

1925

KENYA

284

C. O.
12491
17 MAR 25

Date

DEPARTMENT

190

17th February 1925.

LOCATION

NATIVE LAND TENURE.

U.S. of S.

Trs at request of Missionary Council, documents relating to - addressed to African Native Land Tenure C.O. Commission. Comment by O.A.G will follow.

U.S. of S.

U.S. of S.

U.S. of State

Previous Paper

O.A.C. 11852

MINUTES

Mr. Gordon The Commission had these papers
Mr. Strachey (was 11852)

Partly ✓

The Commission which these are addressed is - apparently had a meeting and Committee, now defunct. All the documents appear to have gone to the E.A. Commission, but Mr. Calder will be able to verify that.

Subsequent Paper

13799

Subject to that point, I think that we can wait for the O.A.G's further decision. O.A.S. 22.2.25

As proposed. But the family for said

See

C.S. 24/3/25

See final plan 21287/15

Part

Reference

26. 6. 25

HW

KENYA.
No. 190



C. S.
12491
17 MAR 25

235r.

GOVERNMENT HOUSE,
NAIROBI,
KENYA.

17th February, 1925.

Sir,

Letter:
I have the honour to transmit at the request of the Kenya Missionary Council a letter and accompanying documents relative to Native Land Tenure in this Colony addressed to the African Native Land Tenure Colonial Office Commission, London.

2. My remarks on this communication will follow as soon as possible.

I have the honour to be,

Sir,

Your most obedient, humble servant,

ACTING GOVERNOR.

RIGHT HONOURABLE

LIEUTENANT COLONEL

L. C. M. G. AMERY, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S. W.,

KENYA MISSIONARY COUNCIL

Postal address:-

Church of Scotland Mission,

Kikuyu,
January 7th, 1926.

The African Native Land Tenure
Colonial Office Commission,
London,

Thro' The Hon. The Colonial Secretary,
Kenya Colony and Protectorate, Nairobi.

Sirs,

Having seen in the Press some time ago that the late Secretary of State for the Colonies stated his intention in the House of Commons on June 23rd, 1924, of appointing a Special Commission to enquire into Native Land questions in West and East Africa, and being led to understand that such a Commission has been appointed, I beg to submit, on behalf of the Executive Committee of the Kenya Missionary Council embracing all the Protestant Missions of Kenya Colony and Protectorate, the enclosed extracts from a memorandum presented to the East African Parliamentary Commission which recently visited this country, together with copies of the other documents therein referred to.

The above memorandum was presented by the Executive Committee of the Kenya Missionary Council, which is keenly interested in the problems of Native Land Tenure in this Colony and feels deeply the urgent need that exists for the full recognition of the Africans' rights, both tribal and individual, in their land, and for giving them proper legal security. It is a matter in which mistakes and injustices have occurred in the past, and is the one which at the present time gives the Africans the deepest cause for concern and about which, in spite of verbal re-assurances, they are most apprehensive and suspicious. We therefore solicit your earnest consideration of the facts set forth in these papers and of all the issues involved.

(2)

My Committee is not aware of the actual terms of reference of your Commission and therefore has been unable to prepare a special statement to place before you. In these circumstances it has been thought best to submit copies of the documents presented to the East African Commission in case these should not have been brought to your notice. Should your Commission, however, desire further or more detailed information on any point, as, for instance, in regard to the native systems of land tenure, I am sure my Committee would be pleased to give what assistance they are able.

I append a list of the papers sent. I regret I am unable to supply a copy of the article by the late Mr. M. H. Beech published in 1917 in the African Society's "Journal" upon which we lay stress in our memorandum, but I trust you may find it possible to obtain a copy from the African Society The Imperial Institute, S. Kensington, S.W.7.

I have the honour to be,
Sirs,
Your obedient servant,

Sd. A. Ruffell Barlow.
HON. SECRETARY.

LIST OF ENCLOSURES:

1. Extract from memorandum to the East African Parliamentary Commission dealing with Native Land Rights, and copy of Supplementary letter regarding the same.
2. Copies of documents referred to in the foregoing:-
 - (a) Memorandum presented to the East African Commission by the "Kikuyu Association" and Appendices to same.
 - (b) Memorandum on Kikuyu Land Tenure sent to the East African Commission by the Rev. Harry Leakey, C.M.S.
 - (c) Memorandum presented to the East African Commission on behalf of the Kamba tribe.
 - (d) Memorandum presented to the East African Commission by the Kavirondo Taxpayers' Welfare Association.

I

MEMORANDUM relating to

NATIVE LAND TENURE

in Kenya Colony.

from the

MEMORANDUM presented to

the East African Parliamentary Commission

by the

Kenya Missionary Council,

at Nairobi.

November 30th 1924.

NATIVE LAND RIGHTS

--- ogo ---

In dealing with this most important and pressing subject we feel it incumbent upon us to endeavour to advance the African point of view, as we hear it presented by the Africans themselves or as we are convinced they would present it were they better able to state their case to European ears.

The standpoint of the European - the need of the development of the economic resources of these territories, the claims of the settlers, the desire to make this a "White Colony" - has been amply expounded. But, owing to ignorance, lack of comprehension, and want of cohesion amongst themselves, together with the state of subjection in which they have felt themselves to be, the native Africans have up to the present time mostly remained inarticulate and passive as regards their prior rights in the tribal lands acquired and occupied by them long before the European ever appeared on the scene; in consequence, their point of view is apt to be overlooked and has been at times ignored.

It must be said that, as it seems to us, there has in the past been a strange failure on the part of those entrusted with the protection of the Africans to ascertain what these rights were at the time when they began to be endangered, and an equally strange failure to deal with the situation in a just and statesmanlike fashion when it was realised that mistakes had been made. The result of this is that the Africans have come to look upon the Government as chiefly responsible, and it is the Government they regard with most suspicion.

There can be no doubt that the question of the security of their tenure of their land is uppermost in the minds of all those Africans who have been in contact with European settlement. The experience of the past has caused apprehension for the future, and owing to delay in recognising African private rights and giving them proper legal security there is abroad a deep distrust in our future intentions.

The experience of the past, from the African point of view, may be summed up as follows:-

The first Europeans who penetrated into the interior of the country came as explorers, traders or missionaries, the two former classes being placed by the Africans in the same category as the Arabs and Swahilis from the Coast who from time to time passed through in quest of Ivory, etc. Efforts by the Imperial British East Africa Company's officials to establish permanent posts were in many cases met by armed resistance. When by show of force portions of the territory had been prevailed upon to accept the Company's administration, and friendly terms had been established, a few Africans were induced by traders and missionaries to sell small plots of land. Then the Company's regime was replaced by the British Protectorate, and the administration was extended and became firmer and more peremptory. Refractory sections of Natives were visited by punitive expeditions. In cases where the stereo-

typed treaties were entered into, the Africans had certainly no notion that their rights in their tribal lands would be interfered with. In subsequent land transactions such rights were for a few years apparently respected. Until comparatively recently, the old idea persisted in the Natives' minds that the Europeans had come temporarily, even as they used to come and go in the caravan days.

Five or six years after the establishment of the Protectorate numbers of European settlers began to arrive, and then the Africans were faced with the surprising spectacle of extensive portions of their tribal land being handed over into the newcomers' possession by the Government whose proclaimed function was to "protect" the Native peoples. Areas in the tribal lands of the Kikuyu, Kamba, Nandi and the Wanyika of the Coast were alienated in this way. (We leave aside the controversial case of the pastoral Masai who occupy their territories under conditions so different from the Bantu and other cultivating tribes.) A show of obtaining the Natives' consent was made in some instances, but in reality no option was given them. Where consent was obtained, it was given either under pressure or in want of comprehension on the part of the people concerned as to what would be the permanent effect of such consent as they gave. The Government went apparently on the mistaken supposition that the only land the people had any real right in was the land actually under cultivation at that particular juncture, and, in Kikuyu, for example, such compensation as was given was given upon that basis only: it was at the rate of two rupees an acre. Those who withheld their consent or who demurred at remaining on the land as "squatters" of the new owner had to take the alternative of finding new homes and new gardens where they could, in spite of the provisions of the Crown Lands Ordinance 1902 (see footnote). Probably the above distinction between cultivated and fallow land made by the Government helped to obscure in the Natives' minds the fact that they were being deprived, not only of their cultivated areas but of their fallow land as well. However that may be, and whether or no a form of consent was given at the time, the fact remains that such consent is repudiated by the Africans today, and they persist in describing the act of alienation of the land as robbery on the part of Government and settlers. They were not yet confident enough (the recollection of the peremptory enforcement of Government's wishes in earlier days was still fresh) nor sophisticated enough to make effectual protest against these transactions.

Still, however, realisation that their title to their tribal land or their family and individual rights in the same were threatened in principle, was slow in coming, or, at any rate, in finding expression. The realisation gathered force in the latter days of the Great War. It came in various ways, through growing sophistication, through the expropriation of pieces of Native land for public purposes,

(1) The Governor may grant leases of areas of land containing Native villages or settlements without specially excluding such villages or settlements, but land in the actual occupation of natives at the date of the lease shall, so long as it is actually occupied by them, be deemed to be excluded from the lease.

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

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through rumours of renewed demands for land for settlement, and later, above all, through the revelation to the African consciousness of the effect of the Crown Lands Ordinance 1915, the Kenya (Annexation) Order-in-Council 1920, and the Kenya Colony Order-in-Council 1921, upon Native rights in land. Although statements had come to their hearing from time to time, such as that all the land now belonged to the Government, so long as they did not see this principle working out in fresh encroachments or in interference with their traditional land tenure systems within the Reserves, it did not appear to carry conviction. Then, however, in a case before the Supreme Court in 1921, in which a Kikuyu was prevented by the intervention of the Crown from suing another Kikuyu for the possession of a piece of land within the Kikuyu Reserve on the plea that there were now no private Native rights in land, consciousness of the real position came with a shock. We repeat the oft-quoted extract from Judge Barth's judgment in this case (Civil Case No. 626 of 1921):

"In my view the effect of the Crown Lands Ordinance 1915 the Kenya (Annexation) Order-in-Council 1920 by which no native private rights were reserved and the Kenya Colony Order-in-Council 1921, as I have already stated, is clearly, *inter alia*, to vest land reserved for the use of a native tribe in the Crown. If that be so, then all native rights in such Reserved land whatever they were, under the Gathaka system, disappeared, and the natives in occupation of such Crown land became tenants at will of the Crown....."

It thus became clear to the Africans that, without their being previously informed or consulted, their rights in their tribal lands, whether communal or individual, had "disappeared" in law, had been superseded by the rights of the Crown, and that they themselves held no better position than that of "tenants at will" of this vague personality or body known as "the Crown", represented to them by the Government. What other conclusion could they possibly draw than that they and their land were now at the mercy of the Government, which had brushed aside their elemental claims by an arbitrary and surreptitious act, and that this was the prelude to further appropriations of land for alienation to Europeans or Indians under the recurrent pressure they are aware is exerted upon Government by those who urge this policy? Is it to be wondered at, either, that Africans with some education have concluded that the conversion of the Protectorate into a Colony (also an act about which they were not consulted) has affected their position adversely, inasmuch as it carried with it the "annexation" by the Crown of their tribal lands? The Africans have a sufficient sense of principle to distinguish moral right from the "right" of power, and it is not surprising that they labour under a feeling of injustice and foreboding, nor that they are now demanding insistently that indisputable security shall be given them for the future.

Their suspicions and apprehensions have in no wise been lessened as the result of various appeals made by them to the authorities, including the Secretary of State himself (through H. E. the Governor) for this matter to be righted. They have had to deal with so many different officials speaking with so many different voices, and have been put off so often with promises still unfulfilled, while officials in sympathy with their claims have been apparently powerless to advance them effectually, that they are now in a mood to put faith in nothing less than legal documentary evidence that their vanished rights/

rights have "reappeared". Some of them are opposed even to the proposal to vest their land in a Native Land Trust upon which Africans would sit, because they distrust the Government officials or other Europeans who would be upon it. This is the effect of history, also of statements made by responsible officials (such as might be appointed to the Native Land Trust) that if the Natives do not make better use of their land it will be taken from them, or will be in danger of being taken from them.

As this question of Native land rights has concentrated largely round the Kikuyu Reserve, the Kikuyu tribe being one of the most nearly affected by the policy of European settlement, and being perhaps the greatest sufferer from alienation of tribal land, we would draw your attention particularly to the Memorandum prepared and presented to you by the "Kikuyu Association". This document we believe to contain a fair statement of the history and facts as they strike the African, regarding this particular area, and it reflects the strong feeling (largely productive of the lamentable "Thuku" outbreak) existing on the subject in this tribe.

We would also refer you to the paper by the Rev. Canon H. Leakey of the C.M.S., Kabete, on Kikuyu Land Tenure, a copy of which he has sent to each member of the Commission.

At the same time we would lay stress upon Memoranda presented to the Commission by other tribes than the Kikuyu in connection with the land question. We regard as an especially urgent case that of the Kamba Reserve, where within recent months approximately 30,000 head of cattle were lost as the result of restrictions of their tribal grazing areas.

When this matter of the rights of Africans in their land comes up as a subject of controversy in this country, we frequently find that endeavours are made to belittle those rights or discredit their claims. One line of argument taken is that, in any case, the Africans' tenure of the land before the advent of the British was based on doubtful origins and was insecure owing to inter-tribal warfare. Even were that so, we fail to see what moral right it gives us to dispossess them. Another and more insidious line of argument rests on the premise that African natives lay no claim to land, as such, but recognise only the right conferred by beneficial occupation. From this supposition is developed the dictum that all African land is held communally and does not permit of individual rights of ownership. We combat this convenient theory strongly. Whatever may be the systems prevailing in other parts of Africa, we hold, from our own knowledge of the tribes here, and from the testimony of Administrative Officers, that the African systems of land tenure found in Kenya have in many cases (probably in the majority of the Bantu tribes) inherent in them, or have developed or are in the process of developing the principle of individual ownership of land. The condition generally found is that the land is divided into holdings with definite and recognised boundaries, each in the possession of a family, the head of which is regarded as the owner or trustee of the land. The holding becomes sub-divided by inheritance within the family, or portions may be disposed of to members of other families by sale or on a kind of mortgage (whereby the original owner is entitled to redeem the portion by returning the purchase price should he wish). Permission may also be given to members of other families to beneficially occupy spare land on the holding, without, however, in any way derogating from the acknowledged rights of the owning family.

family or individual. The system of subdivision appears to vary according to the size of the holdings and the density of the population in different districts.

In support of the general reasonableness of our contention, we would quote Sir V. Lugard in his "Dual Mandate" (page 285):

"It is clear from this description that African land tenure is not 'communal' in the sense of tenure in common. Its fundamental characteristic seems rather to be an individual tenure of land derived from the common stock at the disposal of the tribe or family. Such a tenure would tend to develop very rapidly into individual ownership, and evidence that this was the case was given by several witnesses, and much more is available."

Also the statement on page 286:

"It is remarkable with what tenacity the native mind holds to the idea of private ownership, or at least of the absolute right to tenure in perpetuity."

As a particular case, we would refer again to the Kikuyu system of tenure which we have had principally in mind. The evidence here is ample. W. Scoresby Routledge, who made his investigations into Kikuyu customs, etc., in a methodical and scientific manner during the years 1902-1907, alludes on page 5 of his book, "With a Prehistoric People", to the way in which the Kikuyu bought forest land from the "Wanderobo", and on page 38 he says, "the manner in which the virgin land and on the confines of the country is being brought into private ownership has been described". Again on page 39, "Fallow land is all in private ownership and cannot be again brought into cultivation by anyone except the owner without his leave".

In 1917, the African Society published in its "Journal" (Volume XVII Nos. LXV and LXVI) an account of the "Kikuyu System of Land Tenure" by the late M. H. Beech, who was for a time a District Officer in Kenya. This account is based upon Mr Beech's own observations supplemented by reports and opinions from various other Administrative Officers in close touch with the people in different districts of Kikuyu. We would earnestly ask the members of the Commission to read this valuable account. There is abundance of proof that it is a correct description of the Kikuyu method of land tenure. The evidence therein adduced from Administrative Officers can be amplified and confirmed by recent evidence from Missionaries stationed in the Kyarbu, Fort Hall, and Nyeri Districts, and in Chuku and Merti.

The system as described by the natives of Kyarbu District is also set forth in a memorandum drawn up by the late Chief Native Commissioner, Col. Minsworth, and presented to Government. As the result, the Kikuyu system of tenure was recognised in principle by the Executive Council.

We seriously deprecate attempts to discredit, on insufficient knowledge, the assertions of the Africans as to their system of family and individual tenure, or to impugn or ignore the confirmatory evidence of those who have first-hand acquaintance with the facts. Such attempts can only be construed by the Africans as endeavours to invalidate/

invalidate their claim for security of tenure in order that pretext may be found for appropriating more of their land.

We likewise deprecate statements that the Africans are not making proper or sufficient use of their land, and that therefore it should, by one means or another, be taken out of their possession for the sake of its more rapid economic development. What is this urgency for alienation which, in the same way as a few years ago the imperativeness of War needs demanded the sacrifice of thousands of Native lives, would now demand the Natives' land? To the African mind it appears to be simply a demand for room for more homes for white people and the provision of more avenues to wealth for them.

We would point out that the Africans here require their uncultivated land for the following reasons:-

1. Because at present their method of cultivation is a system of rotation whereby a new piece of land is broken up every few years and the old allowed to recover by lying fallow.
2. Because they need grazing for goats, sheep and cattle.
3. To provide for future increase of population.
4. To afford room for the planting of trees to supply wood for fuel and building purposes.
5. To enable them to find room to grow economic crops in addition to their own food supplies as soon as by education and wise encouragement they extend their activities in this direction.

We fail to see how the African in the short 20 years he has been in contact with European settlement here in Kenya, and in view of the limited educational facilities provided for him and the absence of agricultural instruction, should be expected to be making "better use" of his land; and in our opinion, development should come as the result of education and normal progress, not as the result of compulsion or pressure.

To expropriate the African because he cannot yet develop his land fast enough is in our view a quite unjustifiable proposal. To quote a recent leading article in the local press, "There is a deep-rooted sentiment in the question impervious to any economic or political arguments and the native must be protected for his own sake." This sentiment we should define further as a moral principle.

We desire to support the Native peoples of this Colony in their request for restitution of those rights in their tribal lands which have "disappeared", and for documentary evidence that will satisfy them that they are recognised and safeguarded in law. Freehold titles have been granted in the past to Europeans in this country, and it should therefore be possible to give the Native tribes the freehold of their lands. We do not advocate the granting at this stage of individual title-deeds, but the granting of deeds to the tribe as a whole, or in sections. The interests of the individual holders and other Africans within the Reserves we believe will be sufficiently safeguarded by the recognition of the traditional tribal systems of tenure.

The chief difficulty appears to us to lie in the question

as to what constitutes the tribal authority in whom the land should be vested. In the case of some tribes such as the Kikuyu who are extremely individualistic in their outlook and who have developed no acknowledged central authority, it would almost appear as though, in consultation with representatives of all sections of the tribe, some central authority should be created for this special purpose; or else each section should be dealt with separately and its land vested in a separate local authority.

Should it be found advisable to form a Central Native Land Trust for the whole Colony, or a distinct Land Trust for each tribe, it should be borne prominently in mind that the Kikuyu, for instance, will probably oppose any such Trust in which the European element is predominant. Above all it should be remembered that the individual African land-holder will not accept the right of any Chief, tribal authority or Trust to dispose of his holding, and therefore in any future negotiations as regards the utilisation of land for public purposes or the leasing of land for any purpose, provision must be made for full consultation with the unit of ownership of the particular piece of land affected, whether it be a clan, family or individual, in addition to the tribe or section concerned.

We would beg to support the proposal put forward in the Minority Report of the Land Tenure Commission 1918, para. 5.

There are many facts in connection with the Ukamba, Nyika, Suk, Nandi and other Reserves which ought to be considered before the boundaries are finally gazetted, facts which, in our opinion, call for an extension of the area of the Reserves. We feel that in view of the fact that there was, in our opinion, inadequate investigation into Native systems of land tenure, and inadequate consultation with the Africans concerned, that machinery should be set up on the lines of the above para. 5 which would be instructed to remedy these defects. Every facility ought to be given to Africans to state their case for their lands both personally and through advocates chosen by them. The subject is a most important one and should not be finally settled without thorough investigation and consideration. Anything which is of the nature of an injustice to Africans should be eliminated as far as possible. Justice must be the first consideration, not the desire to extend the area of land available for alienation for White or Indian settlement.

We trust we may be excused for having expressed ourselves forcibly and at such length on this subject of African Land Rights. We feel it to be one upon which depend the credit of our race in Kenya and the future contentment of the African peoples under our care and trusteeship. If the matter is not attended to seriously and righted, we are convinced that there will be perpetuated a rankling sense of injustice in the African mind which will militate powerfully against that good understanding and willing co-operation between African and European which is essential for the prosperity of the Colony.

Later on in the Memorandum the subject of African Native Land Tenure is again touched upon, as follows:-

Gazetting of Reserves.

The only two Reserves finally gazetted are the Kikuyu, 1919, and the Nyika, 1916, with extension of the latter 1919. Others have been provisionally gazetted for objections, and presumably can be set out at will, vide recommendation of Land Tenure Commission. Further, the Kavirondo Tribes have not had their Reserves even provisionally gazetted. Natives outside these Reserves can be set out at will. Security of tenure within the Reserves is at present undefined by regulation.

(Limitation of Individual Holdings.)

Under the 1915 Crown Lands Ordinance, power is given to issue rules, but the suggestion to limit the area of land which an individual holds in the Reserve, carries with it a suggestion of insecurity of tenure of any land now held which may be more than the undefined area to be limited to each individual.

The question of the limitation of the area of land to one individual, is a very big one and presupposes a right to curtail present holdings. We would have to have concrete proposals before us, before we could offer an opinion, but it would appear likely to cause less turmoil if Africans are given time to evolve gradually their own systems of curtailing excessive land holding. We do not think that any suggestion to limit each individual holding to say five acres is a practical one. But we think that a maximum limit might be placed by natives themselves on the land which one man can acquire. A system of big landlords, as in Uganda Kingdom, has serious drawbacks, which the peasant in Uganda is realising increasingly.

See overleaf for copy of
Supplementary Letter.

(Postal address)

Church of Scotland Mission,
Kikuyu, Kenya Colony.

1st, December, 1924.

The Hon.

Maj. W. Ormsby-Gore, M.P.,
Chairman, Committee of the East
African Commission,
The Colonial Office,
L O N D O N.

Sir,

With reference to the Memorandum presented to your Committee in Nairobi on the 26th November by the Kenya Missionary Council, in the section of that Memorandum devoted to "Native Land Rights" as originally drafted, the following additional paragraph was included towards the end of the section:

"Finally, we would ask the Commission to consider the justice of making adequate reparation to those African land-holders or their descendants who were deprived of their land through the former unfortunate policy of Government, whether it were land in occupation or forest for which they had paid goats to the 'Wanderobe'."

After considerable discussion this paragraph was omitted from the Memorandum as presented to the Commission, but it was agreed that it should be forwarded as a confidential recommendation.

The reason for its omission from the text of the Memorandum was that the latter being a non-confidential document it was considered advisable to avoid the possibility of this particular recommendation appearing in the public press. The Kenya Missionary Council's Executive Committee had in mind the possible effect that this might have in reviving in the minds of the Africans a claim for reparation which might not eventuate, and in giving encouragement to extremists among them.

At the same time, although the Africans as a body are not now putting forward a demand for compensation for land taken from them in the past, there is no doubt that the individual sufferers have a grievance in this respect, and the sense of this grievance will persist in their descendants.

In our opinion, they have an undoubted moral claim for reparation, and we suggest that the practicability of such reparation should even now be taken into serious consideration. We are, however, mindful of the many difficulties which lie in the way of any scheme of compensation.

It is regretted that this matter was overlooked and not put before you, as intended, before your Committee left this country.

I have the honour to be,

Sir,

Your obedient servant,

Copy to

The Hon. Colonial
Secretary,
Nairobi.(Sgd. A. Ruffell Burlew.
Hon. Secretary.

Duplicate

II.

COPIES OF DOCUMENTS

referred to
in the foregoing

MEMORANDUM ON

NATIVE LAND TENURE IN KENYA COLONY.

MEMORANDUM

Presented by the Kikuyu Association, Kenya Colony,
to the Members of the East African Commission,
November, 1924.

Sirs,

The following Memorandum is presented to you by members of the Kikuyu Association and embodies a statement of certain matters which this Association desires to bring to your notice on behalf of the Kikuyu people.

The Kikuyu Association was formed, with the consent of the Administration, in the year 1919. Its meetings take the shape of open gatherings of Headmen and people of all classes, land-holders and non-landholders, educated and uneducated, Christian and non-Christian. The Association meets from time to time to discuss matters affecting the interests of the Kikuyu people, and on various occasions has made representations to Government in relation to matters which have arisen. Its ordinary membership embraces the section of the tribe included in the Kyambu Administrative District. The Association welcomes the presence and advice of the Administrative Officers at its meetings, as also of certain Missionaries of long residence in the Kikuyu country and close acquaintance with its people.

The matters dealt with and the petitions put forward in this Memorandum have the concurrence and support not only of the body of the people belonging to the Kyambu District, but likewise of leaders and people in the other districts of Kikuyu-land; therefore the Kikuyu Association is confident that it is expressing the feelings and desires of the Kikuyu people in regard to these matters.

We wish to express our pleasure at your coming to our country in order to look into our affairs and see and hear for yourselves, and we thank the Secretary of State for the Colonies for asking you to come. We would take this opportunity of restating our loyalty to the King, whose subjects we are, and to his Government. We would assure you also of our devotion to His Excellency the Governor of Kenya and our appreciation of the labours of the Chief Native Commissioner, our Senior Commissioner, District Commissioners and other officials on our behalf. Notwithstanding many things that we do not understand and which at times have caused us to doubt, we believe that our Government officials and many other White people wish us well and would do what is right by us.

We thank you for giving us this opportunity of meeting you and speaking with you direct, if only about a few matters that lie heavy on our minds.

1. OUR LAND.

The matter that above all else continues to give us grave concern is the question of the security of our tenure of our tribal lands, now known as the Kikuyu Reserve. Deprived of our land, we Kikuyu should be dispossessed wanderers, dependent upon the White man for home and livelihood. We feel we have reason, as we hope to show, still to feel insecure about this matter, despite the many/

appeals we have made and the answers we have received.

History. - Before the White people came to our country our tribe had held and occupied our land from time unknown, excepting such forest-land in Southern Kikuyu as had comparatively recently been bought by our fathers from the "Wandorobo", the forest-dwellers ("Aathi"), and had not yet all been utilised for cultivation.

We had, and still have, our own system of tenure amongst ourselves, whereby the land is held by families or individuals who originally acquired their rights by purchase either from the "Wandorobo" or from other Kikuyu; the boundaries of these holdings are all known and respected. We would refer you to a memorandum by the late C.N.C., Col. Ainsworth, which we trust you will obtain, in which, we understand, he presented to Government an account of our system of tenure obtained from us direct, with his remarks thereon (we shall refer to this again later). There you will find further particulars respecting our tribal system of land tenure.

When the Whiteman first came we did not understand that we were to be deprived of any of our land, nor that they had really come to stay. A small piece of land here and there was sold to a few of the first pioneers and to one or two Missions voluntarily by its owners in the time of the I.B.E.A. Company. When the British Government took over the administration of the country we still were unaware that our possession of our land would be questioned or endangered.

Then from about the year 1902 increasing numbers of Whitemen arrived, and portions of our land began to be given out to them for farms, until large areas in Kyambu, Limuru, Kikuyu, Mbagathi, about Nairobi, and at Ruiru and beyond, had been disposed of in this way. These lands were not bought from their Kikuyu owners, and any compensation they received (for land actually under cultivation only, and at an extremely small rate per acre) was quite inadequate. The Natives on them had either to become squatters (on what had been their own land) or else move off. Many of them today are squatters on up-country European estates and many have become wanderers, moving from one estate to another.

Another effect in some places of this alienation of our land was that we lost access to watering-places for our cattle and to salt-licks and grazing areas which had now become included in Europeans' estates. (See request in regard to this at end).

We know that in times past certain chiefs and headmen have taken upon themselves to negotiate with the Whitemen about portions of our land and have agreed to its alienation. But we wish to state most emphatically that no chief, headmen or other person has any right or has ever had any right, according to our customs, to arrange or agree on his own authority to the transference of any land; that is a matter for the owning families or individuals concerned.

When the Europeans had established their rule here we were also deprived of large tracts of forest. These may not have been occupied or brought under cultivation by us at the time, but they had mostly been bought from the "Wandorobo" and had passed into our possession and boundaries been fixed between holdings. In course of time they would have become occupied and cultivated by their Kikuyu holders. These are now included in the forest Reserves, which were proclaimed as Crown lands, and a man has now to pay for wood cut from, or may be fined for taking his goats into, forest which was once on his own or his father's land. Although we are now/

now beginning to see that it is wise to preserve the forest, we would yet point out that we experience hardships in this connection, too.

Mr Ainsworth at one time told us that the forest was to be the joint possession of the Government and us, and the policing of it was for a time done conjointly. But this arrangement was afterwards changed to sole ownership and control by the Government.

In the year 1908, Mr H.H.Beech, who was assistant District Commissioner at Dagopetti, instructed our Paramount Chief, Kinyanjui, to have a list made of all pieces of land alienated to Europeans in this District, together with the amounts originally paid for them by their Kikuyu owners to the "Wanderobo". He said the Government was to make a claim in England for money equivalent to these amounts to be refunded to the original owners, as the land had not been adequately paid for by the Europeans. A list was prepared and given to Mr Beech, but nothing more was heard of the matter.

The question of the security of our land became acute at the end of the Great War. There were incidents which happened then which caused us great misgivings. One was the taking of a piece of land at Kabete for the Reformatory; another was a proposal, strongly urged by some Europeans, that a wide strip of our Reserve alongside the Uganda Railway should be taken for alienation to Whitemen. These things caused us great consternation (especially after our service in the War; we asked ourselves, Is this our reward?), and as a result the Kikuyu Association was formed for the watching of our interests. This was in 1919. At that time we sent a letter, signed by Chief Kinyanjui, to the Governor, Sir Edward Northey, begging that the individual Native owners of land in our Reserve might be given title-deeds for their holdings which will give us security of tenure.

A copy of His Excellency's reply, dated 28th Oct. 1919, is appended (Appendix 1), in which it was stated that "His Excellency has prominently in mind the desirability of Individual Tenure in Kikuyu Reserve whereby every garden owner would ultimately receive a certificate of title thus ensuring security of tenure; but owing to the great amount of work now in the hands of Government and the shortage of Administrative Staff, His Excellency regrets that it is not possible at present to carry out the necessary survey which must precede any issue of Certificates; as soon as Government can find the staff this work will be begun."

This was supplemented by a letter from Mr Northcote (Acting Provincial Commissioner) to Koinange, the President of the Kikuyu Association, repeating the substance of the Governor's letter. (Copy attached - Appendix 2.)

No such "certificates of title" were, however, issued.

Subsequent to this, a meeting in connection with the land question was held at the Government station at Kyambu on June 3rd (?), 1920, at which Col. Ainsworth (C.N.C.), Mr Traill (S.C.) and other Government representatives were present. At this meeting the Government officials put forward the view that all the land belonged to God, and after Him, to the Government, and that there was no individual ownership among the Kikuyu. It was also proposed that in future if any one required ground for cultivation or/

or building he should apply to the general Council of Elders ("Kiama") for permission to occupy it. This statement caused an uproar. One or two of the chiefs were willing to accept the proposal but were prevented by the rest of the Natives present.

The outcome of this was that Col. Ainsworth agreed to go thoroughly into the traditional Kikuyu system of land tenure. For this purpose he called meetings in Nairobi on 6th and 10th July, 1920, which were attended by most of the Headmen, a number of elders and young men, belonging to the Kyambu District; also by several Government officials and missionaries. The subject was gone into exhaustively, and Col. Ainsworth expressed himself as prepared to recognise that the "Githaka" system (the Kikuyu system of family and individual holdings) as the traditional Kikuyu system of land tenure and to put forward recommendations to the Government regarding it, with a view to some settlement of policy. He told us after the meeting that he would write a memorandum on the whole matter, and said we should have a copy of this. We understood afterwards that the memorandum had been written, and that Government had in consequence agreed to recognise our "Githaka" system. But we have never received nor been shown a copy of this memorandum and Col. Ainsworth's recommendations. Col. Ainsworth shortly after these meetings went home to Europe.

In June of the following year (1921), nothing further having apparently been done to meet our request for security, at a meeting granted to the Kikuyu Association on the 24th of the month, at Dagoretti, to enable us to discuss our grievances with the Acting C.N.C. (Col. Watkins), we again brought forward our petition for title-deeds. To his written reply, dated June 27th, on the various matters we raised at this meeting, Col. Watkins appended a copy of "Procedure approved by the Governor-in-Council as an experimental measure" in regard to the recognition of "githaka" holders. Title-deeds, however, were held to be "inapplicable to the Kikuyu system of land tenure." We attach a copy (Appendix 3) of Col. Watkins' letter.

In response to a letter from the Kikuyu Association to the C.N.C. sent on November 10th, 1921, Chief Kinyanjui and Philip Karanja, the Secretary of the Association, were seen by Mr S.P. Deck, and he then stated to them that "all land in Native Reserves is owned by the Crown and no title-deeds will on any account be issued." A copy of a letter from Mr Deck (on behalf of the Acting C.N.C.) to the District Commissioner, Kyambu, a copy of which was also sent to Philip Karanja, in which this statement was repeated, is also attached hereto (Appendix 4).

About this time some attempt was made by the District Commissioner, Kyambu, to have the "githaka" holdings in certain localities roughly surveyed and registered in a book. Each "githaka" holder whose holding was registered was given a small scrap of paper with a number on it. A suggested form of "certificate" (as alluded to in the above letter from Col. Watkins) was seen by some of us, but it did not appear to offer the full security that we require. The experiment after a short time was dropped, and no more holdings were "registered".

The next event to be noted in the history of our land question was a judgment delivered in the Supreme Court by Judge Barth in the case of a Kikuyu who claimed the ownership of a piece of land in the Reserve against another Kikuyu (Civil Case No/

No. 588 of 1922). The full text of the judgment is too long for us to quote here, but in it the following statement is made:-

"In my view the effect of the Crown Lands Ordinance 1915 "the Kenya (Annexation) Order-in-Council 1920 by which no native private rights were reserved and the Kenya Colony Order-in-Council 1921 as I have already stated is clearly, "inter alia, to vest land reserved for the use of a native tribe in the Crown. If that be so then all native rights "in such reserved land, whatever they were, under the Githaka "system, disappeared and the natives in occupation of such "Crown Land became tenants at will of the Crown....."

In two previous judgments of Judge Maxwell (Cases No. 576 and No. 132 of 1920) the rights of "githaka" holders were apparently recognized, so that this later judgment of Judge Barth's has had the effect of confirming our apprehensions and has perhaps more than anything given us a feeling of the precariousness of our position regarding our land.

(We should be glad if you could call for copies of these judgments for your fuller information.)

In March, 1922, at a meeting at Kyamba, the C.N.C. (Mr. Maxwell) read to us a despatch (See Appendix 5) from Mr Churchill, then Secretary of State for the Colonies, laying down certain safeguards in regard to our land, at which we were very pleased.

In the absence of security at law, however, we feel that nothing can remove our doubts; and, moreover, small pieces of land have been taken from us since that time.

Our last step was taken in 1923, as His Excellency the Governor was about to go to England in connection with the Indian Question. We then, besides giving him our views on that question, petitioned him to press with the Secretary of State for the Colonies our request for documentary security for our tribal lands such as would safeguard them in law. A copy of our petition is appended (Appendix 6).

On His Excellency's return we were gratified to read in a report of his speech at the Legislative Council that he had decided to send a surveyor to demarcate all the boundaries of our Reserve, and so remove part of our anxieties. At a meeting at Kabete this proposal was discussed with us, and we were asked whether we would be willing to assist the Government in the work of the survey by supplying free portage. To this we gladly assented.

We have, as yet, however, not seen this work begun.

Present position. The position then today is that we are still without documentary security for which we have petitioned, nor have the boundaries of our Reserve been finally and clearly delimited and shown to us as boundaries we can be absolutely assured will not be further encroached upon.

We see that Europeans or others who obtain land in this country receive deeds which ensure to them legal security for their estates. We do not understand why we, the original owners of the land, cannot be given similar documentary security, but must remain "tenants at will" of the Crown.

Still from time to time a little piece of our land is appropriated. In some of these cases it is explained that they are areas which had already been demarcated in past times and excised from/

the case of the Kikuyu owners of the piece of land near the Scott Senatorium recently taken for an Agricultural Showground.

7. That it be laid down that in no circumstances may a Kikuyu holding land in the Reserve sell or otherwise dispose of any portion of his land to anyone but another Kikuyu.

8. That, where at all possible, arrangements be made whereby access to water, salt-licks and grazing of which we have been deprived by the alienation of land, may be restored to us.

9. That in future no arbitrary action be taken concerning any of our land, but that all proposals affecting it be brought to our knowledge and be subject to our consent.

2. EDUCATIONAL AND MEDICAL SERVICES.

We in the Kikuyu Province pay a very large amount annually in Hut and Poll Tax. Of this large sum we see very little coming back to us in direct benefits. We know that there are many general services towards which part of our taxes goes, from which we benefit together with the whole country. Some of these we have perhaps not yet learned to appreciate. But we feel that more should be done for us in ways we can directly appreciate, and of these, increased educational and medical facilities are two things we ask for.

We are grateful for the assistance given to Mission schools by Government to enable them to do more for us in the way of education. We wish, however, to have a certain "High School" established somewhere in our country to which scholars can go for more advanced education on leaving the elementary schools.

The provision of more medical services in our Reserve we regard as a crying need. With the exception of a very few small Mission and Government hospitals and dispensaries, our country is without medical facilities, and in order to obtain treatment a person may have to travel a great distance.

In the past we had no knowledge of the right way to treat diseases ~~proper medical treatment,~~ and we beg that our needs in this respect may be more adequately met.

But numbers of our people have now come to affluence & prefer medical treatment.

3. VOICE IN LEGISLATION.

We have expressed on other occasions our feelings regarding the passing of laws closely affecting us without our people having had any say in the decision, and often without any knowledge on our part until after the laws are made. We feel that it is only right that when legislation affecting us is contemplated we should have opportunity of getting to understand what is proposed and to say what we think about it before a law is passed. Laws have been made which would have been protested against by us had we had the opportunity.

We are glad that provision is now made for the formation of Local Native Councils whereby we may take a greater part in the discussion and management of tribal affairs, and through which we can express our views and desires to Government, and we hope we may soon have such Councils constituted in Kikuyu-land.

At the same time we look forward to the time where we may have/

have direct representation on the Legislative Council. We are aware that the Chief Native Commissioner and the Unofficial Representative of Native Interests are watchful of our interests in the Council, but we feel that they are not able to speak for us as one of ourselves and cannot have such knowledge of our minds as to reflect our point of view in the same way as would our own Native representative. Therefore, although we realise we may not attain to direct representation for some time yet, we ask that we may not be refused the prospect of such representation in the Legislative Council in time to come, but that the door may be kept open.

The subject-matter of this memorandum was decided upon and discussed at a special meeting of the Kikuyu Association on October 10th, and one of the missionaries referred to at the beginning was requested to draw it up and put it into good English for us. During its drafting he has been in frequent consultation with members of the Association, and the things put down are in accordance with our directions and wishes.

There are not lacking other matters about which we would have liked to speak or write to you, but it was agreed that those put down are the most important and that we should not trouble you with others in this statement. You will see how much we have recorded about the question of the security of our land, and once again we would impress upon you that this matter is the one nearest our hearts and the one over which we are most exercised.

We beg that you will give close and sympathetic consideration to the matters above set forth, and we pray that you may be enabled to make such recommendations as may lead to right decisions regarding them.

(Sgd) Koinange wa Mbiu

President,
Kikuyu Association.

(Sgd) Philip K James

Secretary,
Kikuyu Association.

COPY

P.O. Box No. 39.

No. 112/59/19.

Nairobi.

23th October 1919.

Kinyanjui wa Gathirimu,
Thro' Rev. Canon H. Leakey,
Church Missionary Society,
Kisumu, Nairobi P.O.

Greetings.

His Excellency the Governor directs me to say that he has received your letter with which he was much pleased. His Excellency has prominently in mind the desirability of Individual Tenure in the Kikuyu Reserve whereby every garden owner would ultimately receive a certificate of title thus ensuring security of tenure: But owing to the great amount of work now in the hands of Government and the shortage of Administrative Staff, His Excellency regrets that it is not possible at present to carry out the necessary survey which must precede any issue of Certificates: as soon as Government can find the staff this work will be begun.

His Excellency further directs me to assure you and the A-Kikuyu that while he is Governor of this Protectorate he will do all he can to protect the Kikuyu people from encroachments on their lands.

Finally His Excellency confidently trusts that Kinyanjui and the Kikuyu Elders will do their utmost to further the scheme for the registration of Natives that is to begin next month: this scheme will be of the greatest advantage and protection to all worthy Natives.

s/d G. A. S. Northcote.

Acting Provincial Commissioner.

COPY

(Translated from Kiswahili)

38/40/19.

Provincial Commissioner's Office,
Nairobi,
November 3rd 1919.

Koinangi wa Mbia,

Greetings, after which I have to inform you that your letter has reached me. A few days ago Kinyanjui wa Gatherimu sent a letter to His Excellency the Governor asking him as to what is to be done about the Kikuyu land: and His Excellency the Governor answered saying that while he is Governor of the East Africa Protectorate he will guard the land of the Kikuyu from being taken by anyone whatever: moreover he said that presently every one will receive a document for his holding, but at the present time he has not sufficient surveyors to carry out the surveys: and until the holdings are surveyed he is unable to give these documents: so it is well to rest content with His Excellency's reply. But do not cease to urge and teach the Kikuyu to assist the White people in their needs so that the White people may have cause to commend the Kikuyu.

(Signed) G. A. S. Northcote

Ag. Provincial Commissioner.

shamba - estate or garden.

Copy of Relevant Portion of Letter from the Atg. Chief Native Commissioner to the Secretary of the Kikuyu Association.

A/5646
A10/3/1.

Office of the Chief Native Commissioner,
Nairobi, 27th June 1921.

7

With reference to the agenda of the meeting at Dagoretti on Friday, June 24th, following comprise the decisions come to:-

- 1. With regard to
- 2.
- 3.

4. With regard to the delay over the issue of Title Deeds to Gethaka holders, it was pointed out to you that your Association and the Gethaka holders would not seem to have any very clear comprehension of the meaning of the words "title deeds", which are inapplicable to the Kikuyu system of land tenure.

I attach, for the information of your Association, a copy of the procedure that has been approved by the Governor-in-Council, as an experimental measure.

- 5.
- etc.
- etc.

(Signed) O. F. Watkins

Atg. Chief Native Commissioner.

To -
The Secretary,
Kikuyu Association,
Kikuyu.

[See overleaf for Appendix to this letter.

Appendix to letter from the Acting Chief
Native Commissioner (Col. O.F. Watkins)
to the Secretary, Akikuyu Association;
Kikuyu, 27th. June, 1921.

COPY OF PROCEDURE APPROVED BY THE GOVERNOR-IN-COUNCIL
AS AN EXPERIMENTAL MEASURE.

- (a) That the experiment of recognising Gethaka holders be tried first in Kyambu and Dagoretii.
 - (b) That a list be made, location by location, of Gethaka holders. Such list to be made on the spot in consultation with the elders.
 - (c) That the names on the list be numbered and the owner of each name be given a certificate that he is the recognised holder of such and such a Gethaka in such and such a Location.
 - (d) That all transfers be similarly recorded.
 - (e) That registration in this manner shall in the event of dispute as to title throw the onus of proof on to the unregistered disputant.
 - (f) That the rights so recognised shall be
 - (1) Right to occupy in accordance with tribal law and custom.
 - (2) Right to permit occupation by Akikuyu in accordance with tribal law and custom.
 - (3) Right to transfer those rights to other Akikuyu in accordance with tribal law and custom.
-

Copy of Relevant Portion of Letter from Mr Deek to the District Commissioner, Kyambu.

11984
Al/6/67.

OFFICE OF THE CHIEF NATIVE COMMISSIONER,
NAIROBI, 29th November, 1921.

The District Commissioner,
K Y A M B U.

KIKUYU ASSOCIATION - LETTER DATED 10.11.21.

On the instructions of the Chief Native Commissioner I saw Chief Kinyanjui and Philip Karanja on this subject yesterday and conveyed to them the following information,-

1. TITLE DEEDS. All land in Native Reserves is owned by the Crown and no Title Deeds will on any account be issued. I also explained to them that title deeds as issued at present to Non-natives are not applicable to the Kikuyu system of land tenure, as they are subject to certain conditions, e.g.- payment of rent and Stand premia, from which the Kikuyu are free.

2. SALT LICKS. This is a matter of boundaries. Apparently Mr. Greswolde Williams claims the Emboliu Naibor and Githigigwa salt licks, which the Kikuyu state are within their Reserve. They were referred to you.

KIKUYU-NGONG BOUNDARY. Apparently what they really want is a place to water their cattle at, the M'bagathi source, as they claim that the ground on the Kikuyu side is so steep that cattle cannot get down to water. They were told to put their request before you.

3.

4. SCOTT SANATORIUM AREA. This is a matter of boundaries.

5.6.7.

etc.
Copy to Chief Philip Karanja,
D a g o r e t t i.

etc.
(Signed) S.F. Deek.
SENIOR LABOUR INSPECTOR.

COPIE

EXTRACT FROM SECRETARY OF STATE'S DESPATCH ~~388~~
No. 1315 - DATED DOWNING STREET, 25th AUGUST, 1921.
TO THE OFFICER ADMINISTERING THE GOVERNMENT OF KENYA.

PARAGRAPH (3)

I have discussed with Sir Edward Northey the general question of the alienation of small areas lying within Native Reserve which forms the subject of the Despatch under acknowledgement; and I have decided that it will be convenient if I now lay down for your guidance the conditions on which such alienation may be permitted:-

- (1) The prior consent of the Native Authorities concerned must be obtained in every case.
- (2) The prior sanction of the Secretary of State must be obtained in every case.
- (3) Land actually in occupation of natives is not to be alienated permanently or temporarily except in every special circumstances, and then only if full compensation is paid to the Natives affected.
- (4) In the event of permanent alienation an equivalent area of equivalent value must be added to the Reserve, if practicable in the same vicinity.
- (5) In the event of temporary alienation, an equivalent area of equal value should be added temporarily to the Reserve, if practicable in the same vicinity, unless it is quite clear that this is unnecessary, in which case the reasons should be fully stated when the matter is submitted for the consideration of the Secretary of State.
- (6) The whole of the rent or similar proceeds derived from alienation must be expended for the benefit of the Reserve in question.

COPI.

KIKUYU,

312

March 17th. 1923.

To His Excellency
Sir Robert T. Coryndon, K. C. M. G.,
Governor and Commander-in-Chief,
Kenya Colony and Protectorate.

Your Excellency,

1. We, the undersigned chiefs, headmen and elders representing various sections of the Kikuyu tribe, desire to reaffirm our loyalty and devotion to His Majesty King George V. We believe that our actions during the years of the Great War and the sacrifices endured by our people at that time in His Majesty's cause and that of the Empire to which we belong are evidence of the reality of that devotion.

2. We therefore are confident that earnest and sympathetic consideration will be given to matters vitally concerning us by those whom His Majesty has entrusted with the guarding of our interests and the promotion of our welfare, and we humbly approach Your Excellency praying that you will take account of the following petition and statement of our views, and that you will be pleased to put them forward and further them with the force of your personal support.

The matter of the permanent security of our land is deeply exercising the minds of our people in these days and is regarded by them as of paramount importance. The question of the position of Indians in Kenya Colony we also feel to be one which affects us greatly.

3. Having learned that Your Excellency is proceeding to England to discuss many matters with the Secretary of State for the Colonies, and in view of the recent decision of the Chief Justice in Civil Case No. 626 of 1922, and in view of H. E. Sir Edward Northey's letter of 28th. October, 1919, promising survey of the boundaries of the country, we desire to petition Your Excellency that clear documentary evidence be given to the Kikuyu people as a tribe which will definitely safeguard the Kikuyu country, at law, from encroachments without the consent of the tribe and of the individual holders immediately concerned, and at the same time give recognition to their own traditional system of land tenure, as recommended in the appendix to the Acting Chief Native Commissioner's letter to the Secretary of the Kikuyu Association of 27th. June, 1921.

4. In regard to the matter of the Indians in this country, we wish to state

* Word Kikuyu accidentally omitted in original.

(2)

5. In conclusion, having heard that the Rev. J. W. Arthur, O. B. S., M. D., is to accompany Your Excellency to England in order to represent Native interests, we desire to state that he is well acquainted with our concerns, and from experience of his sympathy and help extending over a number of years we have confidence in him and in his ability to state our wishes and advance our views on the foregoing matters, and we hereby request and authorize him to speak on our behalf.

We are, Sir,
Your Excellency's obedient
and humble servants,

(Signed by Four Paramount Chiefs and

Thirty-six Chiefs, Headman and Elders
of the Kikuyu Tribe.)

COPY OF MEMORANDUM

on

Siuyu land tenure

by

the Rev. Harry Leakey, M.A.

COPI.

MEMO RE KIKUYU LAND TENURE, ETC.

by the
Rev Canon Harry Leakey, M.A.

The object of the following memo put briefly is to prove that the Agikuyu had purchased with sheep and cows all the land they possessed when Europeans came to the country. That they paid highly for it from the Wandorobo who were recognized by all as the rightful owners of it. That thousands of acres which are now in the possession of white settlers is this very land which the Agikuyu purchased at a big price, and yet the most ridiculous and inadequate compensation was given to the Kikuyu owners. That in a great number of cases large areas were taken away from them by Europeans without their being aware of the transfer of ownership until the whole transaction had been settled by the issue of title-deeds to the Europeans and no compensation whatever reached the rightful owners. That this was done with the full cognizance of the Administrative Officers who declared that all uncultivated land was Crown land and any intending settler could pick out what he liked and get it surveyed later. That though many promises have been made in the last 30 years by responsible officials, from Governors downwards, that no more land should be taken, yet these promises have been frequently broken, and that so late as October of this present year it has been publicly declared to a representative body of Kikuyu chiefs and elders that unless they make a proper use of their land it will be taken away and given to Europeans who can make better use of it.

[Memo. follows.]

There is one matter above all others which greatly troubles the great Kikuyu tribe, and that is the terrible uncertainty connected with their land tenure. For years they have attempted by constitutional means to get some bona fide guarantee that what little land has been left to them after the great inroads made upon it by the white settlers shall remain in their possession permanently. Promises after promises have been made to them again and again by Government Officials from Governors downwards, yet to-day they possess nothing tangible to prove that they are the recognized owners who cannot be turned off it against their will. As late as October 1924 an important administrative officer is reported to have again told them that if he did not consider they were making sufficiently good use of their land it would be given to others. Upon being asked if 'others' might mean Europeans, he is said to have answered in the affirmative. True, letters from the Secretary for the Colonies have been read to them in which very strong language has been used to show that it was the will of His Majesty that Africans should not be deprived of any portion of their reserves, and copies of these letters have been given to them, yet this does not in any way correspond in their eyes to the title-deeds which settlers can invariably produce every time there is a contention as to who is the owner of a certain piece of ground.

The special claim of the Kikuyu tribe to their land may be of interest here.

These people did not 'just happen to be there' when the British Government took over E. Africa as a Protectorate from the I.B.E.A.C. They, as individuals, or more often in families, purchased at a high price in cows and sheep every acre from the Wandorobo. These latter are known to the Kikuyu as the Athi (or the people of the land) and were recognized by all as those who were in lawful possession. They had won the great virgin forests by their pluck and skill as big game hunters, just as many parts of the world have been won to the British through their intrepid explorers and brave adventurers. None but these people with their deadly arrows and unerring aim dared venture into the forests. The Kikuyu, an industrious cultivating tribe, but also rich in cows and sheep, coveted this land to plant their crops and find pasture for their flocks, and gradually, by making friends with the Wandorobo, they bought many hundreds of square miles and turned great virgin forests into flourishing gardens and grazing land of grass for cattle and sheep, and bush land for their goats of which they had a great preponderance. This exchange of ownership suited the Wandorobo admirably, for they found it much less trouble to satisfy their desire for flesh food with their newly made friends' stock than by hunting wild game and much intermarriage took place and friendly relations existed, and it is probable that the Wandorobo assisted the Kikuyu in their deadly contests with the great Masai cattle thieves.

Soon after the British Government took over the Protectorate a most terrible famine lasting for the greater part of two years took place. For the fearful results of this the British, though unintentionally, were in part responsible. For it was not only the lack of rain which caused the great distress, but largely the fact that thousands of pounds of grain had been sold by the Kikuyu natives to feed the troops being rushed up to Uganda to stop a mutiny. The contractor offered prices never heard of before for food and the people sold all their reserve supplies. The famine carried off thousands upon thousands, while multitudes of others temporarily moved/

moved off into Ukamba or elsewhere. And so it was that when in the first decade of the century white settlers began to pour into this country looking for farms they found what seemed to be an uncultivated country except for patches of cultivation here and there. Even Government Officials did not realize that the many acres of bush land (the delight of the Kikuyu for his goats to feed on) were of any value to the villagers near by. The land office, hardly in existence, and quite incapable of coping with the situation, was powerless to act properly and so the edict went forth from administrative officers that all land not under cultivation was Crown land, and any white settler could choose out any 600 odd acres or so for a homestead, and it would be surveyed later. The only condition was that for all land under actual cultivation the small compensation of four to six shillings (Rs. 2/- to 3/-) had to be paid if the cultivator was turned off. As a result of this it is an absolute fact which can be verified at any time that many hundreds of square miles of land that had been purchased by the Kikuyu at a high rate, by themselves or their fathers, in some cases quite recently, became the property of white settlers, who eventually got their title-deeds, without the rightful owners even being aware, till much too late to be of use to them, that the property was changing hands. A glaring case in point is that of Headman Koinange wa Nbiyu of Kyambu District. Although certain people who were cultivating portions of his estate by the courtesy of members of his family or himself did receive a few rupees compensation, neither he nor any of his family ever got one cent, and it was only when he was sent for by the new owner and told that he must supply labour or leave the property that he discovered that he himself was no longer its owner.

That practically every acre of the Kikuyu land, both the portion still left to them, and that now held by European coffee planters, had its well known and recognized Kikuyu owners has been proved over and over again. To mention only one administrative officer still in office who has proved this, Mr. Wade now assistant to the C.N.C. when an A.D.G. was given permission by his senior officer to test the point and was absolutely satisfied that it was so. The pamphlet published by the late Mr. Mervyn H. Beech of the S.A. Protectorate - *The Kikuyu System of Land Tenure* - (reprinted in 1917 from the *Journal of the African Society*) should be read by all interested in the question. Beside a sketch map specially compiled for it, this pamphlet contains copious extracts from well informed officials' letters. Although in certain official quarters, notably by the late C.N.C. Mr. John Ainsworth, attempts were made to discredit this publication, yet, as the writer of this article showed in the public press in 1919, at least three missionaries who have lived amongst the Kikuyu people for over 30 years in different areas, all came to the same conclusion as Mr. Beech, quite independently of him and of one another (Rev. Dr. Henderson of Kamui, A. B. Barlow Esq. of C.S.M. Kikuyu and of Tumutumu and Canon H. Leakey of Kabete). Much more could be written to show the great hardships that the Kikuyu people suffered by being robbed of their land and many reasons given to explain how it was they did not make much trouble about it at the time. But to any who take the trouble to go fully into the matter it will be clear that it is greatly to their credit that they, an unsophisticated pagan tribe, did not rise and murder all the settlers who were intruding, as it seemed to them on their rights. Instead of this, ever since, after some fighting, they made a pact with/

with the British Government, they have kept that pact and given no trouble, but been perfectly loyal. There has never been occasion since the early days to send a punitive force amongst them, and no kind of rising, except the insignificant little affair of a few years ago under Harry Thaku. This originated entirely from detribalised natives and was engineered and fostered by non-Africans, and the tribe can in no way be blamed for it, as the leading men in the Reserves would have nothing to do with it. On the other hand by the labour which they have supplied they enabled a great number of white settlers to develop splendid estates on the very land which they claim to have been theirs by direct purchase. Then when the war came and Britain's time of stress began, they rose splendidly to the occasion and went in great numbers to carry the loads and ammunition of the British troops losing their lives by thousands. Whatever else can, or cannot, be done to right a horrible wrong - which present day high administrative officers of long standing look back upon as a dark blot (through ignorance admittedly) of their early days administration, - surely there is one thing which can be done - and it is believed it would satisfy them now - and that is, that real bona fide title-deeds be at least presented to the Kikuyu tribe to guarantee to them, in perpetuity, the absolute ownership of their land. To the writer it appears that if this were granted, with the proviso that they might never sell it outside of the tribe without the full consent of the Crown, a great sore would be healed and serious anxiety removed from a people who by their industrious habits and keenness on cultivation should become a great factor in the development of Kenya Colony.

COPY OF MEMORANDUM

presented to the East African Commission

on behalf of

the Kamba Tribe.

COPY.

MEMORANDUM

presented to the East African Commission
on behalf of the Kamba People.

Machakos, Mbooni, Kenya
Nov. 5th, 1924.

Major, The Honorable
William Ormsby Gore, M.P.,
Chairman Parliamentary Commission.

Sir:-

I have the honor to submit to your Commission in behalf of the Ukamba people (who through their District Commissioner communicated their eager wish to be provided an opportunity to lay the problems of their reserve before you, upon your visit to Machakos on the 21st inst), the following Memo:-

It will be of interest to note that this sketch of what they would say before your Commission was made yesterday after a series of local gatherings, by a large general assembly of practically all the principal chiefs and people of the tribe, and is the deliberate and conservative expression of growing grievances. To them the procedures of Government are often inconsiderate of all considered, as concerns their land and their cattle, as well as themselves. They feel themselves bereft of their grazing areas and insecure in their reserve, and beg your kind consideration of the following subjects - LAND AND GRAZING.

To appreciate what now is and what they would wish to be, it is desired to point out -

(a) That their present reserve comprises only about half of the territory which was theirs, acquired by conquest from the Masai. This has reference to the Machakos Administrative District, and not the Kitui area, as the people of this part never had affiliation with the people of the lower section.

They claim to have advanced from the south east, and that their eastern boundary was the Tiva River near Aibwasi, running northeast along the Mwitwa Syeno River, to a point where the Thika river turns abruptly toward the Lana near Sokeni Mt. From this point the boundaries followed the Thika to the point where the Athi turns southeastward, and then along the Athi until its junction with the Stony Athi, and following it to its source, and beyond to the western shore of Lake Magadi, and on towards Kiu.

They do not claim to have occupied all this territory, as their cattle were more lately, and through their raids on the Masai and the conquest of the territory, acquired.

Their grievance is that this territory was not included in their reserve, and that they were evacuated from the Mwa Njira, the Donyo Sabuk, Allima Aiu, and the Latta Plains sections, which were their most prized grazing areas, without regard to their claims to, or need of these areas for their future growth in numbers and in cattle/

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It will be of interest to note that this sketch of what they would say before your Commission was made yesterday after a series of local gatherings, by a large general assembly of practically all the principal chiefs and people of the tribe, and is the deliberate and conservative expression of growing grievances. To them the procedures of Government are often inconsiderate of all concerned, their land and their cattle, as well as themselves. They feel themselves bereft of their grazing areas and insecure in their reserve, and beg your kind consideration of the following subject: LAND AND GRAZING.

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cattle wealth.

(b) That their reserve is inadequate for even present needs. They submit as reasons,

(1) The population has increased. Cultivated areas have in consequence of this and the promptings to accelerate production of food stuffs, needed to be extended. As the tops of Hills and ridges provide the best garden sites, the grazing has become more and more confined to the hillsides, which rapidly deteriorate.

(2) The cattle have greatly multiplied.

With their multiplying, however, has come their forced removal from grazing areas, and the necessity to herd them, together with their sheep and goats, in poor pasture land, with the inevitable result that it has worn out quickly, and has no opportunity from season to season to recover itself.

(3) The Rainfall has decreased and been confined to ever shorter seasons, while the drying up of many old springs and water courses emphasize the regrettable fact of the growing aridity of this country.

(4) The cutting down of practically all large trees, (there is no forest in all Ukamba) and the consequent very general presence of the destructive white ants which riddle the soil, and in sections and seasons eat the grass until the ground is bare, all add to the list of their woes and their growing despair.

They realize that they have been improvident as concerns their land, and are willing to cooperate in studied measures for its recovery and improvement.

They allow that they have clung too avariciously to poor and "dead" stock. They, however, definitely commit themselves to dispose of all such, and request Government after the rains (as at present all stock is very ill looking) to hire Stock Inspectors to assist them to cull from all herds all dud and surplus male stock and advise and assist them in the improvement of the remainder. They philosophically accept the fact of the white man's presence on practically all sides of their reserve, and that there is no probability of their withdrawal in favor of Ukamba's extension.

PROPOSALS:

They submit however,

(a) that they have returned to them the unoccupied sections bordering on their reserve, or,

(b) that they be privileged to purchase, as a tribe, "lanes of access" to the unalienated crown lands opposite the several sections of the reserve so sorely needing extended grazing land.

(c) that instead of land being retained by the crown for game, while its subjects and their cattle, which are the greater economic asset, suffer through too close confinement, some of it be made available to them and embodied in their reserve.

(d) that with these needs carefully considered, their Reserve be surveyed, and the boundaries section by section, clearly demarcated.

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(e) that a plan of the survey and a distinct and definite promise of security of tenure, be given by Government to a Council of ten representative elders, who will act as trustees for the tribe; no alteration nor alienation of any portion to be made without referring the proposal to the tribe and the vote of these elders in Council.

(f) that pending final action (other procedure submitted under "b" 4) provision be made for the accommodation of their stock outside the reserve, (except such milk cows as are required by old people and children for a period of three or four years, during which time earnest effort be made to recover the reserve from its barrenness.

(g) THE YATA PLAINS.

They are eager to point out that the Yata Plains could not possibly accommodate but a portion of their stock, and that outlets in other directions are essential.

They do not feel they should be asked to pay for temporary grazing privileges there, and submit that the losses they have suffered this year, (approximately 30,000 head, or 150,000) through "the fitful policy" of Government in regard to the Yata, more than offsets gain to them for years to come.

TAXATION -

There is a growing dissatisfaction over the apparent lack of application of a more commensurate percentage of taxation of the tribe to the dire needs of their reserve.

The quite recent Medical, Veterinary, and Agricultural services are appreciated, but the objectives of the latter two are still suspended, and there is such need for more settled and thorough policies, as the people feel the succession of new things proposed and proceeded with for a season, are probably only the hobbies of the transient administration officer, and the consequently have little native support, and are attended with little success, while such labor as connects with them is given resentfully.

ROADS:-

The construction and maintenance of roads for wheeled traffic is considered to be of primary importance and the natives themselves are availing themselves of them in ever increasing numbers, as they realize the possibilities of better livelihoods through trading in grain, hides, etc. Some districts are backward, through lack of bridges and connecting links in the road system. The need of better roads, surveyed to grade, culverted and bridged, etc., so as to minimize the use and for continuous unpaid labor in repair work, and to develop the resources of every section, is strongly urged.

DAMS:-

The necessity for and possibilities of dams cannot be stressed too strongly. The rainfall is heavy enough, but is not distributed, and from May to the November large sections receive no rain at all, leaving the seasons water for cattle and for human consumption, to await a day through digging in the sand of the dry river beds.

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By means of dams, large sections now barren could be irrigated, and rendered very productive, and large areas now in gardens could revert to grazing. By dams they mean the building of proper masonry work reservoirs in the large rivers where large quantities of water can be confined and utilized as indicated, not the mosquito-breeding ponds that were made through unpaid labor, and without regard to irrigating possibilities, this last year.

SCHOOLS:-

The desire of Government in the matter of the education of the boys as expressed in the Technical School at Machakos, and feeder schools in certain other sections is appreciated, but the representation of the response to this effort as being an anti-mission attitude or action on the part of any large proportion of the tribe is deprecated. They would propose that Government undertake in behalf of areas insufficiently provided for by missions, and further, cooperate with and assist missions in their educational endeavors, rather than to constitute itself a formidable competitor to mission effort, by sole use of monies available for educational work in the tribe.

REFORESTATION:-

The need for reforestation is keenly felt. In view of the paucity of good land it is felt however, that only waste land should be utilized for the purpose, and that the elders should be deferred to in the selection of sites.

PESTS:-

Chief of these are the destructive white ants, and it is felt that assistance is sorely needed in the riddance of the reserve from this pest, that in many sections destroys even growing grain and renders effort at tree planting utterly futile.

CONCLUSION:-

It is to be noted that the proposals set forth to ameliorate present conditions, allay present unrest, and assure contentment and development to the tribes for the future, carry with them the peoples readiness to cooperate in every possible way.

This Memo is drawn in faithful and honest regard to the desires and feelings of the Akamba people themselves, and while largely sharing their apprehensions, I have in this instance acted only as their amanuensis.

With the earnest hope of your being able to discuss these questions with the elders who are eagerly awaiting your coming, and hopefully trusting to your efforts on their behalf,

I have the honor, to be

Sir,

Most faithfully,

(Sgd.) George W. Road.

Field Director,
Africa Inland Mission.

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COPY OF MEMORANDUM

presented to the East African Commission

by the

Kavirondo Taxpayers Welfare Association.

Memorandum of the Kavirondo Taxpayers Welfare Association
 To the Parliamentary Commission, 1938.

Foreword.

At a general Meeting of the Assn. on Sept. 2nd. it was decided to appoint a sub-committee representing both the Nilotic and Bantu Sections of the Assn. to draw up a Memorandum to be presented to the Parliamentary Commission. This sub-committee strengthened by members of the General Committee sat on Oct. 4th. 11th. and 18th. and discussed thoroughly the points to be included in the Memorandum. A draft of the Memo was drawn up by the President of the Assn. and presented to the Committee, and after discussion and amendment, the President was requested to prepare a revised document to be signed on behalf of the Association by the Secretary, the Chairman of Committee, and the President. On behalf of the Committee we the undersigned now beg to present the Memorandum and beg your earnest consideration of the matters herein set forth.

PART ONE.

The African peoples of Kenya Colony are being brought into closer and closer contact with the powerful forces of Western civilization, and many problems have been raised by the contact of the highly civilized British race with primitive Africans. On the one hand we are profoundly conscious of the very great benefits which the British have brought to our land, and we are proud that we are subjects of the KING. We express our deep loyalty to His Majesty King George, and to His Excellency the Governor. On the other hand we are conscious of deep misgivings and distress with regard to certain aspects of this contact, and that which more than any other gives us cause for concern is the situation with regard to our Lands.

Historical Survey.

Before advent of British.

Thirty years ago when Sir F. (then Mr.) Jackson hoisted the British flag at Mumias the members of the tribes were secure in the possession of their lands, SAVE ONLY where this security was menaced along the borders where tribe touched tribe. (This border line insecurity was not unknown in Europe). In this area tribal warfare made tenure insecure, the stronger dispossessing the weaker tribe.

Within the tribe there was security of tenure and ownership, each family owning its family lands. Disputes with regard to individual boundaries were settled by the Elders, as such disputes were settled in Courts in Europe, and elders were also the witnesses of transactions in which one owner gave part of his land to another outside of the family. The head of the family had absolute control. If he exercised his powers contrary to the wishes of the rest of the family disputes arose, just as in Europe disputes frequently arose when the head of a family parted with land long held by the family unwisely. Lands were divided out to younger members of the family as they grew up and married and at the death of the owner, lands passed/

Regulations and was itself repealed by the 1915 Crown Lands Ordinance. The 1902 Ordinance has no definition of Crown Lands but section 31 excludes from any lease of Crown Land, land which is occupied by natives.

1915. No. 12. Crown Lands Ordinance, is the first Lands Ordinance which contains a definition of Crown Lands. Section 5 contains "Crown Land"..... shall include all lands occupied by the native tribes of the Protectorate and all lands reserved for the use of the members of any native tribe."

Part VI of the Crown Lands Ordinance deals with "Reservation of land for the use of native tribes" and Part IX Sect 93 with the reservation of land occupied by natives within areas leased by the Crown.

1920. In this year the Kenya (Annexation) Order-in-Council was published and in

1921 the Kenya Colony Order-in-Council included in its definition of Crown Lands the definition of Crown Lands contained in the 1915 Crown Lands Ordinance.

Following on the latter Order-in-Council an important Judgment was delivered in 1921 in Civil Case No. 626 in the Supreme Court which contains the following:- "In my view the effect of the Crown Lands Ordinance 1915 and the Kenya (Annexation) Order-in-Council 1920, by which no private rights were reserved, and the Kenya Colony Order-in-Council 1921 as I have already stated is clearly, *inter alia*, to vest land reserved for the use of a native tribe in the Crown. If that be so then ALL NATIVE RIGHTS IN SUCH RESERVED LAND, WHATEVER THEY WERE, UNDER THE GATHAKA SYSTEM, DISAPPEARED and native in occupation of such Crown Land became tenants at will of the Crown..."

We now know the effect of the 1915 Crown Lands Ordinance. Up till 1915 African rights under African systems of land tenure were in existence, but on the passing of the Ordinance such rights "disappeared." The Tribes were not informed that this Ordinance was under consideration and they were entirely ignorant of its provisions and their effect. We feel that the Tribes ought to have been consulted with regard to the framing of a measure so profoundly affecting their rights under African systems of tenure.

We beg to submit that the only justification for causing our rights to "disappear" in 1915 was that they might be made to appear again in a further Ordinance which should recognize our rights and also provide for the further evolution of our system of land tenure in accordance with the changing conditions brought about by contact with a civilized power.

It is in the firm conviction that no civilized power could have intended such treatment of a peoples private rights in land to be a final measure that we beg for the consideration of the following proposals:-

1. That the outer boundaries of our Lands (Reserves) be at once demarcated in accordance with the provisions of Part VI of the 1915 Crown Lands Ordinance. We urge this as a matter to which we attach the most vital importance as we are seriously perturbed at the recommendations made by the Labour Commission 1912 and the Land Tenure Commission 1919. Both these recommend the/

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1920. In this year the Kenya (Annexation) Order-in-Council was published and in

1921 the Kenya Colony Order-in-Council included in its definition of Crown Lands the definition of Crown Lands contained in the 1915 Crown Lands Ordinance.

Following on the latter Order-in-Council an important Judgment was delivered in 1921 in Civil Case No. 626 in the Supreme Court which contains the following:- "In my view the effect of the Crown Lands Ordinance 1915 and the Kenya (Annexation) Order-in-Council 1920, by which no private rights were reserved, and the Kenya Colony Order-in-Council 1921 as I have already stated is clearly, *inter alia*, to vest land reserved for the use of a native tribe in the Crown. If that be so then ALL NATIVE RIGHTS IN SUCH RESERVED LAND, WHATEVER THEY WERE, UNDER THE GATHAKA SYSTEM, DISAPPEARED and natives in occupation of such Crown Land became tenants at will of the Crown..."

We now know the effect of the 1915 Crown Lands Ordinance. Up till 1915 African rights under African systems of land tenure were in existence, but on the passing of the Ordinance such rights "disappeared." The Tribes were not informed that this Ordinance was under consideration and they were entirely ignorant of its provisions and their effect. We feel that the Tribes ought to have been consulted with regard to the framing of a measure so profoundly affecting their rights under African systems of tenure.

We beg to submit that the only justification for causing our rights to "disappear" in 1915 was that they might be made to appear again in a further Ordinance which should recognize our rights and also provide for the further evolution of our system of land tenure in accordance with the changing conditions brought about by contact with a civilized power.

It is in the firm conviction that no civilized power could have intended such treatment of a peoples private rights in land to be a final measure that we beg for the consideration of the following proposals:-

1. That the outer boundaries of our Lands (Reserves) be at once demarcated in accordance with the provisions of Part VI of the 1915 Crown Lands Ordinance. We urge this as a matter to which we attach the most vital importance as we are seriously perturbed at the recommendations made by the Labour Commission 1918 and the Land Tenure Commission 1919. Both these recommend the/

the demarcating of the lands to be reserved to us, NOT ON ANY PRINCIPLE OF FORMER PRIVATE RIGHTS but on a principle of beneficial occupation. We have seen in the Kikuyu and Nandi and other Native land areas alienated by the Crown to non-Africans to an extent which has caused the very gravest concern to all Africans who know of it. And we fear lest we should be left without sufficient lands for our race.

2. That on completion of the demarcation of our lands, such demarcated area be vested by the Crown in a CENTRAL African Land Trust in the Colony. On this Trust body we would beg that representatives of the tribes be appointed. We urge this step as being the one best calculated to remove the load of anxiety on our minds with regard to the insecurity of our tenure.
3. That the document bringing this Trust body into existence should affirm the rights, both communal and private which belonged to us before they were caused to "disappear".
4. That local Land Boards be set up, composed of Africans and Administrative officers, to decide such disputes as arise over the rectification of intertribal boundaries.

No. 14 of 1934 "An Ordinance further to amend the Native Authority Ordinance" 1912 Sect 6 sub-sect. B. provides that the Local Native Council may make recommendations or resolutions with regard to the use of land. But we have in mind disputes concerning areas under two different local native councils, i. e. on the borders of their areas. These disputes were settled in old times by spearmen. We now need the Local Land Board to adjudicate in such matters.

Signed on behalf of the Committee

B. O. Gumba, Secy.

J. Okwiri, Chairman.

W. S. Owen, President.