

No. 17139

SUBJECT

C0533/409

Native Land Tenure in

North Kaviroa Reserve

Previous

See 16111/36 (Land Tenure
in Village
Council.)

Subsequent

See 37150/38

Hand to Library

The 12 copies of Report on Native Land Tenure in
East African Lands, submitted by Council at 1904
to investigate system of land tenure - and reports passed
in 1905 - do not allow immediate adoption of the
recommendations

The would appear to be a very useful
report containing various land recommendations

and regarding that Report volume of 7

is valuable book - and that copy will
be presented to (how or via other date)

What progress has been made in the application
of the recommendations

Col. ... 1904

An interesting report but not
up to the standard of the Kikuyu
Report. The elaborate distribution
arrangement is what one would
hardly necessary in this. but
copies might be to:-

- The Brit. Museum
- The Christian Church at Oxford
& Cambridge
- The Royal Anthropological Institute
- The Librarian (Inst. of African Languages)
- The London School of Economics ^{& Political Science}
- The African Society ^{London}
- The Royal Geographical Society

Hand to Library

The paper of
The 13 copies of Report on native lead
lead minerals lease, submitted by Committee set
to investigate system of lead lease. and suggest
circumstances to allow immediate adoption of
recommendation

This would appear to be a very useful
report containing various lease recommendations

and explaining that Report contains 4? of
a valuable nature - in that it will
be thought to (have or have files etc)

What progress has been made in the application
of the recommendations

Colchester 1/11/44

An interesting report, but not
up to the standard of the Kiskadee
Report. The statement distributed
in relation to what was seen
hardly necessary in this, but
copies might go to:-

- The Pitt Rivers
- The Ch. Leiner Club in Oxford
& Cambridge
- The Royal Anthropological Institute
- The Mineralogical Institute of Bonn (Germany)
- The London School of Economics and
Political Science
- The Royal Society

210 3 about 7 of an 12 crew.

? distribute a above
2 with to for a proposal
for Chamberlain

4.6.31 file - 10 weeks

Patent
10.7.31

But I am not clear
what, if any thing, is being
done on the report. All
they are doing is
suggesting? and what
about recommendations
wh. do not involve
reflections? I think
the report might have been
rather more explicit.

shall we begin by sending
a letter to the (at least)
explaining our information,
wh. if no answer comes,
could take us from the
supplementary material
map?

see Parliament
11.7.31

Search out by committee - the
report is to be published & in many to
be questioned.

[any one who is captured,
send the language of
a thing a might look at the

end of the Report. We are best
concerned - not with a "language
group" but with a single
administrative district - at least,
perhaps, half the size of Yorkshire.

W.C.B.
13.7.31

Sec of State
(through Dr. Shields)

? as proposed

8.11.6

21.7.31

It appears to be a sensible report and
does not suffer from over-elaboration. Paper
with the Committee
1.8.31 22.7.31

P 23/7

- DESTROYED UNDER STATUTE *Dr. Museum*
- DESTROYED UNDER STATUTE *Ant. Dennis Club, Oxford*
- DESTROYED UNDER STATUTE *Cambridge*
- DESTROYED UNDER STATUTE *Anthropological Inst.*
- DESTROYED UNDER STATUTE *Inst. of Linguistics*
- DESTROYED UNDER STATUTE *Inst. of Economics*
- DESTROYED UNDER STATUTE *African Society*
- DESTROYED UNDER STATUTE *R. Empire Society*

copy report
in 1. - 8 AUG 1981 34

10. 5. Case Sept. 1. Howard. Bonn
4/1/32
8 AUG 1981

REDACTED UNDER STATUTE

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16.1.22

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Para. 2 implies, but does not state, that the
draft Rules drawn up by the Committee
are wholly invariable. Otherwise it is not
clear why additional staff is required.

Note that the former was proposed to
remove the functions covered by the C.T.C.;
i.e. to effect a special officer, and to
form rules in the light of his enquiries.
It will be years before anything effective
is done, though the 1920 Committee
held that the effect of an officer was a
matter of enquiry.

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The question of individual business
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14. Mr Moore — 14/7/32

State that it was decided to postpone further action regarding the proposed Kavirondo Land Tenure Rules for one year, & State reasons.

Sir C. Bottonley may be interested

see this with no. 45 of 10/21/30 as to the Kakuyu Rules.

to the Kakuyu Rules.

I propose to thank Mr Moore for his

letter. Yours etc. in a separate letter

J.K. Allen

16/8/32

Not a good start for Kavirondo.

C.C.S.

16.8.32

— call

15

Mr Moore S.O. — 18.8.32.

Dr. Flood

The question is exhaustively discussed in the Carter Report, & there pp may return to add storage.

yes: it may come up but not early 18/7.

Patty

2/8/32

187

W. J. K. LAND TENURE

North Kavirondo Reserve (Report October 1931)

No part of the North Kavirondo District has been set aside for European settlement, and the only parts not in complete native occupation are the District Headquarters Station, a new Mission Station, and trading centres and a block of land set aside for Native Services. The Native population in 1931 was estimated at 341,000.

While the U.K. as a whole is the proprietary unit in respect of the whole area of land within the tribal boundary, the tribal administrative unit is the clan holding. This is under the rule of the Elder who settles all disputes which may arise in matters of general interest with the consent of the families concerned in the clan holding. The clan holding are the holdings of the various families. In general, the land rights of occupation are hereditary over the clan holdings and these rights pass from father to son. The land is held in the name of the clan, not in the individual name of a family or individual holder, with the exception of the holder. There is no individual or family family ownership. All rights of land are held in clan ownership and are hereditary. The land rights pass from the family and are not held by individuals but only the tribal members, represented by the clan head and the Elders. The land outside the clan boundary is the property of the tribe as a whole, and no individual rights can be acquired therein without the consent of the Chief and Elders of the tribe.

The conditions of the land tenure in Kavirondo are completely different from those in the U.K. and the U.K. is not a good start for Kavirondo.

the tribe. Sale of occupation rights is not recognized. Leave to settle on the land of another clan is arranged through a friend in that clan by permission of the Elders. If there is any objection by the Elders the request must be refused. There would be no payment for admission but the incoming tenant would become subject to the usual obligations of the members of the clan and to the authority of the Elders. He may be turned out if at any time he gave offence to his sponsors or to the people, but when once established with his hole and crops he could not be evicted without reference to the clan head.

The tribal Chief was always the final adjudicator in disputes referred to him by clan-heads or by a Disputant appealing from the decision of a clan-head.

Permission to dig potatoes is asked from the clan head.

Wakaya (Report Havelock, 1929)

In general the tendency has been in the Wakaya Province for the native of lands to pass (usually) land to the family, and in the Kaimosi District the right of sale by an individual of his cultivable holdings is admitted. In the East Hill and Waiyaki Districts the land unit of a sub-clan is under the administration of a sub-clan head, but the Councils supervising the sub-clan have rights of user over their cultivable area and these rights are transmitted from father to son. Virgin land is held jointly by the sub-clan and they, or the sub-clan head, must be consulted in regard to the admission of a tenant.

In the Kiambu District the right of sale is recognised in respect of the cultivated area of an individual member of a sub-clan, but uncultivated land is joint property. The consent of the Elders is not necessary for the admission of a tenant to an individual cultivable holding.

The Governor has recently stated that the practical difficulty of arranging for the resettlement among their neighbours of any displaced natives will not be insuperable. The problem, if & when it arises, will be entrusted to the local Land Board or possibly to a permanent Sub-Committee of the L.N.C.

Original registered on
16/21/30. Kikuyu Land Tenure Rules 8

Copy



Nairobi, Kenya,

14th July 1932.

Dear Allen,

In answer to your letter of the 16th June enquiring what has happened to the proposed Kikuyu Land Tenure Rules I have to say that the position was considerably altered by Fazan producing on his return from South Africa an entirely new set of rules to those of Maxwell's (late Chief Native Commissioner). Fazan's rules were 75 as against 15 of Maxwell's.

After considerable examination of these rules the general opinion was that Maxwell's were the more suitable. But the question then arose as to whether it were better to issue them under the Native Authority Ordinance or the Native Lands Trust Ordinance. The former seemed the more suitable as it dealt particularly with internal affairs, but as the Native Lands Trust Ordinance was to be reviewed by the Land Commission it was decided to await their findings

15/7/32
13.5.32
Answer 13.5.32

~~findings.~~

With regard to the proposed Kavirondo Land Tenure Rules, A.E. Hosking (senior Administrative Officer) was instructed to make a full enquiry into the system of land tenure in the Kakamega location last March. He was to draw up a report for the guidance of any officer subsequently appointed to carry out the recommendations of the Committee.

This investigation entailed enquiries into ancient custom, and to make the position clear boundaries of a few 'Taingongo' had to be roughly ascertained. This upset everyone and responsible natives definitely stated that they would receive the investigators, so strong was the local opinion against it. The situation was further complicated by the unrest caused amongst natives owing to the gold rush which was taking place. It was therefore decided to postpone any further action for at least one year. Archdeacon Owen, who was the only member of the Land Tenure Committee

Committee in the country, agreed to the suspension of the year in order to give time for the situation in the gold area to clear up.

Yours sincerely,

(Sgt) E.A.M. Moore.

Copy

~~14~~
13

Opt. on

1611/50.

Kye

Denning Street.

10 June, 1961.

On the 10th February 1961 Martin wrote to Parkinson with regard to the Kikuyu Land Tenure Report. He said that rules were in draft but were the subject of no little argument and would be reviewed afresh when Fynn reported on his visit to South Africa.

Lord Passfield's despatch No. 475 of the 4th September 1960 advised that no action (e.g. the issue of Kikuyu) could be taken until he had been informed of the Government's proposals and had had an opportunity of considering them.

It also appears from the Governor's despatch No. 486 of the 7th December 1961 that the Kikuyu Rules were waiting on the Kikuyu rules.

As we are still awaiting the promised

Further

E. S. S. MOORE, I.M., C.S.S.

12

Further dispatch I should be obliged if you would let me know briefly what has since transpired and what is the present position.

Needless to say I do not forget that since the correspondence referred to the Land Commission has been appointed.

Yours faithfully,
H. T. ALLEN

KENYA.

No. 694



12¹³
GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
5-JAN-1932
GOV. OFFICE

7¹ December 1931.

Sir,

No. 10
I have the honour to refer to Lord Passfield's despatch No. 543 dated 5th August 1931, in which enquiry was made as to the steps being taken to give effect to such of the recommendations of the Report on Native Land Tenure in the North Kavirondo Reserve as do not involve additional staff or expenditure.

2. The recommendations of the Committee resolve themselves into two, first, that Rules be framed for certain purposes and second, that an Administrative officer be detailed for the purpose of putting the proposed rules into operation. Both these recommendations involve the employment of additional staff, which circumstances have hitherto prevented.

3. In Chapter III of the Report the Committee refer to certain conditions revealed by their investigations which they consider require the immediate attention of Government. Of these the lack of accurate knowledge of the history, social organisation and system of land tenure of the tribes in the North Kavirondo Reserve, referred to in paragraph 2 of Chapter III, applies to the past and the investigations of the Committee should prevent similar mistakes in the future. With regard to paragraph 3 of the same Chapter, the question of the infiltration of natives from outside

the ...

THE RIGHT HONOURABLE
MAJOR SIR PHILIP CURRIE-LISTER, P.C., G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S. W. 1.

the Reserve is being carefully watched. The secondment of an administrative officer, suggested in paragraph 4 has been referred to in paragraph 2 of this despatch.

4. No specific Rules have yet been issued as a result of this Report. Some of the purposes however, for which Rules are proposed have been provided for in the general Rules recently approved under the Native Lands Trust Ordinance. Other purposes present no little difficulty. Such difficulties have become apparent also in the framing of the Kikuyu Land Tenure Rules, the final form of which has not yet been determined, and the Acting Chief Native Commissioner would prefer to await the settlement of that issue before embarking on the Kaverio Rules, in the framing of which experience gained in Kikuyu will probably be of no little value. I am in agreement with this view which does not of course mean that the question is being shelved but merely that it is one which has been found to require mature deliberation and a more thorough investigation than the Committee was able to undertake. In my opinion the framing of the Rules should follow the appointment of a special officer as suggested in paragraph 4 of Chapter III of the Report and should be dependent on the result of his detailed enquiries and on the success or otherwise of the Akiba experiment. It had been my intention to detail an Administrative Officer of experience for this special duty for a period of some months but unfortunately, the gravity of the locust situation has rendered that course impracticable for the present.

See No 11 of 16
7/16/21/30

I have the honor to be,
Sir,
Your most obedient, humble servant,

SECRETARY-GENERAL

GOVERNOR.

C. O.

17139/1931 Kenya

10. 15

Mr. Eastwood 29/12

Mr.

Mr. Tomlinson.

Sir C. Bottomley.

Sir J. Shackburgh.

Sir G. Grindle.

Parml. U.S. of S.

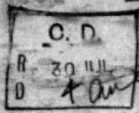
Parly. U.S. of S.

Secretary of State.

Downing Street,

AUG 1931

July, 1931.



Sir,

I have, etc, to refer to your despatch No. 127 of the 4th March, transmitting to me copies of a report on Native Land Tenure in the North Kavirondo Reserve.

2. I have read the report with considerable interest and agree with you in thinking that it contains information of a valuable nature. I am not clear, however, what action is being taken in regard to it. I quite appreciate that at the moment it is impossible to adopt ^{such a} the recommendations as involving additional staff or expenditure; but I should be glad to learn ~~whether any rules~~

DRAFT.

KENYA

No. 543

Gov.

12
 [Handwritten signature/initials]

have

C. O.

17139/1931 Kenya

10/10

Mr. Eastwood 29/12

Mr. *Palmer*

Mr. Tomlinson.

Sir C. Ballouley.

Sir J. Stuchburgh.

Sir G. Grindle.

Parlt. U.S. of S.

Parly. U.S. of S.

Secretary of State.

Downing Street,

AUG 1931

July, 1931.

C. O.	
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Sir,

DRAFT

KENYA

No. 543

Gov.

Handwritten: 12
Handwritten: [Signature]

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have

have been made as the result of the

report, and what steps are being taken

to implement such of ^{the} ~~the~~ ~~the~~ recommendations

as do not involve any expenditures, &

whether any ~~one~~ ~~has~~ ~~been~~ ~~made~~ (and)

if not, why.

as to what
of the report

~~SECRET~~



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

KENYA

No 127

4th March, 1961.

RECEIVED
10 MAR 1961
COL. OFFICE

Handwritten notes and stamps in the top left corner, including a circular stamp with the text 'RECEIVED' and '10 MAR 1961'.

My Lord,

I have the honour to transmit for
SECRET Your Lordship's information twelve copies of a Report on
Native Land Tenure in the North Kavirondo District which has
been submitted by a Committee appointed by Sir Edward Grigg
in June of last year, whose terms of reference were :-

- * To investigate the system or systems of native land
- * tenure within the North Kavirondo Native Reserve and to
- * make recommendations as to what rules should be enacted
- * to govern the occupation rights of tribes, clans and
- * families or individuals in each or any area, due regard
- * being had to native law and custom.

I trust that your Lordship will
agree that the Report contains information of a valuable
nature for the presentation of which this Government is much
indebted to the Members of the Committee. I regret that
present circumstances do not permit me to authorize the
immediate adoption of such of the recommendations in the
Report as involve additional staff or expenditure.

I have the honour to be,

My Lord,

Your Lordship's most obedient,

humble servant,

SECRETARY OF STATE FOR THE COLONIES

GOVERNOR.

Handwritten notes on the left margin: 'Copy sent to... by... 10 MAR 1961' and 'Hand sent - 10 MAR 1961'.

THE RIGHT HONOURABLE
LORD PARFIELD, P.C.,

SECRETARY OF STATE FOR THE COLONIES,

WHITE HALL, LONDON.

FILE COPY

17

COLONY AND PROTECTORATE OF SOMALIA

REPORT

Committee on Native Land Tenure
IN THE
North Kavirondo Reserve

OCTOBER, 1934

Page No. 1

PRINTED BY THE GOVERNMENT PRESS

Report of Committee on Native Land
Tenure in the North Kavirondo Reserve,
October, 1930.

GOVERNMENT NOTICE No. 200

His Excellency the Governor has been pleased to appoint a Committee to investigate the system or systems of Native Land Tenure within the North Kavirondo Native Reserve and to make recommendations as to what rules should be enacted to govern the occupation rights of tribes, clans, families or individuals in each or any area, due regard being had to Native Law and Custom.

The personnel of the Committee is as follows:—

THE HONOURABLE G. V. MAXWELL,

Chief Native Commissioner (Chairman),

LIEUTENANT-COLONEL E. L. B. ANDERSON, D.S.O.,

District Officer, North Kavirondo,

VERONICA ANDERSON OWEN

Secretaries.

This 26th day of June, 1930

H. M. M. MOORE,

Colonial Secretary.

REPORT.

CHAPTER I.

The Report which the Committee now presents is confined strictly to its terms of reference. These terms and this Report ~~fall~~ under two heads: (i) the investigation of the systems or systems of Native Land Tenure within the North Kavirondo Reserve; and (ii) recommendations as to what rules should be enacted to govern the occupation rights of tribes, clans, families or individuals in each or any area, due regard being had to native law and custom.

1. A complete investigation would entail many months of work and constant revisiting of each location, firstly because in no other way could disjointed scraps of tribal tradition be tested and pieced together, and secondly because it is impossible for more than two or three days at the most at any one session to hold the attention of the people to the degree necessary for the eliciting of intelligent answers to questions. The only witnesses whose evidence is of real value are elderly and in most cases completely illiterate natives. Many of these had travelled long distances to the places at which the Committee sat; they are quite unaccustomed to long concentration of the kind required at such an investigation, and after a short time were frankly impatient to be allowed to return to their homes.

3. During the seventeen days devoted to its investigations, the Committee took evidence at Matungu, Kabuchai, Bukhaya, Kisa, Musanda, Mudoma, Teriki and Kakamega. The evidence was sought in open baraza from representative elders of every tribe in North Kavirondo. The keenest interest was taken by the people in the proceedings—in every place many hundreds gathering to listen to the proceedings.

4. With few exceptions, the evidence as concerning land tenure was given with clearness and in a straightforward manner. There was an evident desire to afford every assistance to the Committee. It is a pleasure to us to record this.

5. In order to elucidate the system of land tenure a series of questions was framed covering the points on which information was desired, and at every place the tribal elders gave their

REPORT.

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2. A complete investigation would entail many months of work and constant revisiting of each location, firstly because in no other way could disjointed scraps of tribal tradition be tested and pieced together, and secondly because it is impossible for more than two or three days at the most at any one session to hold the attention of the people to the degree necessary for the eliciting of intelligent answers to questions. The only witnesses whose evidence is of real value are elderly and in most cases completely illiterate natives. Many of these had travelled long distances to the places at which the Committee sat; they are quite unaccustomed to long concentration of the kind required at such an investigation, and after a short time were frankly impatient to be allowed to return to their homes.

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GOVERNMENT NOTICE No. 262.

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Chief Native Commissioner (Chairman),

LIEUTENANT-COLONEL E. L. B. ANDERSON, D.S.O.,
District Officer, North Kavirondo,

VENERABLE ARCHDEACON OWEN

Dated:

This 26th day of June, 1930

H. M. M. MOORE,
Colonial Secretary.

information under the head of these questions. On every occasion opportunity was given to supplement information by statements outside the set questions but on only one occasion was further information volunteered. This referred to the weakening of tribal discipline caused by restrictions on the tribal custom of evicting an unruly member of the community.

4. Although the first question related to the history of the tribes we have not expounded the material thus obtained in detail in our Report, as we feel that it does not come under a strict interpretation of our terms of reference. It is the system of "head-rites" and not the history of the tribes requiring it, which we were instructed to investigate and upon which we now report.

Moreover, the work of the Committee could only be undertaken whenever the members could arrange to free themselves for a time from their many other respective duties, and the actual sittings of the Committee have only occupied seven-
teen days in all.

It is a logical surmise, that the general survey of tribal history which may be derived from a perusal of the evidence, and the information as to the broad principles underlying the same system of land tenure which is revealed by the evidence which has been taken, will serve not only as a useful guide to various land administration, but also as a basis for further detailed inquiries by administrative officers wherever opportunity offers for fuller examination into the actual boundaries of tribal and clan holdings, and into the relative claims put forward from time to time by rival factions in regard to the claims of tradition or members of native tribunals. The root of these matters is always in the land.

The District

5. The district of North Kavirondo which prior to 1902 formed a part of the Uganda Protectorate is bounded on the north by Mount Elgon, on the east by the Uganda Protectorate, and on the south by the district of Central Kavirondo. The inhabitants of the latter district are, with a few exceptions, Luo or Sukuma Kikuyu, whereas those of North Kavirondo are Bantu. On the east the North Kavirondo district is bounded by the original areas of Trans-Nyanza and Usam Galla, and, south of those, by the Nandi Native Reserve and the Easton Reserve. No part of the district has been set aside for European settlement, and the only parts not in complete

native occupation are the district headquarters station, a few mission stations, some trading centres, two ginnery sites, and one block of land at Maseno. The latter is being devoted to native services. The native population is estimated at 341,046 souls, and the district is, for purposes of administration, divided into twenty-five locations, each of which has an official head-man. The map annexed to this Report shows location boundaries, population densities, and the general distribution of tribes.

HOW LAND WAS ACQUIRED.

10. Practically every tribe, other than the El Koni has a history of migration from some place outside the present district. Each traces its origin to an ancestor who is said to have come in search of a home for himself and his family. Some came from Uganda, some from Nandi, some from Central and ~~and~~ South Kavirondo. Their present holdings were in all cases acquired either by right of first occupation of uninhabited country or by conquest. In no case did we hear any suggestion of purchase or of payments to other tribes for surrender of previously existing rights such as are said to have taken place in certain parts of Kikuyu where *ithaka* were acquired by buying out the Wandorobo whose hunting grounds were thus taken over.

11. The present inhabitants are able to trace the pedigree of their leading men to the original founders of the tribes; in this connexion it is to be remembered that ancestor worship is a feature of pagan religious practice in this country, and that they invoke their ancestors by name in the course of their sacrificial ceremonies. The tribe usually takes its name from its founder, and the clans from the sons of the founder. Sub-clans are similarly formed and named. The genealogies as given to us generally went back some eight to twelve generations.

12. Each tribe has followed the ordinary processes necessitated by primitive conditions. It has established a home wherever it could find room and could hold out against enemies, and has extended its holdings according to the measure of the natural increase of its numbers and its ability to defend itself. There has been constant inter-tribal warfare in the struggle for existence with consequent migrations backwards and forwards. It was only the establishment of British

*The word "tribe" is here used to denote the agnate descendants of a common ancestor.

rule in 1911 that brought about conditions which enabled an end to be put to trade and mining deals. Broadly speaking, the holdings of the various tribes and clans remain as they were then found.

The Nature of Land

(a) The nature of tribal land.

It is well to emphasize at the outset the native system of land tenure is not the sort of precise technical terms. With a view of different regions and districts these terms of course will differ. I shall therefore use one set of terms, a list of which, with their native local equivalents, will be found in Appendix A.

I can see the better point of view the tribe and its land are an undivided whole. The land is the home of the tribe. The land is regarded by the tribe as a homogeneous unit, it has been acquired by the tribe as a whole, and all disputes of even technical questions relating to the land or its people were according to custom decided by the tribal elders sitting in council under their chosen chiefs. A clan may however acquire a separate estate if it becomes completely and permanently severed from its original stock.

Within the tribe the land is the property of the whole of the tribe, and the land contained within the tribal boundaries is under customary and of legal administration in the hands of the tribe. This word means a ridge or back and is used to mean ridges and valleys are the natural features of the country, and the great clan holding is a ridge or part of a ridge. Each ridge is under the personal title of an elder who is known as the *iguru* and whose function is to keep the peace in the tribe, to judge the land and its occupants, and to settle any disputes which may arise. He is at the head of the tribe, he is the father of all families resident on the ridge, his personal rights are confined to his own tribe and culture, and he has power of jurisdiction over the whole ridge and its occupants. He is usually the senior member by primogeniture of the clan or branch of the clan occupying the particular ridge.

Within the ridge households are the holdings of the various families. A holding is known as *ibungu* and consists of a *ibungu* (house) and the *ibungu* (cultivation). A single patch of cultivation is known as *ibungu*. Each family has exclusive rights of occupation and usufruct over its own

holding, and these rights pass by inalienable right from father to son. No one, even though a member of the clan, can use the *ibungu* of another without his express permission. Rights of usufruct are in no way impaired by absence, and unless he has been driven out by the tribe for misconduct, a man can always come back and resume possession of his *ibungu*. If he dies during absence his rights pass to his children and cannot be denied to them.

17. There is no conception in the minds of the natives of this district of individual as apart from family ownership. All rights in land are derived from clan membership and from inheritance. No one can hold land apart from his family, and no one can hold land other than under the tribal authority represented by the *iguru* and the elders. Even a clan member could be evicted from his land and driven out of the clan for misconduct, if the chief and elders so decided.

18. In addition to the land over which occupation rights are vested in specific families there is in all areas another class of land specially set aside for grazing, and in two locations there is also the *kitsimi* which is the bush or uncultivated land not included in any *ibungu* boundaries. The *kitsimi* is the property of the tribe as a whole, and no occupation rights can be acquired therein without the consent of the chief and elders of the tribe.

(b) *Seignior*.

19. Each tribe has its Chief who is the head of all the clans. In most cases the post is retained in the clan founded by the eldest son of the common ancestor, but there may be departures from the senior line, e.g. where the tribe decides to replace an unpopular or incompetent leader by a substitute of its own choice, or where dissension between rival factions within the tribe has ended in fighting and the defeat and flight of the senior by birth. In the Wanga Tribe, which was the most powerful in the area, the chief is known as the *Nyongu*, and this title was inherited by Mumia from his father Shunda. Among other tribes there are other specific names for the chief, but among the smaller and less important tribes he is merely known by a term which means senior chief and indicates his authority over the various clan heads.

20. The tribal chief was always the final *omani* (i.e. judge) and decided disputes which were referred to him by the clan heads or in which a disputant appealed against

31. It is the custom for a dying man to give verbal directions to his family as to the disposition of his property among his children. If they are young a brother of his usually becomes their guardian in conjunction with the mother of each. If the mother of any of the children goes to live elsewhere on re-marrying she may cause her property from being her late husband's wife's, but she can always claim them for her children. It was for any children subsequently born by her to any man made widows of her husband by whom she may have been married, for such children are regarded as the children of her first husband.

32. If a woman becomes widowed when she is old and past child bearing she retains her rights over her property and her land. She remains in her till to any point up to a year, after which her late husband's widows inherit her land but which she occupies as her own right. Her sons would take over their father's estate generally and her daughters would cultivate with her or for her until marriage.

33. Although the matter of land is settled by law in the case since the voice of the women counts itself definitely heard in practice and the return of the man is required in his own holding and the laws which in any part forward in actual or that discussion are frequently directed by the influence weight over him by the women of his household.

34. Boundaries and Disputes

34. The boundaries of the land occupied by each wife are usually marked by stones such as stones, valleys, streams or confluence lines. The same applies to *legends* boundaries. It is claimed that all verbal and *legends* boundaries are known, without demarcation was not entered on except as the result of a dispute. In such cases the stones from both sides would meet and divide the boundary between them. This was then demarcated by the planting of certain stones and by the erection of heaps of stones, the latter used being chiefly for and *legends*.

35. There was some of the customs mentioned that was practiced by the Kikuyu on such occasions. In marking a boundary between two close of the same wife there was no boundary other than the possession of land and certain laws for the others concerned, but the marking of a boundary between wives was a more serious affair, and was accompanied by an appropriate ceremony.

36. One form of ceremony used for sealing the peace, whether of settlement of a land boundary or of conclusion of some hostilities, was that known as *shinga* between feuding a dog. This consisted of the opening of a live dog by representatives of both parties, and the unity between them was supposed to pass out and die away in the same way as the cries emitted by the dog. At the same time each representative uttered a vow to observe the compact.

37. In Kwa it is the custom when a boundary dispute has been settled to demarcate the line by driving and upright iron and to kill a sheep to consecrate the boundary. The sheep for this purpose is called *shinga* shinga, *shinga* (the sheep which brings peace). Any man who transgressed a boundary so fixed was taken before the chief of the wife and fined.

38. *Legends* boundaries amongst marked by trees at times but only by cultivated branches.

39. In Maragoli and Kavirua, where population is dense and disputes consequently more frequent than in the more sparsely populated areas, each woman in a land dispute takes her spear and shield and makes her statement to the potential others transgressing his space. At the conclusion of his statement he drives the spear into the ground. When the boundary has been decided representatives of each side make square iron, a *shinga*, iron and so take a vow to respect the boundary. It is believed that anyone violating such a vow will die. If a death occurred which was popularly ascribed to this cause the *shinga* would be dug down and entirely destroyed and any further deaths be caused by it.

40. In Maragoli some legends boundaries are marked by digging trenches and planting certain trees in them.

41. In some places the *shinga* oath is taken by the oral demands in cases where a dispute over *shinga* rights arose at a border between members of different tribes. The ceremony is as follows. Lines from both sides who know the land in dispute are called, and make their statements before the chiefs and assembled people. When the truth of any statement is challenged they proceed to *shinga* shinga ceremony (take the *shinga* oath). A sheep is furnished by those whose statement is challenged, and is killed by *shinga* shinga. When the sheep has been fixed and opened the *shinga* shinga contents of the stomach are wrapped in grass which is used as a *shinga*. The liquid is then expressed and

21. It is the custom for a dying man to give verbal directions to his family as to the distribution of his property among his children. If they are giving a portion of his usually between their children in conjunction with the mother of each. If the mother of any of the children goes to live elsewhere on re-marrying she may cease temporarily from being her late husband's heir, but she can always claim them for her children, or even for any children subsequently born by her to any new male partner of her husband by whom she may have been remarried; by such children are regarded as the children of her first husband.

22. If a woman becomes widowed when still in old and advanced life, she usually has rights and property sufficient for her needs. She remains in her late husband's house up to a year after which her late husband's relations build her a new one which she occupies in her own right. Her sons would take over their father's rights generally and her expenses would continue with her or by her own earnings.

23. Although the control of land is vested in the man, the man about the house of the woman makes itself definitely heard in practice and the interests of the man in regard to his own holding and the share which is sent him forward in any sale of this land are frequently directed by the influence exerted over him by the women of his household.

B. Boundaries and Disputes

24. The boundaries of the land occupied by each village are usually marked by trees or other objects, ancient or comparatively recent. The same system is adopted in boundaries between villages. It is assumed that all village and village boundaries are known, and that no dispute was not caused on account of the want of a dispute. In such cases the lines from both sides would meet and mark the boundary between them. This was done by the planting of certain trees and by the erection of large stones, the same used being chiefly stone and copper.

25. There was some of the evidence submitted that was produced by the village on such occasions. In marking a boundary between two clans of the same tribe there was no formal ritual, but the preparation of food and music were by the clans concerned, but the marking of a boundary between tribes was a more solemn affair, and was accompanied by an appropriate ceremony.

26. One form of ceremony used for sealing the peace, whether on settlement of a land boundary or on conclusion of peace hostilities, was that known as *shaga* and was (using a dog). This consisted of the opening of a live dog by representatives of both parties, and the unity between them was supposed to pass out and the way in the same way as the thing marked by the dog. At the same time each representative uttered a vow to observe the compact.

27. In East it is the custom when a boundary dispute has been settled to designate the line by stones and certain trees and to kill a sheep to consecrate the boundary. The sheep for this purpose is called *shikoko* and is considered the sheep which brings peace. Any man who transgressed a boundary so fixed was taken before the chief of the tribe and fined.

28. *Shikoko* boundaries are not marked by trees or stones but only by cultivation marks.

29. In Maragoli and Donyoro, where population is dense and disputes consequently more frequent than in the open sparsely inhabited areas, each village in a land dispute takes its spear and shield and makes its statement to the opposing village by sending his spear. In the conclusion of his statement he drives the spear into the ground. When the boundary has been decided representatives of each side make again into a *shikoko* tree and to take a vow to respect the boundary. It is believed that anyone violating such a vow will die. If a death occurred which was apparently connected to this cause the tree would be cut down and entirely destroyed and any further dispute is caused by it.

30. In some places large boundaries are marked by digging trenches and planting oak trees in them.

31. In some places the boundary mark is taken by the total destruction of trees where a dispute over cultivation rights arose on a border between members of different tribes. The ceremony is as follows. Elders from both sides who know the land in dispute are called, and make their statements before the chief and assembled people. When the mark of any statement is challenged they proceed to *Shikoko* ceremony (take the *shikoko* oath). A sheep is furnished by those whose statement is challenged, and is killed by strangulation. When the sheep has been fixed and opened the prolonged contents of the stomach are wrapped in grass which is used as a strainer. The liquid is then expressed and

placed in small receptacles of folded banana leaf. This is then drunk by the disputants, each repeating the formula: "May I die if I have told a lie." The matter then stands adjourned to see if any one dies; if a death of any of the participants occurred it was believed that his side had a false claim and the decision was against them accordingly. If no death occurred within a year each side retained what it held. Sometimes a man would drink in fear and refuse to take the oath. His attitude in such case was accepted to guilty conscience and the decision was at once given against him.

42. Any dispute arising within a *happoo* over cultivation or other rights was ordinarily settled by the *happoo* with or without the assistance of the clan-elders, but in case of persistent contention was referred to the tribal chief.

43. In the case of the Wanga tribe and the tribes subject to it disputes were settled by emissaries of the Nagesing, and occasional arbitration by consisting of chief or chiefs had to be paid.

(c) Grazing and Salt-ticks

44. The right of depositing livestock by custom to the tribe on all the land of the tribe which is not under cultivation. This applies not only to the *chopras* but to the land in between patches of cultivation, and takes no account of *happoo* boundaries. Similarly salt-ticks and water are free to all and there are recognized public routes for access to these amenities, and no one may close them off otherwise at their vicinity.

45. In modern times of peace cattle are often grazed across tribal boundaries, but that is a condition which could not have obtained in former times of tribal warfare except by friendly agreement between tribes.

(d) Trees and Fruits

46. Customs relating to the right to fell and use trees vary according to the abundance or scarcity of the natural supply. In some places where the supply is abundant it is said that there are no restrictions on the right of members of a clan to cut trees anywhere on the clan land, but the prevailing custom is that natural trees on a *happoo* are other than very large ones of special utility, such as gink, being to the owner of the *happoo*, on both land they are common

property. Large ones of special utility of which are used for serving places come in but without the permission of the *happoo*, and in some cases of the chief of the tribe.

47. In Kakawra it is said that the forest and the hunting rights therein belonged to the chief of the tribe who controlled them with the help of his officers, and that the game and honey were their property. In Kakawra and Kakawra it is claimed that hunting in the forest was free to all.

(e) Minerals

48. The customs vary, but iron ore and red ochre are not used now by the people. Permission to dig *pa-chay* is asked from the *happoo* of the *happoo*, or, if in the *chopra*, from the *happoo* of the present *happoo*.

49. In early days the Wanga chiefs had official experts whose function was to test *pa-chay* clays to ascertain their value for *pa-making*. Such a man was called *chopras*. The *chopras* who first discovered a deposit of good *pa-chay* was rewarded by the *happoo* concerned. After that permission to dig it would only be given to a limited number and each *chopras* who wanted to dig clay would give a present to the *happoo*.

(f) Right-of-way

50. Right-of-way is free to all except through cultivation. Some even allow the right to walk through karels. There are recognized public routes for access to grazing grounds, salt-ticks and water and no restriction is allowed in their vicinity.

Disputes

51. There are no clans in the district which have no clan land, but there are many families who for one reason or another have left the land of their own clan and are residing, by permission, on the land of other clans. Some are from other clans of the same tribe, some from other tribes, and, in some cases, from tribes outside the district.

52. The custom governing the granting of permission to a family was as follows. The man desiring leave to settle on the land of a clan other than his own would first approach someone well known to him (frequently a relation by marriage) and ask permission to settle on it on his behalf. If the friend was willing he took the applicant to the *happoo* of the

placed in small receptacles of lotted bamboo leaf. This is then drunk by the disputants, each repeating the formula: "May I die if I have told a lie." The matter then stands adjourned to see if any one dies; if a death of any of the participants occurred, it was assumed that his side had a false claim and the decision was against that party immediately. If no death occurred within a year, each side retained what it held. Sometimes a man would shrink in fear and refuse to take the oath. His attitude in such cases was regarded as guilty conscience and the decision was at once given against him.

42. Any dispute arising within a *laguwa* was settled on other points was ordinarily settled by the *laguwa* with or without the assistance of the chief elders, but in case of persistent contention, was referred to the tribal chief.

43. In the case of the Wangra tribes and the other entities in *laguwa* were settled by emissaries of the *Kabonjo*, and generally arbitration for settling of sheep or cattle had to be paid.

3. Grazing and Salt-licks

44. The right of depositing *beestock* is common to the tribe on all the land of the *agbe* which is not under cultivation. This applies not only to the *obangwe* but to the land in between patches of cultivation, and takes as amount of *laguwa* boundaries. Similarly salt-licks and water are free to all and there are recognized public routes for access to these agencies and to the way close them of cut-off in their vicinity.

45. In modern times of power courts are often granted some tribal boundaries, but this is a condition which could not have obtained in former times of tribal warfare except by friendly agreement between tribes.

3. Taxes and Fines.

46. Customs relating to the right to kill and use game vary according to the abundance or scarcity of the natural supply. In some places where the supply is abundant it is said that there are no restrictions on the right of members of a clan to get their anywhere on the clan land, but the prevailing custom is that natural items on a *maganda* other than very large ones of special utility, such as goats, belong to the owner of the *maganda*; on bush land they are common

property. Large ones of special utility, at which are used for meeting guests cannot be cut without the permission of the *laguwa*, and, in some cases, of the chief of the tribe.

47. In *Kabonjo*, it is said that the forests and the hunting rights therein belonged to the chief of the tribe who presented them with the help of his elders, and that the game and honey were their property. In *Kabonjo* and *Kabonjo*, it is claimed that hunting in the forests was free to all.

3. *Maganda*.

48. The customs vary, but even one said that others are not used now by the people. Permission to dig *pet-chey* is asked from the *laguwa* of the *laguwa*, or, if in the *obangwe*, from the *laguwa* of the nearest *laguwa*.

49. In early days the Wangra chiefs had *maganda* *maganda* whose function was to test various clans to ascertain their value for *pet-making*. Such a man was called *maganda*. The *maganda* who had discovered a deposit of good *pet-chey* was awarded by the *laguwa* concerned. After this, permission to dig it would only be given to a limited number and such *maganda* who wanted to dig they would give a present to the *laguwa*.

3. Right of way.

50. Right-of-way is free to all except through cultivation. Some even allow the right to walk through forests. There are recognized public routes for access to grazing grounds, salt-licks and water and no cultivation is allowed in their vicinity.

Disputes.

51. There are no clans in the district which have no clan land, but there are many families who fix one member or another have left the land of their own clan and are working, by permission, on the land of other clans. Some go from other clans of the same tribe, some from other tribes, and, in some cases, from tribes outside the district.

52. The custom governing the granting of permission to a man was at *Kabonjo*. The man desiring leave to work on the land of a clan other than his own would first approach someone well known to him (generally a relative by marriage) and ask permission to work on it upon his behalf. If the friend was willing to back the applicant, to the *laguwa* of the

lugongo who, in conference with the elders, would enquire into the man's history and character and his reasons for leaving his own clan. If there was any objection by elders of the *lugongo* the request must be refused. In the event of approval the man would be allotted land on which to build and on which to cultivate. There was no payment, but he was required to make himself generally useful to the family which had sponsored him and it was an absolute and essential condition of his residence that he came completely under the authority of the *liguru* and elders of the *lugongo*. It was usual for such a person on reaping his first crop to make a feast and ~~some beer~~ and invite the *liguru* and elders. He was known as *omumenya* or *omumenyibwa* (a person placed in occupation)—a term which distinguished him from the clan members, whose rights of occupation were derived from blood membership and inheritance. He could be turned out at any time if he gave offence to his sponsor or to the people of the *lugongo*, but when once established with his huts and crops he could not be evicted without reference to the *liguru*, who would usually remonstrate with him and caution him in the first instance, especially if he had married into the clan.

53. The children of an *omumenya* inherit their father's *kimenya*, but are tenants-at-will just as he was. In some areas they have to ask formal permission to remain but this is never refused except for some definite reason.

54. When the family of an *omumenya* has remained for three or four generations it is known as *omumirikha* (absorbed or merged) and is considered to have been adopted into clan membership, with corresponding rights in the land, but the fact that its members can intermarry with the clan indicates in itself that it is of different stock, and this is never forgotten.

55. Unless driven out for some very serious offence an *omumenya* who has been given notice to quit may reap or sell to a clan member his waygoing crops and remove the materials of his huts. Otherwise they revert to the owner of the holding. An *omumenya* who did not comply with notice to quit was evicted by force, and his possessions were taken out of his huts which were then either demolished or given to someone else.

56. In some areas it was unusual to give an *omumenya* notice to quit on the ground that the land was required. What was done in such cases was for the family on whose

land the *omumenya* was living to carry their cultivation over and more on to the parts usually used by him to such an extent as to leave him insufficient for his sustenance and to squeeze him out.

57. In the position of *omumenya* there is but slight difference between a man who is a member of the tribe but of another clan and the man who is of another tribe. The distinction is that the former has the claim of blood relationship and is therefore regarded as someone *igabo* and consequently more difficult to get rid of.

SALE OF OCCUPATION RIGHTS.

58. From every location except North Maragoli we received an emphatic statement that in native custom there was no such thing as the outright sale of occupation rights, no man can so dispose of his interest in the land which he has inherited from his father as to impair the equal right of his heirs to inherit it from him.

59. In North Maragoli, however, which is a densely (though not the most densely) populated area (600 to the square mile) it is declared that there was before the time of Government a definite custom of buying a customary right and that the usual consideration was a cow and a cow which in modern days has been replaced by a cash payment of Sh. 12. In either case the price seems very inadequate, for it is claimed that such a sale is final and irrevocable. The Committee considers that this evidence should be neither accepted nor rejected without searching inquiry and examination into actual transactions—an investigation which the limited time at the disposal of the Committee prevented it from undertaking.

Iugongo who, in conference with the elders, would enquire into the man's history and character and his reasons for leaving his own clan. If there was any objection by elders of the *Iugongo* the request must be refused. In the event of approval the man would be allotted land on which to build and on which to cultivate. There was no payment, but he was required to make himself generally useful to the family which had sponsored him and it was an absolute and essential condition of his residence that he came completely under the authority of the *Iugongo* and elders of the *Iugongo*. It was usual for such a person on reaping his first crop to make a feast and some beer and invite the *Iugongo* and elders. He was known as *omumenya* or *omumenyibwa* (a person placed in occupation)—a term which distinguished him from the clan members, whose rights of occupation were derived from blood membership and inheritance. He could be turned out at any time if he gave offence to his sponsor or to the people of the *Iugongo*, but when once established with his huts and crops he would not be evicted without reference to the *Iugongo*, who would usually remonstrate with him and caution him in the first instance, especially if he had married into the clan.

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55. Unless driven out for some very serious offence an *omumenya* who has been given notice to quit may reap or sell to a clan member his waygoing crops and remove the materials of his huts. Otherwise they revert to the owner of the holding. An *omumenya* who did not comply with notice to quit was evicted by force, and his possessions were taken out of his huts which were then either demolished or given to someone else.

56. In some areas it was unusual to give an *omumenya* notice to quit on the ground that the land was required. What was done in such cases was for the family on whose

land the *omumenya* was living to carry their cultivation more and more on to the parts usually used by him to such an extent as to leave him insufficient for his sustenance and so squeeze him out.

57. In the position of *omumenya* there is but slight difference between a man who is a member of the tribe but of another clan and the man who is of another tribe. The distinction is that the former has the claim of blood relationship and is therefore regarded as someone *Iyale* and consequently more difficult to get rid of.

SALE OF OCCUPATION RIGHTS.

58. From every location except North Maragoli we received an emphatic statement that in native custom there was no such thing as the outright sale of cultivation rights as no man can so dispose of his interest in the land which he has inherited from his father as to impair the equal rights of his heirs to inherit it from him.

59. In North Maragoli, however, which is a densely (though not the most densely) populated area (950 to the square mile) it is declared that there was before the time of Government a definite custom of buying a cultivation right and that the usual consideration was a fowl and a hoe which in modern days has been replaced by a cash payment of Sh. 12. In either case the price seems very inadequate, for it is claimed that such a sale is final and irrevocable. The Committee considers that this evidence should be neither accepted nor rejected without searching inquiry and examination into actual transactions—an investigation which the limited time at the disposal of the Committee prevented it from undertaking.

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CHAPTER II

PROVISIONS RELATIVE TO

We recommend that Order be made to the following effect:

1. That it should be lawful for the District Commissioner to require that the boundaries of every *lugongo* within any area be marked out by such persons within such time, in such manner and at the possession of such witnesses as he may direct.

2. That the only trees to be used for marking *lugongo* boundaries should be fig trees (*amarula*, *cuphorbia*, or *stala*, and that it should be unlawful for such trees to be planted in trees at any place other than a *lugongo* boundary without the permission of the District Commissioner.

3. That it should be lawful for any native authority to cause notice that any fig trees, *cuphorbia* or *stala* which may be found to be planted in any place, in such a manner as will in their opinion be likely to cause confusion in regard to a *lugongo* boundary be removed.

4. That a *lugongo* register shall be opened and kept by the District Commissioner in which shall be recorded—

- (a) a serial number for each *lugongo*;
- (b) a detailed description of the boundaries of each *lugongo*;
- (c) the date of registration;
- (d) the names of the clan or sub-clan occupying the *lugongo*, and of the tribe to which such clan or sub-clan belongs;
- (e) the name and other particulars of the *liguru* and of the chief of the tribe (*omumira*);
- (f) the name and particulars of every *omumira* *liguru* and of every *omumirika* occupying a *lugongo* on the *lugongo*;
- (g) the death or removal of a *liguru* or tribal chief it should be incumbent upon his successor to apply to the District Commissioner to enter the name of such successor in the Register.

Similarly every succeeding *omumira* *liguru* and *omumirika* should be required to register his succession.

5. That all disputes over *lugongo* boundaries or over any matter relating to the occupation of land in any *lugongo* shall be referred in the first instance by the parties to the elders of the clan or tribe, as the case may be, before any suit is commenced before a Native Tribunal or other judicial body or Court.

6. That an entry in the *lugongo* register should be evidence but not conclusive proof of the matters recorded therein; but it should be lawful for the District Commissioner at any time on the application of any member of the tribe who adduces *prima facie* evidence of fraud or error and who proves that he was prevented by causes beyond his control from contesting the entry when it was made, to correct any entry.

7. That on payment of the prescribed fee a certified copy of the record in the *lugongo* register should be delivered to each *liguru* in respect of his *lugongo*. It should be issued on a special printed form which should contain a note in conspicuous characters to the effect that it is merely a certified copy of an entry in the *lugongo* register and is not a negotiable instrument.

8. That with a view to safeguarding the rights of each clan and of its members yet unborn to its own *lugongo*, no native shall be allowed to enter into occupation of a *kimenge* on the land of any tribe other than his own unless he has first obtained the written permission of the District Commissioner which shall not be granted without (a) prior reference to the tribal authorities and official headmen of the area to which the applicant belongs, and of those of the land on which he wishes to reside; and (b) evidence to the satisfaction of the District Commissioner that there are reasonable grounds for the move.

9. That any dependant (by which term we mean an *omumenga*) who receives notice from a *liguru* to quit his holding should have the right to appeal to the District Commissioner who should have power to cancel such notice if he is satisfied either that it was given without reasonable cause or that there is no other land available for the accommodation of the persons concerned on the land of their own clan or tribe.

10. That no person may be evicted from his holding on the land of his own clan (or of a clan in which he has been recognized as *omumirika*), except in accordance with the provisions of a specific statute.

CHAPTER II.

PROCESSES FOR LUGONGO.

1. The Commissioner shall have the following duties:

1. That it should be lawful for the District Commissioner to require that the boundaries of every *lugongo* within any area be marked out by such persons within such time, in such manner and in the presence of such witnesses as he may direct.

2. That the only trees to be used for marking *lugongo* boundaries should be the trees, *conspicuous or stable*, and that they should be planted for such trees to be planted in time as any place other than a *lugongo* boundary without the permission of the District Commissioner.

3. That it should be lawful for any native authority to enter *lugongo* and any *lugongo*, *conspicuous or stable* which may be found to be planted in any place in such a manner as will in time appear to be likely to cause confusion in regard to *lugongo* boundaries to be removed.

4. That a *lugongo* register shall be opened and kept by the District Commissioner in which shall be recorded:

- (a) a serial number for each *lugongo*;
- (b) a detailed description of the boundaries of each *lugongo*;
- (c) the date of registration;
- (d) the name of the chief or sub-chief occupying the *lugongo*, and of the tribe to which such chief or sub-chief belongs;
- (e) the names and other particulars of the *lugongo* and of the chief of the tribe concerned;
- (f) the names and particulars of every *conspicuous* *lugongo* and of every *conspicuous* occupying a *lugongo* on the *lugongo*;
- (g) if the chief or sub-chief of a *lugongo* or tribal chief it should be ascertained upon his accession to apply to the District Commissioner to enter the name of such accession in the Register.

Similarly every *conspicuous* *lugongo* and *conspicuous* *lugongo* should be required to register his *lugongo*.

5. That all disputes over *lugongo* boundaries or over any matter relating to the occupation of land in any *lugongo* shall be referred in the first instance by the parties to the elders of the clan or tribe, as the case may be, before any suit is commenced before a Native Tribunal or other judicial body or Court.

6. That an entry in the *lugongo* register should be evidence but not conclusive proof of the matters recorded therein; but it should be lawful for the District Commissioner at any time on the application of any member of the tribe who adduces *prima facie* evidence of fraud or error and who proves that he was prevented by causes beyond his control from contesting the entry when it was made, to correct any entry.

7. That on payment of the prescribed fee a certified copy of the record in the *lugongo* register should be delivered to each *liguru* in respect of his *lugongo*. It should be issued on a special printed form which should contain a note in conspicuous characters to the effect that it is merely a certified copy of an entry in the *lugongo* register and is not a negotiable instrument.

8. That with a view to safeguarding the rights of each clan and of its members yet unborn to its own *lugongo*, no native shall be allowed to enter into occupation of a *kimenye* on the land of any tribe other than his own unless he has first obtained the written permission of the District Commissioner which shall not be granted without (a) prior reference to the tribal authorities and official headmen of the area to which the applicant belongs, and of those of the land on which he wishes to reside; and (b) evidence to the satisfaction of the District Commissioner that there are reasonable grounds for the move.

9. That any *dependant* (by which term we mean an *omumenya*) who receives notice from a *liguru* to quit his holding should have the right to appeal to the District Commissioner who should have power to cancel such notice if he is satisfied either that it was given without reasonable cause or that there is no other land available for the accommodation of the persons concerned on the land of their own clan or tribe.

10. That no person may be evicted from his holding on the land of his own clan (or of a clan in which he has been recognized as *omumirika*), except in accordance with the provisions of a specific statute.

11. That the absolute sale of any rights or land be absolutely prohibited, without prejudice to any transactions which may be found to have taken place in the past at North Westcott in accordance with proved native custom (cf. Chapter 1, para. 10).

Provided that nothing in this Rule shall prevent a native of any *Ngungu* from receiving compensation from another native in respect of permission to cultivate a crop on his *ngungu* for one season only.

12. That any holder of any of the titles which have the customary rights to occupy actual land in the Reserve, shall be not be recognized as a *Ngungu* sufficient for himself and his family should apply in the first place to the *Ngungu* of his own clan. If land is not available on any *Ngungu* of his own clan it should apply to the *Ngungu* of a *Ngungu* of some other clan of the title. If no land is available on any *Ngungu* of his title he may apply to the *Ngungu* of any other *Ngungu* in the area of authority of any *Ngungu* the applicant should have the right to appeal to the District Commissioner who should be empowered to exercise any discretionary powers, and to give a sufficient *Ngungu* whatever title land may be in his special jurisdiction.

13. It should be lawful for the District Commissioner to prescribe areas within which no cultivation or residence will be permitted without the special permission of the District Commissioner. All irregular structures and buildings should be a prohibited.

14. That whenever it is considered desirable in the interests of the native community to set aside an area of land for institutional use or for a social service such as a market, trading centre, agricultural plot, school, hospital, dispensary or church, or for improvement or the planting of wood or as a reserve for planting grass or other landbuilding material, it should be lawful for the Council Board, after due reference to the *Ngungu* concerned and to the Local Native Council and Local Board to define and set aside such areas. In such cases the requirements of the community should prevail over those of individuals but full compensation should be paid for any disturbance and buildings provided elsewhere, by any persons whose land or cultivation are concerned. Such areas should be placed under the general supervision and control of the District Commissioner advised by the Local Board.

15. There should be fees payable to the Local Native Fund for registration of *Ngungu* and for every subsequent entry, e.g. the name of a new *Ngungu* or a change of *Ngungu* or chief.

16. Every *Ngungu* belonging to a clan outside the Reserve should be required to pay an annual fee to the Local Native Fund as acknowledgment of tenancy unless exempted by the District Commissioner on the ground of long occupation.

17. It should be clearly laid down that residence on a *Ngungu*, whether as *Ngungu Ngungu* or *Ngungu*, entails absolute acceptance of the tribal authority of the *Ngungu*, of the administrative authority of the official headman of the area, and of the judicial authority of the Native Tribunal of the area.

18. Save as provided by Rules the use and occupation of land in the Reserve, and of grazing, salt-licks, trees and wild produce and common minerals, should be governed by the native law and custom of the area.

19. There should be appropriate penalties for breach of any Rule or non-compliance with any lawful order issued in accordance with the Rules, and a severe penalty for removing, destroying or damaging any boundary mark.

The matter is of great importance for it is only by such action that a clear view of the actual situation can be obtained and lines indicated which will enable the administrative officers to settle the acute differences between rival factions in regard to the spheres of authority of their chiefs.

G. V. MAXWELL,

Chief Native Commissioner,

(Chairman).

E. L. B. ANDERSON,

District Commissioner,

North Eastwards.

W. E. OWEN,

Assistant of Eastwards.

10 October, 1930.

CHAPTER III

CONCLUSIONS

Our investigations have revealed certain conditions which appear to require the immediate attention of Government.

1. In the ~~past~~ it is clear that in the past, in the absence of any systematic investigation into the history of the tribes, their social organization and their system of land tenure, unfavorable mistakes have been made in the selection of official headmen, the fixing of location boundaries and in ~~other~~ ~~cases~~. Administrative Officers have of course acted in good faith, but without sufficient knowledge of all the circumstances. Nations appointed solely for the administrative purposes of the Native Authority Ordinances have usurped the authority and functions of *tapans* in respect of land. Apparently they thought that such was the intention of Government and the people seem to have thought so too, and for that reason only have submitted to their acts while unconsciously recognizing such a reversal of tribal custom, and the Administration has not realized what was happening. We are informed that in many cases headmen and sub-headmen have allowed boundaries on their lands to their chosen friends and supporters with total disregard of the *tapans*. Thus usurping of proper native law and custom.

2. One of the main aims of the Government is to be administered with the object to secure law and custom in the interests of the people for whom it has been set on foot as a *tapans* is a council or assembly with a view to deciding where necessary the utilization of *tapans* from outside the Reserve. This is especially applicable to *Tapans* from outside the Reserve who appear to be coming into the North Eastern District Reserve and to be endeavoring to assert a claim to be independent of the *Tapans* which authorities and even to have administrative headmen of their own case.

3. It is our opinion a matter of urgency that an administrative officer of experience be detailed at the earliest possible date for the duty of demarcating *tapans* boundaries, of compiling the *tapans* register, of ascertaining probably the extent to which *tapans* have settled on the various *tapans* and the present length of their residence, and of putting into operation the Rules which we have proposed.

The matter is of great importance for it is only by such action that a clear view of the actual situation can be obtained and thus outlined which will enable the administrative officers to settle the acute differences between rival factions in regard to the question of authority of their chiefs.

G. V. MAXWELL,

Chief Native Commissioner,

Palmerston.

E. L. B. ANDERSON,

Deputy Commissioner,

North East District.

W. I. OWEN,

Archivist of East District.

10th October, 1930.

APPENDIX A

GLOSSARY


Kash	Land or country	(Marathi) <i>Kash</i> (Hindi and Bengali) <i>Kash</i> (Dhatki) <i>Pag</i>
Kashra (pl. Kashras)	Literally a ridge. Technically a unit of soil land. . . a settlement of people upon the land	(Marathi and Hindi) <i>Kashra</i> (Hindi and Bengali) <i>Kashra</i> (Wani) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra (pl. Kashras)	Homestead, land	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra (pl. Kashras)	A patch of cultivation or tillage	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra	A collection of ingredients	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra	A building (including both house and outlay)	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra (pl. Kashras)	One month occupying that land	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra (pl. Kashras)	The boundary marks, boundaries or change of a Kashra and its subdivisions	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra (pl. Kashras)	Head of a group of class of village origin.	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra (pl. Kashras)		(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>

APPENDIX A—Continued

Kashra	A title applied to a superior landowner or to some man in the head of a group of class of common origin	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra (pl. Kashras)	Title or class	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra (pl. Kashras)	A customary payment or tax in appreciation to that Kashra	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra (pl. Kashras)	A person residing in possession on the land of another class—a dependent	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra (pl. Kashras)	A person who has been attached or adopted into a class	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra	Kashra's title	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra	Kashra's land	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra	Unsubdivided land unit	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra	<i>Kashra</i>	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra	But, Kashra also used like the English word "house" to denote a settlement	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra	Family land share	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra	Revenue land share	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra (pl. Kashras)	Large plot used for growing crops	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra (pl. Kashras)	Field cultivated by the family land owner	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra	A woman's personal cultivation	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra	A man's cultivation	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>
Kashra	Stick projecting from the apex of the head of hat	(Hindi) <i>Kashra</i> (Bengali) <i>Kashra</i> (Dhatki) <i>Pag</i>

MAP ILLUSTRATING POPULATION DENSITY
OF THE NORTH KAVIROONDO NATIVE RESERVE

Native Reserve Boundary

shown thus 

DENSITIES REPRESENTED THUS -

Between 5 and 100 per Sq mile



" 100 " 200 " " "



" 200 " 300 " " "



" 300 " 400 " " "



" 400 " 500 " " "



Above 500 " " "



MT ELGON

ELGON
FOREST
RESERVE

TRANS
NYOYA

UGANDA



PUBLIC RECORD OFFICE

END

TOTAL EXPOSURES →

PUBLIC RECORD OFFICE

C0533/410

ORDER NO. ⇨ FN/E474
CAMERA NO. ⇨ 19
OPERATOR. ⇨ EM
REDUCTION. ⇨ 12
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