "that when those come from England you may say for your rights in your land." KNA, PC/Coast 2/243, "The End," undated.

²Fazan wrote to the Provincial Commissioner, Kikuyu Province, that the barazas provided very little useful information. He wanted the Kikuyu barazas to be kept short and instructed the P.C. to warn the Kikuyu that the commission was not there to "listen to political speeches." KNA, DC/KBU/4/5, Fazan to P. C., Kikuyu, Sept. 26, 1932.

as the most forceful Kikuyu representative to appear before the commission.¹ Because he was a respected chief who had formed the Kikuyu Loyal Patriots to represent "moderate" Kikuyu views and had been sent to London by the government to give "African evidence" before the Joint Select Committee, his evidence had more impact on the commissioners than that of the KCA "radicals."

Koinange's own mbari had suffered from the alienations to the settlers and he shared the emotional commitment to the lost land so prevalent in Kiambu. This commitment precipitated one of the most memorable incidents connected with the commission's deliberations. It took place in Kiambu, where much to the consternation of the settlers the commission's hearings were open to all, rather than being racially segregated, as they had assumed. As a result, a unique situation was created in which Africans could confront and refute the evidence of settlers, and vice versa.² The particular incident³ involved the settler claims that the land alienated in Limuru had not belonged to the Kikuyu. Koinange challenged this, and maintained that his own family had lived in the area for many generations. An early settler in the area named Block swore that Koinange had only come to the land he claimed after it was alienated. When Koinange maintained, "I can still point out the graves of my grandfather and great-grandfather" on the land in question,

¹Kenya gave his evidence in London and did not have an opportunity to challenge the settler evidence. Evidence, Vol. I, pp. 442-444.

²Only at these November meetings in Kiambu did the commissioners allow Africans to act as "assessors." One need only look at the storm of settler criticism which resulted to understand why this practice was not continued.

³The following account is taken from the Evidence, Vol. I, pp. 630-39.

Block said this was impossible. But the next day the D.C., Kiambu and Block accompanied Koinange to the site "where Koinange's father and grandfather were supposed to have lived and where they were both buried." However, Block again swore before the commission that "Koinange never lived there; he only came there...he was a stranger... I believe there are no graves there." The matter rested there for two months until the commissioners received a letter from Canon Leakey who had exhumed the remains of Koinange's grandfather at his request. They had been found "on the lower side of a road made by a European settler to go down to his coffee factory," the precise location where Koinange had insisted his grandfather was buried.

At each baraza in Kiambu the commission generated great excitement. Hundreds and sometimes thousands of Kikuyu came to hear the evidence given by their spokesmen.¹ As the commission traveled to the other Kikuyu districts and to the Kavirondo Reserves, they realized that the intense African reaction was the result of their expectations that the commission would return the lost lands. Deciding that such sanguine anticipation would cause the government trouble, the commissioners on their own cognizance acted to confine "these aspirations within reasonable bounds."² They debated and approved the exact words of a statement delivered to Africans at a baraza in Kiambu "that there can be no question, generally speaking, of land already alienated to

¹ A crowd of over 2,000 gathered for the commission's hearing at Limuru and it took the D.C., Kiambu, Koinange, and the headman some time to move them away, so they would not interfere with the proceedings. East African Standard, Nov. 26, 1932.

² C.O. 533/424, 18117, Carter's Memorandum enclosed in Governor Byrne to S/S, Dec. 31, 1932.

Europeans being taken away from them."¹ If the commissioners found African claims to land justified, they said, they would try to compensate them with land elsewhere, if possible. This statement precipitated the only violent incident associated with the hearings of the commission; the following morning two cows belonging to Europeans in the Kiambu area were found slaughtered.

Although the commissioners' statement that they would not return alienated land to Africans, even if they were the rightful owners, raised allegations that they were prejudging their findings,² they were merely publicizing one of the basic assumptions under which they operated. The Colonial Office had told Carter that he was to "accept the facts as they exist today" in Kenya.³ He and his fellow commissioners interpreted the phrase as an instruction to accept the inviolable alienation of African land to settlers. When the commissioners publicly announced that the alienations were irreversible, the Colonial Office allowed the statement to stand. It only criticized the political wisdom of the statement, since commissioners had apparently failed to take into account that they would have to run "the gauntlet of Kenya critics at home."⁴

The controversy over the commissioners' statement was considerable but it would have been greater, if the British public had been aware of the "advice" given to Carter by the Colonial Office on the "White Highlands"⁵ term of reference. This "advice" constituted the basis of

¹C. O. 533/424, 18117, "Kenya Land Commission Statement on Compensation" (Kiambu Baraza).

²"Kenya and Land Compensation," Manchester Guardian, Jan. 12, 1933.

³C. O. 533/424, 18117, W. C. Bottomley to Carter, May 26, 1932.

⁴C. O. 533/424, 18117, Minute of Freeston, January 13, 1933.

⁵Hereafter this area will be referred to as "the Highlands."

later allegations that "secret instructions" had been given to the commission, charges well founded, not only in the secretive nature of the instructions, but also in the disastrous effect they had on African land rights.

The Colonial Office had failed to define the nature of the "privileged position" which Europeans were to have in the Highlands when it originally had instructed the commission. Fazan realized that the commission could not fulfill its obligations under the sixth term of reference without making certain assumptions which were beyond its jurisdiction.¹ In a memorandum to Carter, he pointed out that it was not wise for the commission to be asked to make such unjustified assumptions. Carter concurred and asked the Kenya Government to refer the matter to the Colonial Office.

The absence of a definition for the settlers' "privileged position" was not an oversight but the consequence of a deliberate Colonial Office policy. Although granting the restriction of the Highlands, the Colonial Office had always maintained that this was an "administrative practice" rather than an official policy. With such obfuscation it had tried to bypass the objections of Indians in East Africa who claimed that as British subjects they should also share in the Highlands. This issue has caused serious political confrontations in Kenya and much controversy with the India Office which had to placate Indian nationalists. More recently, the Colonial Office also had caused diplomatic trouble with the Japanese, who, as non-whites, were theoretically excluded from the Highlands,

¹L.O., LND 45/2, Vol. II, S. H. Fazan, "Some Observations on the Sixth Term of Reference."

even though Britain had agreed to a treaty which granted them extra-territorial rights in the British Empire.¹

In the definition of the settlers' "privileged position" sent to Carter the Colonial Office accepted the principle advanced by the Kenya Government that the declarations of 1906 and 1908 excluded Africans from agricultural land in the Highlands. It instructed the commissioners that the "privileged position" was to be defined as:²

- (1) the right of Europeans to acquire by grant or transfer agricultural land in an area now to be defined and to occupy land therein;
- (2) that no person other than a European shall be entitled to acquire by grant or transfer agricultural land in such area or to occupy land therein.

As minuted by Bottomley, the commissioners' task therefore was to deal "with African requirements of all kinds knowing now that Africans equally with Indians cannot be provided for by ordinary land grants in the area to be defined."³ Since the majority of African claims concerned this area where most of the best land in Kenya was found, the commission's possible recommendations had been deliberately and effectively circumscribed. Without recourse to land in the Highlands, the commission could not fulfill its instructions to provide for African land needs.

The new definition of the "privileged position" was kept secret to remove the possibility of controversy.⁴ The Colonial Office justified its secrecy by stressing that there was no policy change involved in the

¹C. O. 533/424, 18117/6, Minutes on file. This treaty was the Anglo-Japanese Trade and Navigation Treaty of 1911.

²C. O. 533/424, 18117/6, Draft, S/S to Governor, Kenya, Dec. 20, 1932.

³C. O. 533/424, 18117/6, Minute by Bottomley, undated.

⁴C. O. 533/424, 18117/6, Minute by H. T. Allen.

definition since it was merely an "ad hoc" formula for the guidance of the commission. By so presenting it, the Colonial Office hoped to avoid the necessity of consulting the India Office or considering the Japanese treaty question. It reiterated this "no policy change" argument again when the matter of the "secret instructions" came under public scrutiny in 1934, and 1935.¹ It was a flimsy defense and they were accused of deception by all except the Kenya Government and the settlers, who had a vested interest in the new Highlands policy. Most of the Kenya critics remained convinced "that this instruction completely vitiates the report of the Commission."²

Before the commission could submit its report, it was drawn into another controversy, one of the most heated on British policy in Kenya during the colonial period. The Secretary of State for the Colonies had asked the commission to approve the amending of the Native Lands Trust Ordinance to allow the excision of Kavirondo African Reserve land at Kakamega for gold mine leases. Amendment was necessary because the original ordinance contained two important stipulations: the "Passfield Pledge" that land taken from an African Reserve had to be replaced by land of equal value and extent; and a provision that the Local Native Council and the Africans concerned were to be consulted about any excisions. The Kenya Government found the "Passfield Pledge" inconvenient and knew that Kakamega Africans and their Local Native Council would never approve the loss of their lands. With Passfield and the Labour

¹Great Britain, Parliamentary Debates (House of Commons), Vol. 297 (1935), cc. 2077-2081.

²Ibid.

Party no longer in control of the Colonial Office, it was able to get swift approval of an amendment to eliminate these two provisions.

Informed public opinion in Britain was aghast at the aplomb with which the Kenya Government dismissed provisions which safeguarded African rights.¹ Few failed to see a tragic irony in the identity of the amendment's main spokesman, the Chief Native Commissioner. In a statement before Kenya's Legislative Council he had admitted that no amount of compensation could have convinced the Africans of Kakamega voluntarily to give up their land. Therefore, for the "prosperity of the country" it was necessary to move them from their land, even though "we shall have to hurt their feelings, to wound their susceptibilities and in some cases we may have to violate their most cherished and sacred traditions."²

To counter the criticism against the amendment and because the ordinance was within its jurisdiction, Cunliffe-Lister instructed the commission to issue an interim report. The commission's interim report³ was not what the beleaguered British and Kenya Governments had expected. While it did not reinstitute the Native Lands Trust Ordinance's provision about consultation with local Africans, the solution which it recommended for Kakamega was consistent with the "Passfield Pledge." The Colonial Office and the Kenya Government had wanted this principle dropped altogether and were greatly displeased. Rationalizing that the

¹Great Britain, Parliamentary Debates (House of Lords), Vol. 86 (1933) cc. 548-612, and the Jan. and Feb. issues of the Times and Manchester Guardian.

²Kenya, Legislative Council Debates, Dec. 20, 1932.

³C. O. 533/429, 3006/13, "Interim Recommendations of the Kenya Land Commission," March 22, 1933.

commissions' Kakamega solution would "displease" Africans, they decided that it would be better not to publish the interim report.¹

The inconvenient interim recommendations were quietly shelved. By the time they appeared again in the commission's final report, the Kakamega land excisions had become a moot question. With the gold strike quickly petering out, the land had become valueless to Europeans again. In the end very few Africans actually lost land in Kakamega, but the incident had reminded them of the insecurity and vulnerability of their land rights. The Colonial Office's treatment of the interim report had indicated that even when the commission was willing to give some protection to African rights, it was powerless to do so. This proved an accurate portent of the effectiveness of similar recommendations in the commission's final report.

¹C. O. 533/429, 3006/13, Governor Byrne to S/S, April 7, 1933 and S/S to Governor Byrne (Draft), May 5, 1933.

CHAPTER IV

THE REPORT OF THE KENYA LAND COMMISSION

The Kenya Land Commission submitted its final report on July 7, 1933, but it was not made public until May 1934. The difficulties of the simultaneous publishing of the report and the three volumes of evidence in both Kenya and London were the official reasons for the discrepancy in these two dates. However, political strategy had a much more important role in the delay, for the British Government needed the additional time to study the commission's recommendations and to formulate its own position on them. This was no easy task since the report contained 2,152 sections and thirteen appendices and was accompanied by 3,458 pages of printed evidence.

The commission assumed that it was possible to solve almost every land problem in Kenya, and their report contains so many recommendations that the reader is overwhelmed with the variety of issues under discussion. Unfortunately, the extreme attention to detail detracts from and often obscures the underlying principles of their recommendations.¹ This chapter will isolate and study the principles and assumptions which influenced the commissioners' findings, and examine their application in the case of three specific peoples.²

The Kenya Land Commission's Report is a ponderous and often unintelligible work, only partly because of the complexity of the problems

¹Some of their critics claimed that this was intentional.

²The term "tribe" will be used for convenience sake since the commissioners used it throughout their report. Although they never gave their definition of the term, their recommendations indicate an assumption that it was primarily a political entity.

under discussion, the difficulties of style and the tendency toward minutiae. More fundamentally, however, the report lacks a uniform logic because of the contradictions implicit in the commission's task of providing for the opposing land needs of two communities in Kenya. Furthermore, the commissioners interpreted their terms of reference to mean that they were "to make recommendations which offer a practical solution of the various problems in the light of facts as they exist today."¹ They therefore accepted the previous alienation of African lands to Europeans as a fait accompli, no matter how unjust. Since African needs had been subordinated to settler requirements, the commissioners' real task became the placation of Africans and their supporters in Britain.

If the commission was not to appear as a total sham, its members knew that they would have to provide Africans with some form of compensation for unreturnable lands. They would also have to find some means of satisfying African economic needs for land without suggesting an infringement of the settler-restricted Highlands. Their options were very limited, since most of the good land in Kenya was already either in the Highlands or in the African Reserves. Some potentially good land could be found in the Forest Reserves, but the Forest Department fought any attempt to return even small areas to Africans. There was also only a limited possibility of monetary compensation because of Britain's reluctance to spend money in Kenya which would not yield financial dividends. The poor economic state of the Kenya Government and the general austerity of the 1930's depression further lessened available funds. With

¹ Report, section 12.

their alternatives restricted, the commissioners reacted by severely narrowing the grounds on which compensation was due to Africans. They devised a set of guiding principles which continually qualified the eligibility of Africans for the paltry compensation and poor land they could recommend.

The commissioners decided that they would divide land claims into two categories: those based on historical rights and those based on present and future needs. They also concluded that even if these claims were presented by individuals or groups, they would all be treated as tribal claims which could be settled only along tribal lines. Land claims which did not stem from membership in a tribe would therefore be dismissed as invalid. As a first step in deciding the legitimacy of African land claims based on historical rights, the commissioners set about determining the extent of the land within the "unequivocal territory"¹ of each tribe in Kenya at the beginning of the colonial period. While they carefully considered the evidence of explorers, settlers, administrators and missionaries, they generally dismissed African data as extravagant, unreliable and biased.

Each tribe could claim only land which it had both "owned" and occupied in pre-colonial times. If either of these could not be proven to have existed to a substantial degree, the commission ruled that the land in question could be alienated without compensation. After having ruled on each tribe's "unequivocal territory," the commissioners used their own formula² to discover if the land had reached its optimum

¹ Report, section 30.

² Report, sections 318-19 for the computations on the Kiambu Kikuyu area.

population density¹ while in African occupation. Any presumed under-population determined the proportion of the land which the commissioners considered waste land. They firmly supported the government's right to dispose of this waste land without any compensation. They claimed that²

the greater the margin by which the population falls short of this requirement [optimum density], the greater is the justification of Government for regarding unoccupied land as waste land of which it had the right and duty to make disposal in the way which it deemed best for the country at large.

Compensation was therefore due only for that portion of alienated land within the "unequivocal territory" of the tribe which had the optimum population density the commission had devised and which could not be deemed "waste land." Even if a claim met the above criteria, the commissioners could still decide that compensation was unnecessary if alienated land had been used to provide services of "direct benefit" to Africans, i.e., a mission, a government station, etc.³ For those claims which managed to meet the commission's qualifications, money rather than land was usually offered as compensation. Except in the cases of the Kikuyu land losses⁴ and the Kakamega mining leases,⁵ they abandoned

¹The commissioners did not use scientific evaluations to arrive at any area's "optimum population density," but used very arbitrary figures derived from population density studies of Reserve areas or speculations on the potential population an area could support. It is an understatement to say that its figures are suspect and self-serving.

²Report, section 30, part 2.

³Report, sections 444, 451, etc.

⁴Report, section 30, part 2.

⁵Report, Chapter XIII, part 1.

the "Passfield Pledge," declaring that there was no need to compensate for lost land by providing land of equal value and extent.

Whatever form the compensation took, the commissioners believed that it should not go to the individual, family or community which had sustained the loss, but to the tribe. This circumlocution seems the ultimate contradiction, since throughout their work they proclaimed their desire to promote the growth of individual forms of land tenure among Africans. In their report the commissioners had criticized and denounced the previous treatment of African areas as a "common," but their own recommendations reflected this avowedly undesirable policy. It is therefore difficult to understand how they could claim that their proposals were "based on a frank recognition of the fact that the tenure of land is progressively becoming more individual..."¹

The commissioners explained their contradictory behavior by arguing² that individual Africans had not had full ownership rights to the land they had lost, because family groups and the tribe also had some rights to the land. If they were "oversolicitous" for the rights of various parties and tried to "precisely compensate" each of them, they claimed that "such solicitude would defeat its own end" because it would "embitter relations" among those involved. To bolster their sophistry, they added that settlements in individual terms was "certainly not practicable at this date."³ With this admission the commissioners revealed that their true motivation was expediency rather than concern for strained relations among Africans.

¹ Report, section 1821.

² Report, sections 329-339.

³ Report, section 337.

The commissioners may have thought their decision to compensate on a tribal basis justifiable because it was practical, but they perpetrated a great injustice on Africans with legitimate land claims. Most African land tenure systems respected the land rights of individuals and families. Furthermore, the tribe in Kenya was a concept imposed by the colonial administration, since most allegiances were held on a much more local level. The government had also imposed the Local Native Councils which were to receive any monetary compensation due the tribe.¹ Those people whose verified land claims had formed the basis for compensation had no way to share in it. This left little basis for the commissioners' claim that they had recommended just compensation for legitimate claims.

In their examination of African economic needs for land, the commissioners dismissed past alienations as the cause of current African problems. Instead, they blamed poor African agricultural and animal husbandry practices and the population increases encouraged by colonial rule.² African land problems could not be solved, they argued, by the addition of land to the Reserves, since at best this would only temporarily alleviate the situation. The solution lay in the improvement of African agricultural and stock-keeping methods and in the development of more progressive forms of land tenure.³ While the commissioners recommended that the government should work toward these improvements, they were forced to acknowledge that it might be some time before

¹ Report, section 337.

² Report, Part II, Chapter I and sections 1980-2558.

³ Report, sections 2085-2089.

they came about. In the meantime, they recommended the addition of blocks of land to certain Reserves,¹ specifically to provide relief for high population density areas and to offer alternate pasturing areas for Reserves which were to be reconditioned.

However, the land which the commissioners recommended for addition to the African Reserves, on economic grounds or as compensation, was of exceptionally poor quality. The additions of huge expanses of land looked good on paper but were, in reality, almost useless. Of the 2,629 square miles involved much was already part of the Reserves and the commission's recommendations were merely a formalization of its incorporation.² The remainder, except for a small amount of Forest Reserve land, was uninhabitable, lacking any permanent water supply. Its soils were very poor and it was plagued with tsetse fly, East Coast Fever and a variety of human diseases. Because of these conditions it was known locally as "fly and dry" land.

The commissioners did not admit the worthlessness of the land they recommended for the additions, but they did stress the need for the government to provide permanent water supplies on some of it. But even if the Kenya Government had had the necessary financial resources, it is doubtful that such inhospitable land would have been able to attract sufficient people for it to act as either compensation or as an economic relief to the Reserves. Only the restricted land in the Highlands suited this purpose!

¹Report, sections 536, 758, 759, 1452-1460. There is a schedule of these Class B1 and Class B2 land blocks attached to Part III, Chapter II.

²For example, a 205 square mile area called Mwea was already part of the Kikuyu Reserve. Report, section 462.

Under a new land classification system which the commissioners suggested,¹ the land to be added to the Reserves on an economic basis was to have a different status from the land added for compensation. Asserting that fluidity of movement was a major characteristic of a good land system, they criticized the emphasis given to the "safeguarding" of African lands. They claimed that this obsession with security had established rigid tribal boundaries which severely curtailed fluidity of movement in African areas² and had hampered African development. The commissioners believed that their new land classification system would stimulate movement and therefore development.

Under the new system, the former African Reserves and the land added to them as compensation for legitimate historical claims would become "Native Lands," or Class A lands. Not included within these areas were the lands sparsely occupied by pastoral groups such as the Turkana. However, these people were to have exclusive rights, precluding any development by Europeans or other Africans which might infringe on their needs. The land added to satisfy economic needs would be Class B with two categories: Class B1 for land added on a permanent basis and Class B2 for land added to fulfill a more temporary need. The terminology "Reserve" would be applied to the "B" lands.

In addition to the land held by Africans through historical right or economic need, the commissioners suggested the creation of special African leasehold areas. These Class C areas were to be set aside for the exclusive use of Africans who wished to hold land "on a more private form of tenure" than was possible in the "Native Lands" or

¹Report, sections 22-26; 2078-2081 and Part III, Chapter II.

²Report, section 1714-1717.

"Native Reserves." The suggestion for African leasehold areas had been advanced and strongly supported by Carter.¹ The Southern Rhodesia Land Commission,² which he had also chaired, had recommended the creation of such areas, after it had eliminated African land rights outside of the Reserves. Carter believed that leasehold areas would also be a practical solution in Kenya to the problems of "detrribalized" Africans and others who would not fit into the conventional Reserve mold.

With Carter's urging, the commissioners strongly supported the "Native Leasehold Areas." Their report contained detailed regulations for the allocation of land within them and for possible ways in which the government might guide and encourage their development.³ The commissioners also proposed the creation of leasehold areas for the remainder of Kenya not falling within the Highlands, Classes A, B, or C land, or the areas where certain African peoples were to have exclusive rights. In these Class D leasehold lands "no special privilege of race" was to operate for either "initial grants or transfers" of land.⁴

While the commissioners did not approve the emphasis given to "safeguards" in previous land legislation, they did acknowledge the need for security. They believed that rather than providing an ordinance which guaranteed lands to Africans "forever" but which could be amended,⁵ the "Native Lands" and the boundaries of the "Native Leasehold Areas" ought to be protected by an Order in Council.⁶ They recommended

¹ Interview, S. H. Fazan, Sept. 28, 1972.

² For a discussion of this commission and its results, see L. H. Gann, A History of Southern Rhodesia (London, 1965), pp. 267-80.

³ Report, sections 1880-1935.

⁴ Report, section 2080.

⁵ Report, section 1816.

⁶ Report, sections 1441-1469.

against including the B lands in the order to allow for more flexibility. The commissioners justified the special nature of the B lands by asserting that¹

The greatest disservice we could do to the country would be to compromise future development by locking up rigidly in tribal compartments land not yet required by the tribes, because we apprehend that at some uncertain date in the future it might be required.

Despite the complexity of the commission's land classification system, it failed to provide for African urban-dwellers. The idea then prevalent among colonial experts was that Africans were a rural people and that any African experience in an urban environment was only of a transitory nature. Administrators and settlers deplored Africans leaving their traditional lives and taking up employment in the towns and cities. These "detrribalized" Africans were condemned for having been corrupted by their urban existence. Such sentiments were usually shared by missionaries who wanted to keep their flocks away from the evil influences of the towns.

One important factor in the European animosity to "detrribalized" Africans was that many of the African critics of government, settler and missionary practices were town and city dwellers. Europeans usually wanted these Africans returned to their tribal Reserves where they would be under traditional authorities. The commissioners agreed but suggested that "detrribalized" Africans unwilling to stay in their Reserves should be given the option of taking up land in the "Native Leasehold areas."² This

¹Report, section 2077.

²Report, sections 1875-1878.

recommendation was based on a fundamental misunderstanding of the goals of urban Africans. They went to Nairobi, Mombasa or Nakuru because the Reserves could not meet their needs, and certainly would reject living in desolate areas where even nomadic pastoralists could barely eke out a living. Like the other lands that the commissioners suggested making available to Africans, the lands "for the detribalized" were almost totally incapable of supporting humans.

In additions to the "detribalized" urban dwellers, another group of Africans living outside of the Reserves also received the commissioners' attention. These were the estimated 150,000 "resident native labourers," or "squatters," employed on European farms.¹ In their discussion of these people, the commissioners supported the settler beliefs that they should be treated as laborers,² even though many had signed labor-tenancy agreements and were in most cases real tenants of the settlers. Treating "squatters" as laborers implied that they could be forced to leave the land upon termination of labor contracts. The commissioners realized that this interpretation of the status of "squatters" might cause hardships to Africans, but believed that these difficulties would be minor and that the government would be able to make provisions in the Reserves for these people. However, because of the increased land pressure, the return of the "squatters" would cause in the Reserves, the commission again suggested the "Native Leasehold areas" as an alternative.

¹Report, section 1860.

²Report, section 1976.

The commissioners' inability to formulate feasible solutions to the land problems of urban Africans and "squatters" was a consequence of their strict adherence to the idea that African land rights derived from membership in a tribe. Urban dwellers and "squatters," therefore, had no rights to the land they occupied, only to land within their tribe's gazetted borders. While the allegation that the tribe defined all African land rights hurt the urban dwellers and the "squatters," the greatest injustice was done to a scattered and powerless group of people called the Dorobo.¹

The Dorobo are a hunting and gathering people who occupied land throughout Kenya before being driven into forest areas by the encroachments of agricultural and pastoral Africans. They lived within segregated communities interspersed among Kikuyu and Maasai settlements. With the coming of colonial rule, they were continually harassed by the government, driven from their forest homes, and deprived of their livelihood by the Game Department. The government had tried to deal with the problem of the Dorobo many times, the last being the Dorobo Committee appointed in 1929.² Without much past success, the government gladly turned the Dorobo matter over to the Kenya Land Commission.

The commissioners "solved" the Dorobo problem by denying that they could be considered a tribe.³ Not being a tribe, it followed that the

¹The most accurate way to refer to these people is by using the names of their local groups. The term "Dorobo" is used mainly for convenience because the government categorized them as such.

²The committee reported in July 1931, but action on its recommendations was postponed since the Kenya Land Commission was to consider the matter.

³The commission's recommendations on the Dorobo are found under the discussions of the tribes with whom they supposedly had affinity.

Dorobo had no right to the land which they occupied and should be evicted. The commissioners recommended that the now landless Dorobo be sent to the Reserves of the tribes with whom they had an "affinity," even though these peoples were unwilling to take in outsiders. The commissioners argued that it was in the Dorobo's best interests that they be absorbed by culturally-superior peoples. With this justification, the commission robbed a totally defenseless people of their land, dispersed them among sometimes hostile peoples and, in the process, stripped many of them of any wealth they had accumulated, for most of their cattle died when the largest section of the Dorobo were brought to a disease-ridden area among the Kipsigis.

As in the case of the Dorobo, the commissioners saw physical removal as a viable solution for others who did not fit within their definition of a tribe. Urban dwellers no longer employed in the cities, "squatters" dismissed from European farms, and small African groups, such as the El Gonyi¹ and the Uasin Gishu Maasai,² were other candidates for removal. However, the commissioners' most politically controversial removal recommendations concerned the Kikuyu of Tigoni township in Kiambu and the Kikuyu right holders on alienated land. The Tigoni people occupied a piece of alienated land which had never been taken up for European settlement, but the commissioners decided that they had encroached on the land since the colonial period.³ They recommended their removal to the Reserve and suggested some disturbance compensation to remove any

¹Report, sections 1076-1087.

²Report, sections 915-923.

³Report, sections 388-392.

possible feelings of grievance. It is revealing that the commissioners thought that a small payment would eliminate the grounds for future grievances for a people who were being forcibly removed from land they considered their own.

The commissioners also thought that disturbance compensation was all that was due to the right holders whose occupation of alienated land had been guaranteed by previous land legislation. By terminating the rights of these people and recommending their removal to the Reserves, Carter and his fellow members were acting in accordance with their "secret instructions" on the European privileged position in the Highlands. These instructions excluded Africans from the Highlands and the commissioners' decision that any remaining African rights there would have to be extinguished was a logical consequence. They justified this decision by asserting that they had investigated all African claims to land outside of the Reserves and compensated the legitimate ones.¹ In their view there was no longer any need to continue the protection which the Crown Lands Ordinance gave to right holders. Furthermore, the commissioners agreed with the Kenya Government that it was necessary to settle the question of the Kikuyu right holders because their "claims and pretensions were exaggerated out of all proportion to the truth"² and were causing trouble.³ They believed it "absolutely essential to be rid of such potential fruitful sources of trouble as section 86 of the Crown Lands Ordinance."⁴ However, by underestimating the numbers and

¹ Report, sections 1854-58.

² Report, section 1857.

³ "Native political agitators are quick to take advantage of the situation and the resultant indiscipline is embarrassing to the tribal authorities in the reserve as well as to the Europeans." Report, section 366.

⁴ Report, section 1857.

political ability of the right holders, the commissioners' intensified the problem.¹

Ending all African rights to land outside of the Reserves obviously did little to promote African feelings of security. And since the security of African lands was supposedly a primary concern of the Kenya Land Commission it had to recommend ways which, theoretically at least, countered its own assault on African land rights. Besides the Order in Council which would safeguard the boundaries of the "Native Lands" and the "Native Leasehold Areas," the members of the commission proposed that "Native Lands" cease to be Crown lands.² They challenged the appropriateness of the Crown Lands Ordinance of 1915 which, as interpreted by the Barth decision, had transformed all African lands into Crown lands. According to Carter, Hemsted and Wilson, "to deprive a man of his rights in land for the sake of protecting him is a method of procedure which is liable to be misunderstood."³ To clear up this misunderstanding they wanted Class A lands to be called "Native Lands" and the land rights within them transferred from the Crown to the African occupiers. However, these rights would not go directly to Africans but would be "vested in a trust"⁴ to be exercised by a revamped Native Lands Trust Board. The transfer of rights from the Crown to Africans was to be merely theoretical and act as a salve for African feelings of insecurity.

¹Report, section 1855.

²Report, section 1639.

³Report, section 1635.

⁴Report, section 1639.

In a further effort to gain African confidence, Carter and Wilson suggested that the new Native Lands Trust Board be situated in England rather than in Kenya, and Hemsted made this a definite recommendation.¹ The commissioners wanted the board to have only "protective" duties, with its previous theoretical administrative and development responsibilities reverting to the local colonial administrators, who had in reality never relinquished them. For the board to exercise its protective functions adequately, they believed that it must carefully avoid even the slightest appearance of bias. The commissioners admitted that, if the board remained in Kenya, objectivity would be impossible. Previously, the board had drawn its members from the governor's Executive Council and these members had confessed to the commissioners their difficulty in differentiating between their responsibilities as government members and as trustees of African interests.²

The commissioners also wanted the board removed from the sphere of vested interest groups so it might command African confidence. They did not, as Governor Byrne had, state that it was impossible to find local men who were impartial, but they did claim that "a Board consisting of trusted and impartial men resident in England would carry more weight."³ This was also their alternative to African membership on the board. Although admitting that African inclusion was the only real way to secure African confidence in the board, the commissioners argued that they were not ready to assume the responsibilities of membership.

¹Report, sections 1692-97.

²Report, section 1693.

³Report, section 1695.

The recommendations for altering the board were part of the commissioners' review of the Native Lands Trust Ordinance of 1930. Their major criticism of this ordinance was that it was responsible for the "premature locking up of the country's assets in land" and it had failed adequately to provide for the development of African lands.¹ To facilitate development, the commissioners recommended a procedure² which would by-pass the ordinance's obstacles to excisions and exchanges which involved African land. By "setting apart" African land and then arranging a lease or an exchange, it would be possible to avoid the stipulation in the ordinance that land of equal value and extent had to be given for land taken from an African Reserve. Only in exceptional cases did the commissioners think it would be necessary to follow the exclusion procedure for land to be taken from the African Reserves. With the "setting apart" procedure as the "regular method," the "Passfield Pledge" was circumvented and compensation could be either an outright or annual monetary payment to Africans who lost their land.

Of all the issues which the commissioners examined, the one upon which they placed the most emphasis was the development of African lands. In the name of development, their report recommended that the provisions for security against alienation in the Native Lands Trust Ordinance of 1930 be effectively eliminated, and suggested that the forced culling of African stock,³ and the use of forced African labor⁴ be adopted. Under the influence of Wilson,⁵ the commissioners had decided that poor

¹ Report, section 1504.

² Report, sections 1538-1541.

³ Report, Part III, Chapter X.

⁴ Report, sections 2070-74.

⁵ Interview, S. H. Fazan, Sept. 28, 1972.

agricultural and pastoral methods were the main land-related problems of Kenya. The most immediate danger, they thought, came from the overstocking of cattle, sheep, goats and donkeys on African land. The pastoral and semi-pastoral people were particularly condemned for this, with the Kamba and Elgeyo areas being designated for immediate attention.

The commissioners were well aware that Africans would resist any attempts to cull their cattle, but rather than suggesting that the government make it economically attractive to them, they advocated the use of force when necessary.¹ Forced culling had long been a settler viewpoint, and it is no coincidence that Wilson was the moving force for its inclusion in the commission's report. The Kenya Government's later forced culling and attempts at stock reduction caused African hostility and opposition ranging from passive to armed resistance. Unfortunately, this hostility has become the legacy of present developmental programs which are trying to upgrade the quality of cattle and other stock in Kenya.

The commissioners also urged another settler proposal, the use of African communal labor to carry out projects to improve the productivity of the land within the African Reserves. They believed that this arrangement would not only keep the expenses of reconditioning to a minimum, but also that the required labor would be in the "moral and physical interests"² of the Africans. By not being "permitted to live a life of idleness,"³ they would be saved from undoubted degeneration. If it was necessary to amend the International Convention on

¹Report, section 2031.

²Report, section 2073.

³Report, section 2073.

Forced and Compulsory Labor, to which Britain was a party, in order to permit this, then the commissioners thought amendment should be made in the interests of all. This recommendation would have proven quite embarrassing to the British Government, but like so many of the commissioners' suggestions, it appears to have escaped attention due to the magnitude of their report.

On the matter which had structured all of their recommendations, the defining of the Highlands, the commissioners followed the proposal which had been submitted by a 1928 Sub-Committee of the Governor's Executive Council.¹ They included every area in European occupation and most areas in which the settlers had expressed an interest. However, the Leroki area, the "Promised Land" for some of the settler leaders, was excluded because it was heavily occupied by the Samburu. Because of this exclusion the commissioners believed "that the provision which we have recommended for natives will entail some sacrifice on the part of the European community."² In light of this "sacrifice," and so that Europeans could "have the same measure of security in regard to land as we have recommended for the natives,"³ the commissioners suggested that the boundaries of the Highlands, like the boundaries of the "Native Lands," be guaranteed by an Order in Council. In fact, if the settlers had suffered the same degree of insecurity on their lands as Africans, there would have been quite a row in Britain!

The commissioners took a more courageous stand when they dealt with the question of financing the commission and its recommendations.⁴

¹ Report, sections 1952-71.

² Report, section 1978.

³ Report, section 1979.

⁴ Report, Part III, Chapter XI.

They accepted the principle that most expenses would be incurred to rectify mistakes made when the colony was still under the direct control of the British Government. The responsibility for these mistakes fell on the British Government which the commissioners believed should "assist in the provision of funds necessary to implement particular recommendations and the cost of the Commission."¹ The balance was to be paid by the Kenya Government.

The financing of the development of the Reserves was treated as a separate issue by the commission. To find the money for such expenditures as "the improvement of water supplies, fencing, combating of soil erosion, the elimination of tsetse fly, and the reconditioning and conserving of land,"² the commission revived the controversial issue of compensation due to World War I killed or missing African Carrier Corpsmen. To discharge this obligation, the imperial exchequer was advised to allocate £50,000 for the development of the African Reserves.

The question of the unclaimed wages of the African Carrier of the Military Labour Corps had been brought to the attention of the British Government by the Kenya Government a number of times since the end of the war.³ Despite the support of the Secretary of State for the Colonies, the Treasury and the War Office refused to acknowledge that there was any basis for this claim. The problem stemmed from the War Office's failure to register the names of Africans it drafted to serve as carriers during the early years of the German East Africa

¹ Report, section 2044.

² Report, section 2047.

³ C. O. 533/442, 23034/4.

campaign. Nonetheless, a 1918 Kenya Ordinance had mandated the payment of uncollected wages to the tribes of the dead or missing Carrier Corps members. It had been overturned on a technicality, and the War Office resisted any further attempts to pay this debt.

Carter was the moving force behind the recommendation which linked the issue of the unclaimed wages debt to the financing of the development of the Reserves.¹ The commission's report gave three reasons for supporting this suggestion.² First, Africans, who were legally "protected foreigners" during World War I, had been compelled to serve in a war they had not caused. Second, Africans gained nothing from the war which had been fought in furtherance of imperial policy. Third, the payments of unclaimed wages to the carriers' tribes was in keeping with the principles of the Regimental Debts Act of 1893 which governed the War Office's actions, when similar cases arose involving British soldiers.

As the commissioners pointed out in their report, all groups in Kenya were united in the belief that non-payment of the Carrier Corps claim would constitute a grave injustice. The commissioners themselves believed that if the obligation continued to be ignored, "it would constitute a much more callous violation of the principles of trusteeship to the natives than any of the injuries which the natives have suffered by the alienation of their land . . ."³ Their willingness to overstep the boundaries of their terms of reference in this case must be attributed not only to Carter's moral indignation at the actions of the British

¹ Interview, S. H. Fazan, September 28, 1972.

² Report, sections 2058-61.

³ Report, section 2068.

Government, but also to the support which the Kenya Government and the settlers gave the commissioners on this issue. The question had united the "local men" of the commission with the Kenya Government and people against the imperial government. It was perhaps the only time when such unity did not result in a recommendation which was detrimental to African interests.

The application of the major principles of the commission's recommendations to the specific land issues of individual tribes deserves some attention. The agricultural Kikuyu, the semi-pastoral Nandi and the pastoral Maasai people offer the best examples for this. Their land issues were among the most crucial examined by the commission, and they represented the range of different African societies which presented claims.

The land problems of the Kikuyu completely took up Part I of the commissioners' three part report and received more attention than the problems of any other African group. The commissioners were aware of the growing political importance of the Kikuyu and took particular care that their land claims were thoroughly investigated. Justifying their actions by citing the Kikuyu's development of individual forms of land tenure, they decided to deviate from their practice of not recommending compensation in land for legitimate land claims.¹ This decision was no doubt also motivated by the realization that their recommendations on Kikuyu claims would strongly influence the report's reception in Britain.

¹Report, section 30, part 2.

Having decided that the Kikuyu were to be compensated in land for any territory which was unjustly taken from them, the commissioners set up an elaborate "Profit and Loss Account" to balance the losses with additions they would recommend.¹ After their investigations of the limits of "unequivocal" Kikuyu territory, they decided that the Kikuyu had lost 109-1/2 square miles through unjust alienations. However, this was not the figure for which they thought that compensation had to be offered. They argued that the government had already given the Kikuyu 265-1/2 square miles, which were outside of their "unequivocal" boundaries. Although according to their reasoning, this addition had compensated the Kikuyu in terms of the amount of land involved, the commissioners were forced to admit that the poor value of the land added did not compensate fully for the good agricultural land which had been lost.

By using their own quite arbitrary and questionable formulae, the commissioners decided that the Kikuyu had sustained a loss equal to 19,520 acres of good agricultural land. In keeping with their guiding principle of not offering compensation for land used for services which they decided would benefit Africans, more land was deducted from the 19,520 acres. After some territory was added for general disturbance compensation, exchanges and to compensate the Kikuyu for the proposed absorption of neighboring Dorobo,² the commissioners arrived at the final figure of 21,000 acres being due the Kikuyu. Of this amount 2,000 acres was being voluntarily surrendered by the Church of Scotland from previously alienated land.³ Other than small pieces of land to be

¹Report, Part I, Chapter VI.

²These were the Kinari Athi people living in the forest near Kijabe at that time. Report, section 375.

³Report, sections 421-29.

purchased or exchanged, the remaining 19,000 acres was found in forest areas contiguous to the Kikuyu Reserve. The commissioners tried to forestall the opposition of the Forest Department by alluding to the political urgency of Kikuyu land problems.

The land recommended for compensation was to be given to the Kikuyu tribe as a whole and not to those individuals whose claims of unjust losses had been proven legitimate. In fact, most of it was located quite a distance from the areas where the original alienations had taken place, and it would have been extremely difficult for the dispossessed individuals to have received accommodation on it. In their argument against the compensation of individuals in Kiambu, the commissioners turned peoples' claims against them. They stated that when added up, "the total strength of all Mbari claiming to be concerned we arrive at a total which is greater by 50 percent than the total residents of the Kiambu Native Reserve."¹ Ignoring their own calculations that there were 110,000 Kikuyu "squatters" outside of the Reserve,² many of whom were from Kiambu, the commissioners decided to take this discrepancy in numbers "to be an indication that most of the members of the tribe consider themselves to have an interest in the land which has been lost."³ The commissioners therefore believed that they were fully justified in compensating the tribe as a whole for the loss of land in Kiambu.

To support their decision, the commissioners maintained that "the responsible elders of the Kikuyu have always regarded the loss of the

¹Report, section 335.

²Report, section 1860.

³Report, section 335.

Limuru farms and other territory as a matter of tribal rather than individual concern."¹ It is difficult to understand how they reached this conclusion when most of the "responsible elders" of the Kikuyu had advanced individual claims themselves. They need only to have examined this evidence² to have realized that all segments of the Kiambu Kikuyu acknowledged that alienations had hurt specific individuals who deserved land compensation.

While proclaiming that "very little real hardship" had resulted from the alienations of Kikuyu land and that no "redress is due any individual," the commissioners had added 2,000 acres to their "Profit and Loss Account" as "comprehensive compensation for the loss of amenities and general disturbance caused at the time of alienations."³ The Kikuyu to be evicted from Tigon and the European farms were to get monetary disturbance compensation. With these recommendations the commissioners thought that they had finally settled "every aspect of past grievances" advanced by the Kikuyu. They therefore wanted an Order in Council to guarantee that all Kikuyu and all African claims to land had been settled and could not be resubmitted in the future.

Throughout their discussion of Kikuyu claims, the commissioners had evinced great scepticism of their validity. They had decided that the Kikuyu had gained possession of Kiambu from the Dorobo by a process "partly of alliance and partnership and partly of adoption and absorption, partly of payment, and largely of force and chicanery."⁴ Their assumption

¹Report, section 337.

²Evidence, Volume I.

³Report, section 355.

⁴Report, section 285.

that "force and chicanery" played the biggest role in the Kikuyu takeover of Kiambu was not warranted by the evidence. Furthermore, if the use of "force and chicanery" to obtain land did undermine one's right to it, it followed that the British Government and the settlers had no rights at all in Kenya. But with their separate criteria for judging African and European behavior, the commissioners do not appear to have realized that this conclusion could have been drawn from their statements.

In their examination of Kikuyu rights to land on an economic basis, the commissioners believed that the only salvation from a condition of "general congestion" throughout the Kikuyu areas within thirty years lay in the adoption of improved agricultural practices and a new system of land tenure.¹ Admitting that it was unfair to assume that these changes would take place, they acknowledged the need for additional land to be added to the Kikuyu Reserve. However, the land they decided to add could not satisfy Kikuyu economic needs since the 350-400 square miles which they were to receive on the Northern Yatta as Class B1 land² were virtually useless. Even so, it was only to be opened piecemeal under controlled settlement, with European companies being allowed 99 year leases in the area to "provide a nucleus" for Kikuyu settlement.³

One of the longstanding demands of the Kikuyu was for titles to their land within the Reserve. The commissioners avoided making any

¹ Report, section 536.

² Report, section 542.

³ Report, section 548.

recommendations on the registration of African holdings in general, but they did suggest that informal demarcation and an experimental program of registration might be of some value in Kiambu.¹ They specified Kiambu because they thought that its already flourishing form of individual land tenure ought to be encouraged. However, their recommendations lacked force and conviction and did not require any actions by the Kenya Government. In effect, the Kikuyu lost their fight for land titles and for the security which they believed that they would afford them.

As in the case of the Kikuyu, the commissioners' recommendations on the pastoral Maasai supported the previous policies of the Kenya Government.² While the sensitive political nature of Kikuyu land grievances had wrung at least some theoretical compensation for their past "inconveniences," the politically impotent Maasai obtained nothing, although they had suffered the loss of a far greater amount of land. The commissioners examined the government-ordered Maasai moves of 1904 and 1911, and found them fully justified and necessary.³ Rather than agreeing with those who viewed the treatment of the Maasai as a flagrant and enduring violation of the basic principles of justice and trusteeship, they believed that "in view of the fact that the Maasai were a decaying and decadent race when British administration was established and that the protection given them, in all probability, saved them from disaster, it seems clear that they have been treated in an unduly generous manner as regards land."⁴

¹ Report, sections 1662-65.

² Report, Part 2, Chapters 1 and 2.

³ Report, Part 2, Chapter 1.

⁴ Report, section 663.

The commissioners paid little heed to Maasai claims to land by historical right or even economic need, for that matter. Their main concern was that the Agreement of 1911 had set too rigid boundaries on Maasai land.¹ To this they attributed the lack of development in the Maasai Reserve and the population pressure in neighboring African agricultural Reserves. They contended that the Maasai were tying up too much land and that they had to be forced to give leases of land to "develop" their Reserve. Although such leases and exchanges were in violation of the Agreement of 1911, the commissioners thought that, for the Maasai's "own good," their objections to the loss of their land ought to be overridden by the government.

Arguing that "the Maasai can only stand to gain by the elimination of safeguards which are of no practical use or value to them and can only hinder their progress,"² the commissioners recommended an end to the theoretical security which the Agreement of 1911 gave the Maasai. They suggested that the status of the Maasai in relation to their land be the same as any other African people in Kenya. By allowing neighboring African peoples, the Kikuyu in particular, to move into the Maasai Reserve, the commissioners argued that Maasai land would be developed and overcrowding in other African areas would be relieved.³ Their intention seems to have been to use Maasai land to divert interest from the Highlands as the natural expansion area for agricultural Africans.

¹ Report, sections 667-69.

² Report, section 672.

³ The commissioners encouraged tribal interpenetration throughout Kenya as long as the receiving people did not object, and it accorded with the local land tenure system. Report, section 556.

It was unlikely that this ploy could have worked, for the almost waterless Maasai land could barely support pastoralists, let alone an agricultural people.

Although the commissioners disregarded the Agreement of 1911 in all other matters, they adhered to it strictly when they considered the legitimacy of Maasai land claims.¹ The most important of these involved the Mile Zone and the Chyulu Triangle, areas with good water supplies. The Maasai had been in occupation of these areas for some time, but they were outside of the 1911 roughly drawn boundaries of Maasai land. The settlers had opposed Maasai efforts at rectification, and claimed that the land belonged in the Highlands.

While admitting that the Maasai would suffer a grave hardship, by being deprived of the Mile Zone and Chyulu Triangle areas,² the commissioners claimed that they had to abide by the Agreement of 1911 and they recommended that the Maasai claims be denied. If the Maasai still wanted the areas for water, they suggested that they rent them on annual lease or exchange another area in the Reserve for them. Under the strict interpretation of the Agreement of 1911, the commissioners also had to recognize that the Maasai had a legitimate claim to three alienated farms in the Ngong area.³ However, in keeping with their policy of not returning alienated land, they recommended that the amount paid to the government when the farms were purchased be turned over to the Local Native Council in settlement of this claim. The low purchase prices

¹Report, section 677.

²Report, section 680.

³Report, section 692.

which the government had charged at the time of these alienations further worsened the injustice done to the Maasai by this recommendation.

The Nandi¹ fared no better than the Maasai at the hands of the Kenya Land Commission. Their claims of right had involved the flagrant violation of an agreement made in 1910 that their land would remain theirs "forever." Twice ignoring this, the government had alienated over 100 square miles of their land in Kaimosi and for the Kipkarren Soldier Settlement Scheme. The commissioners did not find anything sinister or even unjust in the alienations, explaining disingenuously that the actions of the Kenya Government were the result of the "existence of the agreement" being "overlooked."² Their recommendations did not reverse the losses sustained by the Nandi, for they maintained that the Nandi had made little use of the land in question and that disturbance compensation had been paid at the time of the alienations.³

In truth, after much criticism that the alienations were in violation of the agreement with the Nandi, the British Government had ordered them stopped. In 1925 it had even returned part of the land, and ordered that rents collected for land already alienated go to the Nandi Local Native Council. However, the rents for 1919 through 1923 were never paid. Furthermore, the Kenya Government had waived the stand premia on the alienated land which the Local Native Council was supposed to have received. The commissioners justified the failure to pay the rents and the waiving of the stand premia and went on to recommend that after a few

¹Report, sections 1030-76.

²Report, section 1052.

³Report, sections 1063-65.

salt licks were returned to the Nandi and their council was given £5,000 for comprehensive compensation for their losses, their claims would be settled.¹ Then, to benefit the Nandi by giving them more money from rents, more chance for employment and "an educational" influence for "the development of their country," the commissioners suggested that the British Government's restriction on alienation in the remainder of the Kipkarren block be lifted and the area be thrown open to European settlement.² Thus, in the case of the Nandi, the Kenya Land Commission went beyond its usual justification of past alienations and support for their irrevocability to recommend even further alienations of what was acknowledged African land.

On every account the commissioners concluded that the government had acted honorably on land matters, even if occasionally too swiftly or overlooking some obligatory agreement with Africans. They claimed that the unjust alienations were a result of the government's ignorance of African needs and land tenure systems, and "were inflicted with a complete absence of any conscious purpose of depriving them of their due."³ Denying that these unjust alienations had resulted in any real hardships to Africans, their recommendations for compensation were to them a magnanimous gesture aimed at removing any African grievances over the "loss of amenities" suffered as a result of the alienations.⁴

The Kenya Land Commissioners blamed African land problems on the Africans themselves, charging that the difficulties derived from

¹Report, sections 1059-62; 1065-67.

²Report, section 1070.

³Report, section 2068.

⁴Report, section 377.

poor agricultural and pastoral practices and ill-adapted land tenure systems. While they saw Africans as lazy despoilers of the land or unscrupulous and greedy connivers, the settlers emerged in their report as virtual paragons of virtue whose very presence would act to uplift Africans. They treated the settlers, rather than Africans, as the aggrieved parties in the land situation, because of the few concessions which were made to African needs.¹ Most ironical was their decision that the problem with past land policy was that it had given too many safeguards to African lands.

From an examination of its findings and recommendations, it seems that, with a few notable exceptions, the principles of trusteeship and British justice were irrelevant to the Kenya Land Commission. Its recommendations made a sham of justice, for its members were more concerned with the appearance of justice than with its actual reality. From the outset its findings had been biased by its terms of reference, the people appointed to serve on it, and the desire of these individuals, along with the Kenya and the British Governments, to avoid any real change. It saw its main goal as assisting government by eliminating the basis for African land claims and grievances. In the end, the commission's stated goal of giving Africans true justice in relation to their needs and claims was almost completely subverted. The demands of European settlement had corrupted the Kenya Land Commission, as they ultimately corrupted anything that might have benefited Africans in Kenya.

¹Report, section 1978.

CHAPTER V

REACTIONS TO THE REPORT OF THE KENYA LAND COMMISSION

The Kenya Land Commission signed its report in July of 1933 and its members resumed their pre-commission activities. In the following months Carter returned to Britain and Wilson to his estate in Ukambani. In seeming acknowledgment of their services, Hemsted was soon made the representative for African interests in the Kenya Legislative Council and Fazan the Acting Provincial Commissioner of the Coast. However, despite the disbanding of the commission, the members were occasionally called upon to give advice because of the long interval between the signing of the report and its publication in May 1934.

Some of the delay can be attributed to the difficulties involved in printing the report and its companion volumes of evidence, both in Kenya and Britain.¹ Although a time consuming task, this was not solely responsible for the delay. The British Government postponed publication to gain time to formulate its own position on a number of controversial recommendations made in the report. The Colonial Office decided that the British Government's intentions should be made public at the same time the report was published.

The British Government's concern with the report centered on five of its recommendations. Three of these — the commission's recommendations on the definition of the Highlands, the extinguishment of African land rights outside of the African Reserves, and the passage of legislation to allow for mining leases under the new "setting apart" procedure —

¹Great Britain, Parliamentary Debates (House of Commons), Vol. 281 (1933), c. 343.

it approved and wanted implemented as soon as possible. The new mining lease legislation caused little difficulty, but the two recommendations establishing legal territorial segregation in Kenya submerged the British Government in a tangled web of controversy from which it never extricated itself successfully in the colonial period.

The two remaining recommendations of special interest to the British Government concerned the Native Lands Trust Board and the Carrier Corps debt. Although maintaining it was only making minor amendments to them, it rejected their essential elements and fundamentally altered their intent. This was done before the report was even published, so much of the internal government conflict over them remained secret.

The Secretary of State for the Colonies, Philip Cunliffe-Lister, refused to allow the reconstituted Native Lands Trust Board to sit in London on the grounds that a London board would preempt Parliament's responsibilities.¹ He also thought a London board would be ineffective, claiming the distance factor would cause "intolerable delay." He was supported by the staff of the Colonial Office who deplored the theory which "had grown up in Kenya that Government is not to be trusted and has to be hedged round with independent boards."² These officials agreed with the Secretary of State that it was best to leave land matters to the Kenya Government. However, their choice of a Kenya board forced them to devise a way of meeting the commission's criticism that it would be unable to command African confidence.

¹Great Britain, Parliamentary Debates (House of Commons), Vol. 292 (1934), cc. 560-570.

²C.O. 533/441, 23034, Flood Minute, April 16, 1934.

To give a Kenya board the appearance of objectivity, Cunliffe-Lister proposed that the majority of its personnel be "independent" of the Kenya Government. However, during his visit to Kenya in January-February 1934, he also suggested to Governor Byrne that the board be chaired by the Chief Native Commissioner. Its other "independent" personnel were to be the two members for African interests in the Legislative Council and two other individuals who were not directly involved with the government.¹ This was not exactly the type of "independence" which Carter had envisioned and, after conferring with Cunliffe-Lister, he suggested that under the new circumstances the Chief Justice should at least chair the board.² But Wilson and Hemsted refused to support Carter,³ and Cunliffe-Lister's suggestion was allowed to stand.

Carter was not the only one who did not like the board as proposed by Cunliffe-Lister. Most of the officials in Kenya opposed it on the grounds that the board had to be more subordinate to the government. They did, however, realize that Cunliffe-Lister's board had one very attractive feature. It would be less vulnerable to African demands for representation than a board made up totally of government officials.⁴ They believed that the only way out of this quandry was to abolish the board and transfer its powers to the Secretary of State.⁵ Although Cunliffe-Lister had no particular commitment to the board, he rejected

¹Ibid.

²C.O. 533/441, 23034, Part I, Carter to Freeston, May 20, 1934.

³Ibid., Byrne to Cunliffe-Lister, "Private and Personal," June 28, 1934.

⁴Ibid., Flood Minute, April 1, 1934. Wade, the Chief Native Commissioner, had made this point.

⁵Ibid., Byrne to Cunliffe-Lister, "Private and Personal," March 23, 1934.

its abolition in fear of possible political repercussions. The matter of the board's personnel remained unresolved at the time of the report's publication, but it was only a question of time before Cunliffe-Lister's proposal prevailed. In the meantime, the "gentlemen's agreements" made by the Kenya and British Governments eliminated any remaining possibility of selecting impartial personnel.

At the suggestion of Hemsted and Wilson, Governor Byrne and Cunliffe-Lister agreed informally that one of the two "independent" members of the board would be a settler member of the Legislative Council.¹ Byrne further compromised the board's integrity by suggesting that individuals should be selected who would not be tempted to "make an embarrassing use of the Veto and of the right of inspection" of the Reserves.² There was no opposition from the Colonial Office which apparently had adopted the attitude that all criticisms that the board would not command African confidence would have to be "politely disregarded" and Africans "trained" to have faith in it.³

The commission's recommendation on the Native Lands Trust Board was not the only one intended to benefit Africans which the British Government partially rejected and subverted. The same treatment was accorded the commission's suggestions for financing its recommendations. Its revival of the Carrier Corps debt issue provoked a heated controversy within the British Government, the main opponents being the War Office and the Treasury on one side and the Colonial Office on the other. The War Office and the Treasury, "in a state of some wrath," roundly

¹C. O. 533/441, 23034, Part I, Byrne to Cunliffe-Lister, "Private and Personal," June 28, 1934.

²Ibid., Byrne to Cunliffe-Lister, May 10, 1934.

³Ibid., Flood Minute, May 25, 1934.

denounced the commission's reopening of the issue¹ and demanded that the Colonial Office force the commissioners to withdraw their allegation that the manner in which the debt had been handled was a violation of the principles of trusteeship. They claimed that the commission had exceeded its terms of reference.² But having also advanced the Carrier Corps claim itself on previous occasions, the Colonial Office was unwilling to chastise the commission, and the resulting stalemate brought the matter to the British Cabinet's attention.

On May 2, 1934, Cunliffe-Lister presented the Kenya Land Commission Report to a cabinet meeting.³ The cabinet approved his decision to reject a London Native Lands Trust Board and accepted the remainder of the report. But since the Chancellor of the Exchequer and the Secretary of State for War refused to agree to the financial provisions in the report, a final decision on the report had to be postponed. The Prime Minister directed each of the opposing sides to prepare memoranda setting forth their arguments and submit them at the May 9 cabinet meeting.⁴

In his memorandum, Cunliffe-Lister retreated from his support of the commission's financial recommendations.⁵ The commission had recommended that its expenses and the funds for implementation of its recommendations be met by a grant from the British Government and

¹ Ibid., Flood Minute, April 25, 1934.

² C. O. 533/442, 23034/4, Their arguments are summarized in "Memorandum by the Chancellor of the Exchequer and the Secretary of State for War," (May 9th Cabinet Meeting), Secret-C. P. 128 (34).

³ C. O. 533/442, 23034/4, Cabinet-Secret-C. P. 111 (34). "The Kenya Land Commission Report." Memorandum by S/S.

⁴ C. O. 533/442, 23034/4, Extract 4 of May 2, 1934, Cabinet Meeting.

⁵ C. O. 533/442, 23034/4, Secret-C. P. 125 (34). Memorandum of S/S for May 9, 1934 meeting of the Cabinet on "Unclaimed Balances of Pay due to Native Porters of the Military Labour Corps in the East African Campaign," May 4, 1934.

treated the development of the Reserves as a separate issue to be financed by the payment of the Carrier Corps debt. Cunliffe-Lister, however, rejected the commission's contention that Britain had the ultimate responsibility for past land injustices in Kenya. He maintained that though the land alienations had been made on the British Government's instructions, no one in Britain had derived any benefit from them.¹ Having denied that Britain should provide a grant as compensation for unjust alienations, Cunliffe-Lister turned to the Carrier Corps debt as the only other viable source of funds to finance the commission's recommendations.² His memorandum supported payment of the debt but deliberately ignored the commission's recommendation that this money be used for the development of the Reserves.

Cunliffe-Lister's retreat from the commission's financial recommendations was probably strategically motivated. It would have been very difficult to obtain two separate grants for Kenya, especially for Africans, from a British Government beset by the 1930's economic depression. It was significant that Cunliffe-Lister chose to abandon the grant which would have come from the Colonial Office allocation and support the one which would be paid for by the War Office. Although he may have been forced into this decision, he expressed no misgivings about the basic injustice of it. In contrast, after seeing Cunliffe-Lister's memorandum, Carter protested vigorously that the two methods of financing had been intended to satisfy two separate injustices done to

¹Even if true, it is difficult to see how this argument could absolve the British Government of any responsibility.

²With its policy of subsidizing European settlement, the Kenya Government was already in an untenable economic position and could only bear a small part of the burden.

Africans. He argued that this could not be done "by using the money obtained by the redress of one wrong for the redress of the other."¹

The cabinet voted on May 9th to accept Cunliffe-Lister's "compromise" with certain concessions to the War Office.² The Colonial Office was required to make a public disclaimer of the British Government's responsibility for the non-payment of the Carrier Corps debt and publicly to deplore the commission's reopening of the issue. It also had to announce that the grant was not being made because there was any justice in the claim for payment of the debt. The grant was to be a "gift," an ex-gratia grant, to remove any sense of grievance "whether rightly or wrongly" held by Africans because of the debt. By approaching the financing of the commission and its recommendations in this manner, the British Government absolved itself of any responsibility for injustices done to Africans on either the land or the Carrier Corps debt issues. With the matter of the financing of the commission's recommendations finally resolved, final cabinet approval was given to the report as amended by Cunliffe-Lister.

Cunliffe-Lister was anxious to publish the report, since the delay had already frustrated the establishment of the "setting apart" procedure for granting mining leases in the Reserves.³ After the delay in the cabinet he decided not to follow his original plan of making a statement in the House of Commons when submitting the report and chose instead to issue

¹ C. O. 533/441, 23034, Part I, Carter to Cunliffe-Lister, undated.

² C. O. 533/442, 23034/4, Extract from Conclusions of Cabinet 20 (34), May 9, 1934.

³ C. O. 533/441, 23034, Cunliffe-Lister to Byrne, "Private and Personal," April 19, 1934.

a White Paper setting forth the government's decisions.¹ Cunliffe-Lister hoped that this would forestall criticism by focusing attention on the government's decisions rather than the commission's recommendations.

Because Cunliffe-Lister presented Parliament and the Kenya Government with a fait accompli, he opened himself to allegations of undemocratic actions. However, these allegations did not really disturb him and he confided to Governor Byrne that his strategy had been a success "because practically everybody took their line" from the White Paper.² No doubt the chief reason for the interest in the White Paper was its brevity in contrast to the length³ and complexity of the report.

The White Paper gave only three lines to the Highlands issue and omitted completely any reference to the ending of African land rights outside of the Reserves. As a result, the significance of these crucial recommendations escaped the notice of most critics in Britain for some time. Their main interest was the commission's recommendations on Kakamega. Representatives of British humanitarian groups had met the previous year at Lambeth Palace, the official residence of the Archbishop of Canterbury, to discuss their strategy on the alienation of African land in this area for gold mining leases.⁴ Their only concrete decision had been to reassemble when the Kenya Land Commission Report was published.

¹Great Britain, Kenya Land Commission Report – Summary of Conclusions Reached by His Majesty's Government, Cmd. 4580, 1934.

²C. O. 533/441, 23034, S/S to Byrne, June 11, 1934.

³The body of the Report is 535 pages and it has thirteen appendices plus many maps and charts.

⁴Anti-Slavery and Aborigines Protection Society (hereafter A.S.A.P.S) MSS., Rhodes House, Harris to Archbishop of Canterbury, March 11, 1933 and Harris to Hutchison Cockburn, April 6, 1933.

But when it was finally published, most of them were preoccupied with other matters,¹ and the second meeting had to be delayed for some time.

When the representatives reassembled at Lambeth Palace, the Kakamega issue had lost most of its urgency. By that time it was clear that the area did not have the potential of South Africa's Rand, so there was little danger of wholesale alienations. Furthermore, the commission's recommendations on Kakamega had met most of the criticisms expressed at the first Lambeth Palace meeting. The Archbishop himself was satisfied with them, having discussed them with Cunliffe-Lister even before the report was published.² Basing their discussion primarily on the Kakamega recommendations, the Archbishop and most of those at that meeting concluded that, despite its flaws, the commission had gone a long way toward the protection of African land rights. Since they were familiar only with the White Paper's interpretation of the report and not the report itself, their only major criticism concerned the decision not to locate the Native Lands Trust Board in London. They did, however, ask for a delay before the report was implemented to allow it to be studied by all concerned.³

The general satisfaction of the Lambeth Palace delegates with the report was not shared by McGregor Ross and Norman Leys. Like McGregor Ross, Leys was a former official of the Kenya Government who had earned its enmity by exposing the plight of Africans.⁴ After

¹ A.S.A.P.S. MSS, Archbishop of Canterbury to Harris, May 23, 1934.

² C.O. 533/441, 23034, Part I, Cunliffe-Lister to Byrne, "Private and Personal," March 26, 1934.

³ C.O. 533/441, 23034, Part I, Archbishop to S/S, July 10, 1934.

⁴ Leys was the author of Kenya (London, 1925) and A Last Chance in Kenya (London, 1931).

studying the Kenya Land Commission's Report, both men concluded that it perpetuated the abuses of the past and would inflict even more injustices upon Africans.

But about the time of the commission's appointment, Leys, the more radical of the two "Kenya critics," withdrew somewhat from his active opposition to policies there. Convinced of the futility of protest, he believed the only hope for Africans lay in the parliamentary rise to power of a Labour Party which "openly and determinedly does battle with the City and the Landed Aristocracy and Big Business." Without this, Leys claimed that it would only be a matter of time before "Africans are ready to kill and be killed."¹ The almost total eclipse of the left wing of the Labour Party in the 1930's reinforced his despair about changes in Kenya. Although he left most of the active opposition to the Kenya Land Commission to McGregor Ross, he made it known that the additions to the Reserves it had recommended were "almost entirely of worthless land." Leys concluded that the report was "the worst document ever produced about Kenya."²

McGregor Ross also became progressively embittered by the futility of his warnings, but with the assistance of his wife, he maintained an active campaign against the acceptance of the commission's recommendations. However, the Colonial Office had labeled him a radical and it ignored his criticisms. Other than publicizing them in his writings,³ he had to act indirectly through other individuals who could command the Colonial Office's attention.

¹ A.S.A.P.S. MSS, Leys to Harris, July 17, 1932.

² A.S.A.P.S., MSS, McGregor Ross to Harris, May 22, 1934.

³ McGregor Ross was a frequent contributor to the Manchester Guardian and the New Statesman and Nation.

The Colonial Office was forced to listen to the Archbishop of Canterbury because of his position, but he was the symbolic rather than the real leader of the humanitarian groups. Their real leader and the organizer of the Lambeth Palace meetings was Sir John Harris, Secretary of the Anti-Slavery and Aborigines Protection Society. But while Harris could also obtain a hearing at the Colonial Office, he was not effective in his leadership role, especially as it applied to Kenya. Having little knowledge or interest in Kenya, apart from the Kakamega issue, he was in general willing to accept the Colonial Office's interpretation of what was best for Africans.

Harris had previously accepted the establishment of territorial segregation in Southern Rhodesia as being in the interests of Africans there¹ and the legalization of the same situation in Kenya did not cause him much difficulty. His criticisms of the Kenya Land Commission centered on peripheral issues,² for though he had admitted that only McGregor Ross and Leys could deal with the "intimate points of detail" in the report, he was unwilling to carry through on them.³

Since Harris was easily manipulated by the Colonial Office, he was a poor instrument for McGregor Ross's protests. These had their greatest impact in the questions he supplied for the independent Labour Members of Parliament. McGregor Ross had excellent sources for his questions, having contacts with sympathetic Europeans and Indians in Kenya, and Indian representatives in Britain.⁴ Incensed by their legal

¹ L. H. Gann, *A History of Southern Rhodesia* (London, 1965), p. 279.

² John Harris, "Land in Kenya," Manchester Guardian, May 29, 1934.

³ A.S.A.P.S. MSS, Harris to Leys, May 30, 1934.

⁴ His papers at Rhodes house contain correspondence from all of these sources.

exclusion from the Highlands, Indians were especially willing to assist his efforts whenever possible. McGregor Ross's informal and not always appreciated tutelage of Kenyatta during his first stay in Britain also gave him good contacts with the Kikuyu.

As a member of a predecessor to the Fabian Colonial Bureau, the London Group on African Affairs, and the Labour Party's Advisory Committee on Imperial Questions, McGregor Ross was able to gain a hearing for his views among members of the Labour Party. In a July 28, 1934 memorandum to the London Group on African Affairs, he outlined his major criticisms of the Kenya Land Commission Report.¹ Although he had previously found some worthwhile things in the document, his memorandum was a condemnation of the commission's fundamental recommendations.

McGregor Ross believed that the report was too complicated to follow unless the reader possessed detailed local knowledge of Kenya. He not only agreed with Leys that many of the "additions" to the Reserves were worthless, but he also pointed out that much of the area to be given to the Kikuyu was already in their possession. He charged that the evidence restated in the report was "carefully hand-picked to the undermining of the African case." And he found that the use of the phrase "setting apart," for "the process of invading native lands in the cash interests of our nationals, serves as a blind to the ethical issues involved only in the case of those who are already intent upon self-deception."

McGregor Ross' memorandum to the London Group on African Affairs made two other points which he developed later in articles in the

¹ "Strictures on the Morris Carter Report (Cmd. 4556)," July 28, 1934, London Group on African Affairs MSS, Rhodes House.

Manchester Guardian and elsewhere. The first was that the decision to extinguish African land rights outside of the Reserves had been made because it was in the settlers' interests. The second was a condemnation of the commission's unjust expansion of the area of the Highlands. He claimed that 6,000 square miles of the Highlands were already unused and wasted by Europeans, while Africans barely had sufficient land for survival. These criticisms were later repeated by Labour Members in their questions in Parliament.

Although McGregor Ross received a sympathetic hearing from a few Labour Members of Parliament, there was little they could do to change the government's actions. Parliament itself had little interest in the Kenya Land Commission Report or any colonial issues for that matter. It was one month after publication before the report was even mentioned in Parliament, and then it was only a question about whether the Secretary of State would guarantee that Africans would be informed of its contents.¹ The report was finally discussed on July 12, 1934 during the debate on the Colonial Office Vote.² Cunliffe-Lister presented the government's position, which encountered only token opposition from a few Labour Members. One of them was moved to comment that it was a very "placid" debate compared to those on any issue of home policy. Given this lack of interest, Cunliffe-Lister had no difficulty in obtaining approval for his actions. However, the Labour Members refused to accept the report as final or irrevocable, or to consider themselves committed to the National Government's decisions on it.

¹Great Britain, Parliamentary Debates (House of Commons), Vol. 290 (1934), c. 919.

²Great Britain, Parliamentary Debates (House of Commons), Vol. 292 (1934) cc. 560-664.

For the remainder of the decade, Labour Members such as William Lunn, Major J. Milner, Charles Roden Buxton, Sir Robert Hamilton and, later, Arthur Creech-Jones, periodically brought the issues generated by the commission before the House of Commons.¹ Relying on McGregor Ross, Indians in Kenya, and increasingly, Africans, for their information, they questioned the government on the effects of ending African land rights outside of the Reserves and defining the Highlands. Although these questions never generated enough parliamentary interest to impede the implementation of the commission's recommendations, the public exposure they gave to the African case did, on occasion, force the government partially to ameliorate their effects.

While the publication of the report and the White Paper had generated little interest in Britain, they were greeted with a unanimous outcry in Kenya from settlers and Africans. They were upset that the British Government had accepted the report without any reference to them.² African objections were summarily dismissed, but the Colonial Office moved cautiously with the settlers. To placate them, it delayed implementation of the report until it had been debated and approved by the Kenya Legislative Council. The Colonial Office could be certain of this body's approval because its settler members soon realized that the report was, as Cunliffe-Lister admitted, in "their over-riding interest."³

¹ Lugard was also active in the protests against the commission's recommendations for part of the period. On Sept. 20, 1935, he met with the Secretary of State, but his objections were also dismissed by the Colonial Office. C. O. 533/453, 38005/8, Correspondence and Minutes.

² In the White Paper, the British Government theoretically reserved final decision on the details of the recommended exchanges because the district commissioners and provincial commissioners also had not seen the report.

³ C. O. 533/441, 23034, Part I, Extract from Cunliffe-Lister to Byrne, June 11, 1934.

Although the settlers strongly seconded the commission's contentions that its recommendations called upon them to make "sacrifices," Governor Byrne was able to write Cunliffe-Lister that the settler reception was "most favourable."¹ They were, however, very displeased with one of the commission's recommendations: the exclusion of the Leroki Plateau from the Highlands. Charging that this was "an attempt to deprive the younger generation of colonists of their birthright,"² the settlers refused to accept this recommendation as final. Some segments of the settler community went beyond public denunciations and rallies. Governor Byrne reported that "All kinds of rumours reached me about armed obstruction, and even direct action, if the plateau was denied to European settlement." However, he also added that "Kenya like, all this hot air is likely to end in smoke drenched by many whiskeys and sodas."³

Governor Byrne's prophecy was proven correct and the extent of the settlers' action on the Leroki Plateau recommendation was to reject it in the official Legislative Council debate in October 1934.⁴ When the settler representatives, led by Ferdinand Cavendish-Bentinck, discussed the recommendations which applied to their districts, there was little they faulted in the report, apart from Leroki. With the exception of this

¹ C. O. 533/441, 23034, Part I, Extracts from Byrne to Cunliffe-Lister, "Private and Personal," May 31, 1934.

² "Laikipia Settlers and Carter Report," East African Standard, June 2, 1934, p. 47.

³ C. O. 533/441, 23034, Part I, Extracts from Byrne to Cunliffe-Lister, "Private and Personal," May 31, 1934.

⁴ Kenya, Legislative Council Debates, Oct. 12, 1934.

recommendation, they agreed to accept the report, but only on the condition that they be given the Order in Council protecting their Highlands without delay.

The only non-settlers in Kenya with the potential to cause problems for the British Government were the missionaries. However, desiring to remain aloof from political matters and acutely aware of their own involvement in the land alienations, most of them expressed little interest in the report, with the notable exception of Archdeacon W.E. Owen. He was the adviser to the Kavirondo Taxpayers Welfare Association and was considered a "radical" in Kenya because of his concern with African interests. In a two article series in the Manchester Guardian,¹ Owen found much value in the report but was critical of the exclusion of the Highlands because it would condemn "future generations of Africans to economic and territorial subjection to European landowners." He also criticized the report's selective citation of his own evidence on the Highlands. Owen repeated his criticisms in the Anglican missionary journal,² but if his fellow missionaries shared his sentiments, they did not make this public.

The only other significant missionary reaction to the commission's report came from the Kenya Missionary Council which represented the combined Protestant missionary churches in Kenya. It was active in a shortlived attempt to bring together representatives of all the racial communities in Kenya to discuss and assist in the implementation of the

¹ Archdeacon Owen, "The Kenya Land Commission," Manchester Guardian, June 28 and 29, 1934.

² W. E. Owen, "The Kenya Land Commission Report," The Church Overseas, VII (1934), pp. 1-12.

report's recommendations. Toward this end a race relations committee was established soon after the report was published.¹ But like other efforts at interracial cooperation in Colonial Kenya, it accomplished little and soon disappeared.

Missionary spokesmen, humanitarians in Britain, the "Kenya critics" and the interested Labour Members were united in their concern that Africans have the opportunity to learn of the commission's recommendations and make suggestions before they were implemented. However, despite Cunliffe-Lister's assurances that local administrators would communicate the relevant sections of the report to Kenya's Africans,² there was no concerted attempt made to inform them of its contents. Copies of the report were sent to the settlers' district councils and missionaries, but not to African leaders. Neither the report nor the summary was translated into Swahili or any other African language and Cunliffe-Lister rejected as ridiculous, parliamentary suggestions that this be done. To find out what the commission had recommended, Africans were forced to buy copies of the report and have them translated from English. Despite the expense involved, there was a great demand for copies of the report and the printed evidence among politically active Africans, especially the Kikuyu.³ However, after their efforts, the

¹University of Nairobi, Lord Francis Scott MSS, H., File 7.

²Great Britain, Parliamentary Debates (House of Commons), Vol. 291, (1934), cc. 372-380.

³One member of Parliament thought the rush by Africans to buy copies of the Report quite humorous, "... the buyers no doubt anticipating a sensational return with a volume on the head of each one of a long string of wives." Great Britain, Parliamentary Debates (House of Commons), Vol. 293, (1934), c. 613.

Kenya and British Governments would not listen to any African objections or suggestions. They were told repeatedly that the matter was closed and could not be reopened under any circumstances. The government's lack of interest and respect for African opinion was illustrated during Cunliffe-Lister's visit to Kenya in early 1934.

At a baraza in Nyeri in January, the representatives of the most prominent Kikuyu associations had asked permission to send a deputation to Cunliffe-Lister while he was in Kenya.¹ They were concerned about land matters and anxious to find out about the commission's recommendations. Their request was granted, but Cunliffe-Lister became sick and they were unable to see him. They later learned that on his recovery, he had met with representatives of the Indians and the settlers. All the Kikuyu could do was to mail him the memorandum which they had wanted to discuss with him in person. This was the first of many to be sent to him by the representatives of the combined Kikuyu political associations. It was indicative of Kikuyu concern that, despite their other differences, these groups could find a common unity in protesting against the recommendations of the commission. The Kenya Government might have expected objections from the Kikuyu Central Association and its alter ego, the Kikuyu Land Board Association. However, the participation of the more moderate Progressive Kikuyu Party and the Loyal Kikuyu Patriots, controlled by the government chiefs, should have warned it to pay more attention to these joint memoranda.

¹McGregor Ross MSS, Copy of letter, Feb. 22, 1934, P. K. James to S/S.

The Kenya Government and the Colonial Office ignored the Kikuyu petitions, arguing they had not been submitted through the prescribed channels.¹ According to the procedure laid down by the Colonial Office, all African petitions and requests were to be submitted to district commissioners and then transmitted through the colonial administration's line of command until they reached the governor, who sent them to the Secretary of State with appropriate comments. Not only was this procedure time-consuming, but it was also common for African petitions to go astray or be returned before reaching the governor, let alone the Secretary of State. Having had their attempts frustrated in the past, many African groups by the early 1930's had begun to petition the Secretary of State directly. As a further security some also sent copies of their petitions to well-wishers in Britain who could publicize their cause in the House of Commons or in newspapers.²

Having been anxious about the findings of the commission even before its report was published, the joint Kikuyu associations were alarmed when they finally learned of its recommendations. Acting on their behalf, in July 1934, Chief Koinange and Joseph Kang'ethe of KCA sent a telegram to Cunliffe-Lister strongly protesting the acceptance of the report before they had been given an opportunity to lodge their objections.³ They asked that the implementation of the recommendations be postponed. Although Cunliffe-Lister was arguing in the House of Commons that the

¹This was a frequent complaint of the Colonial Office and the Government of Kenya and a convenient excuse for ignoring troublesome petitions.

²It was not unusual for the joint Kikuyu memoranda to be received by five or six individuals or groups in Britain, besides the Secretary of State.

³KNA, PC/NZA/2/579, Copy, Koinange and J. Kang'ethe to Colonial Office, July 5, 1934.

publication of the government's decisions on the report in the White Paper had been done for the "convenience of the House,"¹ he directed Governor Byrne to inform Koinange and Kang'ethe that the issue of the report was closed because it was "undesirable to re-open any of the questions of principle upon which H. M. Government, basing themselves on the recommendations of the Commission, have now taken their decision."² A joint Kikuyu association memorandum submitted to him in October³ elicited the same response.

The next Kikuyu petition to the Secretary of State against the commission's findings was written "For the Kikuyu People" by the government chiefs of Kiambu District. It was submitted through prescribed channels and took until the end of February 1936,⁴ three months, to reach him. This petition was important because it listed the basic Kikuyu objections to the commission's recommendations and summarized the substance of the individual and group protests filed with their administrative officers. In their petition, the Kiambu chiefs criticized the commission's failure to provide for the security of African lands and complained about the poor quality of the land supposedly to be added to the Kikuyu Reserve. They were especially displeased with the Yatta addition because of its infertility and distance from the main Kikuyu Reserve. They claimed the Kiambu people would never go there or to the equally distasteful Mwea.

¹Great Britain, Parliamentary Debates (House of Commons), Vol. 292 (1934), c. 650.

²KNA, PC/NZA/2/579, Copy of Kenya No. 624, Cunliffe-Lister to Byrne, August 2, 1934.

³KNA, PC/CP/9/24/2, Koinange Mbui and Philip Karanja James to S/S, through Gov., November 5, 1935.

⁴C. O. 533/466, 38086/5, Enclosure in Gov. Byrne to S/S, Feb. 20, 1936.

The petitioners openly challenged the commission's assumption that Africans could live in these places deemed unhealthy for Europeans without also having their health suffer.

The Kiambu people were unwilling to drop their demand for title deeds for githaka holdings and their chiefs included it in the petition. Also, in order to take land cases out of the jurisdiction of the local government administrators, they wanted a special African Court of Appeal to be established. They asked that all available agricultural land in the Highlands be opened to Africans and that, because of its religious significance, the Mt. Kenya Forest Reserve be excluded from the Highlands area. The petitioners wanted all Forest Reserves to remain under government rather than settler control and sought African membership on the Native Lands Trust Board. Although the Kikuyu were not directly involved in the commission's recommended compulsory destocking of the Reserves, the Kiambu petition protested its acceptance. Lastly, citing past disregard for their requests, the petitioners requested the establishment of adequate channels of communication between Africans in Kenya and the British Government.

The Kiambu chiefs received no answer to their petition or even acknowledgement that it had been received by the Secretary of State. In response to such disregard and the April 1, 1936 notice by the Kenya Government that it was taking preliminary steps to evict Kikuyu right holders from European farms,¹ the "Kikuyu Joint Association," on April 29, 1936,

¹Kikuyu right holders on alienated land were given until April 30 to submit their claims for compensation to the D. O. of Kiambu District.

sent a very hostile petition to the Secretary of State.¹ It was signed by George K. Ndegwa of the KCA and Chief Koinange, and was the most anti-government petition to which Koinange was a party during the 1930's. In addition to arguing that the commission had been appointed "to eradicate the 'Land Rights' "of Africans, this petition charged the individual members of the commission with bias so extreme as to invalidate their findings.

Hemsted, Wilson and Fazan were the targets of charges of bias. The Kikuyu leaders claimed that Hemsted "was there to keep what the Kenya Government had done in the past," since he had given away African land and taken land for his own farm at Ngong. Wilson was similarly motivated, being one "of those Europeans who were granted lands." Of Fazan, they said that when he "was D. C. Kiambu, he told us frankly that he would consult the Commission and cause them to decide that there is no native in this country who have [sic] any rights to claim any land." Only Carter escaped their claims of bias.

The petitioners concluded that the Kenya Government's land policy had always been weighed against the interests of Africans. They maintained that in the past,

Those portions of land that were forests the Government proclaimed Forest Reserves, and those that were our Shambas, were given to Coffee Planters; and the fine plains to Sisal Planters. Now the Government want to take us to the poorest, barren and disease-borne places.

They demanded that the British Government keep its word that African interests would be paramount in Kenya.

¹KNA, PC/CP 9/24/2 Kikuyu Joint Association to Secretary of State thro' the Governor, April 29, 1936, "Re. Kenya Land Commission's Recommendations."

After seeing this petition, signed by one of its most respected chiefs, the Kenya Government realized that it could no longer totally ignore Kikuyu objections to the commission's recommendations without precipitating serious trouble. It had also started to encounter a resolute Kikuyu resistance in its efforts to begin evicting right holders from European farms. In the face of this resistance and the Labour criticism which it generated in Parliament, the Kenya Government could no longer proceed with its original plans for implementing the commission's findings.

The dismay of the Kikuyu leaders and their rejection of the commission's report were shared by other Africans in Kenya. Unlike the Kikuyu, most of these people had neither the political importance nor the expertise to force the Kenya Government or the Colonial Office even partially to acknowledge their problems. Their objections were voiced to their local administrators, some of whom were dissatisfied themselves with the recommendations. A few sympathetic administrators tried to obtain redress from the more unjust findings but they were powerless to bring about any changes.

Although some provincial commissioners had been privy to earlier discussions about the commission's recommendations, the Kenya Government did not give them the report and ask for their evaluations until just before it was published.¹ While these administrators generally agreed with the commission's findings, some were opposed to the recommended Native Lands Trust Board because they feared it would interfere with their own work. Others objected to the commission's land

¹KNA, PC/RVP/6A/15/47.

classification system¹ and the recommended method of compulsory de-stocking of the pastoral Reserves.² However, the British Government was not interested in these opinions and published the report and its own decisions before their evaluations were even received in Nairobi.

After the publication of the report the district commissioners were also asked for their evaluations. This was also a formality designed to expedite the implementation of the report but it did uncover some dissatisfaction with the recommendations. This was strongest among the officials of the Kikuyu areas, who were besieged with protests against the report. However, the officials of other areas also had objections. In Kwale District on the coast, they were critical of the commission's having "somewhat summarily" dismissed the Digo request for the extension of their Reserve.³ This dismissal had been based on a mistaken assumption about the history of the area which was not surprising considering the commission's admitted lack of interest in the coast. The Kenya Government, however, was unwilling to try to reverse the commission's findings.

¹H. R. Montgomery, the P. C. of Nyanza Province, who was soon to become Chief Native Commissioner, took particular exception to the Class A lands becoming "Native Lands," although he admitted that there was no real change of ownership involved. P. C. /NZA/2/579, P. C. to Colonial Secretary, April 18, 1934.

²While they agreed with the need for de-stocking, Welby of Rift Valley Province and Champion of Turkana Province suggested alternate ways to the use of force to make it more palatable to the people involved. PC/RVP/6A/15/47, Welby to Colonial Secretary, May 17, 1934; PC/RVP/6A/15/59, Champion to Colonial Secretary, August 1934.

³KNA, PC/Coast 2/244, "Memorandum on Native Reserves of the Digo District other than the South Nyika Reserve," C. F. Atkins, Enclosure in D. C. Kwale to P. C. Coast, October 23, 1934.

In West Suk the district commissioner challenged the commission's basic assumptions on the economics of pastoral life.¹ He believed that the commission was guilty of "an economic fallacy of the first magnitude," when it had assumed that pastoral people viewed stock as currency. He maintained that stock acted as capital and that forced culling meant economic ruin for pastoralists. He also disputed the commission's allowance of twenty head of cattle for a household of five persons, arguing that a safety factor of three was needed to survive the diseases and famine which periodically claimed two thirds of the stock. These objections contradicted the beliefs of the government's economic advisers and appear to have been filed and forgotten.

The criticisms of the Officer-in-Charge of Maasai would also have suffered the same fate had he not brought them personally to the attention of the Colonial Office.² Even before the commission had been appointed, C. E. V. Buxton had contacted the Colonial Office to forward the Maasai claims to the Chyulu Triangle and the Mile Zone areas. When the commission rejected these claims, he visited the Colonial Office while on leave and criticized this decision and the manner in which the commission had taken his evidence. Buxton argued that he had not been allowed to give evidence on the Maasai claims and that the material printed under his name in the Evidence had not been given before the commission and had been printed without his permission. He implied that this had been done deliberately, since Hemsted and Wilson would

¹KNA, PC/RVP 6A/15/59, Shackleton, D. C. West Suk to P. C. Turkana, September 8, 1934.

²C.O. 533/442, 23034/10, Confidential, C. E. V. Buxton, April 10, 1934.

gain if the Maasai claims were denied. Hemsted, who had been in charge of the Maasai from 1912 to 1923 had acted in defense of his past actions and statements, and Wilson had acted because with the rejection of the Maasai claims, the land went into the Highlands. Buxton maintained that Wilson and the other settlers of Ukambani had wanted the Maasai areas for sometime to accommodate their "squatter" labor.

The Colonial Office was unwilling to comment on Buxton's charges, arguing that they had not come through the appropriate channels. However, his protests gave impetus to suggestions that land exchanges be arranged which would give the Maasai the land they claimed and so desperately needed. Buxton's personal protests also succeeded in producing some disquiet in the Colonial Office about the commission's treatment of the Maasai. When confronted by his revelations, one official could only comment, "is no one honest in Kenya?"¹

The uneasiness in the Colonial Office increased as the implications of the commission's other recommendations were gradually exposed and the initial reactions of Africans and settlers solidified into unreconcilable positions. The Colonial Office slowly came to realize that instead of the commission's finally settling the land problems of Kenya, it had only increased their intensity. The Kenya and British Governments were to spend the remainder of the decade unhappily embroiled in controversies created by the implementation of the commission's recommendations.

¹C. O. 533/442, 23034/10, Flood Minute of October 10, 1934.

CHAPTER VI

THE IMPLEMENTATION OF THE KENYA LAND COMMISSION REPORT

In April 1934, when the British Cabinet approved the revision version of the Kenya Land Commission Report, it assumed that most of the important recommendations would be implemented within the following year. It was 1938, however, before the necessary legislation was passed, and 1940 before the last major recommendation was put into effect. Most of the delay did not result from bureaucratic and legislative lethargy, but from the British Government's inability to reconcile the intense controversies which the recommendations generated among the African and Indian communities. Moreover, the Colonial Office, which was charged with executing the recommendations, was especially afflicted by the crisis in political leadership which characterized Britain in the 1930's. During one twelve month period, it had three different Secretaries of State. Under these circumstances, postponement proved an attractive, if temporary, solution to the problems caused by the recommendations.

The first delay derived from a technicality requiring that the recommendations be debated by the Kenya Legislative Council in October 1934. This was a formality designed to appease the Kenya settlers who resented not having been consulted by the British Government. However, the delay did not prevent the passage of the Native Lands Trust Amendment Ordinance in August of 1934. Because this legislation established the machinery for "setting apart" land in African Reserves for mining

purposes, the settlers and the Colonial Office had agreed that it had priority status. The Kenya Government also used the months of technical postponement to establish the procedures for executing the recommendations and to begin negotiating the required land transactions.

Although the Kenya Government was allowed to act on its own discretion, it had to consult the Kenya members of the commission, Wilson and Hemsted, if any deviation from the recommended boundary changes was contemplated.¹ The governor also had been instructed to submit progress reports to the Colonial Office every six months.² However, the Colonial Office had little interest in these reports or the details of implementation, unless they could bring its own policies into question. The Kenya Government exploited this disinterest by frequently failing to report African opposition to its efforts at implementation. It was not uncommon for the Colonial Office to learn of this opposition from questions in Parliament, rather than from the official communications of the Kenya Government.

Within the Kenya Government, several departments shared the duties connected with implementing the report. The Land Office was given over-all responsibility for administering the implementation,³ but the Attorney General's Office supervised the drafting of required legislation and arranged related legal matters. The Forest Department acted as a party to many of the negotiations, since much of the land to be transferred was passing into or out of its jurisdiction. However, the Native

¹C. O. 533/442, 23034/11, S/S to Governor, Nov. 14, 1934, and C. O. 533/453, 38005/4, S/S to Ag. Gov., March 27, 1935.

²C. O. 533/476, 38005, Governor to S/S, July 19, 1937.

³KNA, PC/RVP 6A/15/47, Secretariat Circular Letter, July 16, 1934.

Affairs Department, and particularly the district and provincial commissioners, actually performed the implementation. In most cases, no special assistance was given to the local administrators, and the new duties were merely added to already heavy work loads.

The provincial and district commissioners were responsible for writing the proposals to implement the recommendations which applied to their areas and submitting them to the Land Office. However, before the proposals went to the Land Office, they usually had to have the approval of the senior officials of the Native Affairs Department. A negative comment by a provincial commissioner or the Chief Native Commissioner usually ensured rejection. If the Land Office accepted a proposal, it came before the Governor in Executive Council. If he approved, the district and provincial commissioners, acting under the supervision of the Chief Native Commissioner and the Land Office, implemented the proposal.¹

Since much of the proposal making and enactment was left to the Native Affairs Department, some of the minor recommendations which it had opposed were never enacted.² This obstructionism was done with the tacit approval of the Lands Office and the Executive Council, for some of the recommendations were in reality unworkable or not worth the time and expense involved. However, those recommendations which affected the settlers could not be quietly dropped, even though the Native Affairs Department may have wished them to be. On these issues the Kenya

¹ Annual Report of the Commissioner for Local Government, Lands and Settlement, 1934 (Nairobi, 1935), p. 75.

² These involved such recommendations as "native leasehold areas," procedures for developing the Reserves, and, most importantly, the commission's endorsement of a policy of interpenetration of African Reserves.

Gove

mun

colo

of K

men

clis

was

ce)

on

di

to

v

in

C

n

n

Government believed itself to be directly answerable to the settler community, whose wrath it feared. It showed no similar commitment to the colony's Africans or the Indians, each of whom eventually went outside of Kenya to fight their cases.

While it was considered desirable for the Native Affairs Department to have the appearance of cooperation with the Local Native Councils, in most cases this was not a necessity. When indigenous approval was required in a land transaction, it frequently meant delayed or cancelled negotiations,¹ because the councils were often hostile to the recommendations. However, only in the cases of the Kikuyu and the Dorobo did African opposition bring an issue to the notice of the Colonial Office.

Although initially the Colonial Office was anxious for Kenya quickly to carry out the recommended land transactions, it was reluctant to provide the necessary means, i.e., the grant of £50,000. After the debate in the Kenya Legislative Council, Governor Byrne asked the Colonial Office when his government would receive this grant. Cunliffe-Lister replied that Byrne would have to meet the commission-related expenses from other sources. Parliament's permission for the grant would not be requested until February 1935, making March the earliest time funds would be available.² Byrne was unwilling to incur any financial obligations before the grant was made and notified Cunliffe-Lister that there was "no pressing urgency for implementing the report and [a] delay of 6 months will not cause this Government serious inconvenience."³

¹Negotiations with the Maasai over recommended exchanges were particularly affected.

²C.O. 533/441, 23034, Part II, S/S to Governor, Oct. 11, 1934.

³C.O. 533/441, 23034, Part II, Governor to S/S, Oct. 15, 1934.

However, this delay would have inconvenienced the Colonial Office which was anxious for the completion of the negotiations with the influential Wundanyi Limited for the purchase of their estate in the Teita Reserve. The commission had made a special recommendation for this purchase in February 1933, and the Colonial Office wanted the transaction made as soon as possible. Cunliffe-Lister therefore hastened to assure Byrne that the grant would be forthcoming, that a temporary allotment would be made in the meantime, and that he should proceed with the Wundanyi negotiations.¹

Even when the grant became available, the commission's recommended land transactions were not quickly completed. In most cases the parties to the negotiations – businessmen, settlers and even missionaries – tried to capitalize on their position as tenants-in-place. They could exploit their position because the government failed to use the proven injustice of their original land allocations as a bargaining factor. By not doing so, it paid high prices for the small pieces of land purchased for return to the Reserves. Negotiations and the survey of the land involved and the new borders between the Reserves and the Highlands consumed much time. However, after the settlement of the Wundanyi estate matter and the passage of the ordinances to allow the "setting apart" of African land for mining purposes, the Colonial Office no longer felt the pressure of time. In fact, it welcomed delay, for the controversy over the racial restriction of the Highlands had, by 1935, far overshadowed other commission-related issues. It hoped that the delay caused by negotiations would mask the postponement of its own actions on this controversy.

¹C.O. 533/441, 23034, Part II, Correspondence and Minutes.

In order to legalize the implementation of the commission's recommendations, legislation had to be passed in Kenya and two Orders in Council issued by the British Monarch. The actual drafting of the local legislation had started before the report had been issued. As part of his duties as secretary to the commission, Fazan had prepared draft bills in March 1934 to give legal effect to the non-mining recommendations affecting African areas. Since he wished to avoid criticism, his drafts closely followed the recommendations. Fazan was convinced that any desired deviations could be added "unobtrusively" later as "amendments."¹ Using the suggestions of other administrators,² Kenya's Attorney General rewrote Fazan's draft into two bills, the Native Lands Trust Bill and the Crown Lands Trust Bill. He also prepared a draft of the Order in Council which was to guarantee the safety of the "Native Lands," and submitted his work to the Colonial Office in May 1935.³

Although the draft legislation submitted to the Colonial Office essentially followed the commission's recommendations, they did contain several departures. The most important of these involved the recommendation that African Reserve lands cease to be Crown lands and instead become "Native Lands." According to Fazan, the commission had intended the protective powers over these lands to be "vested" in the reconstituted Native Lands Trust Board.⁴ But the Attorney General interpreted

¹KNA, PC/Coast 2/243, Fazan to Col. Sec., May 9, 1934.

²Land Office, 30895 I, Montgomery to Col. Sec., April 30, 1934 and Fazan to Col. Sec., May 9, 1934.

³KNA, Chief Sec. 1/1030, Ag. Gov to S/S, May 21, 1935. This file also contains the drafts and Fazan's comments on them.

⁴KNA, Chief Sec. 1/1030, Fazan to Harrigin, Att. Gen., Feb. 19, 1935.

the recommendation to mean that the lands themselves were to be "vested" in the board.¹ Although Fazan tried to rectify this error and even took the blame for the unclear wording of the original recommendation, his objections were dismissed.

By stating that the Native Lands were "vested" in the board, the new legislation made the board their "legal owner." Thus, despite the changed terminology, Africans still would have no more than occupancy rights on their lands. However, the Colonial Office did not object to the deception of transferring the ownership of African lands directly from the Crown to one of its boards under the guise of returning to Africans the ownership of their lands. This interpretation eventually became part of the new Native Lands Trust Ordinance and Native Areas Order in Council. However, this legislation on African lands could not become law until the completion of all land transactions and the demarcation of new Reserve boundaries.² Since it was politically impossible to separate legislation on African lands from that concerning the Highlands, the legislative aspect of implementation was at a temporary impasse from 1935 to 1938. The settlers used this delay to increase their influence in land matters.

The Kenya Land Commission had recommended that "accredited representatives" of the settler community be consulted before any changes were made in the boundary of the Highlands. Since the commission had

¹This interpretation was explained at length by Acting Attorney General H.C. Willan in a memorandum distributed to all members of the Kenya Government at the governor's instructions. "Native Land Tenure," Secretariat Circular Letter, July 22, 1939, Ref.No.S.C., LND 20/2, Vol. II/33.

²C.O. 533/476, 38005/6.

not suggested a procedure for the selection of these representatives, the Kenya Government could have made its own recommendations or have referred the matter to the Colonial Office. Instead, it asked the European Elected Members of the Kenya Legislative Council for their suggestions.¹ Seizing this opportunity to expand settler power, the members demanded that a board of settlers be created which would have "absolute power of veto over all land transactions whatsoever within the boundaries of the European Highlands."² They argued that such a board was just as necessary as the Native Lands Trust Board.

Cavendish-Bentinck advanced the demand for the settler board in the Legislative Council debate on the report and later in conversations and letters to Kenya Government officials. In an extensive memorandum to Kenya's Colonial Secretary on behalf of the European Elected Members,³ he and Lord Scott explained that the settlers wanted an absolute power of veto over all "change of user" in the Highlands and not just over transfers involving agricultural land. They insisted that settler representatives would have to approve the definition of the Highlands before it was forwarded to the Colonial Office and that a confirmation of the privileged position would have to be made in the Order in Council. The acting governor, who was more sympathetic to the settler cause than Byrne, forwarded their demands to the Colonial Office within nine days of the receipt of the memorandum.⁴

¹C. O. 533/453, 38005/3, Acting Gov. to S/S, May 4, 1935.

²Kenya, Legislative Council Debates, Oct. 17, 1934, p.528.

³KNA, Att.Gen. 3/155, Cavendish-Bentinck to Col.Sec., April 25, 1935.

⁴C. O. 533/453, 38005/3, Ag. Gov. Wade to S/S, May 4, 1935.

While there was also no shortage of sympathy for the settlers' demands in the Colonial Office, it could not act with a free hand. It was besieged by protests from many quarters against the legalization of racial segregation in the contemplated Order in Council. These were sponsored by the Anti-Slavery and Aborigines Protection Society, the Society of Friends, the Indian Overseas Association, a number of other humanitarian groups, prominent individuals and Labour M.P.'s and most importantly, the India Office.

By recommending an Order in Council to guarantee the security of the Highlands, the Kenya Land Commission had rekindled the 1923 controversy between the settlers and the Indians, but with even more far-reaching ramifications. The nationalists in India could not be so easily dismissed as in 1923, and they forced the India Office to put pressure on the Colonial Office to arrive at a solution which could not be criticized as discriminatory. However, the Colonial Office refused to break faith with the settlers who had been promised exclusive rights in the Highlands. This commitment was reiterated by one of its officials who argued that despite his faults, the Kenya settler was "surely as much entitled to consideration as the low down Indians who crawled into the country after the Uganda Railway."¹

Although the Colonial Office staff might minute anti-Indian sentiments to one another, they could not ignore the protests of the Government of India and the India Office.² These protests were the result of the publicity being given the Order in Council. Its opponents,³ led by

¹C. O. 533/476, 38005/3, Minute by Flood, Dec. 30, 1937.

²C. O. 533/453, 38005/3, I. O. to C. O., Feb. 20, 1935.

³The most important of these were Leys, W. P. Crozier, J. Harris, F. Lugard, C. R. Buxton, C. F. Andrews, S. L. Polak, M. P.'s J. Milner, Morgan-Jones, W. Lunn and R. Hamilton.

McGregor Ross, had succeeded in having the issue debated in the House of Commons on February 14. McGregor Ross also had alerted S. L. Polak, Mahatma Gandhi's lieutenant and the force behind the Indian Overseas Association, to the issue.¹ This group fought the cause of the Indian nationalists in Britain and vigorously exposed discrimination against Indians throughout the British Empire. After the debate in the House of Commons, Polak requested a meeting with the Permanent Under-Secretary of State of the Colonial Office, Sir John Maffey. Fearing that a refusal would only strengthen Polak's position, Maffey agreed.² Polak informed him that the Indian nationalists would protest the change in the legal position of the Highlands.³ Fearful of such activism, the Government of India had already asked the Colonial Office for a postponement of the Order in Council.⁴

In March the Government of India's fears were realized when the Highlands issue was debated in the Indian Legislative Assembly in Delhi.⁵ The first elections under the new Indian Constitution were only a few months away, and the issue of legalized discrimination against Indians in Kenya might have helped the nationalist Congress Party to win control in the provincial and central legislatures. The Government of India and the India Office viewed this possibility as disastrous and tried to dissuade the Colonial Office from insisting on the Order in Council.

¹McGregor Ross MSS, Polak to Ross, March 21, 1935. Ross had also sent Polak copies of his February and March letters to the Manchester Guardian for comment before their publication.

²C. O. 533/453, 38005/3, Minutes by Bottomley, Feb. 15, 1935.

³C. O. 533/453, 38005/3, Minute by Maffey, Feb. 22, 1935.

⁴C. O. 533/453, 38005/4, I. O. to C. O., Feb. 20, 1935.

⁵Flood found the temperate nature of this debate disappointing. He explained that "it is easier to deal with wild and in temperate statements than with sober arguments..." C. O. 533/453, 38005/3, Minute, June 13, 1935.

In May Sir Joseph Bhore of the Government of India met with Cunliffe-Lister¹ and raised his government's objections to the extension and legalization of discrimination against non-Europeans in Kenya. Cunliffe-Lister denied that the Order in Council would legalize discrimination in the Highlands, claiming that it would only establish the borders of the area. He argued that the Order in Council was necessary because the settlers "were afraid that the native reserves might be enlarged in such a way as to encroach on those Highlands."² Cunliffe-Lister was replaced in June by Malcolm MacDonald, the young and inexperienced son of the former Prime Minister. When MacDonald was approached by the Secretary of State for India, the Marquess of Zetland,³ he also was unwilling to abandon the Order in Council. However, he agreed to explore the possibility of omitting an explanation of the European privilege in the Highlands. Since Byrne was on leave in Britain, MacDonald consulted him the same day.

In his discussion with Byrne,⁴ MacDonald strongly advocated deleting the explanation of the privileged position. He argued that its absence would not alter the "administrative practice" of restricting the Highlands, but Byrne rejoined that this concession to the Indians would cause ill feeling "as great as that of 1922-1923" among the settlers. Despite the possible trouble in India, Byrne claimed it would be worse to disappoint

¹The minutes of that meeting were recorded in C. O. 533/453, 38005/3, "Memorandum of Meeting between the S/S and Sir Joseph Bhore, May 21, 1935."

²They were also concerned by the inclusion in the Highlands of the Muhoroni farms, since they were owned and occupied by Indians.

³C. O. 533/453, 38005/3, "Note on discussion between S/S for India and S/S for Colonies, July 30, 1935."

⁴C. O. 533/453, 38005/3, Minutes on discussion between MacDonald and Byrne, July 30, 1935.

the settlers on this issue. When MacDonald later insisted that the explanation be omitted, Byrne asked for the postponement of the Order in Council until after the 1936 budget was passed in Kenya.¹ MacDonald agreed, knowing that the Highlands Order in Council could not be proclaimed separately from the legislation on African lands, which was progressing very slowly. He also needed time to submit the "compromise" Order in Council to the cabinet for its approval.

Meanwhile, another issue arose which compounded the Colonial Office's difficulties. Japan implied that it would challenge the Highlands Order in Council because it violated the 1911 Anglo-Japanese Treaty of Commerce and Navigation and the 1919 Treaty of St. Germain-en-Laye by discriminating against Japanese nationals.² A successful Japanese challenge would have opened the Highlands to Indians, since India was also a signatory to the Treaty of St. Germain-en-Laye. If the British had refused to consider Japanese claims to equal treatment in Kenya, an international incident certainly would have resulted. The possibility of Japanese action further convinced the Colonial Office that any explanation of European "privileged position" had to be omitted from the Order in Council and encouraged further postponement.

In October 1935 MacDonald prepared a memorandum for the cabinet which clarified why he believed the Order in Council should not go beyond a "reaffirmation of the time-honoured administrative practice." He explained that "to go further and give statutory effect to the

¹C. O. 533/453, 38005/3, Minute by Bottomley on MacDonald's discussions with Byrne on Aug. 7, 1935.

²KNA, Att. Gen. 3/155, Hosking to Col. Sec., July 29, 1936, enclosing Consul for Japan, C. Mogaki, to Col. Sec., July 21, 1936.

administrative practice would not only antagonize a large body of responsible opinion in this country; it would also meet with most determined resistance from the Government and people of India."¹ But Britain was about to go to the polls, and MacDonald was reluctant to submit his memorandum to the cabinet. He believed that there might be a new Secretary of State after the elections, and he did not want to "bind his hands" on the issue.

MacDonald was in fact, replaced by J. H. Thomas but he held to his predecessor's position. Only a few minor changes were made in the memorandum, which was then sent to the India Office for its views.³ The Colonial Office had not anticipated the reaction of the Marquess of Zetland. Not content with the omission of the controversial explanation, he claimed that he would have to inform the cabinet that the "administrative practice" itself was also in violation of the Treaty of St. Germain-en-Laye.⁴

The Colonial Office insisted that the treaty did not apply between Britain and India because they were within the same empire, but the India Office prepared a memorandum⁵ for the cabinet which contradicted this claim. The Colonial Office replied that the matter would have to be referred to the Dominions and Foreign Office and prepared another memorandum to defend its own position.⁶ However, before the matter was

¹ C. O. 533/453, 38005/3A, Cabinet Memo. Secret (35) Dec. 1935.

² C. O. 533/453, 38005/3A, Minute by MacDonald, Oct. 20, 1935.

³ C. O. 533/453, 38005/3A, Thomas to Zetland, Dec. 9, 1935.

⁴ C. O. 533/453, 38005/3A, Zetland to Thomas, Dec. 19, 1935.

⁵ C. O. 533/453, 38005/3A, Draft of India Office Memorandum, sent to Colonial Office, Jan. 27, 1936.

⁶ C. O. 533/453, 38005/3A, C. P. 43 (36) Secret, Feb. 1936, "Kenya: Reservation of the Highlands Question."

submitted to the cabinet, the India Office agreed to omit the charge that the administrative practice contradicted the treaty.¹ Nevertheless, at the cabinet meeting of February 19, 1936, the Marquess of Zetland insisted that if the Japanese established a right to the Highlands, Indians would have to be given similar privileges.²

The cabinet approved the preparation of an Order in Council which would only define the boundaries of the Highlands. It accepted the Colonial Office's view that by not bringing "the matter into the forefront by giving a statutory status to the reservation of the Highlands,"³ the Japanese problem would be solved. If not, the cabinet agreed to take up the issue again. To lessen the impact in India, the Colonial Office agreed to postpone the publication of the Order in Council until April 1936, the end of the Indian Legislative Assembly session. It was unlikely that it could have been proclaimed before that time anyway.

The cabinet decision was kept secret for obvious reasons. However, when a settler representative personally visited the Colonial Office to press for the early issuance of the Highlands Order in Council, he was informed of its revision.⁴ This information was not made available to Sir John Harris and Charles R. Buxton, who also made inquiries about it.⁵ But in June, the forceful protests of J. A. Cable, an opponent well respected in the Colonial Office, prompted the revelation that the

¹C. O. 533/453, 38005/3A, Zetland to S/S, Feb. 7, 1936.

²C. O. 533/453, 38005/3A, Cabinet 8 (36) meeting of Feb. 19, 1936.

³C. O. 533/453, 38005/3A, C. P. 43 (36) Secret, Feb. 1936.

⁴C. O. 533/462, 38005/3, Minute of Bottomley, March 7, 1936, and Schwartze to Lord Plymouth, March 6, 1936.

⁵C. O. 533/462, 38005/3, Minutes and Correspondence.

Order in Council had been changed. Cable wrongly or perhaps graciously attributed this change to the "liberal sentiments"¹ of yet another new Secretary of State for the Colonies, William Ormsby-Gore. Finally, in a July 9 statement in Commons, Ormsby-Gore publicly announced that the Highlands Order in Council would contain no legal restriction against Africans and Indians.

The fears about settler reaction to the omission of the explanation in the Order in Council had been exaggerated.² The settler leaders were well aware that the "revision" was only an exercise in legal semantics, designed to placate the Government of India, and in no way threatened their position in the Highlands. In fact they had gained the upper hand because of the "revision," since the Colonial Office was now very reluctant to refuse their demands for a Highlands Board.

With or without the revision, the settlers continued to demand the swift enactment of the Order in Council to secure "their" Highlands. When Lord Francis Scott met Maffey in June 1936, he succeeded in convincing the Colonial Office to consider its early issuance.³ But Governor Byrne objected, and Ormsby-Gore realized that this would not be a wise move politically.⁴ Byrne wanted to move slowly and thoroughly on implementation, for early attempts had convinced him that some of the recommendations needed further scrutiny and possibly adjustment.⁵ It was

¹ C. O. 533/462, 38005/3, J. A. Cable to S/S, June 19, 1936

² C. O. 533/462, 38005/3, Byrne to Bottomley, July 3, 1936.

³ C. O. 533/462, 38005/3, Minute of Maffey and S/S to Gov., June 24, 1936.

⁴ C. O. 533/462, 38005/3, Minutes on File.

⁵ KNA, Att. Gen 3/155, Ormsby-Gore to Brooke-Popham, Oct. 28, 1937.

becoming apparent that in its desire for a final settlement, the commission had made some serious miscalculations and that some of its recommendations were not feasible.

The recommendations which proved the most difficult to execute and to defend involved the forced removal of Africans from their land in the Highlands. These people included forest dwelling Dorobo, pastoral Uasin Gishu Maasai, city dwellers such as the "Swahili" of Pangani, and most importantly, agricultural Kikuyu. These groups occupied land within the new boundaries of the Highlands, and their occupancy rights were to be eliminated under the new land legislation. With the exception of the Kikuyu, the people involved in each of the moves numbered only in the hundreds, and they were almost politically powerless. They were therefore vulnerable to the Kenya Government's efforts to coerce them into moving before the new legislation was even passed. Nonetheless, their opposition to removal caused the government many problems and made it the target of increasing criticism from the Labour opposition in Parliament.

The most controversial and difficult of the moves involved two groups of Kikuyu resident in the Kiambu area: the people of Tigoni township¹ and the right holders on European farms. Soon after the British Cabinet had agreed on the content of the Highlands Order in Council, steps were taken to prepare for their resettlement. It was hoped that they would voluntarily accept monetary disturbance compensation and move to the Reserve before their rights were abolished. However, the vast majority of these Kikuyu would not move voluntarily, and they had

¹Report, sections 381-398, 401, and 402.

the support of all segments of Kiambu Kikuyu society, including the government-appointed chiefs. Their removal required formal eviction notices, and these could not be issued until their occupancy rights were extinguished by the new land legislation. Thus, the government's actions were effectively stalemated. But the situation did not remain stagnant: the incidence of forced evictions by settlers and retaliatory actions by right holders began to increase. In 1937, in an atmosphere of increasing tension, the Kenya Government began to press the Colonial Office for the swift passage of the new legislation.

The Kenya Government's changed attitude toward the early passage of the land legislation was also a result of the appointment of a new governor, Air Chief Marshal Sir Robert Brooke-Popham. It had been announced in November 1936 that he would replace Byrne. When he assumed his new post in April 1937, he knew little about the Kenya Land Commission, or Kenya politics and still less about governing a colony. His lack of experience and his sympathy for the settlers made him an easy prey to their pressure. Unlike Byrne, Brooke-Popham soon began to champion the settler cause in their conflicts with the Colonial Office.

The difference between Byrne and Brooke-Popham was very marked in their approaches to the problem of the Kikuyu right holders. When Byrne reported to the Colonial Office, he stressed the Kiambu Kikuyu's "deep and widespread dissatisfaction"¹ with the commission's recommendation. After explaining the reasons for this opposition and finding most of them justified, he suggested that the government might consider offering the Kikuyu a more generous settlement. Brooke-Popham, however,

¹C. O. 533/462, 38005/11, Byrne to Ormsby-Gore, Aug. 25, 1936.

would not acknowledge that the right holders had a legitimate grievance. The central theme of his dispatches to the Colonial Office was always that the delay in legislation had caused the right holders to adopt "a posture of obstructiveness almost amounting to truculence"¹ which was provoking trouble with the settlers. When some of the settlers began burning the homes of right holders and evicting them, Brooke-Popham defended their actions as understandable reactions to extreme provocation. The brunt of his criticism was reserved for the Colonial Office because the delay in legislation had left him powerless to deal with the right holders' "infringement" of European land rights.²

The Colonial Office was forced to send Brooke-Popham two confidential despatches³ explaining that the delay in legislation was the result of the political problems of the Highlands Order in Council and Byrne's desire to avoid further problems by not moving too quickly. However, the worsening right holders' situation had also convinced its staff of the need for urgency.⁴ The settler-forced evictions had brought numerous Kikuyu petitions to the Secretary of State and prompted many questions in Parliament. Labour M. P. Arthur Creech-Jones had taken up the case of the forced African move out of the Highlands. Since he had more information on the Kikuyu, his questions in Parliament and his letters to the Secretary of State mostly concerned the Tigon people or the right holders.⁵

¹C. O. 533/476, 38005/7, Brooke-Popham to S/S, April 28, 1937.

²C. O. 533/476, 38005/7, Brooke-Popham to S/S, Aug. 9, 1937.

³KNA, Att. Gen. 3/155, Ormsby-Gore to Brooke-Popham, Oct. 28, 1937.

⁴C. O. 533/476, 38005, Minute of Bottomley, Sept. 29, 1937.

⁵Rhodes House, Arthur Creech-Jones MSS and Colonial Office files.

The Colonial Office was hard pressed to give him satisfactory answers and feared that delaying the moves would cause more problems in Parliament. Top priority was given to the revision of the land legislation, so it could be sent to Kenya.

Kenya's original drafts of the Native Lands Trust Ordinance, the Crown Lands Ordinance and the two Orders in Council were rewritten by the Colonial Office's legal and East Africa experts. The format of the Kenya drafts had included detailed information "unsuitable for inclusion" in the legislation.¹ For example, the Kenya Government had defined the boundaries of the Highlands in such detail that it was impossible to follow. The protests of Creech-Jones and others also led to the inclusion of an ambiguous proviso in the Native Lands Trust Bill that the right holders were not to be evicted until the governor was satisfied that there was adequate land in their "Native Land Unit" to accommodate them. This was an important departure from the commission's recommendation to provide only monetary disturbance compensation for the right holders.² The Kenya Government had found that there was no possibility of implementing the moves, if the right holders were not allocated land elsewhere. It had also become impossible for the Secretary of State to defend the moves, unless he could assure Parliament that alternate land would be provided.

In its revision of the drafts, the Colonial Office also incorporated the provision for a Highlands Board. Although the board was not to have

¹KNA, Att. Gen. 3/155, Ormsby-Gore to Brooke-Popham, Oct. 28, 1937.

²The commissioners had been divided on this question. (See KNA, PC/CP 9/24/2, Fazan to P. C. Central, June 6, 1936.) Carter had believed that they should be accommodated on the land returned to the Reserve and had advocated the appointment of a special Kikuyu land board to arrange this. Hemsted and Wilson had strongly opposed this idea as impractical, forcing Carter to withdraw his recommendation.

the absolute power of veto which the settlers had demanded, the procedure established made it unlikely that its veto of any land transaction in the Highlands would ever be overruled. The Colonial Office went even further than the Kenya Government had recommended,¹ requiring the governor to consult the board on matters relating to the administration, management, development or control of land in the Highlands, as well as its disposition. Furthermore, the board not only had almost complete control of the land in the Highlands, but also in the Forest Reserves on its boundaries. Although these Forest Reserves also bounded African Reserves, the Kenya Land Commission had recommended that they be treated as a Highlands area. The Highlands Board's approval was now necessary before any land within the Forest Reserves could be exchanged or added to the African Reserves.² Under the guise of giving the settlers security to their land, the revised Highlands Order in Council enabled them to prevent any real expansion of the African Reserves.

In October 1937 the Colonial Office sent its revised drafts to Kenya for evaluation and action. Apart from the changes discussed, these drafts incorporated the major recommendations of the commission, since the Colonial Office had agreed "that our best way of avoiding controversy is to keep to the Report as far as possible."³ One of its senior officials had advised that this policy would help offset the "outcry" against the

¹KNA, Att. Gen. 3/155, Logan to Chief Secretary, Nov. 10, 1937.

²It took a while for the Colonial Office to realize this, but in Nov. 1938, at least the Under Secretary of State knew. Kenya's C.N.C. reported to his replacement while on home leave that "Parkinson was on to the Highlands Board's overriding powers." KNA, C.N.C. 10/75, Hosking to LaFontaine, Nov. 28, 1938.

³C.O. 533/476, 38005, Bottomly to Parkinson, Sept. 29, 1937.

extinguishment of African rights outside of the Reserves. However, he was concerned about the Indian reaction to the Highlands Board, and was afraid that the board would "create suspicion...that the Europeans [and not the government] are to be masters in their own Highlands." ¹

The Colonial Office knew that the African reaction to the new legislation would be negative. ² Although it was unwilling to stop its passage, some officials had serious doubts about the wisdom of land policy in Kenya. J. E. W. Flood had worked on the revision of the drafts, but he minuted his colleagues after they were finished that the whole tendency of land legislation in Kenya was "the wrong way round." ³

To the casual critic it would appear that the object of land regulation in Kenya has been to try to retain as much land as possible for alienation, and to confine the natives to as little as can be left to them in decency. Hence an attitude of mind which resents turning over unoccupied Crown Lands into Native Reserves, probably on the ground that the areas may be wanted hereafter or might possibly be leased to somebody, and hence the queer idea that natives should be parked in Reserves and kept there.

Flood realized that territorial segregation was impossible in Kenya, because without the use African labor outside of the Reserves, "the whole place would come to a standstill and crash." Despite these misgivings, he recommended that the new land legislation be passed. He advised, however, that the Kenya Government should consider "the unoccupied and unalienated Crown land outside the native zoo or the white zoo as land to be primarily developed by Africans." He seemed unaware that this land had not already been included in the "zoos" because it was not capable of being developed.

¹Ibid.,

²C. O. 533/476, 38005, Minutes on File.

³C. O. 533/476, 38005, Minute by Flood, Sept23. 1937.

In December 1937 the draft proposals were submitted to the Kenya Executive Council, which formed a sub-committee to study them.¹ The two settler members of the sub-committee, Lord Francis Scott and Cavendish-Bentinck, tried to amend the proposals.² They opposed the inclusion of the sections making the eviction of the right holders conditional on the provision of adequate alternate land and the absence of the words "White" or "European" when the Highlands were discussed. Their amendments were rejected, but the Executive Council did suggest some other minor changes to the Colonial Office. These were accepted, and the drafts were submitted to the Legislative Council on April 8, 1938, as the "Memorandum on Proposed Legislation to give effect to the Kenya Land Commission Report."³

The Crown Lands Bill and the Native Lands Trust Bill were debated in the April and August sessions of the Legislative Council, and committees were formed to consider each bill.⁴ As expected, there was strong opposition from the Indian members of the body, but they could not block the legislation. In protest they refused to vote on either bill. Africans had no voice at all in the Legislative Council, and the two Europeans who were "representing their interests" voted with the government on the bills. The settler representatives unanimously approved the Native

¹KNA, Executive Council, Dec. 14, 1937, Minute No. 506; Jan. 17, 1938, Minute No. 15.

²C. O. 533/487, 38005, Part I, Gov. to S/S, Conf. 30, Feb. 8, 1938, KNA, Chief Sec. 1/1030. Cavendish-Bentinck to Att. Gen., Jan. 11, 1938, and Lord Francis Scott to Harrigin, Dec. 23, 1939.

³This was published as East Africa Pamphlet 239 by the Colonial Office.

⁴C. O. 533/487, 38005, Part II, Gov. to S/S, Conf. 182, Oct. 7, 1938.

Lands Trust Bill but were very put out that the Crown Lands Bill had not specified "White" Highlands and so refused to vote on that bill. Nevertheless, both bills were passed, and in October, Brooke-Popham applied to MacDonald, who had returned as Secretary of State, for permission to confirm them.¹

In the year's interim between sending the drafts to Kenya and their passage by the Legislative Council, the Colonial Office had become increasingly doubtful about them. It was willing to overlook the Legislative Council's amendment to the Crown Lands Ordinance which made the Highlands Board's "control" over that area more explicit, since it was still more wary of a "first class row" with the settlers than with the India Office.² However, it could not ignore the criticism it was receiving in Parliament about the attempts to remove Africans from the Highlands.³ The Colonial Office was already in a vulnerable position, and the actions of the Kenya Government in carrying out the moves had worsened the situation.

The Kenya Government had been using "persuasion" to force some Africans to move before it had the legal power to do so. Since it kept the Colonial Office ignorant of the resistance it was meeting, the Secretary of State was unprepared for Creech-Jones' questions on the moves. The information revealed by him severely undermined the Colonial Office's repeated statements that Africans were being treated with justice and consideration and increased suspicion of the Kenya

¹C.O. 533/487, 38005, Part II, Gov. to S/S, Oct. 7, 1938.

²C.O. 533/487, 38005, Part II, Minute of J. J. Paskin, Oct. 25, 1938.

³C.O. 533/487, 38005, Part II, Minute of A. J. Dawe, Nov. 1, 1938.

Government. The Colonial Office staff was already aware that Brooke-Popham was giving them a biased appraisal of his government's actions. While they backed his decisions on the African petitions sent to the Colonial Office and refused to intervene, they were increasingly disturbed with the policy of removing Africans from the Highlands. They were especially distressed by Brooke-Popham's admission that, though the Kenya Land Commission had supposedly added land to the Reserves to meet future African needs, some of those to be evicted could not be accommodated within them. This was especially true for the Kikuyu right holders.

When Creech-Jones wrote to the Secretary of State in October 1938 to object to the determination of suitable accommodation for the Kikuyu right holders being left to the sole discretion of the governor,¹ his criticism did not fall on deaf ears. The Colonial Office staff agreed that Brooke-Popham was unlikely to have a very accommodating attitude toward the right holders.² He already had declared his intention to order their removal despite their objections. J. J. Paskin, on the East Africa desk, was certain that this action would bring a flood of new petitions and questions in Parliament.³ To prevent this and to satisfy the objections which Creech-Jones had raised, he suggested that an impartial commission be established to review right holders' complaints about the resettlement land. His suggestion was tentatively approved, and it was decided to discuss the matter with Kenya's Chief Native Commissioner, E. B. Hosking, who was returning to Britain on home leave in November. In the meantime,

¹C.O. 533/487, 38005, Part II, Creech-Jones to MacDonald, Oct. 18, 1938.

²C.O. 533/488, 38005/11, Minute of J. J. Paskin, Oct. 25, 1938.

³Ibid.

the Secretary of State refused to agree to the confirmation of the ordinances passed in Kenya. If he accepted the new procedure of review by an impartial commission, these ordinances had to be amended accordingly.

When Hosking was "hailed up to the C.O.," he found his position very difficult. While he could not refute the criticisms of the right holders' policy, he was sure that the Kenya Government would be opposed to an impartial commission. He confided to his replacement in Kenya that it "would have natives sitting on it,"¹ a departure from Kenya policy. Hosking believed that such a commission would get bogged down in fruitless investigations of African rights in the Highlands, infuriate the settlers and inflame the situation even more.² To dissuade the Colonial Office from this approach, he suggested the alternative of having the Native Lands Trust Board review the right holders' complaints. He assured the Colonial Office that the board's review procedures and the provision that Africans continue to exercise their occupancy rights until suitable alternate land was available could be established through administrative and not legislative action. Hosking warned that amending the legislation should be avoided because it would cause "a storm of protest from the European community in Kenya."³

Hosking's maneuverings in London were not understood by Brooke-Popham and his advisers. It took a personal letter⁴ to the Acting Chief Native Commissioner, S.H. LaFontaine, before Hosking was able to make the governor's advisers understand his intentions. Brooke-Popham,

¹KNA, CNC 10/75, Hosking to LaFontaine, Nov. 28, 1938.

²C.O. 533/487, 38005, Part II, "Note of a discussion with Hosking, C.N.C. Kenya," on Nov. 8, 1938 by J.J. Paskin.

³Ibid.

⁴KNA, CNC 10/75, Hosking to LaFontaine, Nov. 28, 1938.

however, was not listening to his advisers on this issue, for he was incensed at the idea that his responsibility in the matter would be turned over to the Trust Board.¹ He claimed that this action would undermine belief in his impartiality and justice. The Colonial Office dismissed his continued railings as an indication that he was overworked and instructed him that the Trust Board procedure had to be accepted because of the parliamentary situation.² The Secretary of State could not consent to the locally passed legislation unless he could assure Parliament that the right holders' objections to their removal would be referred to an impartial body.

On December 15, 1938, Creech-Jones was informed of the new Trust Board procedure. It did little to satisfy his basic objection to the principles behind the move, but the Colonial Office believed it adequately answered any other questions which might arise in Parliament. Approval was given to the Kenya ordinances, but they could not go into effect until the two corresponding Orders in Council were issued. These were sent to the Privy Council for its February 2, 1939 meeting, but at the request of the India Office were not made public until February 24, 1939. The Native Lands Trust Ordinance and the Crown Lands Ordinance went into effect on March 1st, and the Kenya Government was thereby given the legal authority to remove all African right holders from the Highlands.

Although the Colonial Office may have hoped otherwise, the procedure of using the Trust Board for right holders' appeals did not end criticism. As will be seen from the discussion of these moves in the

¹C.O. 533/487, 38005, Part III, Brooke-Popham to MacDonald, Nov. 25, 1938.

²C.O. 533/488, 38005/11, S/S to Gov., Dec. 5, 1938.

next chapter, the Trust Board functioned as a rubberstamp for administrative decisions rather than as an impartial body. Even if it had acted impartially, it is unlikely that its decisions would have appeased Africans who were being moved against their will. Petitions and representations to Parliament continued to attack the moves, and the Kenya Government's actions did not make the Colonial Office's position any more tenable.

After learning of the Kenya Government's handling of one of the moves, Paskin confessed as early as December 1938, that "I have almost lost confidence in the probability that the moves which have still to take place will be conducted without hardship to the native." He complained that it was "all very well for the Government of Kenya to expect the Secretary of State to defend them in Parliament when they have a good case, but it is expecting altogether too much to ask him to gloss over... ineptitude."¹ However, when faced with the alternative of reversing the right holders policy, most of his colleagues found it preferable, although occasionally distasteful, to allow the Kenya Government to gloss over its own ineptitude. Even Paskin was later willing to believe that the Kenya Government was doing its best in the situation, claiming that it was easy to criticize when ignorant of the local difficulties.²

The Colonial Office's Highlands policy had continued to draw criticism for its discrimination against Indians. The inclusion of an all-powerful and all-European Highlands Board in the Order in Council had brought renewed opposition from the India Office and the Government of India.³ The Colonial Office had realized that such resistance was likely

¹ C. O. 533/488, 38005/11, Minute of J. J. Paskin, Dec. 8, 1938.

² C. O. 533/502, 38005/11, Minute of J. J. Paskin, Jan. 12, 1939.

³ C. O. 533/476, 38005/3, R. Peel of India Office to Under S/S, C. O., Dec. 9, 1937.

when it agreed to the board, but it was not too concerned. According to Flood, "it was all very well for India to talk about politics, but we have got our own political crisis in Kenya. . . ." ¹

The Colonial Office might dismiss the political situation in India, but the Government of India could not. In January 1938, the East African Indian National Congress had sent a delegation headed by Isher Dass, a member of the Kenya Legislative Council, to India. Its purpose was to agitate against the proposed Order in Council and force the Government of India to block the proclamation. ² As a result of its actions, the Indian Council of State passed a resolution to that effect.

Although the Government of India realized that protests were futile, it feared that Indian leaders would accuse it of complicity in the racial exclusion of its subjects in other parts of the British Empire. To defend itself against this charge, it tried to get permission to publish some of its earlier protests to the Colonial Office. However, the reaction within the Colonial Office was "to throw a jet of cold water over this idea." ³ It also denied subsequent requests that the publication of the Order in Council be delayed until April 1939, when the Indian legislature was no longer in session. The only concession which the Government of India could wrest from the Colonial Office was a delay from February 2 to the 21st.

As expected, the proclamation of the Highlands Order in Council brought a storm of protest among Indians in Kenya and India. The Indian

¹ C. O. 533/476, 38005/3, Minute by Flood, Dec. 30, 1937.

² C. O. 533/488, 38005/3, Gov. Deputy to S/S, Jan. 15, 1938.

³ C. O. 533/488, 38005/3, Minute on file.

Legislative Assembly adopted a motion of adjournment to censure the British Government, and a similar motion of indignation was passed by the Indian Council of State.¹ A protest of "hartals and street processions" was announced by the Indian community in Kenya for March 1st.² A special conference of Kenya Indians was convened by the East African Indian National Congress to consider Indian resignations from the Kenya Legislative Council and municipal boards.³ However, the only constructive thing to emanate from these protests was the formation of a Kenya Highlands League to work peacefully for the abolition of the racial restriction of the Highlands.

Under the auspices of the Kenya Highlands League, a rally against the Order in Council was held in Nairobi on June 4, 1939.⁴ Although there had been rallies in Mombasa and other Kenya towns, these were usually Indian affairs, with occasional Arab participation. The June Nairobi rally, however, was billed as an inter-racial affair. As might have been expected, no Europeans were present, but several important African leaders were. Although Africans and Indians were both opposed to the racial restriction of the Highlands, the leaders of each group directed their attacks against that aspect of the policy which affected their own community. The Indians attacked the Highlands Order in Council because it legalized their restriction from the Highlands. However, the most prominent African at the rally, Jesse Kariuki, Vice-President of

¹C. O. 533/502, 38005/3.

²C. O. 533/502, 38005/3, Clippings from Daily Telegraph and Morning Post, Feb. 25, 1939, and Times, Feb. 28, 1939.

³"Indians and the Highlands," East African Standard, March 10, 1939.

⁴"The Highlands Injustice," Kenya Daily Mail, June 10, 1939.

the Kikuyu Central Association, directed his ire against the new Native Lands Trust Ordinance, because it abolished African land rights in the Highlands and authorized the removal of Africans.

Indian opposition to the Highlands Order in Council was poorly organized, and the momentum of the early rallies and petitions was not maintained. Indians in Kenya were sharply divided by religious and caste differences and had been consistently denied equality in all aspects of life in the colony. Most of them were bitter, yet resigned to the second class status which the Order in Council merely had legalized. A sense of futility permeated their protests against this legalization.

Although the Colonial Office kept watch on Indian and African reactions in Kenya,¹ it was more concerned with the criticism of their supporters in Britain. There were the expected questions in Parliament, Polak's and Creech-Jones' personal appeals to the Colonial Office, petitions from humanitarian groups and letters in the Manchester Guardian. The Colonial Office took these in stride,² except when the legality of the Highlands Order in Council was questioned in light of the Treaty of St. Germain. It was hard put to explain its position on the treaty without embroiling itself in further controversy.

In July 1939 a joint meeting of officials in the Colonial Office and India Office was called to devise a policy for answering questions on the implications of the Order in Council and the treaty.³ It was politically

¹The settler reaction was favorable, but to answer Indian protests, Cavendish-Bentinck published a detailed memorandum, Indians and the Kenya Highlands (Nairobi, 1939).

²Flood referred to these opponents as "the Anti-everything Societies," and they were treated as such by the Colonial Office. Even Lugard's opposition had been dismissed as early as 1935. C.O. 533/4453, 38005/3, Minute, Sept. 10, 1935 and C.O. 533/453, 38005/8.

³C.O. 533/502, 38005/3, Minute on meeting of July 27, 1939, by Dawe, Creasy, Pedler, Sir. G. Bushe and Dibdin.

impractical to announce publicly their rationale that the treaty did not apply between members of the Commonwealth. They were afraid that such a statement would supply the Italians and Japanese with some very effective propaganda with which they could "embarrass" Britain. In the tense atmosphere of those months before the beginning of World War II, the British Government did not want further to aggravate Britain's subject peoples. It was agreed that "the right course is to hedge"¹ and then, if necessary, issue evasive answers when the treaty question was raised.

Hedging on the treaty issue proved a more difficult task for the India Office than for the Colonial Office. The Government of India had received a petition from the East African Indian National Congress on the subject and brought the matter to the India Office's attention again after war had been declared. Both were concerned about keeping Indian opinion on the British side and seemed to have had some faint hope that the war might provide grounds for a reversal of the Highlands policy.² The Colonial Office did not agree, and instructed the Government of India to answer the petition only if forced, and then to state that nothing was to be gained by invoking the provisions of the treaty.³

The war may have overshadowed the effects of Kenya's new land legislation in Britain and India, but not among the Kikuyu. Even the most apathetic of individuals will become incited at the prospects of forced removal from their homes and the land on which they depend for their livelihood. And the Kikuyu right holders included among their

¹Ibid.

²C. O. 533/502, 38005/3, Minute of Pedler, Sept. 23, 1939.

³C. O. 533/502, 38005/3, Dibdin to Pedler, Nov. 9, 1939.

numbers some of the most militant Africans in Kenya, and among their supporters almost all of the important Kikuyu political leaders. By the end of 1938 the Colonial Office and the Kenya Government rightly viewed their eviction with some trepidation. As MacDonald himself conceded, the moves were a "difficult and dangerous business."¹

¹C.O. 533/448, 38005/11, Minute by MacDonald.

CHAPTER VII

THE KIKUYU RIGHT HOLDERS

Among the Africans dissatisfied with the results of the Kenya Land Commission, the Kikuyu of Kiambu were the most frustrated. They were convinced that their protests and petitions had been responsible for the commission's appointment and had high expectations of its outcome. Working with the assistance of the KCA and KLBA, they had organized their mbari claims so they could be understood by the European commissioners. Even the most non-political Kiambu Kikuyu had submitted land claims and had given evidence. In the eupheric period while the commission sat, many Kikuyu anticipated the imminent return of their lost lands.

The Kiambu response had overwhelmed and alarmed the commissioners, who had never seriously considered the return of any alienated land. Carter felt compelled to dash any hopes that they might recommend the return of land and issued a statement to this effect at a baraza in Kiambu. However, this disclaimer did not make the commission's recommendations more acceptable. It was incomprehensible to the Kikuyu that even when the commission had found their claims justified, their land was not to be returned. If any had needed further proof of British injustice, the commission had provided it.

If the commission had recommended that legitimate claims in Kiambu be compensated with land of equal quality elsewhere, the claimants may have been satisfied. But even this conclusion is doubtful, for they had allegiance to specific pieces of land which had traditional as

well as economic importance. With few exceptions, the commission recommended that claimants were not to have any right to the land added to the Kikuyu Reserve. At any rate, this land was not equal in quality or quantity to that alienated in Kiambu, and much of it was already claimed by either Kikuyu.

In Kiambu the profound disappointment with the commission's recommendations affected even the most conservative leaders. It was significant that Senior Chief Koinange, the government's most important chief in Kiambu, emerged as the main African opponent of the recommendations. Koinange had received little satisfaction for the land unjustly alienated from his family, but even the Kiambu chiefs who had not suffered personal losses opposed the recommendations.¹ To express their dissatisfaction they formed an uneasy alliance with the leadership of the KCA and KLBA and, with the help of sympathetic Indians, sent numerous petitions to the governor and Colonial Office.

In the period immediately following the publication of the commission's report, the top officials of the Kenya Government were oblivious to the extent of the dissatisfaction it had caused in Kiambu. They had expected that the Kikuyu would be unhappy with the recommendations and dismissed any protests as the work of KCA "agitators." Since no action was taken to implement the recommendations in Kiambu until March 1935, when Gerald Hopkins became district commissioner, the Kiambu leaders assumed that the delay meant that the commission's findings might still be reversed.² Hopkins' efforts to implement the report ended

¹KNA, PC/CP.9/21/1, "Njuno Estate-Koinange Lands (1934-37)."

²L. O. 31322 I, D. C. Kiambu to P. C. Central, Oct. 3, 1935.

this misconception and also any hopes his superiors had that the people of Kiambu would passively accept the recommendations.

When Hopkins began to investigate the land recommended for addition to Kiambu, Koinange and others advised him that it could not be treated as Lebensraum for the district. It already was claimed by individual Kikuyu, and these claims were legitimate according to the laws and customs of the people of Kiambu. The sub-committee of the Kiambu Local Native Council appointed to assist in the land allocation insisted that if other Kikuyu knowingly accepted this land, "it would lead to endless friction and could bring them no prosperity."¹ Hopkins became convinced that if Kikuyu recognized claims were ignored, a lasting settlement would be impossible. Acting on his own discretion, he began to recognize "reasonable" individual and mbari claims to the added land.

Despite Hopkins' willingness to depart from the commission's recommendations, the added land could only accommodate a very small proportion of the dispossessed people of Kiambu. Discontent increased when it became apparent that many of them would not receive any land. The Kiambu leaders echoed this frustration in their dealings with Hopkins and his superiors, arguing that the people of the district would not accept a partial settlement of the problem of its landless people. Led by Koinange, they retained this position throughout the negotiations to implement the recommendations. They were eventually successful in forcing the Kenya Government to consider the question of resettling all the landless, but as with other aspects of the land issue, the government adopted the piecemeal approach used by the commission.

¹ Ibid.

The commission not only had failed to deal with the problem of the landless Kikuyu, but also had made recommendations which would have increased their numbers. All those Kikuyu legally occupying alienated land were to have their occupancy rights terminated. In Kiambu this eviction was seen as an attempt to finish the earlier settler efforts to dispossess the people of the district.¹ The commission's recommendations to remove the Kikuyu living on the Tigoni township land and the Athi of the Kinari forest area were given the same interpretation. These three removals became the focus for the resentment felt in Kiambu against the commission's recommendations.

Of the three evictions, the one affecting the right holders on the farms had the most potential for causing unrest. The government anticipated resistance from the Tigoni people whose removal had been planned for several years before the commission had been appointed; and the Athi were too few in number and politically ineffectual to cause problems on their own.² In contrast, the government was unaware of the large number of right holders on the farms or the depth of their resistance until it attempted to move them.

In early 1936 the Kenya Government believed that the legislation to abolish African land rights in the Highlands would soon be enacted.³ To prepare for their removal, it had to identify the individual right holders. Theoretically there could have been right holders throughout

¹C. O. 533/466, 38086/5, Kikuyu Joint Associations to S/S, April 29, 1936.

²A discussion of the removal of the Athi from the Kinari Forest is contained in my "The Kenya Land Commission(1932-33) and Dorobo Land Issues," Staff Seminar, Department of History, University of Nairobi, April 26, 1972.

³See Chapter VI.

the Highlands, but the only Africans who had claimed this status were Kikuyu living on alienated land in the Kiambu area. In March, District Officer Arthur Phillips was appointed to compile a census of Kiambu right holders so that £2000 in disturbance compensation could be distributed among them.

The realization that the government was going to act on the commission's recommendations led the Kiambu leaders to petition the Secretary of State directly.¹ They demanded that all Kikuyu previously forced to leave their land be given land elsewhere and that the right holders not be moved. Shortly after the petition was forwarded, representatives of the Kikuyu Loyal Patriots Association, KCA, KLBA, and the githaka owners of Kiambu met in a baraza under the chairmanship of Koinange.² Resolutions were passed and forwarded to the government, demanding land for those already dispossessed and "Freehold Title Deeds" for land in the Kikuyu Reserve. Instead of moving the right holders, the government was advised to refund the money to the settler purchasers of the land in question. The baraza also protested against the racial exclusivity of the Highlands.

The forwarding of the Kiambu petition directly to the Secretary of State and the militant nature of the resolutions passed during the subsequent baraza caused considerable anxiety in the Kenya Government. Its officials were aware that the commission had been less than just in its treatment of the right holders and that many of the Kikuyu objections to the removal were legitimate. More importantly, they were afraid that

¹C.O. 533/466, 38086/5, Kikuyu Joint Association to S/S, April 29, 1936.

²C.O. 533/466, 38086/5, Chief Koinange to the D.O., A. Phillips, May 13, 1936.

their efforts to implement the moves would not withstand parliamentary scrutiny. The actions of the Kiambu leadership increased the likelihood of such scrutiny. The Kenya Government tried to intercept the petition to the Secretary of State, but the original had been posted to the Colonial Office.¹

The Colonial Office inquiries on the grievances in the petition forced the Kenya Government to give more attention to the proposals to accommodate the right holders. At the beginning of the allocation of the land added to Kiambu, Hopkins had set aside an area called Muguga for the right holders. However, he later discovered that Muguga was "entirely waterless and of poor fertility" and decided that it was not suitable for the right holders. He believed that since these Kikuyu were to be "compelled against their own wishes to move off the good European farm land they are now occupying, ... Government is under strong obligation to provide them with other suitable land."² Many of his superiors did not agree that they were under any moral obligation, but they did recognize that it was politically wise to give the right holders decent land. By March 1936 there was a general consensus in the Native Affairs Department that good compensatory land should be provided, "even if it means some sacrifice on the part of the Government."³

As on many other issues, the Forest Department did not share the Native Affairs Department's sentiments on the right holders. Throughout the period of implementation it acted to sabotage any proposals to settle

¹KNA, PC/CP.9/24/2 P. C. Central to Col. Sec., June 24, 1936.

²L. O. 31322 I, D. C. Kiambu to P. C. Central, Feb. 26, 1936.

³L. O. 31322 I, Handwritten note, C. N. C. (?), March 14, 1936.

the right holders on land within its jurisdiction.¹ After the poor quality of the Muguga land became known, the P. C. of Central Province asked that a forest area near Limuru be made available.² The Forest Department refused on the grounds that the forest area was too important to be turned over to African cultivation. This rejection led the next provincial commissioner, S. H. LaFontaine, to propose that the Kiambu right holders be moved to land added to the other Kikuyu districts.³

LaFontaine argued that Kiambu had lost six-sevenths of the land unjustly alienated from the Kikuyu, but it was receiving only one-half the area added to the province. He believed that the Kiambu right holders deserved most of the land added to Fort Hall, South Nyeri and Embu districts. His superiors eventually accepted this view, but only because he had glossed over the Kikuyu opposition to the proposal.

Under LaFontaine's instructions, the Kiambu leaders dutifully met with the Local Native Councils of the other districts to discuss the proposal. The reception they were given illustrated the proposal's major weakness: the Kikuyu were not so united as either the commission or the KCA had claimed. Sectional differences were marked, and the Kiambu people were viewed by other Kikuyu as outsiders who wanted land they did not own. District identity was so well developed that clan affiliations had little practical significance. The leaders of the other districts argued that if the Kiambu right holders were to be forced upon

¹The Forest Department also had a policy of selling off the timber on land to be turned over to the Kikuyu Reserves, until stopped by Native Affairs Department.

²L. O. 31322 I, P. C. to Commissioner for Local Government, Lands, and Settlement, Feb. 29, 1936.

³L. O. 31322 II, P. C. Central to Colonial Secretary, Sept. 3, 1936.

them, they would have to become "blood brothers" of the local people. This prospect was distasteful to all concerned, especially the right holders. On their behalf, Koinange rejected ceremonial brotherhood because it "would mean adoption, and the Kiambu people did not wish to lose their identity in this way."¹

Faced with overwhelming Kikuyu opposition to his proposal, LaFontaine personally addressed the individual councils in July 1936, and made a speech at their combined meeting in August. When he was unable to convince them that they should accept the proposal because they were all members of "one tribe," discussion ceased, and they were ordered to accept it as government policy. Presented with an apparent fait accompli, the councilors had no choice but to acquiesce, but in reality, the proposal had not yet been accepted by the government. When formally submitted the following month, LaFontaine so misrepresented the Kikuyu reaction that the Land Office expressed relief that the proposal had received so little opposition.² Under this erroneous impression, the government approved the proposal, and 4,000 acres of the land, added to Fort Hall, South Nyeri and Embu, were set aside for allocation to the Kiambu right holders.

By the time of the government's approval of LaFontaine's scheme, Arthur Phillips had submitted the results of his investigation of the right holders. As a trained lawyer, who shortly would become Crown Counsel for the colony, he had approached the investigation with a judicial thoroughness which contrasted sharply with the previous treatment of the

¹KNA, PC/CP. 9/24/2, Extract from Fort Hall L.N.C. Meeting, June 17, 1936.

²L.O. 31322 II, C.E. Mortimer to P.C. Central, Sept. 23, 1936.

right holders. Before his report there had only been speculation on the number of people involved and little effort to identify specific right holders. As a result of his work, over 4,000 right holders were identified in Kiambu, mainly in the Limuru area. Although this figure was far in excess of the anticipated number, it did not include any Kikuyu who had left alienated land before 1932, willingly or not. This was the arbitrary cut-off date which the commission had recommended. Phillips' list also was confined to the first and second generation of right holders.¹

The original purpose of Phillips' investigation had been the identification of the right holders, so that disturbance compensation could be divided among them. But when he submitted his report, it was decided to postpone payment until they had been moved to their new land. This face-saving gesture was made for two reasons. The £2,000 available for compensation had been recommended when the numbers involved were thought to be anywhere from two to four hundred. With the actual number at over 4,000, that sum would fall embarrassingly short of its avowed goal. Furthermore, the administrative officers dealing with the right holders were convinced they would refuse to accept any monetary compensation.

The right holders had cooperated with Phillips in his investigation, but they gave no indication that they would move without being forcibly evicted. They were encouraged in their resistance by the KCA and the KLBA.² It was not unusual for the government to move Africans against their will, but the possibility of a political disaster forced it to be more cautious with the right holders. Since they had refused to move voluntarily, the right holders were allowed to remain on the farms until the

¹Rhodes House, Arthur Phillips MSS, "Report on Inquiry into Kikuyu Claims of Right on Alienated Land."

²Interviews, Ng'ang'a Goro, June 15, June 24, and Aug. 2, 1972.

Order in Council gave the government the legal power to move them.

The right holders' issue lost its abstract quality after Phillips' investigation. With specific right holders being identified, there was considerable uneasiness among the settlers on whose farms they were residing. They had previously considered most of them "squatters" whom they could evict at will. Contemptuous and yet fearful of their status as right holders, the settlers began to press the government for their immediate removal.¹ When they received no satisfaction, some of them resumed their own evictions.

With mounting pressure from the settlers and continued delay in the promulgation of the Order in Council, the government redoubled its efforts in 1937 to "persuade" the right holders to move. In August it offered land at Muguga to any of them willing to move. Although the right holders were told that if they refused, they might forfeit their right to any other land, very few accepted. The KCA and KLBA worked hard to discourage even those few from taking the land offered them. By September it had become "abundantly clear that the vast majority of right holders would have nothing to do with the land at Muguga."² They had the support of Koinange and the Kiambu Local Native Council which continued to demand land for all the landless from Kiambu, not just those to be turned off the farms.

In response to their demands, La Fontaine petitioned his superiors to reexamine an earlier proposal to make a specific piece of land outside of the Kikuyu Reserve available for landless Kikuyu. He argued that if

¹C. O. 533/476, 38005/7, Gov. to S/S, Aug. 9, 1937.

²KNA, PC/CP.9/34/1, D.C. Kiambu to P.C. Central, Sept. 4, 1937.

such land were available, "then there would be supreme moral justification for the drastic action, which I consider necessary and which I have every intention of taking" when he had to move the right holders. Although there still might be trouble, he believed that the "Government could then act strongly with a clear conscience."¹

The new Acting Chief Native Commissioner, E. B. Hosking, already had urged his government to reappraise its policy toward the Kikuyu, since it could not withstand Colonial Office scrutiny. He believed that the government could not "afford politically to leave a numerous and powerful tribe with a feeling of resentment and antipathy." The Kenya Government was "to a large extent" responsible for the overcrowding of the Kikuyu Reserve by its "land policy, or lack of it." Hosking emphasized to his superiors that it was "no longer the Kikuyu agitators, who for political purposes or their own glorification are stirring up the natives," but "the responsible representatives of the tribe who are pressing for a settlement of the Kikuyu grievances." To right past wrongs, he suggested that a large area of good land, preferably in the Trans Mara area, be allocated as a kind of Kikuyu colony to "be enjoyed in perpetuity by those who can no longer be accommodated in the Reserve."²

Although Hosking's and La Fontaine's arguments were significant, they would not have had much impact, if the specter of Colonial Office interference had not been present. It had already instructed the governor that "squatters" could not be turned off farms under the Resident Native Labour Ordinance unless alternate land was available for them,

¹KNA, PC/CP. 9/34/1, P. C. Central to Col. Sec., Oct. 30, 1937.

²L. O. 30466 I, Hosking to C. S., Sept. 27, 1937.

and this requirement had been extended to the right holders. Since the land which the commission had recommended for accommodating landless Kikuyu was worthless, the government was forced to find another solution. Hosking's recommendation was the most acceptable and eventually led to the establishment of the Olenguruone Settlement Scheme.

The government's acceptance of the proposal to establish a Kikuyu settlement scheme outside of the Reserve may have helped placate the Kiambu Local Native Council, but the right holders were still unwilling to leave their rich land in Kiambu for poorer land in distant Fort Hall, South Nyeri, Embu, or later Olenguruone. The situation between the right holders and settlers in Kiambu continued to deteriorate during 1937 and 1938. In April 1938, P. Wyn Harris, a district officer attached to Nairobi District, reported that "Disputes, complaints and direct action by both sides are becoming increasingly common."¹

Wyn Harris and other officers, while cautioning restraint to the settlers, usually sympathized with them. Although settler evictions of right holders were illegal, the administrators excused them as justifiable. A case which came to the attention of Parliament illustrated their attitude.² It involved five right holders on a farm belonging to S. Morson in the Limuru area. They had refused to work for him and, according to his testimony, started to cultivate areas of the farm against his instructions. He reported the situation to the local district officer, A. C. M. Mullins, who ordered the Africans' eviction. When they refused to comply, Mullins arrested them for illegally residing on the

¹KNA, PC/CP.9/34/1, Wyn Harris to D. C., Nairobi, April 1, 1938.

²C.O. 533/476, 38005/11, Correspondence and minutes.

farm. He claimed that they were not right holders, but, when they petitioned the Secretary of State and Creech-Jones, they were released and returned to the farm. Within two weeks of their return, several of Morson's cows died of arsenic poisoning and part of a fence was pulled down. Mullins and Morson blamed these incidents on the right holders, but their accusations could not be proven. The right holders were allowed to remain on the farm until they were legally removed under the Order in Council.

The right holders' action in petitioning the Secretary of State and Creech-Jones in the Morson case was typical of their general response to pressure to leave their land. The Morson case was unusual, however, because it was a government official rather than a settler who had done the evicting. In the years following Phillips' report, the Colonial Office received many petitions, either directly or indirectly through Creech-Jones, from right holders who had been evicted and burned out by settlers. Their cases were brought up in Parliament by Creech-Jones and other Labour members so often that the Colonial Office felt obliged to advise the Kenya Government to consider the possibility of paying additional compensation to illegally evicted right holders. It suggested that the additional funds might come from the settlers who had "taken the law into their own hands,"¹ but the Kenya Government dismissed this on "political and moral" grounds.² None of the offending settlers even received so much as a fine for their actions.

The Order in Council was finally promulgated in February 1939, but contrary to the Kenya Government's wishes, it was not immediately

¹ C. O. 533/476, 38005/11, S/S to Gov. Jan. 14, 1938.

² KNA, P. C. /CP. 9/34/1, D. O. Nairobi to P. C. Central, 1938.

empowered to evict the right holders. The governor had to be satisfied that adequate alternate land and disturbance compensation had been provided for the right holders and their annual crops harvested. If the right holders were dissatisfied with the land allocated to them, they were allowed to appeal to the Native Lands Trust Board. The Commissioner of Lands and Settlement and others in the administration warned that these safeguards would cause serious difficulties in carrying out the moves.¹

On February 22, 1939, Wyn Harris was seconded for special duty and charged with the removal and resettlement of African right holders occupying land in the Highlands, i.e., the Kikuyu resident on farms in Nairobi District. Later, he was also given jurisdiction over the removal of the Kikuyu living in Tigon "township," and the Athi of the Kinari area of the Kikuyu Escarpment Forest Reserve. The government had made no decisions on the procedure for implementing the moves or allocating the new land and disturbance compensation to individual right holders.² The resulting lack of legal and procedural guidelines did not distress Wyn Harris, who was quite willing to fill the decision-making void left by his superiors. His ability "to take command" of an explosive situation was a character trait the British Government valued very highly in its administrators. As this was the case, he was allowed more personal discretion than his fellow junior officers and was responsible only to the Chief Native Commissioner and the Commissioner of Lands and Settlement.³

¹ L. O., LND 20/12/1/1/1, Mortimer to Chief Sec., Feb. 14, 1939.

² KNA, DC/NBI 2/1, "Report on the Settlement of Right Holders Removed from Farms in the Nairobi District," by P. Wyn Harris, July 12, 1940.

³ KNA, CNC 10/76, Tomkinson to Hosking, May 30, 1939.

As an officer in Nairobi District, Wyn Harris had shown little regard for the legal niceties which had prevented him from remedying the situation created on the farms by the right holders.¹ Although he believed in the necessity of justice for the right holders, he did not have much sympathy for them or any other Africans who made the task of administration more difficult. Their refusal to move to the lands reserved for them in the non-Kiambu districts was to make his assignment almost impossible.

The right holders and all other concerned Kikuyu had never ceased voicing their objections to La Fontaine's proposal. In October 1938, Col. E. L. B. Anderson, the new D. C. of Kiambu, had warned La Fontaine that his proposal was "absolutely unacceptable to the right holders. . . . In this they are supported by the whole tribe,"² but he was ignored. At the time of Wyn Harris' appointment, Anderson again cautioned La Fontaine that the right holders' issue had reached a crisis stage.³ He wanted the move delayed until the Trans-Mara land was available, but he believed that the only viable course was to find land close to Kiambu for the right holders. Since La Fontaine was Acting Chief Native Commissioner while Hosking was on leave, Anderson's objections never went beyond his office.

Although La Fontaine ignored the objections to his proposal, other members of the government were becoming increasingly aware of its impracticality. Wyn Harris had encountered a well organized campaign

¹In particular he disputed the Crown Counsel's opinion that the right holders could not be administered in the same manner as Africans in the Reserves. KNA, PC/CP.9/34/1, Wyn Harris to D. C. Nairobi, Nov. 15, 1937.

²KNA, PC/CP./24/3, D. C. Kiambu to P. C. Central, Oct. 29, 1938.

³KNA, DC/KBU/4/8, D. C. Kiambu to P. C. Central, Feb. 21, 1939.

of passive resistance among the right holders which had "taken the form of non-cooperation in assessing the value of individual claims."¹ This "almost unanimous opposition" was supported by Koinange and the other government-recognized leaders of Kiambu, and encouraged a growing fear among administrators that evictions would also encounter resistance and perhaps violence.

In May Koinange met Governor Brooke-Popham to explain to him that the right holders would not accept the land offered them.² He suggested that land in the Kerita forest near Kiambu be used as an alternative. Brooke-Popham dismissed Koinange's objections and repeated that the right holders would have to go to the land already assigned. Perhaps on the advice of LaFontaine, who was also at the meeting, the governor got the impression that Koinange had finally agreed to the proposal. He was mistaken and shortly thereafter, Koinange submitted a written protest against the proposal.³

At the end of May, Wyn Harris reported the resistance he was encountering to the Native Lands Trust Board,⁴ which was to review the appeals of the right holders on the land offered them. Two board members, C. J. Wilson and Archdeacon Burns, fearing that the resistance would necessitate forcible eviction, voiced their opposition to LaFontaine's proposal. The use of such force would have had "unfortunate repercussions in Kenya and England,"⁵ and they saw no reason why alternate land

¹ KNA, Chief Sec. 1/1029, C. J. Wilson and C. N. C., May 28, 1939.

² KNA, DC/KBU 4/8; Minute of meeting, May 4, 1939, enclosed in Tomkinson to D. C., Kiambu, May 8, 1939.

³ KNA, DC/KBU 4/8, D. C. Kiambu to P. C., Central, May 15, 1939.

⁴ KNA, Chief Sec. 1/1029 I, C. J. Wilson to C. N. C., May 28, 1939.

⁵ Ibid.

could not be found in the forest near Kiambu. Wilson pointed out that the Forest Department was in the process of negotiating the surrender of one hundred square miles of bamboo forest to a European company in this area. In light of this, he argued that the "supposed sanctity of the Forest Reserve"¹ was no justification for refusing evicted right holders 4,000 acres of forest land.

The right holders' campaign of passive resistance had also prompted other members of the Kenya Government to reevaluate La Fontaine's proposal. When Hosking returned from leave he found four of the five members of the Trust Board and "also nearly all the Administrative Officers concerned" in revolt.² With only La Fontaine favoring exile for the right holders, Hosking called a meeting of the governor, top government officials, Wyn Harris, and Anderson to sort out the shambles.

Anderson submitted a memorandum to the meeting which outlined the situation in Kiambu.³ Of the eight farms which Wyn Harris had visited by then, there had not been one case in which the right holders had cooperated with him in his assessments or even considered the possibility of going to the areas allotted. Since it seemed likely that these areas would be boycotted entirely, forcible evictions would be necessary, and these would be accompanied by appeals to the Trust Board. Anderson reminded the meeting that the Colonial Office had asked that Africans be evicted only in exceptional cases and had expressed the hope that there would be few appeals to the Trust Board. The right holders' resistance

¹ Ibid.

² KNA, CNC 10/65, Hosking to J. J. Paskin, Colonial Office, Nov. 1, 1939.

³ KNA, DC/KBU 4/8, "Settlement of Right Holders, Limuru," June 2, 1939.

created "the possibility that the storm raised by the evictions might be on the same scale as that of the Machakos destocking, or that the Secretary of State might be so pressed by Mr. Creech-Jones in the House that he would interfere."

This last argument was the most telling, and with LaFontaine conveniently on leave, Brooke-Popham agreed to explore the possibility of finding land close to Kiambu for the right holders.¹ He directed Wyn Harris and Anderson to investigate the forest around Kiambu for a suitable area and to ask Koinange and Waruhiu, another chief in Kiambu, if the addition of this land would settle the right holders' problem. According to Wyn Harris, Koinange still insisted that the mbari claims would have to be met first. This was quite likely, but Wyn Harris was also exceptionally hostile to Koinange and used this occasion to denounce him to his superiors as an obstructionist.² Waruhiu, who earned a reputation as an "ndiyo bwana" for his cooperation with the government,³ accepted the new proposal for the right holders. With his help, Wyn Harris located two areas for them in the Kikuyu Escarpment Forest, the Lari Plantation and the Kerita Forest.⁴

The Trust Board had to approve the new proposal before the government could make the final decision. Wyn Harris, acting as the board's secretary, received the endorsement of Burns, Wilson, H. R. Montgomery, and Hosking. The fifth member of the board, Lord

¹ Forest Department, TV-118-II, "Minutes of Meeting at Government House on June 2, 1939."

² KNA, Chief Sec. 1/1029 I, Report of P. Wyn Harris, June 30, 1939.

³ Interview, Ex-Senior Chief Josiah Njonjo, August 16, 1972.

⁴ Wyn Harris has written of Waruhiu, "My great friend the late Chief Waruhiu, who helped me so much in the settlement was unfortunately the first target of the terrorists in the Mau Mau disturbances..." Personal correspondence, Sept. 21, 1972.

Francis Scott, the settler representative, opposed it on the grounds that LaFontaine's proposal was more than fair to the right holders. He deplored the government's inclination "to run away whenever opposition appears." He stated he had no sympathy for the right holders, since they had "proved themselves the worst type of agitating and offensive natives."¹ But he could not deny the ramifications of the passive resistance which Wyn Harris had met. Since the settlers' overwhelming concern was the removal of the right holders as soon as possible, Scott grudgingly agreed to the new proposal. Ironically, it was he who had to persuade the settler-dominated Highlands Board to accept the proposal.

The Highlands Board often used its veto over Forest Reserve land to win concessions for the settlers. For example, it only agreed to the excision of 20,000 acres from the Trans-Mara forest area for Olenguruone on the condition that an equal amount of acreage in the area be opened for European settlement.² Despite its reluctance to approve the proposal to allocate forest land near Kiambu to the right holders, the board wanted to avoid delay in the moves and forestall Colonial Office interference. It accepted the proposal but with the condition that 4,000 acres be returned to the Forest Reserves from the land the commission had added to the Kikuyu Reserve. The government accepted this stipulation to placate the Forest Department, as well as the Highlands Board.

From its first airing, the proposal to give the right holders land near Kiambu had drawn the "most emphatic objections" of the Forest

¹KNA, Chief Sec. 1/1029 I, Lord Francis Scott to Hosking, June 23, 1939.

²Forest Department, TV 118-2, J. C. Rammell to Windby, Aug. 16, 1936.

Department which would lose some valuable tree plantations.¹ Its officials expressed concern that the loss of forest in Lari and Kerita might affect the head-waters of the rivers which furnished the water supply for Nairobi. However, since the Forest Department had recently turned over one hundred square miles in the same area to a lumber concession, this argument had little force. Much more telling was its objection that the proposal would sacrifice correct land planning for the expediency of political goals.

On July 28th, the Governor in Executive Council approved the excision of 4,000 acres in the Lari and Kerita areas for the right holders in exchange for 3,000 acres previously added to Fort Hall and South Nyeri districts.² He directed that 500 acres of the new land be retained for resettling the Athi of the Kinari forest, who were to be removed with the right holders by February 28, 1940. The government decided to call a baraza at Tigoni in August to inform the right holders of its change of policy.³

The members of the Kiambu Local Native Council had continued writing and cabling the governor to protest the resettlement of the right holders. When they requested a meeting with him before the Tigoni baraza, he agreed, but only so that he could personally tell them of the new proposal which he declared was the "last sacrifice" he would make "to meet the Kikuyu."⁴ Contrary to Brooke-Popham's expectations, they were not "grateful" for the new proposal, and they angered him by raising

¹Forest Department, TV 118-2, J. C. Rammell to Chief Secretary, July 14, 1939.

²L. O. 26193, Executive Council Minute 387, "Additional Land for Right Holders."

³KNA, DC/KBU/4/8, Wyn Harris to P. C. Central, Aug. 4, 1939.

⁴KNA, DC/KBU 4/8, "A Note on Governor's Speech to the Kiambu LNC LNC Committee on Aug 20, 1939."

the mbari claims again. Koinange and the others believed that "if the Settlers find it uncomfortable to live among us, the Government should find some other place for them. We do not want to be moved from our original lands, our trees of worship, graves of our ancestors."¹ They wanted a postponement of the baraza until the right holders had had an opportunity to examine the land at Lari and Kerita, but Brooke-Popham refused. Instead he warned them that it was their duty as "servants of the Government" to carry out his orders and make the resettlement of the right holders a success.

The baraza at Tigoni was held the day after the meeting with the governor, but only two hundred and fifty right holders attended. The government attributed the poor attendance to the KCA, but even those present voiced their continued opposition to the moves. They claimed that they did not want to be moved from the land they were occupying, no matter what the government offered in return. Nevertheless, the right holders were instructed that the government's decision was final.² After the baraza there was a general consensus in the government that the right holders would cooperate, although reluctantly. This baseless optimism was dispelled when Wyn Harris again met resistance and the majority of the right holders appealed his assessment of the land and compensation they were to receive.

Even though Wyn Harris had supported finding alternate land for the right holders, he had expected that it might not satisfy them. He

¹KNA, DC/KBU/4/8, Letter personally given to governor by Koinange at August 20, 1939 meeting.

²KNA, DC/KBU/4/8, "Notice Circulated at Meeting on August 21, 1939 (Tigoni)," "Notice of Baraza."

believed the Kikuyu to be "an ungrateful and omniverous creature when it comes to land," but defended the proposal because it would allow the Kenya Government, "with a good heart," to "content with our critics at home."¹ However, when the Colonial Office learned of the proposal in October, it was very distressed at the assumed poor ecological effects of losing forest area in the Kiambu area.² There was general agreement that farms should have been bought for the right holders. Approval of the moves was therefore delayed until the Kenya Government was questioned further on the matter and until the Secretary of State received a copy of a petition which Creech-Jones insisted had been sent to him by the KCA.

The petition to which Creech-Jones referred had been written after the Tigoni baraza and vigorously protested the right holders' moves, even to Lari and Kerita.³ Three reasons were given for the right holders' opposition: Wyn Harris had wrongly assessed their land on the farms; the new land was not sufficient for their needs; and they had been unable to appeal the Trust Board's decisions to the governor. The Colonial Office was unable to obtain the original copy of the petition which had been sent through "proper channels" in Kenya and finally had to ask Creech-Jones for his copy.⁴ However, after examining the petition, the Colonial Office dismissed it, as it had other Kikuyu protests.

¹KNA, Chief Sec. 1/1029 I, "Memorandum on Right Holders on Limuru Farms," by P. Wyn Harris, June 17, 1939.

²C. O. 533/502, 38005/11, Minutes by Chadwick, Pedler, Stockdale, Creasy and Dale.

³C. O. 533/502, 38005/11, George K. Ndegwa, Ag. Gen. Sec., KCA, to S/S, Sept. 11, 1939, enclosure in A. Creech-Jones to MacDonald, Dec. 13, 1939.

⁴C. O. 533/502, 38005/11, Minutes on file and A. Creech-Jones to MacDonald, Dec. 13, 1939.

Short of abandoning the "odious" policy of moving the right holders, it believed there was nothing else which could be done.¹

The permanent officials in the Colonial Office were willing to allow Kenya to proceed with the moves, but MacDonald was uneasy. He was concerned that the moves would provide excellent war "propaganda to the effect that we only care about freedom for the white man and not the black."² He directed his staff to explore the feasibility of shelving the moves until the war was over.

MacDonald's change of heart hit the Kenya Government like an "unexpected bombshell."³ Hosking and A. Wade, the acting governor,⁴ responded quickly and forcefully to convince him of the absolute necessity of moving the right holders as soon as possible. Their most persuasive argument was that the moves already had been initiated. Although this was only technically true, MacDonald believed he had been given a "fait accompli."⁵ However, he delayed giving his approval to the Lari and Kerita proposal for several months. After finally consenting to the moves, MacDonald received seven petitions from right holding mbaris which revived his doubts.⁶ Kenya was again asked to defend its policy, but MacDonald was willing to be convinced. A personal note

¹ C. O. 533/516, 38005/B, Minute by Seel.

² C. O. 533/502, 38005/11, MacDonald's Minute, Nov. 12, 1939.

³ KNA, CNC 10/65, Hosking to J. J. Paskin, Colonial Office, Nov. 1, 1939.

⁴ At the outbreak of the war, Brooke-Popham had been recalled for duty in the R.A.F. He was later to preside over the fall of Singapore.

⁵ C. O. 533/502, 38005/11, Minute by Chadwick, Dec. 6, 1939.

⁶ C. O. 533/516, 38005/11, Extract from S/S to Sir Henry Moore, April 9, 1940.

1

from Wyn Harris explaining the necessity of the moves and the "generous treatment" being given the right holders assured him that all was well.¹

The Kenya Government had established a procedure for removing the right holders which insured that their objections would have little effect. Even if they refused to cooperate, Wyn Harris' assessment of their property was backed by the Trust Board and its decision was regarded as final. Moreover, it was within Wyn Harris' discretion to punish uncooperative individuals by under-assessing the value of their land, buildings and permanent crops. He had modified MacDonald's original instructions that the quality and extent of the right holder's land on the farms were to be the bases of his assessment. Instead he only accepted land which he believed was in "beneficial occupation"² and excluded land which he believed the right holders had cultivated for political purposes or which was beyond their needs. Therefore, rather than the extent of the land they occupied, the major factor in his assessment was his calculation of the land needs of the right holders. Although he argued that most of the right holders fared better this way, they disagreed and most of them appealed to the Trust Board.

Only in rare cases, however, did a right holder succeed in obtaining even a minor variation in his assessment, as illustrated by the outcome of the board's January 8, 1940 meeting.³ Of the sixty-eight appeals

¹C. O. 533/516, 38005/11, "An informal note on the Settlement of ex-right holders" by Wyn Harris, enclosed in Gov. Sir Henry Moore to MacDonald, March 23, 1940.

²KNA, DC/KBU 4/8, "Memorandum, Removal of Resident Right Holders from European Farms," by P. Wyn Harris, March 31, 1939.

³KNA, CNC 1029(2), Native Lands Trust Board, Minutes, Jan. 8, 1940.

heard at this meeting, the board refused to increase any of the land assessments but did decrease one by an acre. In only three cases was there an increase in monetary compensation. Even though there was no official appeal beyond the board, many right holders petitioned the Secretary of State to intervene, but to no avail.

The board not only gave Wyn Harris full rein on the matter of assessments, it also accepted his policy of denying right holders status to some of those included in Phillips' original list.¹ The largest group to be excluded were the right holders who had left the farms after 1932, many of whom had been forcibly evicted by settlers. Unless they had protested their eviction to the government, Wyn Harris claimed that their status as right holders could not be proven. His approach to the right holders still living on the farms was equally sceptical:²

where a native claims to be a right holder the evidence adduced is invariably native evidence and I have always found such evidence in this matter highly suspect if not deliberately untruthful.

Of the 7,000 right holders which the government had estimated to be in need of resettlement, Wyn Harris only accepted 4,000 as legitimate.

Wyn Harris' power to decide who were legitimate right holders and to assess their property was a powerful incentive for right holders to cooperate with him. Those who continued to resist complained that he ignored the wattle which they had planted and excluded much of the land they had under cultivation from his assessment.³ If the possibility of underassessment did not bring about a right holder's cooperation, Wyn Harris could

¹KNA, DC/KBU 4/8, Harris to D. C. Kiambu, Oct. 17, 1939.

²KNA, DC/NBI 2/1, "Report on the Settlement of Right Holders..."

³Some of the errors in Wyn Harris' assessments were also inevitable because the right holders refused to cooperate with him.

bring criminal charges against him for failure to comply with the governor's removal order.¹ If the courts found that the right holder was in violation of the order, he was fined, evicted, and, on at least one occasion, imprisoned.

Even without pressure from Wyn Harris, there was a group among the designated right holders who were willing to accept new holdings for the land they had occupied on the farms. These people were ahoi and other tenants of the Kikuyu "githaka" owners who, under Kikuyu tenure concepts, had no claim to be right holders. However, since the government had refused to use Kikuyu tenure concepts to determine the nature of the "rights" of the Kikuyu living on the farms, all "right holders" were given equal treatment in the resettlement.² The KCA petitioned MacDonald about this injustice, but without success.

Despite ahoi defections and uneasiness among the right holders, Wyn Harris had little success in breaking their resistance. Harris' official reports attributed their stubbornness to the temporary unacceptability of the Lari and Kerita areas because drought, to right holders' fears that they would not have a secure claim to the land there, and to their dissatisfaction with their allocations. Basically, however, the right holders did not want to be moved and hoped that their resistance would force the government to reverse itself. When the date for their removal, February 28, 1940, passed without their complying with the governor's order, the government acted to break the center of the resistance and

¹This order was issued automatically when the board ruled on Wyn Harris' assessment of the right holder's property.

²Ministry of Lands and Settlement 1/4, C.H. Williams, Safari Diary, Tigoni, Jan.31-Feb.3, 1939.

prove that, if necessary, it would forcibly evict them. The target was the Kikuyu living in Tigoni township.

Although the decision to move the Tigoni people first had originally been made for procedural reasons, by 1937, it had become apparent that they were providing both leadership and an example for the passive resistance campaign on the farms. Of the ten mbaris claiming land at Tigoni the government had persuaded seven and one-half to accept land at Nyamweru, in the Lari forest. These people were led by Luka Wakahangara, who was rewarded with a chiefship and additional land for his willingness to comply. After these defections, the remaining mbaris, under the leadership of KCA and KLBA stalwarts Marius Karatu and John Mbugwa, became more adamant in their resistance. Their followers took an oath of unity and vowed that they would never move. A "curse" was placed on the land at Nyamweru.¹

On March 27th the resisters at Tigoni were convicted of disobeying the governor's order and given one week to move. When they did not comply, Wyn Harris, expecting trouble, led a force of fifty armed police into Tigoni.² They did not have to use force; the resisters watched from a distance as Wyn Harris' men removed their possessions from their homes and tore down the buildings. However, after Wyn Harris left, they resumed occupation of their ruined homes.³ Wyn Harris returned within a few days, and his men completed the destruction of the

¹ L.O. 26193, Marius Karatu for "Mbari of Tigoni" to J. Angaire Oct. 12, 1965.

² Interview, P. Wyn Harris, Sept. 27, 1972.

³ Ministry of Lands and Settlement 1/4, D.O. Wyn Harris to D.C. Kiambu, April 19, 1940.

homes, setting fire to their remains and confiscating the possessions found within. Since the Tigoni people had again deserted the area to avoid a confrontation, Wyn Harris encountered no armed resistance. However, Marius Karatu and his followers still refused to go to Nyamweru or to accept any monetary compensation.

Tigoni may have served as an example of the government's commitment to remove the African right holders from the Highlands, but it did not break the resistance to the moves. As the government's intentions on Tigoni and the other moves became clearer, the KCA and the KLBA grew more vociferous and militant in their denunciations. Kenyatta asked for an interview with MacDonald, but his request was ignored.¹

The Colonial Office, however, could not ignore the petitions which it was now receiving from the embittered leaders of the right holders. Their petitions made embarrassing analogies between the moves in Kiambu and the movement of subject people in Europe by the Nazis, claiming that "what makes the policy so heinous in Europe is that Europeans are being treated in such a way, and what makes the policy so fair in Africa is that it is only Africans."²

The more aggressive nature of the right holders' petitions did not improve their case for postponing the moves until after the war. Instead the Kenya Government used it as proof that the KCA and KLBA leadership were under Italian influence.³ There was no substance to this

¹ C.O. 533/518, 38086/38, Minutes on file.

² C.O. 533/516, 38005/B, Kimengi wa Muchema, Marius Karatu, etc. to S/S, March 27, 1940. The same charge appeared in several other petitions addressed to the S/S by Africans being moved in the Kiambu area.

³ The Kenya Government claimed that the KCA destroyed the other evidence. C.O. 533/518, 38086/38, Gov. to S/S, April 9, 1940.

charge, but the Kenya Government had learned from Tigoni that forcible eviction would not end the right holders' resistance. Only the banishment of their leadership and outlawing of the associations encouraging them might accomplish this. Within two weeks of Wyn Harris' final incursion into Tigoni, the KCA, KLBA, and two other African organizations were proscribed. Twenty-three KCA and KLBA leaders were arrested and imprisoned for the duration of the war. In the eyes of the Kenya Government these men had proven they were "subversives." They had opposed the moves in Kiambu and attempted to undermine the British Empire by publicizing their resistance.

With the loss of their leaders, the right holders' resistance began to crumble. Those on the farms which still had to be assessed cooperated with Harris. By July he reported that the vast majority of the right holders had been resettled in Lari and Kerita. In February, 1941 the D. C. at Kiambu reported that "the arrest of the leaders and the closing down of the Association [KCA] has given the Lari and Kerita natives a chance to settle down without agitators being able to disturb them."¹ The government, the Colonial Office, and even Creech-Jones claimed "the battle is over,"² but the story of the right holders did not end there. The animosity between those who had resisted and those who had cooperated grew until in 1952, it culminated in the massacre of Luka and one hundred of his followers on the land in the forest on which they had been resettled.

¹KNA, DC/KBU 4/8, "Settlement of Right Holders - Final Report, D. C. Kiambu, Feb. 17, 1941.

²C. O. 533/516, 38005/11, A. Creech-Jones to George Hall, M. P. (C. O.) Aug. 8, 1940.

The bitterness remains today as many of the right holders continue to petition for the return of the land they lost in Kiambu. But like its predecessor, the independent government of Kenya maintains that the findings of the Kenya Land Commission are "conclusive."¹ Such a determination is all the more ironical when it is remembered that the leaders of this government originally opposed the findings and agreed with Creech-Jones that they were "inspired by some of the worst features of imperialism."²

¹ L. O. 26/93, O'Laughlin to P. S. /Ministry of Lands and Settlement, April 19, 1966.

² C. O. 533/516, 38005/11, A. Creech-Jones to George Hall, M. P. (C. O.), Aug. 8, 1940.

CONCLUSION

By appointing the Kenya Land Commission, the British Government attempted to solve the problems which its land policies had caused in Kenya. The exigencies of late nineteenth century European imperialism had left it in control of an area which had little intrinsic value. However, climate, the presence of some fertile land, and a potential labor force suggested the possibility of establishing a self-supporting plantation economy run by British nationals. Although failure became evident in the 1920's, Britain would not repudiate its experiment because of its commitment to the settlers. They continued to be subsidized by Britain and by Kenya's indigenous inhabitants until the end of British rule in 1963.

No consideration was given to African needs when settlement was envisioned. The settler economy did not meet their needs, and most Africans continued to depend on their own subsistence economies. However, the productive capacity of traditional economies was severely impaired by the demands of the settler economy and settler control of much of the colony's most valuable but limited natural resource-fertile land. The settlers had demanded this control and the dominance of their own interests when they realized the tenuity of their position.

Britain's second Labour Government (1929-1931) professed a greater concern for Kenya's Africans than its predecessors and attempted to insure their equality with settler interests. It planned to launch a separate investigation of the land needs of Africans. However, Labour's attempt at reform failed, and when its government fell, the nature of the

land investigation was altered; the land needs of both Africans and settlers were studied by the Kenya Land Commission. The theoretical contradiction between providing for the needs of two competing economies did not trouble the new National Government because it had reaffirmed the priority of settler interests.

Operating within a framework of settler dominance, it was impossible for the Kenya Land Commission to satisfy African land needs. The National Government understood this but hoped that the commission would recommend concessions which would placate African and other critics of settler dominance. However, the commitment to the settlers prevented any substantive concessions and led to recommendations which further infringed on African land rights and needs.

The Kenya Land Commission not only failed to achieve its goals but it also exacerbated the problems it hoped to solve. It acted to concretize the separation of the settler and African economies by legalizing the racial territorial segregation which the settlers had established. In reality, this economic separation was impossible because the settlers depended on Africans for land, labor and often foodstuffs. By recommending racial territorial segregation, the commission had done a disservice to the settlers, as well as to the Africans it was legally relegating to an inferior position.

In trying further to entrench the settler minority, the Kenya Land Commission acted against the settlers' ultimate security. Without a mutually beneficial integration of the African and settler economies, both would always be in competition for the same limited resources. The settlers did not have the economic power to give them the upper hand and so had to rely on political power. However, their small numbers

and dependence on the British Government made even their political power tenuous.

In the changed circumstances after World War II, Britain found it increasingly difficult to support the settlers in their economic and political competition with Africans. When Africans finally gained the ascendancy, most of the settlers could not reconcile themselves to the idea of integration. They thought in terms of dominance and assumed that their needs would be subjected to African needs. The mass exodus of settlers from Kenya just before its independence indicated the true nature of white settlement.

Although most of the settlers have left, independent Kenya has not reversed many effects of white settlement. The land alienated in the past has not been returned to the Africans who claim to have lost it. The Kenya Land Commission's findings on these claims have been allowed to stand. Some of the land in question has gone to "landless" people, but much of it has become the property of the ruling African elite. As in the colonial period, the unequitable distribution of land continues to create political, economic and social unrest. Independence has not erased this most damning legacy of British imperialism in Kenya.

APPENDIX

APPENDIX I

The following were the terms of reference of the Kenya Land Commission:

- (1) To consider the needs of the native population, present and prospective, with respect to land, whether to be held on tribal or on individual tenure.
- (2) To consider the desirability and practicability of setting aside further areas of land for the present or future occupancy of-
 - (a) communities, bodies or individual natives of recognized tribes; and
 - (b) detribalized natives, that is, natives who belong to no tribe or who have severed connexion with the tribe to which they once belonged.
- (3) To determine the nature and extent of claims asserted by natives over land alienated to non-natives and to make recommendations for the adequate settlement of such claims whether by legislation or otherwise.
- (4) To examine claims asserted by natives over land not yet alienated and to make recommendations for the adequate settlement of such claims.
- (5) To consider the nature and extent of the rights held by natives under section 86 of the Crown Lands Ordinance (Chapter 140 of the Revised Edition), and whether better means could be adopted for dealing with such rights in respect of-
 - (a) land already alienated; and
 - (b) land alienated in the future.
- (6) To define the area, generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923.
- (7) To review the working of the Native Lands Trust Ordinance, 1930, and to consider how any administrative difficulties that may already have arisen can best be met whether by supplemental legislation or otherwise without involving any departure from the principles of the said Ordinance.

SELECT BIBLIOGRAPHY

SELECT BIBLIOGRAPHY

Although the importance of the Kenya Land Commission has long been acknowledged, it was never the object of scholarly analysis. The general neglect of the colonial period in Kenya and the emphasis on local level studies were not totally responsible for this. The subject is very complex and the materials for its study were not readily available, even though, paradoxically the commission's report and three volumes of evidence have been used by numerous scholars since publication in 1934. However, the necessary information on the Colonial Office's role in relation to the commission was lacking until the British Government modified its fifty year rule. The materials for the role of the Kenya Government will never be readily available, for the original records of the commission and the implementation of its recommendations were destroyed in the Nairobi Secretariat fire of 1939.

The loss of the original commission records was not a total catastrophe. The colonial administration's practice of filing carbon copies of inter-departmental and often intra-departmental correspondence increased the likelihood that duplicates of the records would survive outside of the Secretariat. However, to find this material, it was necessary to sift through countless departmental, district and provincial files. The Kenya National Archives has been attempting to collect these files in one location, but many have not survived the ravages of time, neglect and the colonial government's penchant for burning or removing controversial documents before turning over control to an independent African government. And since the Kenya National Archives' categorization of

the surviving records has only just begun, the research for this study was a very time-consuming and frustrating venture. Ultimately it was also rewarding.

Those records not yet moved to the Kenya National Archives presented an even greater challenge. The Land Office and the Forest Department still retain most of their own papers. Each has changed its filing system a number of times since the 1930's, making it very difficult to locate the documents of this period. The Land Office files have also been subjected to selective destruction. Nevertheless, with the co-operation of sympathetic clerks, especially in the Land Office, I was able to sift through numerous files to obtain the information I needed.

Despite the obvious disadvantages, disorganization also has advantages: copies of documents destroyed because of their controversial or confidential nature passed unnoticed into obscure files. Even copies of correspondence with the Colonial Office which are unavailable in the Public Record Office were overlooked, greatly rewarding the persistent researcher.

The Colonial Office records on the Kenya Land Commission which are in the Public Record Office were very useful but would have been deceptive, if not balanced by materials available in Kenya. As I followed the correspondence from the district level in Kenya to the official reports given to the Colonial Office, I was able to trace a gradual and sometimes complete alteration of the facts. As information passed up through successive layers of the colonial bureaucracy, each official tried to give it the interpretation which would best serve his needs and please his superiors. By the time "data" reached the Colonial Office it was sometimes distorted to the extent that a complete rout had become a

total victory. Unless the issue involved came under Parliament's scrutiny, the Colonial Office remained unaware or unconcerned about the corruption of the information it received.

Personal papers are the traditional source of subjective observations on historical events. The collections at the Oxford University Library, Rhodes House, provided these for some of the key figures in the discussion of the commission. Finally, because of the relatively recent nature of the events connected with the commission, many of the participants were still alive while I was researching this dissertation. Although somewhat obscured by time, their accounts enabled me to grasp the attitudes and emotions of the different antagonists and give more substance to the events I had constructed from the written records. I used the material collected from interviews to corroborate the information in the records and vice versa. I, of course, applied the tests of historical authenticity equally to both sources.

In my bibliography I shall only list the materials I found most useful, rather than everything I examined in the course of my research.

UNPUBLISHED SOURCES: OFFICIAL

I. BRITISH GOVERNMENT

The Colonial Office's files on the Kenya Land Commission and related matters are found in the C. O. 533 classification in the Public Record Office, London. The files on the commission were assigned a series number such as 38005 and the individual files classified within that series, i. e., 38005/3 - "The White Highland Boundaries" and 38005/11 - "Kikuyu Right Holders: Compensation to." Although from 1932 through 1934 the general classification number assigned to these file series differed from year to year, it remained stable from 1935 through 1943.

Kenya Land Commission Files:

C. O. 533/424(1932), Series 18117
 C. O. 533/434(1933), Series 3096
 C. O. 533/441 and 442(1934), Series 23034
 C. O. 533/453(1935), 462(1936), 476(1937), 487(1938), 488(1938),
 502(1939), 503(1939), 516(1940), 524(1941-43). All
 series 38005.

Some Related Files:

C. O. 533/395(1930), Series 16010
 403(1930), Series 16333
 416(1931), Series 17312; 17333
 422(1932), Series 18073
 429(1933), Series 3006/13
 437(1933), Series 3243, 3246
 466(1936), Series 38086/5
 501(1938), Series 38400
 506(1939), Series 38086
 508(1939), Series 38137
 513(1939), Series 38400

II. KENYA GOVERNMENT

A. Kenya National Archives:

Provincial File Series

Central-(PC/CP) Deposits 6, 8, and 9.
 Coast-(PC/Coast) Deposits 1, 2, and 12.
 Ngong-(PC/Ngong) Deposits 1 and 2.
 Northern Frontier District(PC/NFD) Deposit 4
 Nyanza-(PC/NZA) Deposits 2 and 4.
 Rift Valley Province-(PC/RVP) Deposit 6A.
 Annual Reports (Provincial)-1926-1943.

District File Series

Central Nyanza(DC/CN) Deposit 8.
 Kiambu(DC/KBU) Deposits 3 and 4.
 Nairobi(DC/NBI) Deposit 2.
 Nakuru(DC/NKU) Deposits 4, 6, and 7.
 Northern Nyeri(DC/NN) Deposit 10.
 Taita(DC/TTA) Deposit 3.
 Tambach(DC/TAMB) Deposit 2.
 Annual Reports(District) 1926-1943.

Secretariat

Secretariat(SEC.) Deposit 7.
 Chief Native Commission(CNC) Deposit 10 and 1029.
 Chief Secretary(Chief Sec.or C.S.) Deposits 1, 2, and 9.

Attorney General

(Att. Gen.) Deposit 3.

Ministry of Lands and Settlement

Deposit 1.

Miscellaneous

Church Missionary Society. Deposit 1.
Executive Council Minutes.

B. Lands Office

Since files were not organized into series, the listing below only serves as an illustration of the more important files consulted.

26093 and 26093A-Carter Land Commission
26193-Carter Land Commission
26250-Temporary Native Reserve, Yatta
30048-Highlands Board
30050-Applications to Highlands Board
30390-Allocation of Land to Right Holders-Kerita and Lari
30046-I, II, III-Settlement-Returning Squatters
30491-Alienation, Forest Reserves, Molo
30895-Native Lands Trust Ordinance, 1938.
31322-I, II, IV-Native Reserve Boundaries, Kikuyu
LND20/11/23-Native Reserve Boundaries, Fort Hall
LND20/12/1/1/1-Native Reserves, Implementing of Kenya
Land Commission Report
LND45/1/1-Highlands Order in Council

C. Forest Department

Series TV 118.

UNPUBLISHED SOURCES, UNOFFICIAL

I. PRIVATE PAPERS

A. Oxford University Library, Rhodes House MSS

Anti-Slavery and Aborigines Protection Society
 Sir Henry Robert M. Brooke-Popham
 C. E. V. Buxton
 Sir Robert Coryndon
 Arthur Creech-Jones
 Fabian Colonial Bureau
 London Group on African Affairs
 Arthur Phillips
 W. McGregor Ross

B. University of Nairobi MSS

A. R. Barlow
 H. E. Lambert
 Lord Francis Scott

C. Andrew Gathea MSS — In A. Gathea's possession.

II. INTERVIEWS

Cavendish-Bentinck, Sir Ferdinand — A leader of the European members of the Kenya Legislative Council in 1930's and prominent settler politician throughout the colonial period. Nairobi, Kenya, August 17, 1972.

Fazan, S. H. — Secretary to the Kenya Land Commission. Bexhill-on-Sea, England, September 28, 1972.

Gardner, H. M. — Conservator of Forests, 1928-1945. Karen, Kenya, July 14, 1972.

Gathea, Andrew — Leader and representative of the eleven mbari petitioning the Kenya Land Commission for return of their land at the Government Station, Kabete. Kabete, Kiambu District, August 4, 1972.

Goro, Ng'ang'a — President of the Kikuyu Land Board Association and a leader of the Kikuyu Central Association. Near Kikuyu Town, Kiambu District, June 15, June 24, August 2, 1972.

Harris, Sir P. Wyn — Settlement Officer in charge of removing the right holders, later Chief Native Commissioner, Kenya. London, September 27, 1972.

- Kambui, Marko – Treasurer of the Kikuyu Land Board Association and a leader of the Kikuyu Central Association. Gikambura, Kiambu District, July 28, 1972.
- Kang'ethe, Joseph – President of the Kikuyu Central Association. Near Thika, Muranga District, July 21, 1972.
- Karatu, Marius Ng'ang'a – Leader of the Tigoni resisters and a leader of the Kikuyu Central Association. Near Limuru town, Kiambu District, June 20, 1972.
- Kimani, Ngamate – Member of the Kikuyu Land Board Association and Kikuyu Central Association, and a former right holder. Gikambura, Kiambu District, July 21, 1972.
- Mortimer, Sir Charles – Lands Secretary in 1932-1933 and later Commissioner of Lands. Nairobi, Kenya, August 14, 1972.
- Muchuchu, Job – A founder of the East African Association and the Kikuyu Central Association. Kabati, Muranga District, June 30, 1972.
- Mugia, Kinuthia – Member of the Kikuyu Central Association and Kenya African Union, and petitioner to the Kenya Land Commission. Kabete, Kiambu District, August 3, 1972.
- Njonjo, Josiah – Government Chief, Kiambu District, 1920-1964, father of Kenya's Attorney-General. Kabete, Kiambu District, August 16, 1972.
- Nyali Nditu wa Ndiu – Athi woman moved from Kinari forest by P. Wyn Harris. Kambaa, Kiambu District, April 15, 1972.
- Ruinge, Justus Ng'ang'a – Secretary of the Kikuyu Land Board Association and leader of the Kikuyu Central Association. Kikingo, near Limuru town, Kiambu District, July 21, July 31, 1972.
- Turuthi, Njehu – Son of Turuthi, leader of the Kinari Forest Athi. Kambaa, Kiambu District, April 15, 1972.
- Wambaa, Charles – A leader of the Kikuyu Central Association and Kenya African Union. Nairobi, August 9, 1972.

III. MANUSCRIPTS

- Breen, Rita. "The Kenya Land Commission (1932-33) and Dorobo Land Issues." Staff Seminar, Department of History, University of Nairobi, April 26, 1972.
- Fazan, S. H. "Precis." (For the Kenya Land Commission.) 2 vol., 1932, located in Kenya National Archives Library.

Fazan, S. H. "Land Policy and the Royal Commission." Chapter XVIII of untitled manuscript in the possession of S. H. Fazan.

_____. "A Report on a Visit made to the Union of South Africa for the Purpose of Comparing the Methods of Land Tenure in the Native Reserves There with the System Obtaining in Kikuyu Province." (KNA Library).

"Memorandum by the Mbaris and Clans of the Kikuyu to the Royal Commission on Land and Population." June 27, 1953. Manuscript in the possession of Ng'ang'a Goro.

Muriuki, Godfrey. "A History of the Kikuyu to 1909." Unpublished Ph.D. dissertation, University of London, 1969.

Ward, Kendall. "European and African Land Settlement in Kenya." April 11-22, 1952. Manuscript in the possession of K. Ward.

PUBLISHED SOURCES: OFFICIAL

I. BRITISH GOVERNMENT

Indians in Kenya: A Memorandum. Cmd. 1922. 1923

Report of the East Africa Commission, 1924. Cmd. 2387. 1925.

Future Policy in Regard to Eastern Africa. Cmd. 2904. 1927.

Report on the Commission on Closer Union for the Dependencies in East and Central Africa. Cmd. 3234. 1929.

Report of Sir Samuel Wilson on his Visit to East Africa. Cmd. 3378. 1929.

Statement of the Conclusion of His Majesty's Government in the United Kingdom as Regards Closer Union in East Africa. Cmd. 3574. 1930.

Memorandum on Native Policy in East Africa. Cmd. 3573. 1930.

Report of the Joint Select Committee on Closer Union in East Africa. 3 vol. H. C. Paper No. 156. 1931.

Correspondence Arising from the Report of the Joint Select Committee on Closer Union in East Africa, 1931-32. Cmd. 4141. 1932.

Report of Kenya Land Commission. Cmd. 4556. 1934.

Kenya Land Commission; Evidence and Memoranda. 3 vols.
Col. 91. 1934.

Kenya Land Commission Report; Summary of Conclusions
Reached by H. M. Government. Cmd. 4580. 1934.

Land and Population in East Africa; An Exchange of Correspondence between the Secretary of State for the Colonies and the Government of Kenya on the Appointment of the Royal Commission. Col. 290. 1952.

East Africa Royal Commission 1953-1955: Report. Cmd. 9475. 1955.

Parliamentary Debates (House of Commons). 1929-1941.

Parliamentary Debates (House of Lords). 1929-1941.

II. KENYA GOVERNMENT

Annual Report of the Lands Department (The Settlement and Local Government Departments were under the same commissioner for part of the period examined.) 1928-1963.

Annual Report of the Forest Department. 1930-1941.

Annual Report of the Native Affairs Department. 1929-1943.

Laws of Kenya.

Law Reports. 1920-1940.

Legislative Council Debates. 1929-1955.

National Atlas (3rd edition). 1970.

Report of Committee on Native Land Tenure in Kikuyu Province. 1929.

Report of Committee on Native Land Tenure in the North Kavirondo. 1931.

III. OTHER

Land Commission, 1925. Report. Salisbury, 1926.

PUBLISHED SOURCES: UNOFFICIAL

I. NEWSPAPERS AND PERIODICALS

The Church Overseas(Church Missionary Society Periodical).
1934.

Daily Telegraph. 1939.

East African Standard. 1932-1940.

Kenya Daily Mail. 1939-1952.

Manchester Guardian. 1932-1940.

Morning Post. 1939.

The New Statesman and Nation. 1932-1934.

The Times (London). 1932-1940.

II. BOOKS AND PAMPHLETS

Most bibliographies on Kenya can provide the reader with the important secondary works on the nation and its history. Only a few of these are worthy of mention in relation to the Kenya Land Commission and even these only treat it in passing. C. G. Rosberg, Jr., and J. Nottingham, The Myth of "Mau Mau": Nationalism in Kenya, (New York, 1966) provide a general survey of the role of land grievances in the development of "nationalism," but their analysis of the commission is too superficial to be of much value. Their discussions of the Tigoni moves and the establishment of Olenguruone also suffer from the same problem and are often erroneous or at best misleading. M. P. K. Sorrenson's two works, Land Reform in the Kikuyu Country (Nairobi, 1967) and Origins of European Settlement in Kenya (Nairobi, 1968) provide the reader with the most useful discussion to date of the history of land as a political issue in colonial Kenya. However, he has also given only superficial treatment to the commission. While he discussed the move of the right holders in Kiambu, his sole source for this discussion was Wyn Harris' official report on the move. As a result, a number of his conclusions are in error.

The materials listed below have been cited in the course of this study. However, as in the case of other secondary material consulted, their contributions have been very minor.

- Cameron, Sir Donald. My Tanganyika Service and Some Nigeria. London, 1939.
- Cavendish-Bentinck, Sir F. Indians and the Kenya Highlands. Nairobi, 1939.
- Clokier, H.M. and J.W. Robinson. Royal Commissions of Inquiry - The Significance of Investigations in British Politics. Stanford, 1937.
- Dilley, Majorie Ruth. British Policy in Kenya Colony. New York, 1937.
- Gann, L.H. A History of Southern Rhodesia. London, 1965.
- Gregory, Robert G. Sidney Webb and East Africa: Labour's Experiment with the Doctrine of Native Paramountcy. Berkeley, 1962.
- Hanser, Charles J. Guide to Decision: The Royal Commission. London, 1965.
- Kenyatta, Jomo. Facing Mount Kenya. London, 1938.
- Lambert, H.E. Kikuyu Social and Political Institutions. London, 1956.
- _____. The Systems of Land Tenure in the Kikuyu Land Unit. Cape Town. 1950.
- Laskie, Harold J. Parliamentary Government in England. New York, 1938.
- Leys, Norman M. Kenya. London, 1924.
- _____. A Last Chance in Kenya. London, 1931.
- Maini, Krishan M. Land Law in East Africa. London, 1967.
- Murray-Brown, Jeremy. Kenyatta. London, 1972.
- Robinson, R., J. Gallagher and A. Denny. Africa and the Victorians. New York, 1961.
- Ross, W. McGregor. Kenya from Within: A Short Political History. London, 1927.
- Thuku, Harry. Harry Thuku, an Autobiography. Nairobi, 1970.

MICHIGAN STATE UNIV. LIBRARIES



31293011098849