Land and Labour in Kenya under British Colonial Rule
from 1888 to 1953

Presented By: TOUAIBIA Mohammed Zahir
Supervised By: Pr. LAHOUEL Badra

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- Chairperson Pr. Bouhadiba Zoulakha
- Supervisor Pr. Lahouel Badra
- Examiner Dr. Moulfi Leila

Academic Year 2013/2014
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Abstract

At the end of the nineteenth century, Kenya evinced the interest of the British Empire to colonize it under the civilizing argument, which was just a blanket to legitimize its presence on the Kenyan soil. In fact, the British colonizer chose Kenya because of its strategic geographical location as being the Seagate to Asia and because it wanted to control the Nile River, which was an important outlet to the Mediterranean Sea, which was to be used as a rapid means of communications for military intervention. During their presence, the British in Kenya confiscated land from the Africans for the benefit of the settlers and for public use in order to implement Britain’s imperial projects. As a result, the Africans free labourers were reduced to wage labourers that depended on wages granted from the colonial authorities owing to the enactment of an armada of regulations and ordinances to facilitate the alienation of land and recruitment of cheap labour. Land confiscation had resulted in the outbreak of the famous agrarian revolution in 1952 known under the name of the ‘Mau Mau revolution’ that shook the prestigious image of the British Empire in Kenya, marked the collapse of its colonial authority, and gave birth to an overriding stout political activism that militated to bring the Kenyan independence on 12 December 1963 under the leadership of President Jomo Kenyata.
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<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>CMS</td>
<td>Church Missionary Society.</td>
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<tr>
<td>CO</td>
<td>Colonial Office.</td>
</tr>
<tr>
<td>CSM</td>
<td>Church of Scotland Mission.</td>
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<tr>
<td>DC</td>
<td>District Commissioner.</td>
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<tr>
<td>EAP</td>
<td>East African Protectorate.</td>
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<tr>
<td>GEA</td>
<td>German East Africa.</td>
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<tr>
<td>IBEAC</td>
<td>Imperial British East Africa Company.</td>
</tr>
<tr>
<td>KAR</td>
<td>King’s African Rifles</td>
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<td>KAU</td>
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INTRODUCTION

The system of land ownership in Africa was managed on traditional basis. The conquest of Africa by the European powers had devastated this system of land ownership in three main ways. First, land was owned by the European colonizers by directly acquiring it for their own use. Second, land was used for fostering development schemes: by building dams, factories, for housing projects and for the construction of routes to facilitate transportation of goods and humans. Third, land was used for commercial purposes by encouraging cash-crops production, and for mineral exploitation like in South Africa where gold was extracted from mines. But, to render land exploitable, the Europeans depended on their labour and mainly on the African labourers to adapt land to their various needs.

The intrusion of the British into Africa at the end of the nineteenth century had altered the traditional status of land and its relation to labour. Land in Africa was lost owing to the signing of faked treaties between the European powers and the African rulers. The alienation of land was sometimes held according to official treaties like the agreement held between the Imperial British East Africa Company (IBEAC) and the Sultan of Zanzibar to exploit the land under his rule in order to build the railway extending from the Kenyan coast to Uganda. Sometimes, treaties were not signed

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officially between the European powers and the African rulers, but these treaties transcended the official stage to take a more disguised form, under which the European colonizers sent their colonial agents to sign illiterate chiefs away of their land under the pretence to hire land for a certain period of time.

Like many capitalist powers in Europe, Great Britain wanted to expand its empire by controlling key gates to Asia and the world. For this reason, it took a foothold in East Africa to control the route to the Mediterranean Sea through the Nile River and the route to India through the Red Sea. Moreover, the British presence in East Africa was stimulated by their expansionist needs to accumulate wealth and to preserve their prestige as a powerful nation by exploiting the African countries such as Kenya. Besides, another motive had spurred the British to seize Kenya during the nineteenth century, which was the humane burden of civilization that Great Britain took on its onus to legitimatize its seizure of that country.

Like many Europeans, the British not only intended to exploit the Kenyan soil, but also to dominate the Africans through the exploitation of their labour and by depriving them of their means of production that was land. Land and labour in Kenya could not be dissociated from each other, since Kenya was an agrarian country that depended a lot on human labour for land cultivation. But to identify the relationship tying land to labour it is important to know what is labour. It means any valuable service rendered by human agents in the production of wealth other than accumulating and providing capital or assuming the risks that are normal parts of business undertaking.  

Human labour can be classified into three main headings, labour as a technique, labour as a social phenomenon, and labour as a social practice that contributes to the development of social relations between labourers.  

It was the valuable importance of labour that instigated the British imperial Government in Kenya to make every endeavour in order to subjugate the Africans to

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become semi-servile in the machinery of the colonial economy. The previously stated events would raise many questions:

1- How did the British manage to seize control of Kenya and weaken Zanzibar’s Sultan?
2- What were the different means used to subjugate the Africans?
3- What were the impediments that prevented the British colonial Government in Kenya to extract labour power from the Africans?
4- What was the reaction of the Africans towards the exploitation exercised by the colonial government on them?

The aim of this thesis is to cast light on the policy adopted by the British colonial Government to subdue the African populations in Kenya, and to highlight the different methods that Great Britain adopted in order to reinforce her control over the Africans through the use of various economic tools like the imposition of taxes and the establishment of a judicial system and the enactment of regulations.

The relationship tying land with labour is the centre of my thesis, since Kenya is by tradition an agrarian country whose people depended on mixed farming\(^3\) for their subsistence. Land was the basis to develop any kind of labour, but labour within society differed from one ethnic group to another and varied from one individual to another living within the same community or ethnic group.

Labour, in spite of its diversity, can be technical that depends on the intellectual capacities of individuals like clerical labour or it can be manual and rests on the physical power of man like the cultivation of land. Since there are different types of labour, there are also different types of labourers whose skills vary from one labourer to another. There is a different range of labourers who may be considered as skilled, semi-skilled or specialized, and because of the diversity characterizing labour and the people dealing with it, I limit my scope of study in this thesis to agrarian labour and its relationship with land and the Africans, as being the main actors, while taking into

account the settlers and the colonizers as the principal forces exerting power on those denominators, labour, land and the Africans. For this reason, I divided my thesis into three chapters.

The first chapter is devoted to the study of the system of land ownership in Kenya, prelude to the British colonization, and to the study of access rights to land according to African customs. This chapter also sheds light on the social and cultural value of land ownership in Kenya. Moreover, the second part of this chapter focuses on the fall of Kenya under the British colonial rule after the partition of Africa in the Berlin Conference, 1884-1885.

The second chapter sheds lights on the arrival of the first settlers in Kenya, and the pressure they exerted on the colonial government and the Foreign Office in order to force away the Africans from their arable lands. This chapter also brings to the fore the slave trade practised by the Arab sultan of Zanzibar, and the meddling of the British in Zanzibar’s political life, under the guise of slaves’ emancipation cause. This chapter also stresses the way the British adopted to weaken the power of Zanzibar’s sultan in order to reign and gain sway over Kenya and the eastern coast of Africa.

The third chapter deals more with the period extending from the end of the First World War to the fifties. This chapter is more concerned with casting light on the different crises that colonial Kenya faced and their impacts on land and labour, and the role the colonial government played in handling them. Moreover, the third chapter spots light on the welfare policy and the paradoxical policy enacted by Great Britain for land and labour under the governance of Sir Philip Mitchell during and after the Second World War, and how the mishandling and the short-sightedness of this Governor aggravated the accumulated problems and generated a series of uprisings that ended up with the outbreak of the famous agrarian revolution, known under the name of the “Mau Mau revolt”, which in spite of its crush, dealt a serious blow to British rule in Kenya and paved the way for political activism to come and impose its dictate on the colonizer in shaping the future of Kenya as a free country.
CHAPTER ONE

Background to the Traditional System of Land Tenure, and Kenya’s Fall under British Rule, 1885-1890s

Before the Europeans’ arrival to East Africa, and mainly to Kenya, the Africans were leading a traditional life. Relations were regulated by customs; elders were granted a specific place within their tribes, venerated and respected for their wisdom. Furthermore, elders’ role was summed up in guiding the tribe’s members and giving advice to its warriors.4 When they are in wartime, the elders would intervene to arbitrate and settle disputes between belligerent tribesmen. Alongside this traditional organization, an economic system had existed, and that was mainly based on exchanging goods and cultivating tight commercial relations between the tribes. However, this does not rule out the existence of wars and raids between the tribes themselves. These latter might wage raids over their neighbours’ cattle like the Akamba

people, who lived between Mombasa and the coast of Kenya, and who were more interested in cattle raids than in capturing slaves. Actually, recourse to violence was due, mostly, to the sporadic periods of famine that obliged people to loot their neighbours’ cattle and resources.

Although raids and looting were endemic practices among certain tribes in Kenya, labour, however, was the predominant feature characterizing most societies in that country and that was practised under different forms. It was, mainly, based on the cultivation of land for sedentary populations like the Kikuyu who lived in rural areas, and was centred on cattle breeding for nomadic populations like the Masai. These two main forms of labour were altered with the advent of the Europeans to East Africa, and for Kenya with British occupation.

The advent of the Portuguese to East Africa at the end of the 15th century, followed by the British missions during the 19th century, had marked the beginning of new economic and social changes in Kenya. The British occupation of Kenya was the longest one, and which wrought too many changes to the labour field in Kenya. Those changes were typified, especially, in the emergence of the early wage-labourer class controlled by British colonial rule in that country during the 19th century. This will invite many questions. To what extent did the British occupation impact on both the economic and social spheres in Kenya? What were the means used to provide for the formation of a massive labour force to serve the settlers’ economy. Another question, which may be raised deals with the implications of the colonial state in regulating labour in colonial Kenya.

In order to give answers for this bundle of questions, it would be very crucial to raise the land question and explore its relationship with labour, for land was the prime source of income for the Kenyans in pre-colonial and colonial Kenya.

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The position of land in African societies, and particularly in the eastern region of the continent, was of paramount importance for the natives. Alongside cattle rearing, land was the premium and the primitive natural resource on which the Africans had to rely in order to secure their livelihood. Land had also significance for the Africans not only as a property, but also as being a cultural marker of the African traditional societies. Moreover, land was regarded as being the pillar that sustained labour in the African sedentary societies. For short, it was the Africans’ economic capital.

Actually, one of the main aims of this chapter would be to analyse relationships between the African land and labour during the pre-colonial era, and with great focus, on the colonial period, for British domination was the principal denominator of land alienation and forced labour in colonial Kenya. In order to find answers to the previous questions, it would be important to bring to the fore the features that epitomised the traditional system of land tenure. Thus, what characterized the system of land ownership in pre-colonial Kenya?

I - The Traditional System of Land Tenure before 1885

If the Africans were alienated from their land by the European invaders, that was because of its critical economic value, and because of its role in wealth accumulation. Actually, there existed a kind of inextricable relationships between the Africans and their lands. These ties came into existence and developed with the advent of early ethnicities that peopled eastern Africa. To know better about the early settlers of East Africa, it will be primordial to trace back their origins. Thus, who were those first comers to East Africa? And what characterised their relations with the land? And how did they exploit it?

Many theories were formulated to give answers about the origins of the early inhabitants of East Africa. Some of those theories suggest that East Africa was the cradle for populations who were the descendents of the Bantu people. The Bantu are

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considered to be among the first inhabitants of East Africa. Their cradle land was in north-west Africa, nowadays Cameroon, from where they migrated. In their migratory voyage, the Bantu split into two groups (see map, p.09). The first group expanded westwards across the Congo basin, then moved to the south-west. This group’s labour was centred on iron working, and the marketing of iron tools. Prosperity of iron working in the Congo basin is attributed to its richness with raw materials like copper and ore.

The second group of Bantu people expanded eastwards, down to the south, till it reached what is called today South Africa. The eastern Bantu were agriculturalists and pastoralists. Moreover, they encompassed different ethnic groups that made their early settlement in the interlacustrine region around Lake Alberts, Victoria and Tanganyika.

From the previous east African groups descended the Bantu of Kenya that were mostly living on the Rift Valley, in the central highland. This group of dwellers also gave birth to other ethnic groups such as the Igembe, Meru, Tharaka, Chuka, Embu, Mbeere, Taita and the Kikuyu. During their settlement in East Africa, each group developed its proper way to gain a living. Some of those groups like the Masai and the Nandi, for instance, developed their own techniques for cattle rearing.

Others like the Kikuyu had become sedentary cultivators and grew more attached to land and in particular to agriculture. Studying the relationship between land and labour would be the focal point in this chapter.

Actually, one of the main aims of this chapter would be to analyse the relationship between the Africans, land and labour, all being treated in a colonial context, as being

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9 Ibid., p.21.
10 Ibid.
12 Rift Valley: It is also known as the Great Rift Valley, the Afro Arabian-Rift Valley and the Eastern Rift Valley. It is one of the longest rifts on the planet. It has a wide variation in elevation, from around 1,300 feet in the Dead Sea to about 6,000 feet above the sea level in Kenya. The Rift Valley included the most fertile land Kenya. See Willie F. Page, (ed), *Encyclopaedia of African History and Culture*, USA, New York, 2005.
the dominating atmosphere at that time. In order to find answers for this bundle of inquiries, it would be of paramount importance to start analysing firstly the relationship between the land and the Africans in the light of tradition and culture prior to the British occupation. Thus, what characterised the traditional system of land ownership in pre-colonial Kenya?

A study of some ethnic groups in Igi, Thuita and the Kikuyu Districts and their relations with land property would give a clearer answer about these relationships. The Kikuyu people are among the largest ethnic groups in Kenya. As many other Africans, they believe in the influence of Gods and the spirits on the fate of their lives. The impacts of those beliefs were mirrored in their relations with land and with the awe and reverence the Africans bear for their Gods and their ancestors.

1) Land Ownership in the Kikuyu Tradition and Culture

Land in the Kikuyu tradition occupied a sacred position. The Kikuyu as many other ethnic groups venerated land, for they regarded it to be related to certain divine powers like the *Ngai* [God], the ancestors and other spirits.\(^{14}\) Spirits were everywhere, while ancestors were close to the land. It was those latter whose decisions accounted mainly for land ownership. Punishment or rewards depended on their will. Owners of land had the duty to protect those who were living on it in return for their protection, the users of land owed loyalty and respect for the former. Protection in its wider sense meant pushing away any inside or outside dangers.

The relationship exiting between the land and the spirits and the amount of the duty incumbent on the owners towards those supernatural powers was proportional. The larger the tracts the larger was the number of spirits, and the heavier the duty to offer sacrifices.

Settlement of the Kikuyu in Kenya during the pre-colonial period was a debatable matter, and there were different narratives recounting how the Kikuyu set out on land ownership. According to Prof. Kershaw, in the beginning the Kikuyu settled in

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Murang’a District, and then moved into the southern forests which belonged to the Ndorobo hunters-beekeepers, and gatherers. It was from them that the Kikuyu bought the land they possessed. Negotiation about the transfer of land ownership from a Ndorobo to a Kikuyu owner passed through certain arrangements and rituals. If a Kikuyu wanted to buy land from a Ndorobo, he had to settle an arrangement with him that consisted in selling the land by the Ndorobo and in return the Kikuyu had to defend him against his enemies. In this way, the Ndorobo would become *athi* [a seller of land] and the Kikuyu could purchase land from him.

Another way of transferring land property was to undergo certain rituals. The Ndorobo could sell land to a senior-Kikuyu elder after passing through long ceremonial negotiations with the guardians of land (the Ndorobo ancestors) whereby the ancestors, were recalled in to get their consent, for it was regarded insufficient for the transfer of land ownership to have solely the agreement of the living. The agreement of the elders was essential too. Neither the Ndorobo nor the Kikuyu had to undergo new rituals of adoption if they were to make additional selling of land. Sharing the land meant that the Ndorobo and the Kikuyu would become kin but not their descendents. In this case the land would become the social tie that linked the Kikuyu with the Ndorobo.

The ritual, actually, consisted of a barter whereby the Ndorobo gave a piece of land called *Magatha* to the Kikuyu in return for some goats. After they had acquired the land, the Kikuyu could clear it. In return, they would herd the Ndorobo’s goats if no one was to do it.

Although the land could be transferred to the new owners, the decision made by the ancestors and their agreement about the transfer of land’s property, would be seen through the prosperity of goats and fertility of land. This facility of adoption, Pr.Greet Kershaw regarded it as being one of the main factors that led to the speeding up of the

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16 Greet Kershaw, op.cit, p.20
17 Ibid., p.21.
Kikuyu’s settlement. Buyers of land in Kikuyu culture were sometimes regarded as one person.\(^{18}\) They were also regarded as brothers tied by family ties to the land, as being their mother.

Other paradigms that reflect land ownership in pre-colonial Kenya are those of the Igi and Thuita districts where land ownership was founded on the belief in supernatural forces that shape the transfer of land property. But, not were there any differences or similarities in the culture underlying land ownership in both districts?

2) Land Ownership in the Igi and the Thuita Districts

Land ownership in the African culture was centred on the existence of supernatural forces epitomised in God, spiritual and ancestral forces, which are considered to be responsible for the lasting of land ownership or causing its loss. Actually, the loss or the maintenance of land depended on the deeds of the landholder. If his deeds were good, he would be rewarded by keeping his land, otherwise he would be punished by the taking back of his tracts. The same beliefs were shared by people in the Igi and Thuita Districts. Actually, how was land owned in the light of those two cultures?

In both districts of Thuita\(^{19}\) and Igi, there was a common belief that ascribed land’s acquisition to ancestral forces. And according to a ‘Thuita’ elder, land was acquired by the ancestors before the *Kirika*\(^{20}\) famine ravaged Thuita in 1835, then, was, transferred to descendants through inheritance. Fathers who had their sons married could, in their lifetime, parcel out the land between them. The rest of the land was divided later after the fathers’ death.

Igi had witnessed the same situation like Thuita. Land in Igi was bought from the initial owners, and then divided among the buyers according to their contributions in the purchase. The subdivision of land took place when the fathers got their sons married, or when the formers died. This system of inheritance led to a shortage of land as the

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\(^{18}\) Ibid., p.22.
\(^{19}\) Ibid., p.14
\(^{20}\) *Kirika* Famine: a famine that struck Kenya before the arrival of the British to Kenya and caused the death of many Kenyans. See Greet Kershaw, op.cit., p.16.
number of descendents increased across time. In spite of land scarcity, the Kenyans were leading a relatively harmonious life that was rigorously hampered by the arrival of Europeans who embarked on a land-confiscation policy.

Parallel to land ownership, the usage of land in African societies was governed by customs. Thus, how was land shared between tribesmen and how did they manage it?

Whether in the Kikuyu, Igi or Thuita society, land ownership was explained on the ground of supernatural forces that were responsible for the lasting or the loss of the land acquired. The Africans were profoundly influenced by oral traditions which had negatively impacted on their lives. Prof. Kershaw reported that in the Kikuyu culture it was bad to evoke bad things that happened in the past, and it was good to recount good things that happened to people because this might give the blessing of those supernatural forces.21

Blessings emanating from ancestors and super-natural forces were manifested in prosperity of wealth and, in particular, land. Those who had lost their land were thought to have been cursed, while some stories refuted this information. Prof. Kershaw asserted that some people had lost their land because it was confiscated by their likes. For short, land acquisition in Kenya could have different stories depending on the informants. But regardless of the way used to acquire land, people living within the same community had to adopt different systems to benefit from land property. What were those different systems used to share land between people in Kenya?

3) Access Rights to Land Property in Pre-colonial Kenya

The usage of land is an intertwined matter in African societies. Land in Africa could be owned by one person but shared by different people. Actually, two main features had characterised land in the pre-colonial period: land ownership and access rights to land property. The first feature revolved round the possession of land and how it was acquired and the rituals fulfilled for its acquisition. The second feature is right to

21 Ibid., p.16.
land access: it deals more with the different rights given to the users of land to exploit it for various purposes. Thus, what were the different forms of access rights? Were all ethnic groups in Kenya adopting the same systems of land access?

Access to land property varied from one ethnic group to another. The main feature characterising the pre-colonial system of land tenure was the building up of access rights to land on kinship. The acquisition of those rights could be fulfilled in different ways, through marriage, ritual adoption, or incorporation. Additionally, rights to land were inheritable too. This idea was thoroughly supported by Migot-Adholla et all (1993) who stated that:

Access to land was based on membership in a land controlling social entity defined by birth, marriage, ritual adoption, or incorporation. Once individuals acquired those rights to land, those rights remained inheritable within the family... persons unable to find suitable land often migrated elsewhere as segments of their lineage or isolated individual families, and were incorporated into their communities of destination.

Furthermore, land-access right was based on divergent types of groups who shared different rights to the same parcel of land, like the right to grazing, cultivation, hunting, or transit. Those rights were distributed on equitable basis, hopefully to guarantee peace among tribesmen who exploited land in various ways with the view to secure their livelihood. Okoth-Ogendo (1976) argued again that people living in the same village might claim divergent rights over the same parcel of land and according to him:

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23 Incorporation: The process that results from the interaction of different ethnic groups and social units is known as incorporation. See Aylward Shorter, East African Societies, London, Routledge, 2004, pp.04-05.
24 Migot-Adholla: a well-established figure in Kenyan conservation, Prof. Shem is an expert on agriculture and rural development and has even served as the vice-chairman of the board of directors of the Kenya Wildlife Service. See: http://kenyawildlifetrust.org/who-we-are/ (accessed on January 13, 2012).
26 Ibid.
27 Ibid.
A village could claim grazing over a parcel of land subject to the hunting rights of another, transit rights of the third, and the cultivation rights of a fourth. Each one of these categories carries with it a degree of control exercised at the different levels of the social organization. For example, while cultivation rights were allocated and controlled at the extended family level, grazing rights was a matter of concern for a much wider segment of society.\(^\text{28}\)

The establishment in Africa, and specifically in Kenya, of this system of land sharing aimed at ensuring equitable profitability of land among tribesmen. Moreover, the emphasis to ensure land-equitable partition among the land users was a primordial matter. That mainly aimed at avoiding any potential clashes that could generate segmentation among the groups exploiting the land. Access rights to land were controlled by the different active agents in society starting from the smallest nucleus, which was the family and ending up with the most important elements, which were the clan and territorial sovereigns; however, those rights did not predicate any legal right to the land use. Okoth Ogendo (1976) emphasises that

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\text{The raison d’être of control was to guarantee these rights and to ensure their equitable distribution among all members of the community. The control, although exercised by the family, clan or in some cases the territorial sovereigns did not...entail de jure ownership.}^{29}
\]

As it was emphasised by Karuti Kanyinga,\(^\text{30}\) the lack of de jure individual to excercise authority of land ownership, and the control of this latter by larger groups of society gave rise to a system of check and balance that might guarantee an equitable access to land property.

It can be concluded from what preceded that the traditional system of land tenure was a very sophisticated mechanism that aimed primarily at preserving the stability of the Kenyan society. Recourse to the communal system of land property was made in the absence of a central authority in charge of regulating the distribution of land with equity, and the distribution of wealth among the members of society. The existence of a

\(^{28}\) Ibid.  
\(^{29}\) Ibid.  
\(^{30}\) Ibid.
customary system in pre-colonial Kenya is a cogent proof to assert the development of the Kenyan society, and a potent argument to refute its social backwardness. The traditional system of land tenure was rather a system that bore features identical, in some ways, to the Islamic system of communal property ‘Wakf’, which entails to put one’s personal property to be freely used by the poor and the helpless. This analogy between Wakf and the Kenyan customary system of land property is intended to accentuate the profound importance of the role of the traditional system of land property in maintaining, the social, economic and political, stability in Kenya. The aim of a communal land property was to secure self-employment and subsistence and by the same token guarantee a permanent livelihood for the whole community. This structure of free labour, practised by the natives in the pre-colonial period, contrasted with the system of slavery practised by the colonial authorities during the colonial era in Kenya. Slavery had reduced the African labour force to a malleable economic power concentrated into the hands of a handful of chiefs and rulers, who profited from it to accumulate wealth and power in order to serve their personal needs. Similarly, Kenya witnessed the practice of slavery during the pre-colonial as well as during the colonial periods. Then, what was the harm that slavery had inflicted to the Kenyan society, and the role the Kenyan slaves played in the propelling of other nations’ economies?

II - The British and the Abolition of the East African Slave Trade during the 1800s and the 1890s

With the outbreak of explorations led by the Portuguese at the beginning of the 15th century (1419), and the discovery of America by Christopher Columbus in 1492, the European powers set out on a fierce race to acquire new territories overseas in order to enhance their wealth, strengthen their political powers in Europe and preserve their prestige there. The competing powers like Spain, France, Great Britain, and the Dutch Empires were embarking on the lucrative commerce in commodities like spices in India, tobacco, sugar, and cotton in America and the Caribbean. Those products were cultivated in large plantations that required recruitment of a massive force of labourers. Increasing commercial competition between European powers spurred those latter to look for cheap labour whereby they resorted to salve trade.
The necessity to offer commodities at low prices was impossible to be achieved without using a malleable, cheap labour force. For this reason, the European powers turned to the black continent in search for slaves that they could exploit at derisory costs on their plantations in the West Indies and the Caribbean, for instance, in order to provide commodities at competitive prices.

Because of the disgraceful aspects of slavery, mistreatments, over-exploitation and humiliations exercised on the slaves by their masters, many abolitionists in Great Britain such as William Wilberforce, Thomas Clarkson, and Granville Sharp\(^{31}\) fought vehemently and arduously to suppress the slave trade. Their impact was so profound that later on Great Britain took on its onus the responsibility to suppress this illegitimate trade. After the regression of the Atlantic slave trade during the American Civil War (1861-1865),\(^{32}\) the British focus was directed towards the East African slave trade, and mainly towards the Arab slave trade that was prospering and that was, to a certain span of time, out of the sight of the British Department of Slave Trade.\(^{33}\) The suppression of the Slave trade led by Great Britain in the East African region hid other lurking interests epitomized in the annexation of Kenya and Zanzibar. Thus, how did the British manage to implement their plan and to lay their control over the African lands of East Africa?

During the 16th century the Omani Arabs stretched their power over the east African coast and made of Zanzibar the capital of their suzerainty and consequently laid their authority over Kenya through Mombasa. The transfer of the Omani throne to Zanzibar under the reign of the Busaidi dynasty headed by the Sultan Ahmed Ben Said had made of the East African coast a very prosperous area and opulent market for slaves and commodities that were loaded from Zanzibar to other destinations across the world.


\(^{33}\) The Department of the Slave Trade was created by the British Foreign Office in 1848 and aimed at suppressing the slave trade. See Julie Hamilton (ed),“Australian Joint Coppping Project: Handbook Part II”, Australia, National Library of Australia, 2005,p.x.
In March 1807, the Abolition Act was passed and approved, by the British Parliament but its effects were limited on the slave trade and did not force the abolition of slavery completely.\textsuperscript{34}

In 1833,\textsuperscript{35} another Abolition Act was enacted. It explicitly stipulated that people could no longer be bought, owned, or sold in the British colonies. The impacts of the anti-slavery Acts had affected many states and kingdoms whose economies rested on the sale of slaves, as it was the case of Zanzibar sultanate who prospered on the basis of slave trade and who was compelled to give up the slave trade after the intervention of the British in East Africa. The British who advocated the end of slavery in East Africa and forced the Omani to give up this illegal commerce; however, they used this argument to hide their lurking intentions that were epitomized in seizing, with firm grips, the pearl of east Africa, Zanzibar, and Kenya alike. Thus, how did the British set to achieve their ends?

\textbf{1) Kenya from Slave Trade to Zanzibar’s Plantations}

Kenya was among the most important hubs of slaves and ivory trade in East Africa during the pre-colonial and colonial periods. The disruptive effects of the illegitimate trade was materialized in the deportation of many Kenyans offshore, where there was an increasing demand for labour power to be exploited in the tending of plantations on the western parts of the Atlantic, namely the Americas, and eastwards in India, where slaves were deployed in the cotton plantations.\textsuperscript{36} Just near the east African coast, the great sultanate of Zanzibar was among the greatest exploiters of human power. Zanzibar’s economy rested mainly on the cultivation of spices, whereby a system of clove plantations had been developed in order to supply the Asian and European markets, with the hope of reaping huge benefits from this thriving commerce. If Zanzibar’s economy depended enormously on the exploitation of slaves, then how did

\begin{footnotesize}
\begin{enumerate}
\item Mike Kaye, op.cit., p.15.
\item Ibid., p.17.
\item Exploring Africa: \url{http://exploringafrica.matrix.msu.edu/students/curriculum/m15/activity2.php}, (accessed on April 27, 2010).
\end{enumerate}
\end{footnotesize}
it deplete Kenya from its human resources? And what was the impact of this unfree-labour on Kenya’s economy and society?

The relationship existing between Kenya and Zanzibar stretches back to the 17th century, when the Omani Arabs chased out the Portuguese from Zanzibar in 1698. Thereafter, both Zanzibar and Tanzania became subordinates of Zanzibar’s Sultans by 1720, and fell under the direct command of the Omani sultans by 1800. By 1837, it was Mombasa, Kenya’s coastal town, which fell under the Omani rule, whereby it became administered from Zanzibar when Seyyid Said moved his capital to Zanzibar in 1840 as being the capital of the Omani suzerainty.

Actually, Zanzibar witnessed its heyday during the 17th century owing to the flourishing trade in slaves. Most slaves were bought from the east African hinterlands of Ethiopia, Kenya, Tanganyika, and Mozambique and later transported to the island of Zanzibar where they were deployed in the clove plantations. The remaining cargos of slaves were sent to other destinations in Asia; India took the lion’s share in exploiting slaves’ labour due to its acute demand for slaves in the coffee and cotton plantations. Kenya as being under the rule of Zanzibar, its labour market was subjected to the decisions of the Zanzibari rulers. Slavery on the eastern coast of Africa took different forms. On the One hand, slaves were employed in the plantation of Zanzibar and elsewhere in the plantations of Lamu Island (a Kenyan island); on the other hand, slaves were also an integrated entity of the Kenyan coastal society and deeply melting in it. For instance, female slaves were tasked with household duties like preparing the meal, looking after their masters as well as their families members; while, male were in charge of manual work and worked as: farmers, sailors, porters, boat conductors, casual labourers, carpenters and food sellers.

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At the same time, slavery on the east African coast was not only a means of dispossessing humans by their likes from their own rights and liberties, but rather a means of acquiring certain professional skills, through contact and interaction between freed slaves that endeavoured to gain freedom, and reshape their lives, by relying on themselves to secure constant sources of income. A vivid instance of that was the Mijikenda\(^{41}\) ethnic group in Kenya, where the families like the Giriama and Digo had embraced slavery,\(^{42}\) and they deliberately moved to some Swahili towns were they had - -with their own will- made themselves slaves under the authority of their Muslim masters, purposely to acquire some skills in house-keeping and other crafts; besides, they converted to Islam, the religion of their masters, and they learnt by the same token the Koran. The mastering of new professional skills had enabled the former slaves to become later on free-wage labourers, working for their British masters in return for wages.

Whether labour was accepted in its disguised form as working for European masters at one’s will, as it was the case for the Mijikenda peoples, or in a disgraceful and brutal image as it was practised in the Indian Ocean, Zanzibar and south Asia’s plantations; however, all these forms of unfree-labour, in spite of their differences, represent two sides of the same coin which is slavery. From the humanitarian point of view, slavery had to be abolished. This situation had been vehemently resented worldwide, as some escalating voices shouted to the abolition of this disgraceful trafficking in humans and the exploitation of their labour. Slavery abolitionism started from Britain that heralded the movement for the abolition of slavery by passing the first abolitionary Act of 1807, and another one in 1811 whereby the British Parliament declared the slave trade by the British subject as piratical act that entailed severe punishments.\(^{43}\) But how did Britain deal with slavery in east Africa? How was the east

\(^{41}\) Mijikenda: people inhabiting the East African coast of present - day Kenya not considered to be Swahili in language, culture, but the traded with neighbouring Swahili peoples. The name Mijikenda, meaning “Nine Towns,” refers to the nine fortified centers, called kayas, occupied by these peoples, who include the Chonyi, Digo, Duruma, Giriama, Jibana, Kauma, Kambe, Ribe, and Rabai. New Encyclopaedia of Africa, Vol 03, 2008, p.100.

\(^{42}\) Carol M. Easterman, op.cit., p.100.

African slave market affected by the decisions taken by the British to abolish the slaves’ trade? And what was the impact of such a decision on Kenya?

2) Britain and the Abolition of Slavery in Zanzibar

Great Britain’s presence in East Africa was due to two main reasons that were both humanitarian and strategic. Strategically, Great Britain had to have a permanent foothold in Zanzibar in order to control and secure the maritime route extending from the Mediterranean Sea via the Nile to the Arabian Peninsula and south-east Asia; and at the same time to forestall the presence of other contending European powers in east Africa like the French and the Germans. At the humanitarian scale, Great Britain’s position was determined in consecrating her power and efforts to the abolition of slavery. But how did Great Britain impose its rule on Zanzibar to eradicate the slave trade? And what were its consequences on labour in Kenya?

The period spanning from the end of the 18th century until the beginning of the 19th century was epitomised by the emergence of claims appealing for social reforms. During those eras, societies, especially in Europe, became influenced by certain philosophical and religious theories and trends such as the Social Contract, Enlightenment, and Antislavery movements, which aimed at improving human rights.

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44 Social Contract: it is a philosophical theory that emerged during the eighteenth and the nineteenth century in Europe. It asserted a moral and civic compact between individual and society. The most outstanding exponents of the social-contract theory were John Locke, Jean Jaques Rousseau and Thomas Hobbs. The stated theory of Social Contract is based on the principle that the person’s moral and political obligations depend upon a contract or agreement among them to form a society in which they live. See Internet Encyclopaedia of philosophy: http://www.iep.utm.edu/soc-cont/ (accessed on 22 December 2013).

45 Enlightenment: a late eighteenth-century international movement in thought, with important social and political ramifications. The Enlightenment is at once a style, an attitude and a temper-critical- a secular sceptical, empirical and practical. It is also characterized by core belief in human rationality, in what took to be ‘nature’ and the ‘natural feelings’ of mankind. Four of its most prominent leaders are David Hume, Thomas Jefferson, Emmanuel Kant and Voltaire. Enlightenment is a belief in human nature. It has several aspects. (1) Human beings are free that their actions are carried out for a reason. Actions are prompted by traditional authority, whether religious or political, are therefore not free; Liberation requires weakening if not also overthrow of this authority. (2) Human rationality is universal, requiring only education for its development. On virtue of their common rationality, all human beings have certain rights and among them the right to choose their individual destinies. (3) A final aspect of the belief in human rationality was that the true forms of all things could be discovered. See Robert Audi, (ed), the Cambridge Dictionary of Philosophy, 2nd ed, Cambridge University Press, 2005, p.266.
Anti-slavery movements\textsuperscript{46} were among the most outstanding and powerful movements that saw the light in Great Britain. Their influential ideas reverberated across the world to reach the Sultanate of Zanzibar. As far as Zanzibar was concerned with the antislavery campaign, Great Britain took the leadership in putting an end to the illegitimate trade there by staging a fierce campaign through which it forced the slave traders and employers to give up smuggling in humans both in Zanzibar and on the east African coast and the Indian Ocean. But how did Great Britain manage to implement its anti-slavery policy in Zanzibar? And what were the tools used for its implementation?

The abolition of slavery started in Europe, but its fruits were reaped everywhere across the world, and namely in Zanzibar that gave in under the British pressure. The military power that Great Britain held was epitomized in her naval force, which enabled her to exercise its power over the Red Sea, and notably to impose its dictate on the Sultan of Zanzibar, Seyyid Said, in order to abolish slavery.

Seyyid Said, Zanzibar’s ruler, ascended the Omani throne in 1804. His takeover of power at that time was followed by the signing of numerous treaties with Great Britain to abolish the slave trade in East Africa and precisely in Zanzibar. The first treaty signed by Seyyid Said and Britain was the Moresby Treaty of 1822\textsuperscript{47} called after the name of Captain Fair Fax Moresby,\textsuperscript{48} the person who settled it. This latter prohibited the transport of salvies south and east of the “Moresby Line”; and confined the navigation of the Arab-Salve trade to the east African coasts and Arabia (see map, p.23).

\textsuperscript{46} Anti-slavery movements: Their aims were to struggle for the abolition of slavery across the world. The most outstanding anti-slavery organisation holding the first World’s Anti Slavery convention in 1840 was labelled \textit{The British and Foreign Anti-Slavery Society} (BFASS). See Peter Hink and John Mckivigan, (ed), Encyclopaedia of Antislavery and Abolition, Vol.2, USA, Greenwood Publishing, Inc, 2007, p.760.
\textsuperscript{48} Moresby Treaty: it was called after Captain Fairfax Moresby a Senior Officer in the British navy who threw himself into the battle to end piracy and the slave trade in the Indian Ocean. See Nicolini Beatrice, \textit{Makran, Oman and Zanzibar: Three-Terminal Cultural Corridors in the Western Indian Ocean},1799-1856, The Netherlands, Koninklijke Brill NV, Leiden, 2004, p.132.

Fairfax Moresby was Senior Officer in Mauritius. Encouraged by Robert Farquhar, Moresby threw himself into the battle to end piracy and the Slave trade in the Indian Ocean. In 1837, weakened by the tropical climate, he travelled towards the Mediterranean and in 1862 was promoted Admiral. Ibid.
Map 2: The Moresby Line

Later, the illegal slave trade was replaced by the legitimate trade that was practised through the employment of freed slaves in agriculture. The nature of the Zanzibari environment was more favourable for the growing of agricultural produce, which spurred Zanzibar’s rulers to set on the cultivation of clove. The demand for this produce was very high, and Seyyid Said resorted to slaves to work in his clove plantations, and consequently fell into the pitfall of slavery again after his signing of anti-slavery treaties with the British.\(^\text{49}\) However, this situation did not last for long. After his death, Seyyid Said was succeeded by Sultan Bargash Ben Said who, during his reign, signed another treaty with the British in 1877,\(^\text{50}\) whereby to abolish completely the slave trade. But this treaty did not reach its ends, as it only mitigated the density of the slave trade. Owing to the treaties signed between the British and the Omani sultans many slaves were emancipated and obtained their freedom, while others escaped from their masters, and fled from Zanzibar to the hinterlands of East Africa where they mingled with free men of local populations of the coastal towns.

Many of free and fugitive slaves coming from Zanzibar, and its neighbouring dominions came to Kenya, melted in the Kenyan society, and constituted an important class of labourers therein. In fact, the emancipation of slaves affected labour in Kenya in different ways: firstly, it enriched the Kenyan society with a new stratum of skilled workers; some of whom came from Zanzibar’s dominions whether to settle in the mainland of Zanzibar or in Mombasa, in search for jobs. For instance, some Lamu\(^\text{51}\) (slaves living in a Kenyan archipelago of Lamu) ex-slaves became customs-checkers in Mombasa; some others worked as porters and few went into construction works; others were very keen on crafts and excelled in working silver, gold and wood\(^\text{52}\) - which India became its main importer by 1843. The flourishing commerce of clove led consequently to an increasing demand for labourers.


\(^{50}\) Encyclopaedia of African History, op.cit., p.1713.

\(^{51}\) Lamu sometimes called Lamu Archipelago: a Small group of islands off the extreme north coast of present-day Kenya. The island chain includes Lamu, Manda, Pate, and Kiwayu Islands. Encyclopaedia of African history and culture, op.cit., p.147.

Just after the 1907 treaty was issued in respect of the slaves’ emancipation, a new wave of free slaves came to Mombasa to integrate in the Kenyan society and the labour market. The emigration of former slaves, especially the skilled ones, who settled in Mombasa, had enriched the Kenyan labour market with new categories of skilled workers, who were very keen craftsmen, known for their mastery of wood carvings especially doors, chairs and ivory. In fact, those ex-slaves were so keen on their crafts that they tried to compete with the Indians in opening craving shops, but their attempts were unsuccessful.

To sum up, it can be stated that the Arab presence in east Africa had made a turning point in the geopolitical and social composition of the east African nations. The reliance of the Arab Sultanate of Zanzibar on slaves’ labour to build its economy was about to make of it the future-leading political and economic power of the area, since its influence was gradually increasing and spreading into the African hinterland. Similarly, it can be deduced, that the commercial achievement attained by the Omani rulers in Zanzibar owing to clove and slaves trades had aroused the fears of the European powers from the domination of the Indian Ocean by the Arabs, as well as from the growth of their monopoly over commerce.

At the same time, those factors united altogether had evinced the interests of the European powers to partition East Africa, and their intentions were concretized through the Berlin Conference that was held in 1884. Prior to the Berlin Conference, the abolition of slavery wrought great changes to the type of labour exercised in East Africa, and partly in Kenya, where there was a shift from unfree labour to free labour practised by former-skilled slaves, owing to the coming of Christian missions, which offered a suitable environment for fugitive and emancipated slaves to start new lives, as it was the case for the Christian Centre of Freretown that was founded in 1874 by Sir Bartle Frere as a settlement for freed slaves.

54 Ibid., p.505.
55 Frere Town is situated just outside Mombasa, it was founded in 1874 by Sir Bartle Frere as a settlement for freed slaves after a special mission to Zanzibar in 1872. Encyclopaedia of African History op.cit., p.1275. A similar town was founded on the Western part of the African continent called Freetown - the
In its essence, the Berlin Conference served multiple goals, and the human interests epitomized in the abolition of slavery was just a blanket deployed by the European powers to mask their lurking interest to annex Africa, which would put into question the aims of the Berlin conference and its connection with the Kenyan land and subsequently the labour question.

3) The Berlin Conference as the First Official Step to Land Alienation in Kenya, 1884 -1885

The presence of the European powers in Africa, headed by Great Britain, in their duties to end up the slave trade and replace it with the legitimate trade, and civilize the Africans, had culminated in the opening up of new avenues for competition between the Europeans. This sharp rivalry had culminated in frequent disputes arising over the territories under control of the European powers, which necessitated an arrangement to be held. The best alternative chosen to overcome those misunderstandings surrounding the relationships between the imperial powers over boundaries was to sign a treaty: a pact to define the geographical boundaries for each African country falling under European rule. This was, practically, put into effect between 1884 and 1885, in the Berlin Conference. Hence, in which sense did the Berlin Conference affect Kenya in respect to its land and labour?

It is of paramount importance to know the basics on which the Berlin conference was built. The drives that triggered off the competition between the European powers were numerous and intertwined; some of those causes were political and related to the preservation of the prestigious pictures of the imperial powers that endeavoured always to keep an intact image of their empires: Portugal, France Belgium, and Great Britain are a point in case. Parallel to the political drive, the economic stimulus had played a
capital of Sierra Leone - which served in the past as a refuge of freed slaves. Freetown was founded by two Scandinavian abolitionists, Carl Bernard Wadström and Anders Johansers, who initiated the idea of building a refuge of freed slaves in Freetown. But the first person who put in practice that idea was an English philanthropist called Granville Sharp who settled first about 400 freed slaves in Freetown. Ibid., p.531.
big role in hastening the presence of the European powers in Africa and partly in the eastern territories. The promising economic potential of East Africa was stimulated by the economic development, that took place in Europe due to the Industrial Revolution, and that urged many European powers to get a foothold in the area and secure ‘spheres of influence’ there. But what is really meant by a sphere of influence?

A sphere of influence is a geographical area that was delineated as a result of an arrangement made between two or many different colonial powers over territories belonging to a native ruler, whereby the colonial powers had to respect the geographical boundaries delimiting the spheres of influence, and at the same time, respect the commercial interests held in those territories. Holdich Thomson Hungerford defined a sphere of influence that it “involves an agreement between two powers, made over the head of the nominal rulers of the sphere to limit and respect each other’s prospective interests within a particular geographical area.”

In order to establish spheres of influence, it was primordial for the European powers to prove the authenticity of the interests sought beyond those spheres. The only solution adopted by the imperial powers to shape their agreements was to sign

56 Holdich, Sir Thomas Hungerford (1843–1929), surveyor and geographer, was born at the rectory, Dingley, Northamptonshire, on 13 February 1843, the eldest son of Thomas Peach Holdich, rector of that parish, and Susan, daughter of William Atherton Garrard of Carisbrooke, Isle of Wight, and Olney, Buckinghamshire. After attending Godolphin Grammar School, Hammersmith, he went in 1859 to Addiscombe College, where he gained the sword of honour (1860). After training at the Royal Military Academy, Woolwich, he was commissioned in 1862 in the Royal Engineers and, after further training at Chatham, was sent to India in 1865 to become temporary assistant surveyor with the Bhutan expedition of 1865–6. This led to his permanent appointment to the Survey Department. From 1867 to 1868 he was lent to the Abyssinian expedition to conduct surveys. In 1878 Holdich began a long connection with the north-west frontier as a survey officer with the southern Afghanistan field force. He served with distinction in the Second Anglo-Afghan War (1878–80), the Mahsud Waziri expedition of 1881, the Zhob field force of 1890, and the Afridi Tirah expedition of 1897–8, being several times mentioned in dispatches. He was promoted brevet major in 1881, brevet lieutenant-colonel in 1887, and brevet colonel in 1891. In 1902 Holdich served on the tribunal appointed by the British Government at the invitation of the Governments of Chile and Argentina to interpret a treaty of 1881, which fixed their boundary in the south of the Andes mountains. Holdich was an active member of the Royal Geographical Society. He served on its council under Sir Clements Markham's presidency, and was himself president from 1916 to 1918, when he kept the society's activities going under conditions rendered difficult by the First World War. Deafness induced him to decline nomination for a third term, though he continued as vice-president until 1922. He wrote well-informed books on the geography of India (1904 and 1909). He died at his home, Parklands, Merrow, near Guildford, on 2 November 1929. See Oxford Dictionary of National Biography: http://www.oxforddnb.com/templates/article.jsp?articleid=33932&back=(accessed on October 3, 2013)


58 Ibid.
treaties with the rulers of the spheres of influence concerned. As a result, the African rulers were duped and signed factitious treaties that were supposed to benefit the Africans from the protection of the European powers, but in reality, the treaties implied the transfer of the Africans’ land to the Europeans’ possession. Many falsified treaties were signed haphazardly and chaotically in a very short span of time. In fact, this rush for treaties is explained by the fear of the competing powers to be bypassed by their rivals and consequently lose territories.

Another way to secure spheres of influence was by cession of territories.\textsuperscript{59} The territories seized by the European powers were bought for derisory prices. That was the common policy followed by most colonial powers. A very clear instance about this illegal action is the case of Kenya, where the Taveta concession, a territory located between Kenya and Tanganyika (nowadays Tanzania), was acquired by Harry Johnston\textsuperscript{60} for a quantity of beads.\textsuperscript{61} Regardless of the means adopted to acquire the spheres of influence, the Berlin Conference was held in a very tight atmosphere, which would raise the following questions: what characterized the circumstances surrounding the conference? And what were the aims of the latter?

Until the conference was held, the European powers, in East Africa were controlling only the coastal areas of the African continent. The Conference was a decisive matter that numerous states attended. One of the most outstanding non-European countries was the United States. The remaining states, in addition to Belgium, were France, Portugal, Spain, the Netherlands, Denmark, Sweden, Norway, Italy, Russia, Turkey, Austria, and Hungary. In fact, the preponderant objective of the colonial powers was to extend their control inland. That was made possible through the Berlin Conference from 1884 to 1885. The partition of the African continent was among the vital aims of the conference. Another outstanding aim discussed by the colonial

\textsuperscript{59} Ibid., p.180.
\textsuperscript{60} Sir Harry Hamilton Johnston (1858-1927): British explorer, botanist, zoologist, artist, and pioneer colonial administrator. He had widely travelled in Africa, and spoke many African languages. He was closely involved in what has been called the scramble for Africa by 19th colonial powers. He published 40 books on African subjects and from 1891 to 1895 served as the first British Consul-General and Commissioner for Nyasaland (now Malawi).Http://www.Britanica.com, op.cit., (accessed on May 23, 2010).
\textsuperscript{61} Adekunle Ajala: op.cit., p.179.
powers in that conference was the fear from the eruption of a potential war that prompted the Europeans, under the blessing of the German Chancellor Otto von Bismarck to call on for a conference that was convened on November 15, 1884 and lasted till February 26, 1885. The conference culminated in the following seven main points:\textsuperscript{62}

- The free State of the Congo became the private property of King Leopold II of Belgium.
- Free trade must be guaranteed for the parties who attended the conference. Free trade should be granted to all the parties in the Congo Basin, in the Lake Nyasa (Nyassa) south of five degrees north.
- International prohibition of the slave trade must be enforced.
- Free shipping would be allowed in the Niger and Congo rivers.
- The principle of Effectivity must be applicable, that is, there should be no setting up of colonies if national flags were to fly there, unless treaties were signed with local chiefs and the colonizing power(s) established an administration in the territory to govern it with a police force.
- Any fresh act taking possession of any portion of the African coast would require that the power taking possession should notify the parties to the act, or assure a protectorate to the other signatory powers.
- The division or partition of Africa between the main powers of Europe.

The land question was, also on the agenda of the Berlin Conference and arrangements were achieved by the great powers for a future partition of Africa. Moreover, the impact on East Africa, and mainly Kenya, was tremendous. Many African tribes found themselves separated from their likes by means of the boundaries established by the European powers as a result of the partition. For instance, the Germans and the British signed a treaty in 1886 (see map, p.30), whereby either of them delimited its spheres of influence, and in this way circumscribed the influence of the Sultan\textsuperscript{63} of Zanzibar and


\textsuperscript{63} Karuti Kanyinga, op.cit., p.34.
Map 3: British and German Spheres of influence

Source: HTTP//: Unimap.com. (accessed on April 13, 2009)
weaken his power, purposely, to gain access to the interior of the continent and to get control of the eastern coast of Africa. As a result of the Berlin Conference, the agreement held between Germany and Great Britain stipulated that Uganda should be delineated from the coast of Kenya to Lake Victoria by a line of the present Kenya and Tanganyika border. This agreement also resulted in the creation of a ten miles strip stretching from Tanzania to the Tana Delta of Kenya. This latter was located in a strategic geographical position, with its opening on the Indian Ocean. This arrangement furnished a suitable environment for the development of commercial activities in East Africa.

That situation had also evinced the interest of other colonial powers to gain a foothold in the area, in order to ensure a permanent control of commerce in the interior as well as in the exterior of Africa. Embellished stories were heard about the richness of East Africa by the European settlers and had aroused the interests of many European citizens, who were leading precarious lives in their home countries, and who intended to immigrate to East Africa in order to improve their living conditions as they were wiped out by effects of the Industrial Revolution in their home countries, since many had lost their jobs due to the mechanization of factories. This technological development realized in Europe, owing to the Industrial Revolution, had profited mostly to the upper industrial class and had generated social and economic instability among common people in Europe. It was because of these reasons that many Europeans were compelled to leave Europe for Africa. Great Britain was among the most advanced countries that were living social upheavals during the 18th and 19th centuries.

But in order to secure the economic stability of the future-colonial state in the colonies overseas, the British had to ensure a permanent and stable presence in Africa through a set of chartered companies that had as a major task to look after the interests of the mother country. For this reason, the British created a company under the name of the Imperial British East Africa Company (IBEAC) to promote the economic development of the future East African Protectorate as well as to build the

64 Ibid.
infrastructures necessary for its development. This would raise questions about the role played by the IBEAC in implementing the resolutions set in the Berlin Conference, mainly those related to land and free labour in Kenya during the charter of the IBEAC in East Africa, and the role of the former in ruling the affairs of the British crown in East Africa and mainly in Kenya.

4) The Role of the IBEAC in Imposing British Rule and Shaping Labour in East Africa, 1888-1895

The 18th and 19th centuries, which witnessed the birth of the Industrial Revolution in Europe, were characterised by a parallel transplantation of commercial activities in the African continent, since the latter provided a large deposit of raw materials such as copper, iron, zinc, and other minerals to quench the thirst of the European factories for such natural resources. Moreover, Africa provided an important outlet for the European manufactured goods. Actually, the previously stated periods witnessed a keen activity of the imperial powers through chartered companies. This system was practised by most European powers. Britain began first in West Africa with the Royal Niger Company, chartered in 1886; and two years later, it chartered the Imperial British East Africa Company in East Africa. France, for instance, was represented by the Société Commerciale Ouest Africaine (SCOA), and the Compagnie Française d’Afrique Occidentale (CFAO, 1887-2007), Germany acted through the German East Africa Company, Belgium, by 1911, established two outstanding companies, the Union Minière (For copper and other metals) and Forminère (For diamond).

Great Britain relied much on the IBEAC. This latter was devised to protect the strategic and economic interests of Great Britain by establishing an administration in the northeast of Africa. The presence of the IBEAC in East Africa will raise questions about the role of the Imperial British East Africa Company in imposing order,

extirpating the slave trade and supplanting it with free labour, as well as its achievements in organising labour in Kenya, and whether there was a clear policy adopted for employment.

Great Britain did not want to venture in East Africa, for this reason it chartered the Imperial British East African Company (IBAEC) in order to act on its behalf there. Actually, the Company had to implement a disparate number of goals set by colonial rule. In addition, those aims were of a paramount importance for the existence of British Colonial rule in East Africa. The need for the establishment of a colonial state, mainly in Kenya, was the culmination of numerous impulses, that could be explained on account of the humanitarian, political, economic and strategic reasons.

The humanitarian factor was among the principal goals, which led to the formation to the IBAEC in Africa. In fact, the real aim sought beyond its creation was to extirpate the slave trade in East Africa and its vicinity, and replace it by the legitimate trade. That goal was to be concretized through the construction of the railway from Uganda to Kenya’s coast, which aimed subsequently at boosting commerce between East Africa and the world, and on the other hand to eradicate the slave trade. Before the construction of the railway, slaves were used to transport goods from the hinterland towards the coast. Once there, slaves were loaded on board vessels and transported to other destinations, where they were sold like any other commodities. For this reason, Great Britain intended to supplant slaves who were used for transporting goods from the hinterland to the coast of Kenya by the train.

Strategically, IBEAC’s penetration in Africa aimed at securing the head-waters of the Nile that were springing from Lake Victoria. This was planned by building a railway extending from the Kenyan coast to Uganda to enable a swift military intervention in order to protect the access of the Nile; While the economic impulse could be explained in the light of securing permanent revenues for the nascent

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68 G.H. Mungeam, op.cit, p.10.
71 G.H. Mungeam, op.cit., p.07.
protectorate by levying taxes on goods transported on railway and by imposing customs taxes on goods exported from Uganda and Kenya to Asia, Arabia, and Europe via Mombasa’s port.

Actually, the Imperial British East Africa Company was founded by Sir William Mackinnon in 1888. It was one among the three British companies (The Royal Niger Company, the British South Africa Company, and the British East Africa Company) chartered by the British Government to venture on its behalf in Africa. The British Government being reluctant to venture in East Africa for fear of failure had charged the IBEAC to represent it there. In effect, the IBEAC owed its existence to Sir William MacKinnon, a successful businessman and stout opponent of the slave trade, who succeeded to secure a charter for the Company to act both in the interior and exterior of

72 Mackinnon, Sir William, baronet (1823–1893), shipping entrepreneur and imperialist, born at Campbeltown, Argyll, on 31 March 1823, was the son of Duncan Mackinnon (d. 1836) of Campbeltown and his wife, Isabella (d. 1861), daughter of John Currie of the same town. He was educated at Campbeltown, and was trained to the grocery trade there. Early in life, however, he came to Glasgow, and was employed in a silk warehouse and afterwards in the office of a merchant engaged in the Eastern trade. In 1847, he went out to India and joined his old schoolfellow Robert Mackenzie, who was engaged in the coasting trade in the Bay of Bengal. Together they founded the firm of Mackinnon, Mackenzie & Co on 12 May 1856. On 29 September 1856, the Calcutta and Burmah Steam Navigation Company was founded mainly through Mackinnon's efforts. It was renamed the British India Steam Navigation Company on 8 December 1862. About 1873, the Company established a mail service between Aden and Zanzibar. Mackinnon gained the confidence of the sultan, Seyyid Barghash, and in 1878, he opened negotiations with him for the lease of a territory extending 1150 miles along the coastline from Tungi to Warsheik, and extending inland as far as the eastern province of the Congo Free State. In 1886 Lord Salisbury, the foreign minister, used Mackinnon's influence to secure the coastline from Wanga to Kipini as a British sphere of influence, but declined to become directly involved in East Africa. Mackinnon formed the British East Africa Association, to promote the formation of a company; £250,000 was subscribed. A charter was granted, and the Imperial British East Africa Company was formally incorporated on 18 April 1888, with Mackinnon, who had subscribed 10 per cent of the shares, as chairman. The Company included among its principles the abolition of the slave trade, the prohibition of trade monopoly, and the equal treatment of all nationalities. The British Government, on the other hand, was debarred by the principles of English colonial administration from offering similar assistance. The territory of the company was finally taken over by the British Government on 1 July 1895 in return for a cash payment. Mackinnon became a prominent member of the anti-slavery campaign. He was for some time a director of the City of Glasgow Bank, and assisted in extricating the concern from its earlier difficulties. In 1870, finding that he could not approve the policy of the other directors, he resigned his seat on the board. On the failure of the bank in 1878, the liquidators brought a claim against him in the Court of Session for about £400,000. After protracted litigation Mackinnon, who had peremptorily declined to listen to any suggestion of compromise, was completely exonerated by the court from the charges brought against him, and it was demonstrated that the course taken by the directors was contrary to his express advice. In 1891, he founded the East African Scottish Mission. He died in London, in the Burlington Hotel, on 22 June 1893, leaving an estate worth more than half a million pounds. He was buried at Clachan in Argyll on 28 June. Oxford dictionary of National Biography: http://www.oxforddnb.com/templates/article.jsp?articleid=17618&back= (accessed on October 14, 2013)
73 Ibid., p.7.
74 Ibid., p.10.
the British sphere. The Royal charter was granted to Mackinnon and his partners for their East African Association, which became later on the Imperial British East Africa Company (IBEAC) in 1888. Strategically, the establishment of the IBEAC firstly aimed at forestalling the German penetration in the area under British domination. Secondly, it aimed at thwarting the French intervention in the area that might cause the blockage of the Nile source in Lake Victoria and result in blocking the passage from the Mediterranean Sea to the Indian Ocean. From its inception, the IBAEC was administered from Zanzibar.

The British chose the Arab kingdom of Zanzibar: firstly, owing to its economic importance, and secondly, because the British wanted to consolidate their diplomatic relations with the Arab rulers in Oman in order to guaranty a safe route to India, as the Arab dynasty in Muscat was controlling the maritime route to Asia. And it was for those reasons that Colonel Atkins Hamerton had been appointed as the first British Consul at Zanzibar in 1841, in order to foster diplomatic relations with the Omani rulers there, and look after the interests of the Indian businessmen trading in Zanzibar, as being British subjects. Another prominent personality, that played a big role in the administration of East Africa, was Sir Arthur Hardinge, whose support helped a lot in lasting the existence of the Company in East Africa.

78 Sir Arthur Hardinge, Henry (1859–1933), diplomatist, was born on 12 October 1859 at 10 Chester Square, London, the only son of General Sir Arthur Edward Hardinge (1828–1892) and his wife, Lady Mary Georgiana Frances Ellis (1837–1917). He entered at Balliol College, in 1876. He took a second class in classical moderations, but followed with a first in modern history and, in 1881, a fellowship at All Souls. Hardinge entered the Foreign Office in July 1880, before he had taken his degree, with a nomination from Lord Salisbury, who remained a patron. As an undergraduate, he had travelled widely. He subsequently seized every opportunity to travel in remote places and was privately commended by Salisbury for his political reporting. After spells in the Turkish and German Departments of the Foreign Office, Hardinge's first overseas appointment in 1883 was to Madrid, under Sir Robert Morier. In 1885, following a short period in England as a précís writer to Lord Salisbury, Hardinge followed Morier to St Petersburg as his private secretary and subsequently travelled extensively in Russia and central Asia. There followed a series of appointments to Constantinople, under Sir William White, in 1887; to Bucharest in 1890; as a companion to the tsarevich (the future Nicholas II) to India, and to Cairo in 1891 under Sir Evelyn Baring. In 1894, Hardinge was appointed to Zanzibar, as political agent and consul-general, then Commissioner of the East Africa Protectorate in 1895. Hardinge raised the challenge to
One year before Hardinge’s appointment, in 1894, Uganda was declared a protectorate,\textsuperscript{79} and later Kenya as the East African Protectorate (EAP) in 1895. The annexation of the former territories was due to varied drives. In the case of Uganda, it was the expansionist attempts made by the Germans that led to its declaration as a protectorate.

Mackinnon’s efforts to build an economic platform to buttress the presence of the colonial government were useless, and his achievements were very meagre. His failure sprang up from his lack of experience. Disorder and lack of financial resources to manage the IBEAC were very pronounced features that had epitomized Mackinnon’s administration of the Company and had caused its bankruptcy. As a result, the Company was compelled to cede its rights to the British Government in 1895, which took on its onus the responsibility to develop the commercial potential of the fledgling protectorate. Sir George Eliot, who was the Governor of the East Africa Protectorate from 1900 to 1904, stated that:

In 1895 the Company sold their remaining rights to the Government for £250,000 and the East Africa Protectorate was constituted. An official notice of August 31, 1896, declared that all the territories in East Africa under the Protectorate of Her Majesty, except the islands of Zanzibar, Pemba and the Uganda Protectorate, are for the purposes of administration included in one Protectorate under the name of the East African Protectorate’. It was decided to construct the Uganda Railway. The first rails were laid in 1895, and the first train reached the Lake\textsuperscript{80} in December 1901.\textsuperscript{81}
In spite of its failure, the Company endeavoured to make available the means necessary for building the railway, especially those related to transportation of goods, tools and materials, but the only reliable means were humans. The IBEAC relied on porterage\textsuperscript{82} for transportation of goods. Porters were employed from different Kenyan tribes, where the \textit{Pokomo} and \textit{Kamba} tribes formed the great bulk of porters.\textsuperscript{83} In fact, porters were employed to replace beasts of burden, like horses and donkeys. Moreover, porters were able to reach areas that were inaccessible by animals. And it was in the hope of putting an end to porterage practised under the slave trade that the Act of Brussels’ Conference was convened in 1890. But what did it really stipulate?

The General Act of Brussels’ Conference had, explicitly, emphasised the development of the commercial capacities of the spheres of influence detained by the European powers, by accentuating the need to develop free and legitimate commerce, and to insist on combating slavery. Some clauses of the Brussels Act stipulate that:

- The Powers declare that the most effective means for counteracting the Slave Trade in the interior of Africa are the following:
- Progressive organisation of the administrative, judicial, religious, and military services in the African territories placed under the sovereignty or protectorate of civilized nations.
- The gradual establishment in the interior, by the responsible power in each territory, of strongly occupied stations in such a way as to make their protective or repressive action effectively felt in the territories devastated by \textit{man-hunters}\textsuperscript{84}.
- The construction of roads, and in particular of railways connecting the advanced stations with the coast, and permitting easy access to the inland waters and to the upper reaches of streams and rivers which are broken by rapids and cataracts, so as to substitute economical and speedy means of transit for the present means of porterage by men.

\textsuperscript{82} Porterage: is the action of transporting goods on the backs and shoulders of men who are called porters.
\textsuperscript{83} G.H. Munegaem, op.cit., p.11.
\textsuperscript{84} Man-hunters: it was referred herein to slavers, who used to raid on villages and capture their inhabitants as if they were hunting animals.
The establishment of steamboats on the inland navigable waters and on the lakes, supported by fortified posts established on the banks.

The establishment of telegraphic lines assuring the communication of the posts and stations with the coast and with the administrative centres.

Organisation of expeditions and flying columns to keep up the communication of the stations with each other and with the coast, and to assure the security of the roadways.

Restriction of the importation of firearms, at least of modern pattern, and ammunition throughout the entire extent of the territories infected by the Slave Trade.

It was under these clauses that the Europeans enunciated their will to suppress the slave trade, and this stimulated the interests of the British to construct the railway to get rid of this illegitimate trade. The construction of the railway had officially been declared in 1896, one year after the declaration of the British East Africa Protectorate in 1895. The railway construction project, being a project of public interest, had affected Kenya in two ways. On the one hand, land was confiscated to serve public purposes, which culminated in the enactment of panoply of laws, acts and regulations, in order to legitimate the confiscation of land. The first act related to land confiscation was issued in 1897 and was termed the ‘Regulation Land Act.’ This Regulation is considered to be the first one issued to legalise the possession of land by the Europeans. It aimed mainly at allocating land for European settlers for a period of 21 years. On the other hand, land was used to build the railway, and this had affected the Kenyan labour, for the British Government resorted to foreign labourers brought from India, because those latter were considered as more qualified than the Africans in railways’ constructions. But how was the British Government to pay back the huge sums of money spent on the railway project?

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The British Government decided to launch the construction of the railway\(^{86}\) in 1896. The railway project was conducted during the service of Sir Hardinge and lasted after his departure in 1900 and was carried on until 1901, where it reached port of Kisumu (Port Florence) in Uganda.\(^{87}\) (see map, p.40). On October of the same year, Hardinge left East Africa to Persia to undertake diplomatic tasks there, and was succeeded by Sir Charles Eliot, a Brilliant scholar and a Keen diplomat, who had acquired deep experience in diplomacy while serving in Russia. At the beginning of his appointment as Commissioner and Consul General of the East Africa Protectorate, Elliot was facing a bundle of problems. Firstly, he had to impose control over the area of Kenya and restore peace there. Then, he had to find the resources to cover expenditure of the nascent administration.

In order to counter the problem of money shortage to finance the railway project, ad hoc\(^{88}\) measures were to be taken, and the fastest solution to solve that problem was to impose taxes on the Africans. The first tax being imposed on the East African called the *Hut Tax* that started in January 1902\(^{89}\) as a modest collection at a rate of two rupees, and that had already been adopted by the Germans in the German East Africa.

The second solution to boost the economy of the East African protectorate had already been proposed by Sir Henry Johnston Hamilton,\(^{90}\) the Special Commissioner of Uganda, who suggested in his report, that the means he envisaged to stimulate the economy of East Africa would be to rely on the settlement of both Indians and Europeans.\(^{91}\) Charged to report on the situation of the whole East African Protectorate, Sir Henry Johnston declared about the economic potential of the highlands:

\(^{86}\) G.H. Mungeam, op.cit., p.33.
\(^{88}\) Ad hoc: made or arranged for a particular purpose; happening as necessary and not planned in advance. *Oxford Advanced Learners Dictionary*, op.cit.
\(^{89}\) G.H. Mungeam, p.102.
\(^{90}\) Johnston, Henry Hamilton (Harry), 1885-1927: British Explorer, naturalist, artist, linguist, author, and colonial administrator; helped to establish British administration in southern Nigeria (1858-8), Malawi (1891-6), and Uganda (1899-1901); played a major role in shaping British attitudes towards Africa. See *Dictionary of African Historical Biography*, second ed, 1989, p.94.
\(^{91}\) G.H. Mungeam, op.cit., p.102.
Map 4: Communications in Kenya

Here we have territory (now that the Uganda railway is built) admirably suited for a white man’s country, and I can say this with no thought of injustice to any native race, for the country in question is either utterly uninhabited for miles and miles, or at most its inhabitants are wandering hunters who have settled home or whose fixed habitation is in the lands outside the healthy area. This will be one source of profit to the United Kingdom.\textsuperscript{92}

It can be deduced that the idea of settlement in East Africa had both strategic and economic ends. Strategically, the settlers’ presence was sought to fill in the foothold acquired by the British Government and to populate the area with the British and European settlers. Economically, the settlers were requested by the colonial government to take part in the economic development of the colony through the cultivation of cash crops that would be destined for overseas exportation. The cultivation of cash crops means the confiscation of large tracts of lands belonging to the Africans, and this would put into jeopardy their traditional system of land tenure.

The system of land tenure that saw its early days in pre-colonial Kenya was subject to many changes. But, this traditional system was adapted to the African’ social life, and permitted to all members of society to use land with the common consent of the owners and users to avoid, in this way, any arguments and clashes. This traditional system of land tenancy was overshadowed by a new one, tailored and imposed to suit the Europeans’ needs, and in the case of Kenya, a colonial system of land tenancy was established to conform to the British colonial policy that privileged the whites to the detriment of Africans and non-white settlers coming from abroad.

In general, the advent of the Europeans to Africa had impacted heavily on the African system of land tenure. The partition of Africa between the European powers had distorted the African culture and consequently devastated the traditional system of land tenure. Additionally, the Europeans deprived the Africans of their capitals and reduced them to mere servants in the whites’ farms. This started with the advent of the

\textsuperscript{92}William Robert Ochieng & Robert M. Maxon, op.cit., p.150.
settlers during the 1900s, who were fleeing the harsh living conditions in their home countries, and seeking in Africa new economic assets to accumulate wealth through land cultivation, and through the policy of land confiscation sustained by the Foreign Office and carried out by the Colonial Office, from 1905 until Kenya’s independence.

Actually, to analyse the policy adopted by both the Foreign Office and the Colonial Office in British East Africa, and the role played by the settlers to subdue the Africans and exploit them through land confiscation policy, it would be of prior importance to inquire about the origin of the settlers, and the circumstances that had shaped their adoption of a given policy to achieve their ends. Parallel to that, the labour policy of the colonial government must be analyzed.

The colonial government, in order to make the East African Protectorate economically self-dependent, it turned to settlers that it called on to embark on agricultural activities, since agriculture seemed to be the suitable activity that the settlers had to develop, in order to propel the economy of the new Protectorate of East Africa.

The large tracts of land acquired by the new-coming settlers were not easy to cultivate, since those latter had to rely on a large number of African labourers, and the recruitment of African labourers on white farms was not an easy task, because most Africans refused to be employed by the whites. In order to make the Africans work for the settlers, those latter exerted important pressure on the colonial government to help in the provision of labour.

The policy used to subjugate the African labourers would reveal some facts about the colonial labour policy, and would raise the question whether the latter was previously planned or adapted just to face the day to day problems relating to labour. In order to find answers to those questions, it would be important to analyse the aspects of settlement, and its impact on the Africans’ social and economic domains.
CHAPTER TWO

Settlers’ Domination and the Exploitation of African Labourers in Colonial Kenya, 1900s – 1918

The first settlers who came to settle in Kenya during the 1900s belonged to different races and nationalities and came from different countries. Their advent to Kenya was stirred up by a variety of motives. Some settlers came to look to better their living conditions; others migrated to Kenya to accumulate wealth, hoping that Kenya encompassed a huge amount of minerals; some elites who graduated from the highest British universities were sent to Kenya to undertake the duty to serve for the mother country. Most of those elites were appointed as Governors, Sub-Governors, and District Commissioners; the less ranked were recruited as clerks and were in charge of running the administration. But what were the real reasons laying behind the origins of settlement in Kenya?

I – The Origins of the Settlers and Settlement in Kenya

The European settlement in Africa, in general, is the result of European incursion coupled with economic needs, and search for prestige and strategic advantages lying behind this intrusion. European intrusion could not have lasted without the back up of
settlers. This was an outstanding characteristic of the British colonial policy, and regardless of the aims sought beyond settlement, the latter was officially propagandized and claimed by the British colonial officials, who called up both Europeans and Indians to come to Kenya and partake in the developing policy planned by the British Government by exploiting its economic resources. The 1890s witnessed a significant influx of Europeans to the East Africa protectorate and mainly to Kenya. The Process of settlement underwent different steps before it reached its final stage. How was then settlement taking place in Kenya? And what was its impact on the Africans?

Actually, settlement in colonial Kenya represents the central aspect of colonial policy sought to generate revenues, in order to secure a stable financial subsidy for the new protectorate of East Africa. Settlement, as it was previously stated, started as mere contemplation made by Sir Johnston Henry Hamilton, the Special Commissioner of Uganda, who was impressed by the agricultural potential of the Kenyan highlands and called for its peopling by European settlers. The same idea was championed by the Commissioner of Kenya, Sir Charles Eliot, who eagerly called up the European settlers to come and settle in East Africa. The idea resting behind the encouragement of settlement in Kenya was to open up new economic opportunities in the nascent protectorate of East Africa, and make of the railway a thriving project, that could pay back to the British treasury the huge sums of money spent on it.

European settlement in Kenya, actually, started before Sir Eliot was appointed Commissioner of East Africa in 1900. The 1890s witnessed a large influx of European settlers who came with the hope to stay in East Africa. The first Europeans settled in the Kikuyu region, where, in 1896, three European couples moved there and installed themselves. One of those new coming couples gave birth to the first European settlers’ child born on Kenya’s soil in December 1896, and who was christened Francis George Kikuyu Wallace.¹

In order to make settlement attractive, the British Government enacted a set of Ordinances known as the *East Africa Land Orders in Council* issued respectively in

¹ Ibid., p.63.
1895, 1897 and 1901. Although the British were busy preparing the judiciary platform to promote settlement, they were, at the same time, reluctant about the race they had to select for settlement. This situation had spurred Charles Eliot and the Foreign Office, represented by its Secretary Lansdowne, and the Colonial-Office Secretary Sir Chamberlain, to hold divergent views about settlers.

In fact, Charles Eliot thought of the Indians and the Europeans to be the suitable races for settlement, provided that they both would play their roles in promoting the East African economy. The Foreign Office preferred the Fins, While Chamberlain, the Colonial Secretary, was for the settlement of the Jews\textsuperscript{2}. In the end, it was the Foreign Office’s proposition that was the most outstanding as it decided that capitals investment should be the only solution for economic development in East Africa.

While Eliot implemented his own policy of settlement,\textsuperscript{3} he was alarmed by the idea of settling the Jews and circumvented it by sending, urgently, his Chief of Customs to South Africa in order to convince the South-African settlers of the interesting possibilities of settlement and land acquisition in Kenya, and by the same token alleviate the former South Africans of the harms of the Boer War by giving them the opportunity to settle, acquire land and take part in agriculture. In order to prepare an adequate atmosphere for settlement, Eliot issued in 1902, in the name of his Majesty, the Crown Land Ordinance. The essence of this Ordinance was that all unoccupied land belonged to the Crown,\textsuperscript{4} and that it could be sold or leased for 99 years instead of 21 years as in the 1897 Land Regulation Act. The 1902 Land Ordinance was issued with the hope of encouraging white settlement through “the alienation of the Crown Land to European settlers either by direct sale or by granting 99 years’ lease”.\textsuperscript{5} In fact, the essence of the 1902 Crown Land Ordinance was that land could not be sold by the Africans to Europeans but it was the government that had to sell it at low prices.

\textsuperscript{2} Ibid., p.104.
\textsuperscript{3} Ibid.

In the early times of settlement, the British-colonial Government encouraged the European acquisition of the land in Kenya in form of concessions rather than individuals.\footnote{Ibid.} At the onset of the First World War, half of the alienated land was in the hand of concessionaire companies. Land was granted for free under the rule of Charles Eliot,\footnote{Ibid.} in order to encourage settlement in the areas that were not yet occupied.

Eliot held a discriminatory view about the Africans. He thought that the Africans had low potentialities and abilities. About the Bantu tribes, he wrote in his first report “All agree that at least in certain negative qualities…they are somewhat low in scale of civilization and have no political organisation.”\footnote{Ibid., p.109.} And he regarded the Masai as “The most significant, the most important and the most dangerous of the tribes.”\footnote{Ibid., p.110.} He also had debasing opinions about the elders of north Kavirondo, whom he described as: “I have never seen such a collection of filthy, decrepit, idiotic old men as a meeting of Kavirondo Chieftain at Mumias.”\footnote{G.H.Mungeam, op.cit., p.109.} Eliot showed great preference for the Ugandan people, and considered them to be more civilized than the Masai and Somalis living in his Kenya protectorate. In this case, he wrote:

> To cross the lake is like entering another continent…any estimate of the potentialities of East Africa must …recognize in the natives of Uganda a semi-civilized race superior to the best of the Somalis and Masai.\footnote{Ibid.}
In spite of his view about the Africans, Eliot regarded that the settlement of the Europeans was among the priorities of British policy when he pointed out “…and so I think it is a mere hypocrisy not to admit that white settlement must be paramount and that the main object of our policy and legislation should be to found a white colony”.

Eliot was more pragmatic in his politics. He strongly assumed that the settlers were the linchpin of the East Africa Protectorate’s economy and that they should be granted all advantages that would help them in the development of the protectorate. The Africans, in their turn, could help through the Hut Tax. Eliot encouraged settlement at the detriment of the Africans. In order to implement his policy, he tried to grant the land belonging to the Masai in the Rift Valley to the European settlers. Eliot’s Sub-Commissioners Jackson and Bagge, as already experienced in Uganda, advised him as well as the Foreign Office to preserve the Masai’s rights by putting them in reserves, in case the colonial government intended to grant their land to the European settlers.¹³

However, Eliot refused Bagge and Jackson’s advice and he suggested that the Masai should be encouraged to settle in small villages among the European settlers. This misunderstanding between Eliot and his Sub-Commissioners was raised to the Foreign Office when both Bagge and Jackson returned to Great Britain and the former approved it.¹⁴ In addition to this, the relationship between Eliot and the Secretary of the Foreign Office, Lansdowne, had deteriorated to a certain extent after the former granted a large tract of 32000 acres of land to two South-African settlers R.B. Chamberlain and A.S. Flemmer. This action led to an escalation of clashes between both Lansdowne and Eliot and culminated in the resignation of the latter on April 09, 1904, who was replaced later by Captain Donald Stewart, an army officer, who was selected because of his success in dealing with the Europeans in the Gold Coast.

Eliot’s resignation did not affect the policy followed by the Foreign Office. Lansdowne, the Secretary of the Foreign Office gave the same instructions to Stewart, whereby he thoroughly insisted that ‘the primary duty of Great Britain in East Africa is

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¹³ G.H Mungeam, op.cit., p.108.
¹⁴ Ibid.
the Welfare of the natives.' Lansdowne also insisted on practising a policy based on consolidation rather than expansion and on the practising of economy all the time and that unnecessary expenditure should be avoided. Those were in general the broad lines of the Foreign Office policy.

One of the first sensitive cases that Stewart had to face, when he was appointed Commissioner of the East Africa Protectorate, was the Masai’s problem. On the one hand, he had to ensure the promotion of settlers’ agriculture that was one among the main aims that spurred the British Government to encourage the European settlement in Kenya. On the other hand, Stewart had to protect the Africans’ rights according to the instructions he received from Lansdowne. This situation, owing to the contradictions besieging it, had caught the attention of Lansdowne who recommended Stewart “how best to harmonize their [the Africans] indisputable rights with the requirements of the white settlers is a problem which will require your closest attention”. The only possible solutions that Sir Stewart resorted to, in order to satisfy the requests of the settlers, was to establish an agreement with the Masai of both Naivasha and Nairobi over the area of the Rift Valley. This agreement stipulated that the Masai had to leave the previously stated area to the European settlers and would move to a reserve in Laikipia. This was the first move of the Masai that took place in 1904.

Actually, the choice made for this area was based on two main respects. The first reason was that the Rift Valley’s climate was mild and suitable for white settlers. Secondly, the Rift Valley contained the best arable and fertile lands adequate for the growing of most agricultural products, and this was the main drive that had stimulated the European settlers to choose this area as place for settlement. Owing to these reasons, the Masai lost the land they used formerly for cattle grazing. But what may really raise questions about this agreement is how Sir Donald Stewart concluded this

16 G.H.Mungeam, p.118.
17 Ibid.
18 Ibid.
19 Highlands: Include today both Central and Rift Valley Provinces of Kenya.
agreement without meeting any resistance on behalf of the Masai, knowing that the Masai were very recalcitrant warriors.

Controversial views had aroused about this agreement. Some historians like Dickson A. Mungazi explained that the establishment of this agreement was a result of the military intimidation exercised by Stewart upon the Masai to cede their land. While others like G.H. Mungeam explained the rapprochement made between the two parts by the pragmatic relationship existing between the British Government and the Masai. The Masai were pastoralist people who were accumulating their cattle through two chief methods: peacefully through breeding and violently by raiding on other tribes’ cattle. Raiding became recurrent, and violent to such an extent that it was impossible for the British colonial Government to intervene. Ainsworth, the local Sub-Commissioner of Kenya - admitted to Hardinge, the ex-Commissioner of the East African Protectorate (1895-1900), that they were not a match to fight the Masai. As he stated openly “we are not strong enough to fight the Masai on their ground”. Wisely, the British took advantage from Masai military-power to enter in alliance with them.

The British had nurtured good relations with the Masai by sustaining them militarily against their rivalling tribes. What confirms this idea was the reliance of the British on Masai levies who were used mostly in punitive expeditions against enemy tribes. This agreement between the British and the Masai was among the main factors that facilitated the cession of their land in 1904. Stewart’s interest was directly focused towards military actions, and towards the pacification of troublesome and rebelling tribes like the Sotik, the Kisii and especially the Nandi whose warriors had

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24 Cession, (n): the transfer of sovereignty over a territory by means of a treaty. This may either be a peace treaty (e.g. the peace treaty between France and Germany in 1871 that made Alsace-Lorraine part of the German empire), a treaty to exchange territory (e.g. the treaty of 1890 whereby the UK ceded Heligoland to Germany in exchange for Zanzibar). Oxford Dictionary of Law, 5th ed, Oxford University Press, 2003. In our case, the Masai cession of their land was epitomized in the transfer of their rights over their land to the Europeans on the basis of an agreement signed in 1904 between Sir Donald William Stewart, the Commissioner of East Africa, and the Masai.
multiplied their attacks over the railway, robbing and killing troops, policemen, and traders.

This incapacity to manage the Protectorate under the ruling of the Foreign Office and to establish a clear policy of development for both the Europeans and the Africans had spelled for the intervention of the Colonial Office, which seemed to be keener than its precedent Office on the management of colonies. Thus, how did the transfer of power take place between the Colonial Office and the Foreign Office?

II- The Transfer of Power from the Foreign Office to the Colonial Office, 1904 -1905

On 1 April 1905, the East Africa Protectorate was transferred from the Foreign Office to the Colonial Office, which witnessed the appointment of very important personalities such Henry Campbell Bannerman, who was appointed at the head of the Colonial Office; its Secretary was the Earl of Elgin, Sir Victor Alexander Bruce; and Sir Winston Churchill was Under-secretary. The new appointed officials found themselves face to face with myriads of problems that they had inherited from the Foreign Office. At the top of those problems stood the labour problem as one of the most sensitive and serious problems that the newly appointed Colonial Office had to handle with care while taking into account the Africans and settlers’ interests.

Donald William Stewart kept the same post under the Colonial Office and this latter ordered him to cut off any communication with the Foreign Office and to work directly with the Colonial Office. As Commissioner of the East Africa Protectorate,  

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26 Lord Victor Alexander Bruce was the ninth Earl of Elgin, born on May 18, 1849 and died on January 18,1917. He succeeded to his father’s earldom at the age of fourteen. Elgin was the first work Commissioner under William Gladstone, the British Prime Minister, in 1886. He became Viceroy in India in 1894. He organized relief for the four millions of Indians who suffered from famine caused by drought in 1896. Between 1889 and 1905, he accepted to be appointed Chairman of commissions of public inquiry into the military conduct of the Anglo-Boer War. Elgin was also appointed by the Liberal Prime Minister Henry Campbell Bannerman, as Colonial Secretary. But he was dropped from Government in 1908 by the new Prime Minister H.H. Asquith, and devoted himself to his family’s interests until he died in 1907. James S. Olson & Robert Sadler (eds), *Historical Dictionary of the British Empire*, USA Greenwood Publishing Group Inc, 1996, p. 205.
Stewart was not an outstanding Governor, and his achievements under the Colonial Office were not conspicuous; even his service carried out under the new Office did not last long, because Stewart succumbed to a pneumonia that he caught while he was on one of his punitive expeditions against the Nandi people. Punitive expeditions that were sought to pacify the rebelling tribes had also awakened the interest of the colonizer to seize the opportunity to alienate more lands for the benefit of the European settlers. Those intentions were revealed by Stewart when he was leading his punitive expedition, in 1905, against the Sotik (a small sub-tribe closely related to the Kipsigis people) who had raided on the Masai. Captain Stewart favoured very firm measures to stop the Sotik attacks; at the same, time he pointed out the need to use the land of the pacified Sotik for settlement and in this respect he proposed that

A post will probably have to be kept in the Sotik country, as there is a large area of excellent land between Njoro and Sotik which should now be opened up to settlers … After the Sotik have been brought to reason, I hope the Kisii28 [tribe] will give no trouble. It is most important to open up this part of the Protectorate which is well adapted to European settlement…some of the Kisii are friendly and want us to establish a Government post in their Country, but a large portion of this tribe is inimical and will be likely to give trouble. I have however great hopes that the punishment of the Sotik may bring them to reason.29

One of the main preponderant steps initiated by Stewart was the implementation of a reserve scheme that was much claimed by his former colleagues, namely his predecessor Sir Eliot, who intended to expropriate Masai and put them in a reserve, but did not dare to do so, because he feared their reactions.30 The same thing happened to the Nandi that were later on pacified and moved to a reserve.

Whether they were Nandi or Masai, the colonial government did not make any distinction between Africans. They were all put within reserves, because they were

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27 G.H. Mungeam, op.cit.
28 The Kisii tribe (also known as the Gusii tribe) is a Bantu ethnic group who occupies the Kisii highlands in Nyanza, Western Kenya. Their home area is sandwiched between the Luo and Luhya tribes. See the Kisii Tribe Carvers of the Soapstone. http://www.kenya-information-guide.com/kisii-tribe.html (accessed on August 25, 2010)
29 G.H. Mungeam, op.cit., p.142.
30 Ibid., p.108.
dispossessed of their lands that they had to leave for the new owners - the European settlers. Henceforth, what were the real drives behind lands’ alienation and the establishment of reserves’ schemes? And what were the impacts of the reserves system on the Africans?

1) Reserves’ Schemes and Land’s Alienation under the Rule of the Colonial Office

The confinement of the Africans to reserves was starting to take place after the British succeeded in imposing their power and pacifying the rebelling tribes. Many reserves had been established by the colonial government to separate the European settlers from the African peoples, like in Kikuyu, Masai, Ulu, Kikumbuli, Kitui, and the Nandi Districts.\textsuperscript{31} The first reserve was established in the Masai land in 1904. The separation of the Africans from the European Settlers was intentional and served many purposes.

In the first place, the native reserves were used, as previously stated, to separate the Africans from the settlers. Second, the reserves were used to limit the movement of the African tribes, and thirdly to control the African labour through chiefs’ authority, since those latter were in charge of recruiting the African labourers from the reserves. Although native reserves had saved the colonial government much effort to control the mobility of the Africans by confining them to limited geographical areas; in spite of that, reserves were detrimental to settlers who were in need of the African labourers, as they were kept away from them; since the Africans were under the control of their chiefs, and those latter obeyed only to the colonial authorities’ instructions, it was impossible for the settlers to force the chiefs to supply them with the number of labourers they needed. Additionally, the Africans were confined to a limited space of land and could not practise their cultures as they used to do before they were put into the reserves. The Masai, for instance, could not move from place to place seeking new grassy lands to graze their cattle and then return to their traditional land.\textsuperscript{32}

\textsuperscript{32} Ibid., p.249.
economic level, reserves prevented some tribes that were living on the sale of cattle to practise their trade. These measures culminated in the concentration of an increasing number of cattle within the reserves, whose owners became unable to retrieve money from its sale. Consequently, this economic stagnation had reduced the herds of cattle owned by the Africans to a valueless wealth and the owners to become poorer and poorer.

Additionally, reserves were used as a weapon against the poor Africans living in them to block their agricultural production. As it was declared by one of the most prominent white settlers Lord Delamere, “If the Africans had enough land, and therefore stock and produce, they would not be obliged to go out and labour for others”. 33 Many settlers turned to the colonial government to secure for them the set of labourers needed to work their large tracts of land. For this reason, many settlers called on the government to reduce the boundaries of reserves, in order to reduce the size of cultivated lands by the Africans and force them to seek jobs on the European settlers’ farms. 34 In fact, the problems related to the provision of labour for the settlers were among the most serious ones; then, how did both the settlers and the Colonial Office deal with such problems?

2) Settlers’ Reaction to the Shortage of Labour in 1905, and the Struggle of the Colonial Office against the Settlers’ Abuses

One of the main duties that the Colonial Office had taken on its onus, when it took over the governance of East Africa in 1905, was to find solutions to the different problems that the Foreign Office had failed to solve. The labour problem was one of those serious problems that the previously stated Office had endeavoured to cure in vain. Then, how did the Colonial Office handle such a problem and what were the reactions of both the Africans and the settlers towards the Colonial Office initiatives?

In the first place, the Colonial Office, as a newly appointed and experimented department in charge of the British colonies, had to prove its efficiency with regard to its predecessor: the Foreign Office. For this reason, the newly appointed men at the head of the Colonial Office had to follow a certain trajectory to solve the problem of labour recruitment. Among the most outstanding personalities, there were Campbell Bannerman\textsuperscript{35} at the head of the Colonial Office, the Earl of Elgin as his Secretary and Winston Churchill appointed as his Under-Secretary.

The period from 1905 onwards had witnessed many changes. During the early days of the Colonial Office’s takeover of the East Africa’s administrative affairs, the settlers began to voice their discontents to the colonial government in order to organize the labour market and help them recruit labourers. Actually, the settlers’ claims put into question the means they used in order to accentuate their demands for labour and the reaction of the colonial government to their claims. This would also put into question the reactions of the Africans towards the settlers’ influence and the colonial government’s policy.

In order to face the different problems relevant to land and labour in Kenya as well as those dealing with health and that were prevailing in East Africa, the Secretary of the Colonial Office, Lord Alexander Bruce, dealt with problems differently. He wanted to get a closer view of the situation. For this reason, he sent Winston Churchill, his Under–Secretary, to East Africa in order to investigate the situation there and by the same token solve labour problems.\textsuperscript{36}

In 1907, Churchill arrived at Mombasa and he immediately delved in the affairs of the Protectorate. One of the most preponderant problems, which Churchill tried to

\textsuperscript{35} Sir Henry Campbell-Bannerman, (1836 - 1908) original name Henry Campbell. He was a member of the House of Commons from 1886 and served as the financial secretary to the War Office from 1871-74, and from 1880-82. On February 6, 1899, he was elected leader in the commons of the badly organized Liberal Party. During the South African War, War between the British and the Boers, he adapted a moderate policy between imperialists and anti-Boers with regard to his fellows of the Liberal party. He was appointed Private Secretary of Sir Charles Eliot in 1901. He served as prime minister from December 5, 1905 to April 5. In 1908, Bannerman’s health began to deteriorate and he was compelled to resign on April 04,1908 and died 18 days later. Encyclopaedia Britannica Online: \url{http://www.britannica.com/EBchecked/topic/91258/Sir-Henry-Campbell-Bannerman}. (accessed on June 12, 2010).

\textsuperscript{36} G.H. Mungeam, op.cit., p.187.
solve, was the one related to the labour system. Churchill’s concern about the labour problem was effectively reflected in his encouragement of the Department of Native Affairs. This Department was instituted specially to deal with labour supply. One of the most outstanding tasks that the Department of Native Affairs had to conduct, was to investigate the Africans’ working conditions and to regulate labour with the hope to guarantee decent treatment of the Africans. It was also concerned with meeting the urgent needs for labour on the European farms.

In order to make the provision of labour sufficient and regular, the settlers felt that the colonial administration should encourage the Africans to work. The same idea was shared by the Land Committee Report, which had insisted that the African labourers should work for contracts on the European farms. In order to quicken the recruitment of workers, a Committee of Colonists’ Association had submitted in 1906 a draft of the regulation labelled the ‘Master and Servants Ordinance of 1906’. This draft was accepted by the committee without any alteration, then submitted to London for approval. The Master and Servants Ordinance of 1906 was based on the Transvaal (South Africa) Master and Servants Ordinance of 1880 and the Gold Coast Master and Servants Ordinance of 1893. Until 1907, the Colonial Office was split, with regard to the choice of the policy it had to follow in order to enhance labour recruitment. At that time, forced labour was at the heart of discussion, and it was the foremost problem worrying the Colonial Office. When both Crewe and Seely replaced Elgin and

37 Ibid., p.191.
38 Ibid.p.191.
40 Ibid., p.461.
41 Ibid.
42 Seely, John Edward Bernard, first Baron Mottistone (1868–1947), politician and soldier, was born at Brookhill Hall, between Derby and Nottingham, on 31 May 1868, the fourth son and seventh child of Sir Charles Seely, first baronet (1833–1915), and his wife, Emily (d. 1894), daughter of William Evans. Seely was brought up in Nottinghamshire but spent most of his holidays on the Isle of Wight. While an undergraduate Seely joined the Hampshire yeomanry and when the South African War broke out he succeeded in arranging private but immediate transport to South Africa for his squadron, with the assistance of his uncle Sir Francis Evans, chairman of the Union Castle Line. During his absence in South Africa, Seely was elected, in May 1900, Conservative member for the Isle of Wight. With some of the younger Conservatives, in particular Winston Churchill and Lord Hugh Cecil, Jack Seely maintained a sustained attack on the Balfour government’s administration of the army. He left the Conservative Party in March 1904 on the combined issues of protection and ‘Chinese slavery’, and, after resigning his seat, was re-elected without opposition at a by-election. In 1906 he was narrowly elected as a Liberal for the
Churchill,\textsuperscript{43} they found themselves facing one of the most critical problems, which was labour shortage. On this account, Sadler, the Commissioner of the East Africa Protectorate, suggested to Crewe, the Colonial Office Secretary, two propositions: in the first place, he suggested that the Africans living on the uplands of Kenya should be pressed to work through a gradual imposition of the Poll Tax upon able-bodied man,\textsuperscript{44} and that a remission should be given to the Africans who worked for one month on whites’ farms. The weakness of this idea was that the remit, which Sadler had proposed, conflicted with forced labour and consequently mitigated its effect. Crewe\textsuperscript{45} agreed on the idea of remission, provided that the work allotted would be done, regardless of the race and status of the employer.

Secondly, Sadler proposed that the coastal area and the area in the middle belt, between the coast and the uplands of Kenya should be worked by indentured labourers

\textsuperscript{43}G.H. Mungeam, op.cit., p.196
\textsuperscript{44}Ibid.
\textsuperscript{45}Milnes, Robert Offley Ashburton Crewe-, marquess of Crewe (1858–1945). He was born at 16 Upper Brook Street, London, on 12 January 1858, the only son of Richard Monckton-Milnes, first Baron Houghton (1809–1885), and Annabella Hungerford (\textit{d}. 1874), daughter of the second Baron Crewe. He was educated at Winton House, near Winchester, Harrow School, and Trinity College, Cambridge, where he graduated in 1880. He was appointed assistant private secretary to Lord Granville, Foreign Secretary in Gladstone’s second ministry, in April 1883. In 1884, he was adopted as Liberal candidate for Barnsley, but he never contested the seat, as the death of his father in August 1885 consigned him to the House of Lords as Baron Houghton. He inherited his father’s view that England was responsible for Ireland’s misfortune, and his loyalty to his party during the Irish home-rule crisis left him one of the few Gladstonian peers after 1886, ensuring his subsequent political influence. In September 1910, Crewe was appointed Secretary of State for India; he was thus responsible for the Delhi durbar of 1911. The fourth Marquis of Salisbury described Crewe in 1945 as ‘perhaps the last of the Whig statesmen’. History-biographer considered him more radical than Whig. Crewe died at West Horsley Place on 20 June 1945. Oxford Dictionary of National Biography, op.cit.; http://www.oxforddnb.com/ templates/article.jsp?articleid=36007&back, (accessed on October 2013).
that were to be imported from India. However, Crewe showed his disapproval to this idea and opposed it firmly.

The colonial government encountered difficulties with settlers dissatisfied with stringent labour conditions. Crewe and his fellows in the Colonial Office thought of sending home those dissatisfied settlers. The South-African settlers were the most worrying ones. Crewe and Sadler, mainly, were afraid of the arrival of huge flocks of settlers to Kenya. The Bores were at the top of those settlers, and it was estimated that about 2000 to 3000 Boers would come but only 240 arrived to Kenya.

The arrival of the Boers to Kenya aroused many problems that were not only related to labour, but also dealing with the grant of land and conditions required to fulfil them. The settlers Committee had highlighted the fact that land located in the highland should not be granted to the Indians. In order to impose order and secure a permanent labour force for the settlers, the Colonial Office had enacted a set of legislations. There are three types of legislation: compulsory labour legislation, resident labour (or “squatter”) legislation and registration certificate (or “pass law”) legislation.

3) The Master and Servants Ordinance as a Means of Labour Coercion, 1906-1910

By 1906, there were more than 600 settlers looking to employ Africans on their farms. In order to reinforce their claims, the settlers buttressed them with a regulation labelled the Master and Servants Ordinance that was enacted in 1906. This ordinance was added to the statute book of East Africa in the same year and lasted until the 1950s. The enactment of such ordinance questions its utility for the settlers and its impact on the Africans.

The Master and Servant Ordinance of 1906 was not only a tool to regulate labour recruitment in colonial Kenya, but a weapon to subjugate the African workers. For

46 G.H. Mungeam, op.cit., p.196.
47 Ibid., p.198.
short, it was a means to control labour in colonial Kenya. The control of labourers’ relations with their masters was achieved through contracts. The latter took two different forms: verbal (unwritten) and written contracts.

Verbal contracts, under the Master and the Servants Ordinance of 1906, were commonly implemented in establishing labour relations between masters and their workers. The verbal (unwritten) contract would last for only one month. If the servant stayed after this period had expired, the contract would, automatically, be renewed. Labourers mostly breached contracts whether they were written or verbal, as they were sometimes badly treated by their masters or they wanted to seek new jobs on other farms, in order to get higher wages than those received by their former masters.

The task of the colonial government was to legislate adequate ordinances, which would force labourers to keep their jobs without deserting. In this regard, coercive punishments were included in the ordinances issued by the colonial government. The 1906 Master and Servants Ordinance is a case in point. What was traditionally applied in case of worker’s desertion was that deserters would be prosecuted by a civil court, but in colonial Kenya, desertion’ cases were dealt by the criminal tribunals.

Punishments inflicted on the labourer who might breach the law differed according to the seriousness of the committed offences. That is why offences were classified into two types: ‘minor’ and ‘major’. Minor-types offences included failure to work, intoxication or absence during working hours, careless or improper work, and use of rude language to the master or his agent. The maximum penalty for such offences was a one month cut of wage. ‘Major-types offences’ included any deliberate action to break duty: drunkenness leading to loss, or injury to animals and desertion from the service without convincing causes. Punishment for this kind of infringement was a two months’ wage cut or two months’ imprisonment.

50 Ibid.
52 Ibid.
53 Ibid.
Because of the abusive clauses of the Master and Servants Ordinance, the Earl of Elgin, the Secretary of the Colonial Office, objected to the 1906 Master and Servants Ordinance,\(^5^4\) which he regarded too rigorous and implemented payment of fines and imprisonment of labourers for breach of contracts. In order to remedy this problem, Elgin had appointed A.C. Hollis\(^5^5\) as a Secretary of the Department of Native Affairs in 1907 to deal with labour supply. Hollis was more concerned with investigating the labour system rather than convincing the labourers to work. The investigations conducted by the Native Department had revealed the austerity of the ordinance.\(^5^6\)

\(^{5^4}\)G.H. Mungeam, op.cit., 191.

\(^{5^5}\)Alfred Charles Hollis (A.C Hollis), colonial governor, was born on 12 May 1874 at Cumberland Villa, Highgate Road, London, the second son of George Hollis (1843–1919), a barrister of the Inner Temple, and his wife, Susannah Smith (1843–1921). A pioneer of British administration in East Africa from the 1890s, he also served in Sierra Leone (1913–16) and Trinidad (1930–36). He was educated privately at St Leonards (to 1890) and in Switzerland (1891) and Germany (1892). In March 1897, after working for a commercial company in German East Africa (1893–6), he was appointed assistant collector in the British East Africa Protectorate. He quickly became famous, through his energetic work as a District Officer at the coast, and owing to his linguistic ability, he became government examiner in Swahili in 1901. Invited to join the staff of the commissioner and consul-general, Sir Arthur Hardinge, he was subsequently appointed private secretary to Hardinge's successor, Sir Charles Eliot, and to the new post of secretary to the protectorate administration. Hollis took part in the expeditions to Jubaland (1900–01) and against the Nandi (1905), receiving the Africa general service medal. His real concern, however, was the protection of African interests, especially from the demands for land and labour from incoming European settlers. Official recognition came in 1907 with his appointment as Secretary for Native Affairs and membership of the Legislative Council. His pioneering and authoritative works on the Maasai (1905) and the Nandi (1908), to both of which Eliot contributed introductions, received wide acclaim. Eliot's successor, Sir Donald Stewart, had little time for studious officials. Hollis's work continued to be commended by successive governors, Sir James Hayes-Sadler and Sir Percy Girouard. In 1911, he was appointed CMG, receiving congratulations from, among others, Winston Churchill, who had strongly supported Hollis in his defence of African interests when he visited the protectorate as Under-Secretary of state for the colonies in 1907. Hollis was promoted Colonial Secretary in Sierra Leone in 1913.

Following the outbreak of the First World War in 1914, Freetown, the capital of Sierra Leone, became a port of call for troopships from the south, as a result of which Hollis's responsibilities were greatly increased. He became Secretary to the administrator of the occupied territory of German East Africa and in 1920, Chief Secretary in the newly created Tanganyika territory. He received further promotion in 1924, when he became British resident in Zanzibar. In 1930 Hollis was made Governor of Trinidad, a post he held until his retirement in 1936. Hollis's early years of retirement, though fully occupied with a range of activities including membership of the Imperial Communications Advisory Committee, were marked with sadness. His devoted wife Enid died in 1939 at the early age of fifty-one and his only son, Mark, was killed in action in 1941. He nevertheless remained active for many years, serving as a JP and as master of the Leathersellers' Company (1945–6), and enjoying English country life. He died, aged eighty-seven, on 22 November 1961, at the Evelyn Nursing Home in Cambridge. \(\text{\footnotesize {Oxford Dictionary of National Biography, op.cit.; http://www.oxforddnb.com/templates/article.jsp?articleid=32628&back=} \text{(accessed on October 8, 2013).}}\)

\(^{5^6}\)Ibid.
instance, labourers were left starving and without transportation to take them home at the end of their contracts.\textsuperscript{57}

This situation had affected Churchill so deeply that he wrote a minute\textsuperscript{58} to Sadler, the East Africa Protectorate’s Commissioner, in which he accentuated the need to regulate in a careful manner the recruitment of contract labourers.\textsuperscript{59} Churchill was too concerned about the interests of the natives that he held a meeting with Hollis and Saddlers, whereby he insisted that certain District Officers were ‘to be detailed to represent the interests of the natives in all questions arising between them and the white men or Government’.\textsuperscript{60} In this respect, a circular was issued to forbid chiefs and headmen to use force to recruit Africans.\textsuperscript{61}

Similarly, Hollis was for the betterment of the Africans’ working conditions, too, and with this end, he advised his Government to immediately give up dealing with the policy of ‘Direct Coercion’.\textsuperscript{62} But his protective policy of the Africans’ interests set the settlers to wage a protest demonstration against the Colonial Office in 1908 whereby they called for the resignation of the East Africa Protectorate’s Governor, Sir Hayes Sadler, since this latter did not intervene administratively to withdraw the circular, neither did he try to make any attempt to supply the settlers with labourers. This action had resulted in suspending the leaders of the protest, Sir Delamere and Baillie, two mighty settlers who were members at the Legislative Council, who were considered by the colonial government as the real instigators of the settlers’ protest.

In spite of Sadler’s stiffness and that of his fellows towards the settlers’ mistreatments of their labourers, and A.C Hollis’s enactment of the circular prohibiting forced recruitment,\textsuperscript{63} those attempts did not diminish the gravity of labour problems, but were more detrimental to the settlers, who suffered a lot from two bad farming

\textsuperscript{57} Ibid.
\textsuperscript{58} A minute: an official message from one person to another in an organization.
\textsuperscript{59} G.H. Mungeam, op.cit., p.192.
\textsuperscript{60} Ibid., p.193.
\textsuperscript{61} Ibid.
\textsuperscript{62} Bruce Berman, op.cit., p.64.
\textsuperscript{63} G.H. Mungeam, op.cit., p.193.
seasons, owing to labourers’ shortage. Even Saddler had admitted that the rate of recruited labourers had fallen due to the stiffness of the measures taken by him.

In 1907, the Colonial Office witnessed new changes. Churchill was replaced by Colonel J.B Seely who was appointed as Under-Secretary and Elgin was replaced by Robert Crewe who was appointed as the Secretary of the Colonial Office. Those newly appointed officials held divided views about labour policy that should be enacted in East Africa. J.B Seely had condemned all forms of forced labour, while Crewe preferred to postpone any examination of the labour question until he had received further information from the Governor of Kenya, Hayes Sadler, about labour problems in Kenya. The latter had a meeting with the settlers, and came out with the conclusion that two solutions might be envisaged to solve the labour problem: First, Poll Tax should be imposed gradually on the Africans in order to press them to work. Secondly, indentured labourers from India had to be brought to face labour shortage on the coastal area, in the middle belt and the area between the coast and the uplands of Kenya.

Until the outbreak of the First World War, labour shortage was one of the black bears that the colonial government had to get rid of. The latter was fighting on two fronts. On one hand, it had to solve the civil labour problems dealing with the shortage of labourers on the settlers’ plantations, which gave birth to a new system of African labour known under the name of ‘squatting’, and on the other hand, the colonial government had to solve the problems of military labour recruitment caused by the need for porters to transport arms to the battlefields. For this reason, the colonial government created a corps of carriers labelled the ‘Carriers Corps’. But how did the creation of such a corps affect labour recruitment in Kenya?

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64 Ibid., p.194.
65 Ibid.
66 Ibid., p.196.
67 Ibid.
68 Ibid.
4) The Carrier Corps Recruitment in British East Africa and Kenya, 1914-1918

In order to overcome the economic needs of the fledgling protectorate, the British colonial Government had to find new ways whereby to supply the labour market with the needed labour force. In order to achieve the previously stated goal, the colonial government adopted different ways for recruiting the Africans. Those methods varied from one place to another within the protectorate and from one Provincial Commissioner to another. Officials had resorted to peaceful as well as violent methods to recruit the Africans. The First World War absorbed the great masses of young Africans who where conscripted to fight under the British flag against the Germans in Africa. This would put into question the impact of the First World War on the Africans and the methods used by the colonial government in recruitment and accordingly the reaction of the Africans to the labour-colonial policy.

The outbreak of the First World War had created a dire need for labourers to transport weapons for soldiers, who were fighting on the African battlefields, in inaccessible and accidental areas where it was impossible to use vehicles and animals to reach them and where man was the only reliable means to fulfil this task. This urgent need for porters had pushed the British colonial Government to create an organized corps known under the name of ‘Carrier Corps’. This would raise a bundle of questions relating to this novel corps. Who recruited the Africans? What were the methods adopted for recruiting the Africans in this new corps? What were the reactions of the Africans to recruitment in the Carrier Corps? Was the Carrier’s Corps beneficial to both the colonial government and the Africans?

The Carrier Corps, as its appellation indicates, aimed at using men to transport weapons to the battlefronts and not to use weapons to fight. At the beginning of recruitment, the Chief Secretary, in order to gather men necessary for the carrier corps, wrote to the Provincial Commissioners who had to evaluate the number of people living in the districts belonging to their provinces, and from which they could provide
labourers. The officials had to rely on their sub-officials in the provinces, District Officers and chiefs to influence and grab the people of their districts and tribesmen in order to recruit them in the Carrier Corps.

The method of recruiting varied from one district to another. Generally, the administrative officers had to move to the target areas and ask the District Officers to provide the quota necessary for recruitment, depending on the number of people inhabiting in their areas. The success of recruitment depended generally on the influence of chiefs. A vivid instance of this was the C.W. Hobley who intended to recruit from Malindi, a Swahili city located on the coast of Kenya, and failed, but owing to the influence of Sheikh Ali, he succeeded to provide the necessary men from Mombasa.

At the same time, different illegitimate methods were used to recruit people in the Carrier Corps. The latter, for example, proposed higher salaries to the Africans than those proposed by the settlers for farming jobs. This had resulted in the shift of the Africans from settlers’ plantations to military labour by causing a high shortage of labourers in agriculture.

Whenever peaceful methods had failed to grab the needed Africans for recruitment, the colonial government used force to meet the demanded quotas of labourers. Men were driven by force to work for military corps. Sometimes Africans who committed crimes were conscripted into the carrier corps in order to spend their sentences. This situation was not always welcomed by the labourers’ masters. For instance, Miss

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70 Ibid., p.316.
71 Charles William. Hobley was born in 1867 at Chilvers Coton in Warwickshivers. He was educated at King Edward VI School. In 1888, Hobley admitted to the institution of Civil Engineers. In 1890, he was appointed geologist to the Imperial British East Africa Company; Assistant Deputy Commissioner in 1902 in the eastern province of Uganda. In 1912, he served as the Provincial Commissioner in Mombasa. After a short period, he was appointed as Commissioner of Mines and member of the Legislative Council. Hobley returned to England in 1921 and devoted himself to work for the learned societies until his death in 1947. See A.T Matson and Thomas P. Ofcanskyn, ‘A Biography of C. W. Hobley’, *History in Africa*, Vol.8, 1981, pp.253-260.
72 Donald C. Savage and J. Forbes Munro, op.cit., p.316.
73 Ibid., p.317.
Buxton, from Kericho District, refused that the District Commissioner would send her servant to the Carrier Corps for having stolen Rs.100.\textsuperscript{74}

In other cases, the Africans were tricked to be recruited in the carrier corps. This had happened with some Africans in the Kisii District of Nyanza where the colonial administration called young men to the station to cut the grass, but when on the spot, they were asked to enrol for the Carrier Corps.\textsuperscript{75}

The colonial government used pacific methods to recruit the Africans in the Carrier Corps; however, the Africans’ reactions to labour recruitment were sometimes negative and vehement. The Giriama,\textsuperscript{76} an ethnic group in Kenya, were among the first tribes in Kenya to rise against the colonial domination and against any attempt made by the colonial government to exploit their labour.\textsuperscript{77} In the period between 1912 and 1914, there were some arguments between the Giriama and the colonial authorities that intended to regroup them south the Sabaki in order to facilitate their control. In 1914, the Giriama centre on the north bank of the river was blown up and the Giriama rose in rebellion. A punitive expedition was sent to crush the rebellion and the Giriama were defeated on August 28, 1914 and forced to pay a fine of Rs 100,000 and supply 1,000 men for the Carrier Corps.\textsuperscript{78} As they refused, a second expedition was sent and the Giriama were defeated and 567 men had been collected for the Carrier Corps but many of them had deserted. It was until 1915 that the number of men to be supplied by the Giriama was met.\textsuperscript{79}

The problem of controlling the Africans, in the early times of the First World War within the frame of labour, was one of the main problems that the colonial authorities were facing, especially when that problem was related to the Carrier Corps. In order to

\textsuperscript{74} Ibid.
\textsuperscript{75} Ibid.
\textsuperscript{76} The Giriama (or Giryama): it is one of the Nyika tribes of the coastal region of Kenya, which reacted violently in 1913 and 1914 to the sudden establishment of colonial rule in Kenya. Giriama’s land was in the Malindi District of Seyidie Province. Some lived in the Takunga Sub-District. Their activity was based on agriculture. K. David. Patterson, “The Giriama Risings of 1913-1914”, African Historical Studies, Vol. 3, No.1, 1970, pp.89-99.
\textsuperscript{77} Donald C. Savage and J. Forbes Munro, op.cit., p.318.
\textsuperscript{78} Ibid.
\textsuperscript{79} Ibid.
solve that problem, the colonial authorities had enacted ordinances, such as the ‘Native Follower Ordinance of 1915’, which gave the government\textsuperscript{80} the power to conscript the Africans into the Carrier Corps. In the same way, the settlers seized this opportunity to extend the application of this ordinance to serve their interests by forcing the Africans to allow their conscription into the European farms. The harshness of war and the horrible stories heard about Africans who conscripted into the Carrier Corps, had discouraged many of them to seek military labour, and accordingly turned to seek jobs on European farms and in public services. For instance, the Meru tribe while it provided only 216 men for the Carrier Corps, about 16,531 were recruited to work for transport projects, and about 8,849 for work on telegraph lines.\textsuperscript{81}

If many Africans had made their choice to join the European farms, others were conscripted and taken to the Carrier Corps against their will. For this reason, many Africans had deserted military labour and took different destinations. Some returned to their homes, others hid with friends and relatives, some others fled to the bush or had joined mission stations.\textsuperscript{82} The Carrier Corps which seemed likely to drain the local labour force of Africans from the settlers’ farms had reversed the shift of Africans from the Carrier Corps labour to the European farms. For instance, there was a migration of labourers from the Nyanza Province to Trans-Nzoia District in search for labour. In the same way, the Kikuyu found labour in the areas surrounding their reserves and in the Rift Valley. The Giriama people moved to Mombasa’s port where there was a considerable shortage of labourers there.\textsuperscript{83}

During 1917 and 1918, there was a big demand for recruits in the Carrier Corps, and the settlers were asked to give to the colonial authorities a list of their able-bodied labourers in order to be conscripted into the Carrier Corps; and in return, they would be replaced by the injured of the previously stated corps in order to undertake jobs in the European farms and factories. However, this new policy was not well appreciated by

\textsuperscript{80} This ordinance gave powers to the district administration to force the recruitment of able-bodied men under the age of thirty-five to serve as porters for the military. Robert M. Maxon, \textit{Struggle for Kenya, The Loss and Reassertion of Imperial Initiative, 1912-1923}, USA, Associated University Press, 1993, p.90.

\textsuperscript{81} Donald C. Savage and J. Forbes Munro, op.cit., p.324.

\textsuperscript{82} Ibid., p.327.

\textsuperscript{83} Ibid., p.329.
the injured of the Carrier Corps, who refused to work for the European settlers, and of whom many deserted as soon as they were recruited.

The policy that was planned by John Ainsworth\textsuperscript{84}, in order to replace the able-bodied men by the injured soldiers of the war was not successful, for the rejected Africans did not accept to work for the whites and many of them had deserted their jobs.\textsuperscript{85} In order to solve the problem of labour shortage, the colonial authorities had taken drastic measures in order to plug any loophole in the system of recruit. In March, 1918, William. Maclellan Wilson successfully proposed to the Legislative Council to pass a resolution aiming to create a department called the Native Affairs Department.\textsuperscript{86}

The period from 1917 up to 1918 witnessed a great demand for recruits in the Carrier Corps, which resulted in the depletion of reserves from males able to work.\textsuperscript{87} For fear that the Africans would revolt, the colonial authorities gave up forced recruitment. The excessive recruitment of the Africans had caused a shortage of labourers to be recruited on the European farmers. This measure turned them furious against the colonial authorities.\textsuperscript{88} The colonial government had felt the degree of

\textsuperscript{84} John Ainsworth: (1864–1946), colonial administrator, was born at 29 Lyme Street, Chorlton upon Medlock, Lancashire, on 16 June 1864, the son of John Dawson Ainsworth, commercial traveller, and his wife, Margaret, née Bond. His eight years of formal education were meant to prepare him for commercial employment. At the age of twenty, he visited the west African coast; this led to employment with an English trading company in the lower Congo basin. After returning to Britain in 1889, he took employment with the Imperial British East Africa Company. He spent just over two years in charge of the company's transport and supply operations in what later became known as Kenya. In February 1892, he was placed in charge of the company's Machakos station. In 1895, he assumed the administration of what was then known as the British East Africa Protectorate. Ainsworth remained in charge of Machakos as Sub-Commissioner of Ukamba province. In this role, he completed the process of establishing control over the Machakos Kamba. Just as important, he helped lay the foundations of the British alliance with the Maasai. With the arrival of the Uganda railway at Nairobi in 1899, Ainsworth switched his provincial offices to the future capital of Kenya. As Chief Government Official in Nairobi during the first years of its existence, he played a central role in the development of the new township, where he remained until 1906. While in Nairobi, he founded the East African Agricultural and Horticultural Society and edited its journal, the East Africa Quarterly. He was able to gain acceptance of the policy of setting aside land reserved for the Kikuyu, and later the Maasai, that could not be alienated. He was influential in gaining acceptance of the creation of two reserves for the Maasai that were recognized by treaty in 1904. He settled at Somerset West in Cape Province and enjoyed an active retirement there, serving as mayor of the town during 1928–30. He died at Somerset West on 31 March 1946. The Oxford Dictionary of National Biography, op.cit., : http://www.oxforddnb.com/templates/article.jsp?articleid=94556&back (accessed on September 02, 2013)

\textsuperscript{85} Ibid., p.334.
\textsuperscript{86} Ibid., p.336.
\textsuperscript{87} Ibid., p.337.
\textsuperscript{88} Ibid., p.238.
hostility emanating from the settlers and tried to appease it through the enactment of Circular N°55 that aimed at putting an end to compulsory recruitment by replacing it with a voluntary one and by keeping the existence of the Carrier Corps.

It can be concluded from what preceded that the First World War had affected negatively the lives of the Kenyans on different scales: economically and socially. The Africans were not left any alternative to choose the camps with whom they had to side. As the latter fell under British rule they were forced to conscript into both the Carrier Corps and the Kings’ African Rifles (The K.A.R) that were on fierce competition to conscript the largest number of Africans in order to consolidate their military units. In order to force the Africans to conscript, the colonial government instituted regulations such as the Native followers Ordinance of 1915 that gave the power to the colonial authorities to conscript the Africans into the Carrier Corps. This flow of the Africans from civil service, epitomized in the working of the Africans for the white settlers, and their enrolment in the military corps had stirred the anger of the settlers who reacted outrageously against the colonial authorities that depleted the labour market from the African labourers. The colonial authorities tried to calm down the anger of the settlers by passing Circular N°55 on 8 August 1918\(^9\) to stop compulsory conscription into the Carrier Corps. The enactment of regulations to compel recruitment or stop it was a characteristic that had epitomized the colonial government. That was just a tactic in order to avoid a direct confrontation with Africans. This actually reflects the type of flexibility the colonial government had adopted in order to keep civil life and military duty working without impeding the functioning of the colonial system in Kenya, which was a crucial matter for keeping alive the colony.

At the same time, the compulsory recruitment of the Africans and white settlers during the First World War had left many African labourers without their own masters. In order to replace the vacuum that the settlers had created when they were called out for the war, the African labourers took over the farms and became de facto masters and managers of the newly seized properties. Some others were occupying parcels of land belonging to the white farmers, and as the latter left to the battlefront, the Africans

\(^9\) Ibid.
squatted them, and consequently a new system of labour developed that was called “Squatting”. This new labour system played a big role in absorbing the labour force and in sustaining the African economy during the British colonial era, which may raise numerous questions: What was the squatter system? What were the causes leading to its emergence? Who were its proponents and opponents and what was its impact on the African and colonial economy?

5) Settlers’ Domination and the Emergence of a Squatter Labour System in Kenya

After the Europeans had seized the most arable lands in Kenya and evicted the Africans from them, the latter found themselves compelled to move to the new reserved areas where they had to establish themselves and begin a new life. Other groups of African landholders, who were forced off their lands, were incorporated in the wage labour system by working on the European settlers’ estates in return for wages. Actually, three main types of labour systems had emerged during the British colonial occupation of Kenya that were: Kaffir-farming, squatting and migrant labour. Those systems were, in fact, the result of different interacting factors that helped to supply labourers on the European farms. In order to probe the colonial labour policy administered by the colonial government in Kenya, it would be central to identify the specificities characterizing each of the formerly stated systems.

First, Kaffir-farming is considered to be one of the first kinds of labour systems practised in colonial Africa. This system derives its name from South Africa. It was based on the principle that poor settlers, who were unable to cultivate their farms owing to lack of capitals, would allow the Africans to cultivate their lands and use them for grazing in return for a rent that was paid in nature like milk, manure, stock, crops or in cash. In Kenya, Kaffir farming was the overriding labour system prevailing during the first two decades of colonial rule. It was condemned by colonial officials as early

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91 Ibid.
93 Ibid.
as 1912, but it was practised until the 1930s. This disapproval of Kaffir-farming, expressed by colonial officials and wealthy settlers, sprang up from the fear that the Africans would acquire permanent rights to the lands they occupied and cultivated at that time. Additionally, labourers working under Kaffir system were difficult to control for they were protected by the Master and Servant Ordinance of 1906.\footnote{94 Tabita Kanogo, op.cit., p.17.}

Kaffir-farming was gradually disappearing to be supplanted by migrant and squatter labour. This would raise inquiries about the definition of squatting and its specificities and the features differentiating it from Kaffir-farming. Squatting was practised at a large scale in many British colonies like South Africa, Rhodesia, Zimbabwe and Kenya. The squatter labour system differs from Kaffir farming, for it was based on the principle that African tenants under the squatting system would pay the rent of the cultivated land in labour and not in cash or kind. Some historians like Bruce Berman\footnote{95 Bruce Berman is professor emeritus of political studies at Queen’s University. A native of New York City, he was educated at Dartmouth College (B.A., International Relations), the London School of Economics (M.A., Social Anthropology) and Yale University (M.Phil., Ph.D., Political Science). He had taught at Queen’s since 1971. Bruce Berman is the writer of many books. He is also the author, co-author and co-editor of six books and more than forty published papers. His early work focused on the political economy of the colonial state in Africa and its impact on African societies, including \textit{Control and Crisis in Colonial Kenya: the Dialectic of Domination} (James Currey/Ohio University Press, 1990), which won the Joel Gregory Prize from the Canadian Association of African Studies in 1991; and, with John Lonsdale, \textit{Unhappy Valley: Conflict in Kenya and Africa} (James Currey/Ohio University Press, 1992), which received the Trevor Reese Memorial Prize in Imperial and Commonwealth History in 1995. His recent publications include “Ethnicity, Patronage and the African State: the politics of uncivil nationalism,” \textit{African Affairs}, 1998; \textit{Critical Perspectives on Politics and Socio-Economic Development in Ghana}, edited with Wisdom Tettey and Korbla Puplampu (Brill, 2003). \textit{Ethnicity and Democracy in Africa} edited with Dickson Eyoh and Will Kymlicka (James Kymlicka Currey, Ohio University Press, 2004), http://www.queensu.ca/edg/bios/berman.html.(accessed on September 10, 2011).} regards squatting as being “the second of the most dominant forms of African labour to emerge, involved access to land on settler estates for cultivation and grazing in return for stipulated labour on the settler’s fields at minimal wage”.\footnote{96 Bruce Berman, \textit{Control and Crisis in Colonial Kenya: the Dialectic of Domination}, James Currey, Oxford University Press, 2006, p.62.} In order to tend their cultivated lands and look after their cattle, the Africans had to move to the European farms to settle there. This is why squatter labour was sometimes called ‘\textit{resident labour}'.\footnote{97 William Robert Ochieng & Robert M. Maxon. op.cit., p.177.} The move of the African labourers to reside on the European estates had put them at the permanent disposal of their masters.
The squatters’ system encompassed a symbiotic relationship between the settlers and the African labourers. The latter would rent their physical power, which consisted in the cultivation of lands, to the European landholders who would allow the Africans to exploit parts of the occupied lands and keep the products. In fact, the relationship between the European landholders and the Africans, under the squatter labour system, was materialized in a tacit agreement that was held between the settlers and the Africans without the direct and official intervention of the colonial authorities. Squatting was neither compulsory, nor official, but was authorized by the colonial government to underpin the settlers’ economy. Squatting was practised by under-capitalized settlers who had not sufficient resources to develop their farms at the early days of settlement and during the colonial period.  

Another form of labour had existed besides Kaffir farming and squatting in colonial Kenya, which was migrant labour. The Africans were sometime compelled to leave their rural homes to look for jobs in towns like Nairobi that was the hub of job seekers during the colonial period. Those who were lucky to get a job in Nairobi would work as shamba gardeners (small plots), cooks and domestic servants. Most of migrant Africans were their families’ breadwinners who had to provide the daily needs of their families and who had been overburdened with taxes by the colonial authorities. Despite the peculiarities of migrant labour, squatting as far as rural labour is concerned was the most important form of colonial labour, since it is concerned with agrarian societies which is the concern of this study. Thus, how were squatters recruited?

6) The Recruitment of Squatters in Colonial Kenya

Squatter’s recruitment was a very organized one. The European landholders were sometimes impelled to provide the African squatters with parcels of land, in addition to herd cattle in order to encourage their settlement on the Europeans’

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99 Shamba(s): Plot of land.
The Kenyan Districts of Naivasha and Nakuru were among the most opulent areas of Kenya. The formerly stated Districts included a large number of squatter-families; about 8,000 families were working in Nakuru District alone.\(^{102}\)

The first recruitment of labourers to take place in Kenya was in the Kikuyu District where labourers were promised large tracts of land for grazing and cultivation. An initial quantity of goats and cows was given to the early Kikuyu labourers; in return, those latter were asked to graze the settlers’ herds.\(^{103}\)

In addition to the economic drive, there was a bundle of reasons that spurred the Africans to seek labour on the European farms. For instance, some Africans fled the persecution of their authoritative chiefs.\(^{104}\) Other Africans living in the reserves, after they were evicted from their land, found themselves without any resources and were compelled to look for jobs outside their reserves on the European estates. Land size and infertility are also among the chief impulses that compelled the Africans to leave their lands.

If squatting was a new system of labour based on mutual agreements concluded between the Africans and their masters, to which extent was it beneficial to either of them? And what was its impact on the colonial policy on the whole?

Squatters had enabled many poor settlers with weak means of production to preserve their lands; on the other hand, squatting made the Africans more powerful as commodities producers, and many colonial officials were alarmed at the success realized by the squatters and regarded it as putting into jeopardy the existence of the colonial government. This spurred some officials, such as the District Commissioner of Naivasha to report in 1917 that ‘agriculture has made little progress except at the hands of native squatters.’\(^{105}\)

\(^{101}\) Tabita Kanogo, op.cit., p14.
\(^{102}\) Ibid.
\(^{103}\) Ibid.
\(^{104}\) Ibid., p.13.
Colonial officials regarded squatting as a potential danger more than an alternative that could be seized by the impecunious settlers who could not afford sufficient money to finance their agricultural projects, nor could they pay wages to hire labourers. This fearful situation, as regarded by the colonial government, had urged the latter to stiffen regulations to destroy tenants’ rights and control squatters. Those aims were concretized through the 1918 ‘Resident Native Ordinance’. The role of that ordinance was to eliminate any rights that the Africans could have on land owing to tenancy.

The Resident Native Ordinance aimed also at regulating squatting by defining the squatter as ‘Labour tenant’ where the Africans are asked to pay-cash rent to their masters. In this way, squatters would be employed under contracts whose duration would not exceed 180 days per year and it was applicable to all adult male members of the squatters’ family over 16 years old.

In other words, the Resident Labour Ordinance of 1918 sought to encourage squatting as a source of labour by bringing squatters under control through regulations that made Kaffir farming illegal, abolished the squatters’ rights as tenants and reduced them to the status of servants.

It can be concluded from what preceded that owing to the shortage of labour during the First World War period, the colonial government in Kenya tightened up the measures of labour recruitment through the use of a myriad of regulations to subdue the African free labourers, who were looking to work independently on their own and for their own accounts far away from the authority of their masters. In this view, the colonial government tried to restore order and called for it, by putting once again the African workers at the mercy of the settlers. In spite of those measures, some circumstances cropped up to imbalance the factors overriding the relationships existing between the Africans, the settlers and the colonial government in Kenya in favour of the African labourers during the 1930s. Hence, an inquiry about the economic atmosphere that characterized colonial Kenya during that period, and how it impacted on the

106 Ibid.
108 Ibid.
109 Ibid.
colonial policy is necessary. What were the different reactions of the three actors: the Africans, the settlers and the colonial authorities?
CHAPTER THREE

Land and Labour in Colonial Kenya, 1919-1953

During the period 1919 to 1953, Kenya was subject to many crises that struck it. The Africans participated in the two World Wars by sending their sons to battlefronts in Europe and Africa to join the British whether involuntarily by conscripting in the army or sometimes by joining the army forces deliberately because of the high salaries offered by the military service. In addition to the First and the Second World Wars, the Africans were affected by the Great Depression that struck the world and Kenya as well. But this economic crisis did not prevent them to reach high rate of cash crop production. If the Africans were leading the agricultural production after the First world War and mainly during the thirties, the settlers, however, grew powerful during the Second World War and through the 1940s, where they were leading agriculture due to the grants in aid allotted by the colonial government and because they were controlling key posts in the colonial administration through the District Councils.

The 1940s were not only marked by the breakout of the Second World War, but witnessed different important events both on the colonial and African scales. Actually, the colonial government after the end of the war tried to put more pressure on the Africans with regard to land and labour in order to subjugate the Africans and maintain them under its control. Thus, what characterized the period from the First World War and the Second World War and the post-war periods? And how did the Africans react towards the different measures taken against them with regard to land and labour?
I- Labour in Kenya during the Interwar Period, 1919 - 1930s

Despite the fact that the First World War period was characterized by its urgency that compelled the colonial government of Kenya to take stringent measures to control the availability of labourers by means of the set of regulations it enacted like the Native Follower Ordinance of 1915, forced labour remained the predominant and the most sought form of labour during wartime. The post-war was a period during which the colonial government of Kenya encountered serious problems due, to the settlers’ complaints about labourers’ shortage, because the Africans refused to work in the Europeans farms. This situation led the settlers to exercise more power on the colonial government to enact regulations to force the Africans to work for them.

In addition to the settlers’ influence, the colonial government of Kenya was struck by the Great Depression of 1929, which coupled with natural disasters had deeply affected the colonial economy. All those problems would raise a set of questions: first, how did the colonial government face the outrage of the settlers about the shortage of labour? Second, what were the measures undertaken by the colonial government of Kenya and the Colonial Office to rescue Kenya’s economy from an obvious failure? Third, how did the colonial government of Kenya face the losses caused by natural disasters to agriculture, knowing that Kenya had an agrarian economy that was destined to generate profits from cash crops exportation?

1) Labour Shortage and the Northey’s Crisis during the 1920s

The interwar period was marked by an economic slumber that was epitomized by the depression periods taking place during the 1920s and the 1930s. The first depression struck Kenya between 1921 and 1922, but was followed by a slight economic progression in 1923 and was affected by some fluctuations that lasted until 1929.¹

During the 1919-1923 period, the Europeans wanted to expand their export market, but agriculture suffered from a dire shortage in labourers. This was mainly due to many factors, among which epidemics and diseases that decimated many Africans,\textsuperscript{2} malnutrition that the Africans suffered from while serving in the carrier corps, in addition to forced conscription into the army that had reduced the number of civil labourers. The year 1919 marked the end of the First World War that created a suitable atmosphere for the Africans and the settlers to recover from a long period of instability. However, this recovery was impossible without recourse to the main denominator that was the African worker. In order to overcome the shortage of labourers, the colonial government under the leadership of Governor, Sir Edward Northey,\textsuperscript{3} enacted a circular on 23 October 1919 in which it was ordered that:

\textsuperscript{2} Bruce Berman, \textit{Control and Crisis in Colonial Kenya}, op.cit., p.143.

\textsuperscript{3} Edward Northey was the Governor of the East Africa Protectorate. Edward (always called Eddie) was born in May 1868 in Cockerham and educated at Eton and Sandhurst. He was commissioned into the King's Royal Rifle Corps (the same regiment as his uncle, Francis Vernon) in 1888. He served on expeditions to Hazara and the Miranzai Valley in 1891 and to Isazai the following year. At that time, the North-West Frontier was part of India (now Pakistan) and controlled by the British, but there were frequent rebellions. Edward also served in the Second Boer War from 1899-1902, twice being mentioned in dispatches. He was at the Battle of Talana (1899) and fought at Ladysmith, the Transvaal, the Orange River and the Cape Colonies, receiving the Queen's Medal with five clasps and the King's Medal with two. At the beginning of the First World War Edward was a Lieutenant Colonel, commanding the 1st Battalion of the 60th Rifles on the Western Front: the Battalion took part in the retreat from Mons, the Battles of the Marne and Aisne and was also at Ypres. In 1914, he was shot in the shoulder after crossing the Aisne and was at home in Epsom recovering when his father died and news was received of his brother William's death at Boulogne. In February 1915 he was promoted to Brevet-Colonel and appointed ADC to King George V. The next month he was promoted to Brigadier-General commanding an Infantry Brigade and was seriously wounded in the thigh by shrapnel at the 2nd Battle of Ypres (which consisted of four separate engagements from April to May 1915); he was again mentioned in dispatches. He returned to duty in 1916 and was posted to Nyasaland (now Malawi, then a British Protectorate) to command the Nyasaland Rhodesian Field Forces, which entered German East Africa on 25 May 1916. The German commander was General Paul Emil von Lettow-Vorbeck, who, despite the Allied advances, managed to hold out right up to the Armistice, using a force largely composed of Askaris. In 1917, Edward was appointed a Companion of the Order of the Bath. In 1918, he was knighted and promoted to Major-General. Subsequently, he was made a Knight Grand Cross of the Order of St Michael and St George. Edward returned to Britain in 1923 and in 1924 took command of the 43rd (Wessex) Infantry Division, which was a Territorial Army unit, combined with command of the South West area of Britain. He retired from the Army in 1926. In addition to the honours already mentioned, he was the recipient of the Bronze Star for Mons, the Officers' Cross of the French Legion of Honour, the King and Queen's Coronation Medal and one red and three blue chevrons\textsuperscript{4} for his service in the First World War. On retirement, Edward bought a house near Dunster in Somerset, became a magistrate and was Deputy Master of the West Somerset Fox Hounds. Following the death of his mother, Florence, in 1928, he took his family to live at Woodcote House. Anna Evangeline, Sir Edward’s wife, died after a lengthy battle with cancer in 1941, whereupon Edward sold Woodcote and moved to Berkshire. He died on Christmas Day 1953. http://www.epsomandewellhistoryexplorer.org.uk/ Northeys9.html, (accessed on October 4, 2013).

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All Government officials in charge of native areas must exercise every possible lawful influence to induce able-bodied male natives to go into the labour field. Where farms are situated in the vicinity of a native area, women and children should be encouraged to go out for such a labour as they can perform. Native chiefs and elders must at all times render all possible assistance on the foregoing lines. They should be repeatedly reminded that it is part of their duty to advise and encourage all unemployed young men in the areas under their jurisdiction to go out and work on a plantation.4

But this circular that projected to gather the highest number of African labourers to work on European farms had created a kind of contradictions, for it intended to force the Africans who were working on their own land to leave it and be hired by the European farmers; at the same time, the African farmers aimed at expanding commodity production and this circular inhibited them from working as such. The Africans were torn between two forces: between being labourers under the commands of settlers and being free labourers working on their own and for their own benefits.

In order to reinforce the 1919 circular, the colonial government, put more pressure on the Africans by increasing the hut or poll tax to eight rupees in 1920,5 in order to incite the Africans to look for more jobs to pay their taxes, and subsequently increase the number of labourers needed to work on the Europeans’ farms.

Moreover, a new ordinance was introduced in 1920 labelled the ‘Native Authority Amendment Ordinance’. The latter endowed the chiefs and headmen with the power to deploy compulsory labour for the purpose of public utilities for up to 60 days a year. This was done in addition to the existing compulsory unpaid 24 days a year labour. However, Africans were exempted from compulsory labour unless they would enter in contract for three months labour on settlers’ farms. In other words, those circulars and orders had made of the Africans a manipulative force at the disposal of the colonial authorities and under the permanent control of the settlers.

4 Bruce Berman, op.cit., pp.145-146.
Actually, Northey’s circulars aroused a disagreement in both the House of Lords and House of Commons and both rejected the circular. In 1921, Winston Churchill was appointed Secretary of the State, and he forbade compulsory labour for private purposes, but he did not ban compulsory labour for public purposes, and this was achieved through the help of chiefs who were asked, under traditional communal labour, to supply the necessary labour force.\(^6\) Churchill built his argument on the premises that compulsory labour was an extension to the traditional duty that the natives owed to their chiefs and they had to fulfil under their traditional life.

Although the British colonial authorities had resorted to regulations in extracting labourers from peasants, this practice was not always tolerated as some ordinances were rejected by the judicial branch. In 1923, the Supreme Court declared that a squatter was a tenant and not a servant;\(^7\) and in this way, it exempted him from punishments that could be inflicted on him on the ground of the Master and Servant Ordinance.

However, in 1925 a new Conservative Minister issued a new Resident Labour Ordinance,\(^8\) which made of the squatter’s failure to carry out his duties and to reside on an estate without the permission of its holder a punishable offence that merited sanctions.

Although the succession to power was fulfilled by both the Conservative and Labour Party, they both sought to tighten up control over the Africans to supply the labour force needed by the European settlers and the public service. This was first achieved through a myriad of ordinances and measures that had traced the broad-lines for the colonial administrators to subjugate the Africans. Furthermore, other methods were implemented in order to control the movement of the African labourers by reserving areas for the Africans to live in and exploit the land located within it as far as the reserved land could suffice the needs of the Africans living on it.

\(^7\) Bruce Berman, op.cit., p.149.
\(^8\) Bruce Berman, and J.M Lonsdale, *Unhappy Valley: Conflict in Kenya and Africa*, op.cit., p.,114
If the reserves were so important to the colonial government, this would raise the following question: how did the latter put into effect the native-reserves scheme and how did it manage to control the mobility of the African-contracted workers? And to which extent were all the measures taken by the colonial government efficient to overcome labour shortage?

2) The Use of Reserves and Registration System to Control the Flow of Labour in Colonial Kenya

The British colonial authorities in Kenya devised every legal means to control the mobility and the availability of the African labourers. This was achieved either through the enactment of new ordinances, or through the reinforcement of old regulations by new ones. In order to control the mobility of the Africans, the colonial authorities made use of two main devices: the creation of reserves and the establishment of a registration system. So, how did the colonial authorities put into effect those devices?

As the Africans were alienated from their lands, they found themselves without any land to live on or to gather within as a tribal community. In order to remedy to this situation, the British colonial authorities reserved official parcels of land for the Africans to live on. Those reserves were governed by the Crown Land Ordinance of 1915, which empowered the Governor with the authority to reserve land for the use of African tribes, and cancel boundaries of the land that exceeded their needs. In 1926, the administration gazetted 24 tribal reserves covering 46,838 square miles; 14,600 square miles were in the sparsely populated Masai reserves.

Parallel to the Crown land Ordinance of 1915, the British colonial Government of Kenya introduced in the same year a system of registration labelled ‘The Kipande’, which was introduced in the Registration of the Natives Ordinance. The latter was

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9 Bruce Berman, *Control and Crisis in Colonial Kenya*, op.cit., p.150.
11 Bruce Berman, op.cit., p.147.
first passed in 1915 and brought into force in 1919-1920,\\(^{12}\) and required that every African male aged over 15 years to register before an administrative officer,\\(^{13}\) and to be issued with a fingerprint-certificate identity. The Kipande was kept in a cylinder of metal hung around the African labourer’s neck, and containing every personal information related to the African labourer: the type of work allotted to the labourer, his age and the rations he received. Each time the labourer was employed or left employment, he would be signed in or off by his employer; and in case of desertion, he would be arrested by the police and pursued in justice.\\(^{14}\) Owing to the Kipande, even employers became liable to penalties if they refused to sign off their employees at the end of the contract.

The Kipande proved to be more beneficial to the settlers who could control the movement of the African labourers. It was pretended by the colonial authorities that the Kipande aimed at protecting the Africans’ rights as it was stated by John Ainsworth, a colonial senior and a very prominent defender of the Africans’ rights, that the Kipande would protect the Africans by providing greater job security and making it harder for settlers to defraud them of their wages.\\(^{15}\)

From the organizational point of view, the Kipande was an efficient device in preventing desertion of the African labourers and keep their wages at the lowest level than they could estimate, as their bargain over new jobs could be checked from their reports in the Kipande. Actually, owing to the Registration of the Natives Ordinance, the number of convicted labourers had decreased. There were 2,220 successful prosecutions under the Registration of Natives Ordinance in 1921, which equaled 60 percent of the 3,959 desertions reported during the year.\\(^{16}\) In 1922 desertions had fallen to fewer than three per thousand labourers.

\\(^{12}\) Ibid.
\\(^{13}\) Ibid.
\\(^{15}\) David. M. Anderson, op.cit., p.147.
\\(^{16}\) Ibid.
Moreover, the Registration of Natives Ordinance put more power between the hands of employers who abused of its usage against their labourers, and the Kipande proved to be humiliating for the great bulk of Africans that were all the times harassed by the officials, as they were reported in their personal documents - the Kipande- as trouble makers or criminals.\textsuperscript{17}

However, this humiliation that the Kipande had caused to the Africans did not keep them unbiased towards the economic exploitation, social segregation and oppression exerted on them by the British colonial Government and the settlers alike; and consequently they reacted vehemently against those colonial mistreatments through protests.

At the beginning of 1922, Kenya witnessed the rising of the Luo and Kikuyu peoples who organized themselves in political organizations.\textsuperscript{18} The Luo were led by several young educated missions, and they formed with some official chiefs meetings through which they protested and presented their complaints to the colonial authorities in the name of ‘Piny Owacho’, which means ‘The country says’, or ‘We the people say’.\textsuperscript{19}

Similarly, in the Kikuyu areas, the ‘East African Association’ appeared in 1921 under the leadership of Harry Thuku\textsuperscript{20} who was a clerk in the Treasury in Nairobi.

\textsuperscript{17} Bruce Berman, \textit{Control and Crisis in Colonial Kenya}, op.cit., p.147.
\textsuperscript{18} Ibid., p.199.
\textsuperscript{19} Ibid.
\textsuperscript{20} Thuku, Harry (1895–1970), Kenyan nationalist politician and farmer, was born near Kambui, Kiambu District, Kenya, to Wanjiku (d. 1934), the fourth wife of Kairianja (d. 1899), an elder of the powerful Gathirimu clan of southern Kikuyu. In the same year Britain declared a protectorate over Kenya. Having lost his father, a farmer, at an early age Thuku abandoned his family's goats to herd for the Gospel Missionary Society mission station at Kambui, founded in 1902. At sixteen, he was literate in Swahili and English, the diminutive Thuku sought work in Nairobi, a tin-roofed railway town notorious for its insanitary slums no less than for its excitable white-settler politics. Having started as a bank messenger he was gaolled for two years for forgery. Next he became a compositor for a settler newspaper, and then telephonist at the treasury. Thuku took a leadership in African protests after the First World War against the pro-settler policies of the governor, Major-General Sir Edward Northey dealing with women's forced coffee-picking labour; the Kipande system; higher taxes; and threatened wage cuts. In June 1921, influenced by Baganda in Nairobi, Thuku formed the Young Kikuyu Association, in imitation of the Young Baganda Association, which he soon renamed the East African Association and which became multi-tribal, if largely Kikuyu. Thuku advocated civil disobedience as a political weapon. His arrest on 14 March 1922, for threatening peace and good order, caused popular disturbances in Nairobi. A crowd attacked the police station where he was detained, and police and settlers shot dead 25 African
Broadly speaking, all those organizations had expressed their explicit rejection of increased work, taxes, unpaid compulsory employment of Africans for public works as well as the alienation of tribal lands to white settlers. \(^{21}\)

The educated African elites tried through political activism to advocate peoples’ rights and impart their grievances to the colonial authorities, but this was regarded as inconvincible for the Africans who waged a violent demonstration in Nairobi in March 1922 and which resulted in 21 Africans dead and 28 wounded. \(^{22}\) The colonial authorities, on their parts, moderated their labour policy; announced the reduction of hut tax; disabled government labour camps; and put an end to recruitment carried by the chiefs and Provincial Administration. \(^{23}\) In addition to the measures taken by the colonial government to control labour, there existed other factors that affected the availability of labour and impacted heavily on the economy of Kenya; those causes were epitomized in the natural calamities that hit Kenya during the 1920s. So, how did natural disasters impacted on Kenya’s economy and subsequently on labour?

demonstrators. Africans subsequently believed (with some exaggeration) that this excess of oppression shamed the British government into issuing, in 1923, the Devonshire declaration \([\text{see Cavendish, Victor Christian William, ninth duke of Devonshire (1868–1938)}]\) that Kenya was an African, not settler, territory, in which native interests were paramount. In 1935, after clashing with his political heirs, radicals in the Kikuyu Central Association of which he was elected president in August 1932, he founded a new party, the Kikuyu Provincial Association. He favoured gradual constitutional advance, and his association became dedicated to agricultural improvement in alliance with the colonial administration. When war broke out in 1939, he supported the Government. In 1944, he helped to found, and was first chairman of, the multi-tribal Kenya African Study Union (KASU) that was renamed the Kenya African Union (KAU) in 1946. This acted as a constituency association for the first black member of Kenya’s legislative council, Eliud Mathu, who had been nominated by the governor after consulting elite African opinion. Not until 1948 did Thuku consolidate his respectability with a Christian marriage to his long-standing ‘customary’ wife, Tabitha. By then Kikuyu politics was sharply divided between the moderate constitutionalism of landed elders and the secret, potentially violent impatience of the young and landless that erupted, in the early 1950s, in the Mau Mau emergency. Thuku, protected by the police and allied with Dr Louis Seymour Bazett Leakey (1903–1972), palaeontologist and self-proclaimed ‘white Kikuyu’, committed himself to the British, and proprietied Kikuyu, cause. To support its military campaign of counter-insurgency, the colonial government embarked on a second prong of agrarian reform that stripped white farming of many of its former protections. Thuku was one of the first Kikuyu to be permitted to plant coffee, and in 1959 became the first African board member of the Kenya Planters Coffee Union. He celebrated the day of Kenya’s independence, 12 December 1963, by planting out coffee seedlings, in defiance of quota controls, while every official back was turned. A few years later, in his seventies, he supported Kenya's claim for a larger coffee quota by setting fire to his coffee nursery in front of television cameras. Following a short illness, he died in Nairobi on 14 June 1970. \(\text{http://www.oxforddnb.com/templates/article.jsp?articleid=75842&back=}\) (accessed on November 12, 2013).

\(^{21}\) Ibid.

\(^{22}\) Ibid.

\(^{23}\) Ibid.
3) Natural Disasters and their Impacts on Labour

The 1920s had witnessed other changes that affected Kenya’s economy. In 1928, the agricultural situation witnessed the beginning of difficulties owing to the natural disasters that struck Kenya. The rainfalls were scant and drought hit even the most prominent agricultural districts in Kenya such as Kerio District and the Northern Frontier Province, where drought was very serious; moreover, the Ukamba people suffered from locust invasion by the end of the year. By contrast, agricultural production was higher in Nyanza Province than in other districts, but maize production was still below the average.\(^{24}\) Maize production had fallen owing to rain shortage and in some areas like Nakuru District it failed completely owing to drought.\(^{25}\) Drought and locust had destroyed, to an important degree, the amount of maize destined for exportation. The quantity between 1920 and 1927 totalled 1,100,708 bags, and it fell to 805,801 bags in 1927-1928, although locust did not hit severely native crops in the reserves, since it came only by the end of the year after the crops were ripening.\(^{26}\) In the same way, the 1920s also witnessed an acute decrease in coffee production as it reached 7,800 tons in 1928, whereas it was 12,300 tons in 1927.\(^{27}\) In fact, crops production had not only been affected by natural disasters, but labour shortage was also among the main factors that caused the ruins of certain farmers like in Trans Nzoia District.

Notwithstanding the natural disasters and human factors that had affected both native and European agriculture, this did not discourage the colonial authorities from promoting settlement programmes in Kenya. In this respect, the colonial authorities, through the Advisory Committee, established a settlement scheme.\(^{28}\) Those settlement programmes were buttressed by the creation of a new body destined to facilitate the integration of settlers within the host country, while endowing them with the necessary means to carry out their businesses. For this reason an Advisory Land Board was established to promote settlers’ living conditions.

\(^{25}\) Ibid., p.23.  
\(^{26}\) Ibid., p.35.  
\(^{27}\) Ibid.  
\(^{28}\) Ibid.
In October 1928, the Advisory Committee was consulted on matters related to land alienation and it proposed that an Advisory Land Board be established to advise the Governor on proposals for: alienation of land under ordinary conditions; schemes for the development of unopened areas; closer settlement proposals and all matters in connection with it; applications for direct grants of lands, and for adjustment of farm boundaries; alleviation of development or other conditions in leases of farms.

In November 1928 an Advisory Land Board was appointed. Accordingly, About 72,000 acres had been devoted for scheme settlement to non-native races that included:

a) Small holdings of 200-300 acres for local land overseas applicants of small means. This covered the Trans Nzoia District where 28000 acres were marked.

b) Mixed farms of 750 to 1,500 acres for local applicants with some means.

c) Land grants to retiring civil servants. This included officers nearing retirement from the service of any of the East Africa group of dependencies, and the Kenya and Uganda Railways and Harbours administration.

Other disasters had cropped up during the 1920s to exert more pressure on Kenya’s economy and this pressure resulted from the Great Depression that struck Kenya as well as many industrialized nations across the World. Thus, what was the impact of the Great Depression on Kenya’s economy? And how did it affect the African labour?

4) The Great Depression and the Labour Crisis in Kenya during the 1920s and 1930s

The years that followed the First World War were affected by the worsening impacts of the war that caused the loss of infrastructures of many countries across the world that were affected by the war, which led to an economic slumber, but the greatest problem that had a disastrous impact on world’s economy was the Great Depression of 1929. Great Britain, which built its colonial economy on cash crop exportation tried to adapt it to the restrictions dictated by the crisis of 1929. Those restrictions were

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29 Ibid., p. 64.
epitomized in prohibiting the cultivation of certain staple products that were destined for exportation by the European settlers.

The colonial economy in Kenya was based on agriculture, since raw materials, such as copper, zinc, and the like were not profitably exploitable, owing to their scarcity on the Kenyan soil. For this reason, Great Britain directed its efforts towards agriculture. The 1930s represent a classic case where Great Britain followed a discriminatory policy based on the encouragement of the settlers’ cultivation of any cash crops and the prohibition to Africans to cultivate certain crops.30

During the 1930s, Great Britain encouraged the cultivation of certain staple crops in Kenya such as tobacco, cotton and rice, but great encouragements were given to the European farmers to cultivate coffee,31 while the Africans were prohibited from its cultivation under the pretence that it would whet their appetites for high wages and would discourage them from asking jobs on Europeans farms,32 which would result in high costs of labour.

Economically, Kenya was not immune from the different financial crises that blew the world during the interwar period. The year 1929 witnessed the Great Depression. This crisis affected the greatest European powers as well as their dependencies across the world. The British colonies are a case in point, and Kenya is a vivid example of the impact of the Great Depression. The latter had its effect on the value of certain cash crops such as sisal wheat and coffee, which lost their export values with regard to production costs during that period.33

The 1930s also witnessed other calamities that struck Kenya’s economy. Climatic changes and locusts had harmed heavily the Kenyan agricultural products.34 In May

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31 Ibid.
32 Ibid.
34 S. M. Lind Holms, op.cit., p.73.
1930, the Governor of Kenya, Sir Edward Grigg\textsuperscript{35} had reported to the Secretary of the State for the Colonies, Lord Passfield\textsuperscript{36} that Kenya, as well as other nations across the world, suffered from abnormal climatic conditions, which in the previous few months, had delayed the delivery of agricultural products to overseas markets.\textsuperscript{37} In the same way, locust had ravaged the Kenyan cash crops in 1931 in the foremost agricultural

\textsuperscript{35} Edward William Macleay Grigg (1879–1955), first Baron Altrincham colonial administrator and politician, born on 8 September 1879 in Madras, the only son of Henry Bidewell Grigg (d. 1894) of the Indian Civil Service and his wife, Elizabeth Louisa (d. 1920). Edward Grigg was a journalist. In 1903 he joined the \textit{Times’} staff as a secretary to, G.E Buckle, the editor. Then, moved to the Outlook as assistant editor, (1905-1906), to J.L Garvin. When the First World War broke out Grigg joined the Grenadier Guards as an ensign. Owing to his Keenness in leadership, Grigg was to the rank of lieutenant-colonel and GSO1 of the Guard division. In 1925, he was appointed governor of Kenya. He was in charge of unifying the tree territories of Uganda, Kenya and Tanganyika. Although he did not succeed in his mission, he brought substantial economic improvements to Kenya in different fields like agriculture, forestry, communications, schools, town planning and security of land tenure At the second World War Grigg was appointed parliamentary secretary to the Ministry of Information. And in April he became financial secretary and in May joined parliamentary –under secretary, at the War office. The defeat of Churchill government in July 1945 put an end to his political ambitions and his active political Life. He was created Baron of Altrincham and died at his house in Gloucestershire, on 1 December 1955 after a long illness. See Oxford dictionary of National Biography: \url{http://www.bookrags.com/biography/sidney-james-webb/} (accessed on November 30, 2013).

\textsuperscript{36} Lord Passfield (Sidney Web), James Webb, Baron Passfield (1859-1947), was an English social reformer and a leading Fabian Socialist, a historian of social and economic institutions, founder of the London School of Economics and Political Science, and Cabinet Minister. He was educated in Switzerland, Germany, the Birkbeck Institute, the City of London College, and through his own intensive reading. After a brief period of employment in the office of a firm of colonial brokers, he entered the civil service in 1878. In 1885 he was called to the bar and in the following year received his bachelor of laws degree from London University. In 1885 Webb joined the Fabian Society and soon became a dominating influence on that organization. In 1891, he resigned from the civil service to run successfully for the London County Council. During most of the next 2 decades he was chairman of the Technical Education Committee of the council and brought about a thorough going reform and centralization of the educational system in London. In 1895, he became the founder of the London School of Economics and Political Science. In 1892, Webb married Beatrice Potter. From that time on, their work merged so thoroughly that it is impossible to distinguish their individual contributions. Among the earliest and most notable of their works are \textit{The History of Trade Unionism} (1894) and \textit{Industrial Democracy} (1897). Later there were nine massive volumes of the history of \textit{English Local Government}, the first of which appeared in 1906 and the last in 1929. By 1910 the Webbs decided that the Fabian policy of working through the existing political parties without partisan involvement had outlived its usefulness, and the Fabian Society threw its weight behind the Labour party. From 1915 to 1925 Sidney was a member of the party executive. In 1920 he was elected to Parliament, and in 1924 he was appointed president of the Board of Trade. Although he retired from office in 1928, he was called out of retirement in 1929 to serve (as Baron Passfield) as secretary of state for the colonies. After the fall of the Labour government in 1932, the Webbs toured the Soviet Union and extolled it in their \textit{Soviet Communism: A New Society} (1935). Beatrice died in 1943, and Sidney on Oct. 13, 1947. Source Oxford dictionary of National Biography, op.cit, \url{http://www.bookrags.com/biography/sidney-james-webb/} (accessed on November 30, 2013).

\textsuperscript{37} Ibid.
provinces of Nyanza, and in the western and eastern agricultural provinces of the Rift Valley.38

The Great Depression did not only affect agriculture and the prices of cash crops destined for exportation, but it had also harmed the labour market. It was impossible with the increase of production costs to hire Africans to work on European farms. In order to cope with such a situation, the European settlers tried to curb their expenditures by diminishing the superficies of the cultivated land and reducing the number of labourers employed on their farms.39 Lucky were the Africans who found jobs during the depression period, as the District Commissioner of North Kavirondo had remarked:

As early as March and April [of 1931] when natives were being urged to go out to earn their tax, one heard of the number that had tried to obtain work and failed to do so. At that time, one was inclined to believe that men were refusing work because they could not get the amount of the money they got in former years. While this was true in some cases, evidence was soon forthcoming that labour was turned away in large numbers, and those that were lucky enough to get any had to take such wages as were offered.40

Thus, the number of Africans recruited saw an increasing decline as early as 1930. The number of recruited labourers was 2,732 in 1930; then 1,928 in 1931 and finally 1,228 in 1932.41

In fact, the year 1930 was a very important land-mark in the history of Kenya as well as the history of Great Britain’s colonial dependencies. In this year, Great Britain, with the presence of 22 members of the League of Nations, held a convention of the International Labour Conference in Geneva, in June.42 Actually, the conference did not aim at prohibiting compulsory labour, but rather setting some recommendations to

38 Nicholas Ekutu Makana, op.cit., p.75.
39 Ibid., p.76.
40 Ibid., p.77.
41 Ibid.
regulate it, as it was revealed explicitly from its clauses. This implies that there was a kind of legitimization of forced labour on behalf of the colonial powers.

During the 1930s, Kenya witnessed an economic boom that was triggered by the discovery of gold in Kakamega District. The discovery of gold gave Kenya a potent economic impetus, but this economic relief did not last for a long time, although it helped improve the financial situation of Kenya at a certain time. Gold mine in Kakamega had absorbed a great mass of Africans; about 10,000 Africans were coming from the surrounding farms and represented the great bulk of workers, while the number of whites recruited on mines reached 1000 workers.

Additionally, agriculture also contributed to the betterment of Kenya’s economy during the 1930s, owing to the production of cash crops like pyrethrum that reached a very high quality and whose cultivation increased from 425 acres in 1933 to 3 794 acres in 1936. The same year witnessed the production of maize in Kenya in a very remarkable atmosphere. The Africans did not only produce maize in huge quantities, but also in higher quality than that cultivated by the settlers, which facilitated its exportation to overseas markets.

The amount of cultivated crops could not have been realized without the deployment of a large number of labourers. The squatters are a point in case. The overpopulation that developed in the reserves led many Africans like the Kikuyu to leave those reserves to seek new settling areas where they could lead their lives by relying on their own labour to subsist, and to look for jobs on the settlers’ farms that they found out suitable to practise their labour. About 100,000 squatters were working on European farms in 1936. Just before the outbreak of the Second World War, the

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44 S. M Lind Holms, op.cit., p.110.
46 Ibid., p.119.
labour market in Kenya saw a remarkable relief in 1937. A great number of Africans was recruited by the European, Asian as well as native employers.\textsuperscript{47}

The average number of African adult males registered in employment during 1938 was 172,760. In addition to males, a considerable number of females and juveniles were employed in picking pyrethrum, where juveniles proved to be more efficient than women.\textsuperscript{48} It was estimated that 5,000 juveniles were also employed on tea estates, 4,000 in sisal industry and 1,500 worked in mines.\textsuperscript{49}

Actually the availability of African labourers was affected by many factors. From January 1938 until the end of May, supply of labour was adequate and during June and July there was a decrease in demand on sisal estates owing to the shortage of rain which caused a decrease of sisal production and which, consequently, implied regression in the number of labourers employed in cultivation.\textsuperscript{50}

The enactment of new regulations to organize the labour market had also impacted on labour demand. For instance, many settlers during the period from September to October were unable to recruit labourers because they failed to accommodate with the \textit{‘Natives Employment Ordinance’} of 1937 that imposed on the employer to obtain a license to recruit labourers and for the employee to get a work permit to be authorized to work.\textsuperscript{51} Because of the settlers’ lack of information about the newly enacted ordinance, it was difficult for them to recruit labourers. Inspections forbade the settlers to employ any labourer who was not in conformity with the Natives Employment Ordinance. The situation improved by November when the settlers became cognizant with the previously stated ordinance, complied with it and, consequently, managed to recruit labourers by getting licenses for them. The Natives Employment Ordinance was applied in the colony of Kenya at the end of April 1938. After September 1938, a

\textsuperscript{47} Annual Report on the Social and Economic Progress of the People of the Kenya Colony and Protectorate, 1937, p.29.
\textsuperscript{48} Ibid., p.30.
\textsuperscript{49} Ibid.
\textsuperscript{50} Annual Report on the Social and Economic Progress of the People of the Kenya Colony and Protectorate, 1938, p.31.
\textsuperscript{51} Ibid.
systematic check of licenses and work permits was conducted by the colonial authorities.\footnote{Ibid.}

It could be deduced from what preceded that the colonial authorities in Kenya were not able to establish a very efficient system of labour employment, as it lacked a solid agrarian policy that could ensure a decent labour for the Africans as the use of force and compulsion were the predominant means to supply labour at that time. The colonial policy in Kenya was affected by different external and internal factors that had affected it. Thus, what were the different measures undertaken by Great Britain to control labour in Kenya during the Second World War? And what characterized the colonial policy in Kenya during and after war time in order to ensure the survival of the colony as well as its competitiveness at the international market level?

II- The Colonial Policy of Land and Labour, 1939 - 1953

The First World War had a deep effect on the course of world’s policies set by the colonial powers to rule their nations and their colonies. The atrocities of the First World War and the disasters it caused to humanity had led to the emergence of new organizations like the League of Nations that advocated for peacekeeping across the world and promoting the welfare of poor nations and countries under colonial rule. The idea of welfare promotion was among the main ideas that influenced great powers like Great Britain at the outburst of the Great Depression in 1929 and during the 1940s. Welfare promotion was also embodied in the recommendations made by the League of Nations’ members, under the leadership of the United States and Great Britain in order to enhance the status of peoples living in the motherlands, the colonies, or were under the mandate of the League of Nations, whereby the Leagues’ members recommended and permitted recourse to the deployment of forced labour for public purposes and insisted that it must be practised in a moderate way and in conditions different than those characterising slavery.\footnote{Jean Allain, \textit{The Slavery Conventions: The Travaux Préparatoires of the 1926 League of Nations Convention and the 1956 United Nations Conventions}, Koninklijke, Netherland, Brill NV, Leiden, 2008, p.12.} Nevertheless, if the recommendations ratified by the great
powers, under the auspices of the League of Nations, implied that labour should be conducted in a humane way, then how did Great Britain deal with labour in its colonies and specifically in Kenya during and after the Second World? And to which extent was forced labour in accordance with the welfare policies practised in the British colonies and namely in Kenya?

1) The Policies Instituted by Great Britain to Promote Development and Welfare Schemes in her Colonies.

Owing to the different crises that struck the economies of the world during the 1920s, 1940s, and after the Second World War, many European Governments tried to counter those problems by setting a kind of national welfare policy whereby to dilute the effects generated by those economic crises and promote the living conditions of their peoples by financing the most vital fields for their nations, including infrastructures like housing, transport, roads building, and improving services such as education, health and social insurance. All those measures were taken in order to enhance the living standards of peoples and in order to maintain stable-national, political, social and economic standards. The same welfare policies adopted by the European powers in their home countries were adopted in their colonies. Welfare policies were used by the colonial governments in their colonies as a valve of security in order to pacify their subjects whenever they felt a threat to their colonial regimes.

Like many European colonial powers, Britain had tried to adopt a welfare policy in her colonies as it did in Kenya in order to maintain order and stability of its colonial rule. Kenya had witnessed different crises like the Great Depression of 1929 whose impact had lasted until the 1930s. During that period, the Africans were subject to different discriminatory policies that covered different fields of their daily lives, whether at the economic, social or political levels. The unfair treatments of the Africans by British colonial rule culminated in the outbreak of a set of riots, protests and uprisings that first started overseas in the West Indies during the 1930s and propagated

See [http://books.google.dz/books?id=qj7b0hglG51C&pg=PR3&hl=fr&source=gbs_selected_pages&cad=3#v=onepage&q&f=true](http://books.google.dz/books?id=qj7b0hglG51C&pg=PR3&hl=fr&source=gbs_selected_pages&cad=3#v=onepage&q&f=true) (accessed on October 12, 2013)
to reach East Africa and mainly to strike Kenya. After the happening of those events and the disasters caused by the Second World War during the 1940s, the British Colonial Office and the British colonial Government of Kenya found themselves in a tight situation, where they had to look for compromises to appease the escalating outrages of the revolting populations, and the only alternative to face this popular discontent was to set a welfare policy whereby they could absorb the Africans’ anger by improving their living conditions and countering their increasing problems.

The welfare policy set by the British Government in the homeland, in the different colonies, and specifically, in the colony of Kenya was covering different vital sectors such as communication and transport, agriculture, public health, land, fishery, and many other important sectors (see Table, p.93). This policy was conducted under the 1929 Colonial Development Act that was intended, under the recommendation of the Labour Party, to grant money for the colonies for the sake of developing them in the fields of agriculture and industry, in order to promote commerce with Great Britain.\(^{54}\) The welfare policy implemented by Great Britain in colonial Kenya targeted the fields of agriculture, transports, harbours fisheries, forestry, surveys, land reclamation and irrigation, water supply, electric power and public health. The same policy was carried out during 1940 under the Colonial Development and Welfare Act. Huge sums of money were spent on welfare projects in the British colonies, where certain projects took the lion’s share for the financial aids granted under the Colonial Development and welfare Act. The budgets allotted for the colonies during 1940 varied from one field to another, according to the priority given by the British Government for each field, and due to the urgencies imposed by Second World War. For instance, public health witnessed a sharp increase of grants from 10 percent in 1939 to 40 percent in 1940. The same thing happened with agriculture whose grants increased from 14 percent in 1939 to 18 percent in 1940 (see table, p.93).

### Table: Percentage of Total Assistance Recommended by the Type of Scheme under the Colonial Development Act, 1930-1940

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<th>1930*</th>
<th>1931</th>
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* To February 28, 1930. All other years ended in March 31, the following year.
** To July 17, 1946.

As far as land and labour are concerned, and since Kenya was an agrarian colony that depended on cash crops export, how did the British Colonial Office and the colonial government of Kenya deal with labour and land during the Second World War and during the post-war period in order to overcome its economic problems? And what was the effect of welfare policy on the Africans?

2) The Agrarian Wartime and Post-war Policies, 1939-1948

Like the First World War, the Second World War had a disruptive effect on Kenya’s colony as well as many countries across the world. The experience acquired by the Government of colonial Kenya during the First World War was beneficial to it, since it taught it how to handle crises, especially those related to wartime. During that period, the colonial government implemented a dual policy that was paradoxical in its aim. On the one hand, it tended to promote the Africans’ welfare by promoting native agriculture, in order to overcome shortage of cash produce during the war. On the other hand, it conducted an agricultural policy that was both discriminatory and oppressive in its aims in that it privileged the settlers, especially, with the regard to the derisory prices the colonial government gave to Africans when compared with the high prices granted to the settlers for their products. The negative aspect of the welfare policy was coupled with the extraction of labour power by force from African the peasantry, and this was achieved by compelling the African labourers to conscript into the army to partake in the maintenance of the infrastructures necessary for the viability of the colonial state and its existence.

The Second World War represents a very important landmark in Kenya’s colonial history. The tumultuous economic atmosphere prevailing during the war had created urgent needs epitomized in war exigencies. Those latter rested on two fundamental aims which were: first, the need to keep Kenya’s economy competitive at the international scale, with regard to the production and exportation of agricultural products; Second, the need to enhance production to supply food for domestic consumption and for the troops that were fighting at the battlefront.
The achievements of such goals needed an efficient planning that the colonial government in Kenya tried to implement through the setting of a policy designated for wartime emergency in order to counter shortages of goods and products.

In 1939, the colonial government planned a policy to meet the British Empire’s needs. This policy was twofold: the first aim was to be self-sufficient and provide the necessary agricultural products requested. The second aim was to supply the motherland, Great Britain, with the products cultivated in Kenya.\textsuperscript{55}

In order to implement the wartime policy enacted by the colonial government, the acting Deputy Director of Agriculture, G.J.C Burton, set on a tour round the European agricultural areas in Kenya in order to make a survey and collect the necessary information needed to analyse the different shortages that could inhibit the improvement of agricultural production and help improve the capacity of production in order to ensure supplies.

At the end of his survey, Burton came to the conclusion that the most outstanding agricultural product cultivated in large quantities during the 1930s was pyrethrum; while, mixed farming, crops cultivation and stocks breeding, on which the colony depended for supplying food, were still recovering from the adverse effect of the Depression.\textsuperscript{56} Burton also reported that maize production was affected by indebtedness and low prices.\textsuperscript{57} Relying on Briton’s report, the acting director of agriculture, H. Wolfe, publicly announced the colony’s wartime-agricultural policy on 23 September 1939.\textsuperscript{58} During that period the colonial government declared that all efforts should be directed to put into effect a plan that would be devoted to meet the needs of the war. In this respect, the British Government declared:

\begin{quote}
Government is desirous of introducing a planned agricultural policy for the colony of Kenya in order that
\end{quote}

\textsuperscript{56} Ibid., p.132.
\textsuperscript{57} Ibid., p.132.
\textsuperscript{58} Ibid.
the agricultural development of the country maybe fostered as far as possible during wartime and that its resources may be employed to the best advantage of the colony and of the empire under war conditions.\footnote{Nicholas Ekutu. Makana, “Increased Agricultural Production in the Midst of Escalating Ecological Distress: Bungoma District in the 1930s &1940s”, \textit{African Economic History}, No. 35 (2007), p.106.}

By 1940, the settlers tried to seize the drastic war conditions in order to enhance their exportation capacities; however, their requests were impossible to be fully realized by the colonial government as well as the British Imperial Government, for there was not enough space in ships to carry the huge quantities produced. The Africans, on their part, also played a leading role in sustaining the colonial economy with foodstuffs necessary for wartime, since they increased their production of cash crops like maize, but they were treated unfairly on the scale of the prices granted to them by the colonial government for their cultivated products, in spite of the efforts they made to enhance agricultural production. Regardless of the lower prices granted to the Africans for their products, they managed to realize huge profits\footnote{Ibid., p.114.} by cultivating large surfaces of land owing to the facilities granted to them by the colonial government like, high quality seeds, ploughs, and guaranteed prices offered to the African farmers for cash crop cultivation.

To implement the aims of the policy set by the colonial government, in order to enhance production, it was incumbent on the government to provide the financial means to cultivate the large tracts of land. A bill was debated by the Legislative Council on 15 April 1942, whose aim was to provide funds for the cultivation of flax, maize, and cereals whereby the Financial Secretary, L. Tester, insisted deeply on the role of Kenya to fulfil its duty in the production of cereals as being the colony whose geographical location enabled it to be the suitable supplier of foodstuffs for the Middle East.\footnote{Nicholas Ekutu Makana, op.cit., p.136.}

However, Kenya could not play its leading role to underpin the colonial and imperial economies without the deployment of an adequate mass of labour force. For
this reason, the colonial government of Kenya adopted a labour mobilization policy that was intended to supply the labour force needed to implement the agricultural policy.

There was a great difficulty on the part of the settlers as well as the authorities to recruit the Africans during the Second World War. The nub of the problem was that there was a sharp competition between civilian and military recruiters to get the adequate numbers of labourers to be supplied. As the urgency implied that military conscription had the priority, thus military recruitment overtook civil recruitment during the Second World War. In 1941, military conscription was more privileged and pursued by the colonial authorities at the detriment of the settlers’ needs. It was noticed that on 23 May 1941 labour shortage was cogently apparent. Actually, it was not easy to recruit Africans who were asking for higher wages with the 4 shillings offered for maize bags by the Maize Board. As a reaction to those difficulties, the settlers sent their claims to the colonial government to take urgent measures to solve the labour recruitment problem.

In order to find a solution to labour shortage for civil needs during wartime, the Colonial Office geared towards conscription for civil service, whereby the local colonial authorities consequently moved fast and announced the appointment of a committee under the director of manpower, Walter Harrigan, with a mandate to put into effect conscription. In February 1942, Harrigan submitted his report in which he advised that conscription should be undertaken in order to remedy for labour shortage. He also made many recommendations that gave birth to the ‘Essential Undertakings Board’, whose task was to define which sectors of Kenya’s economy would benefit from conscripted labour.

During the 1940s, the white settlers of Kenya’s colony benefited from unprecedented help relating to agriculture, which was granted under different forms such as guaranteed prices grants, sending ploughing teams to move around Kenya to

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62 Ibid., p.145.
63 Ibid., p.146.
64 Ibid., p.149.
65 Ibid.
66 Ibid.
assist farmers, and increase the use of imported fertilizers and government conscription to labour.\(^{67}\) Although conscripted labour was implemented by the colonial government, only ten percent of African labourers were conscripted and the great mass of forced labourers was employed on settler’s farms.

The policy adopted by the colonial government was more beneficial for the settlers than for the Africans who were offered lower prices than the former for their agricultural products such as maize or meat, although the Africans possessed the largest rate of cattle that represented 95 per cent of the whole cattle of the colony.\(^{68}\) The Africans in the reserves gained important sums of money that they collected from their work outside the reserves on the European farms, from their conscription into the army and from the export of their cultivated produce in the reserves. However, these types of labour did not enhance their standards of living because they were overburden by taxes. Additionally, the Africans were harmed by famine in 1943 that was due to shortage of food that was caused by over cultivation of maize, and abandonment of all soil conservation programmes.\(^{69}\) Little importance was given to the development of reserves due to the priorities dictated by the urgency of the war.\(^{70}\) Much importance and willingness to develop reserves was formulated by Philip Mitchell, the Governor of Kenya, but his efforts were slow.

By the 1940s the colonial authorities became more concerned about soil fertility, and by 1944 the situation so aggravated that the settlers could no longer feed themselves. By the end of the Second World War, measures were taken by the colonial authorities to control the land cultivated by the Africans. As early as 1946, the head of Soil Conservation Unit was making research about conditions how to handle soil conservation and to regain control over it. Conservation soil was among the serious problems that the colonial government of Kenya had to face in order to preserve the arable lands on which the cash crop economy of Kenya depended.

\(^{68}\) Ibid., p.509.
\(^{69}\) Ibid., p.511.
\(^{70}\) Ibid., p.513.
Soil erosion was among the arguments that the colonial government of Kenya seized and cogently defended at the end and mainly after the Second World War in order to exert more pressure on the Africans to throttle their expansion in land cultivation, since the colonial policy aimed at reducing the areas cultivated by the Africans. Those disruptive aims were incarnated in Philip Mitchell’s\textsuperscript{71} policy. Thus, how did Mitchell, the Governor of Kenya, deal with soil erosion? And what were the impacts of his policy on the Africans?

3) Mitchell’s Policy, the Settlers and their Reactions towards the African Squatters

Philip Mitchell was appointed Governor of Kenya in 1944. He was an advocate of African trusteeship and an ardent opponent of African politicians. He believed that it would take a long time before the Africans could govern themselves, as their political maturity should be nurtured by the British, who would give aid and direction to them.\textsuperscript{72}

\textsuperscript{71} Philip Mitchell: (1890-1964) colonial governor was born on 1 May 1890 at 32 Spencer Hill, Wimbledon, London. He was sixth of seven of Hugh Mitchell, barrister and his wife, Mary Catherine Edwards (Katie) Creswell. Sir Mitchell was educated by a French tutor and his father. He first won a scholarship to Paul’s School and then to Trinity College, Oxford, where he read classics, however he did not succeed and he was sent down without getting his degree. Then Mitchell applied for the colonial service where he was chosen for his temperament rather than his qualifications, because temperament was regarded to be more important than degrees to occupy such a key position. In 1913, Mitchell was appointed in Nyasaland as assistant resident in Zomba. At the breakout of the First World War, he was refused his enlistment in the army, but disobeyed his superiors and joined the King’s African Rifles (KAR), and he was fighting in German East Africa. At the end of the war, Mitchell refused to return as subordinate Nyasaland administration and he applied for a position in the military administration of Tanganyika. He rose through the ranks to become in 1922 District Commissioner in Tanga. He was appointed by Sir Donald Cameron, who came from Nigeria, as assistant of Native Affairs, and in February 1934, he became Chief Secretary. Mitchell was one of the ardent proponents of indirect rule in which he excelled thoroughly and this had confirmed his reputation at the Colonial Office as Africa’s future pro-consul. Latter in 1935 he was rewarded with the governance of Uganda. The outbreak of the Second World War implemented a new organization of the colonial territories whereby the attentions were directed to Sir Philip Mitchell who was transferred in Nairobi as deputy chairman, and in practice Chief executive, of the East African Governors Conference. In 1944, Mitchell was appointed Governor of Kenya where he started by introducing many administrative reforms. In 1945, Mitchell became more concerned about soil erosion that the agricultural department ascribed to over –stocking and over cultivation in the African reserves. This situation urged Kenya’s Governor and the settlers to adopt urgent measures that was the source of a large number of problems that Mitchell was unable to handle at that time that culminated with the outbreak of a series of general strikes in Mombasa in 1947 and in 1950 a more serious group of eruptions and uprisings took place. In 1952, Sir Mitchell retired although promising a future for Kenya’s colony and led a very modest life as he accepted many minor jobs such as director of the Kenya Power Corporation and Chairman of the Kenya Girls high School. His health deteriorated and moved later to Gibraltar in 1963. He died on 11 October 1964. See http://www.oxforddnb.com. (accessed on October 22, 2013).

It was for this purpose that Mitchell adopted his policy that he founded on racial
tolerance and cooperation.

But Mitchell’s policy was contradictory too, since it had as a target the restriction
of African farming under the guise of protecting soil from erosion and desertification.
This policy was influenced by the settlers, since it was nourished from the envious
attitudes that they held towards the Africans because of their growing rivalry in the
agricultural market, and that stretches back to the depression period where the colonial
government had pressed and encouraged the African production in order to counter the
costly products cultivated by the settlers.73

The settlers feared the expansion of the African peasantry and its domination over
agriculture and the export business both in meat and cash crops. For these reasons, they
set to hinder the development of the African and mainly the squatter’s agriculture by
raising arguments about squatters causing soil erosion due to excessive cultivation.

During the Second World War, Governor Mitchell set on implementing his policy
of agricultural welfare. This policy tended to enhance the level of productivity and
prevent soil erosion and socially to create a multiracial society based on tolerance74. The
Rift Valley was the stage to the implementation of Mitchell’s policy, where the
squatters were the main antagonist as regarded by the settlers. However, Mitchell’s
attempts where hindered by the settlers who grew more powerful and became
incontrollable.

In fact, Mitchell’s government regarded the settlers not as a problem, but rather as
an essential asset for the development of the Africans. This could be understood when
he plainly stated that

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73 David Anderson and David Throup, “Africans and Agricultural Production in Colonial Kenya ,the
myth of the War as a Watershed”, The Journal of African History, Vo.26, No.04, World War II and
Africa (1985), p.329
74 David W. Throup, op.cit., p.39.
It is of the greatest importance ... for future well being and property of the native people that there should be a vigorous and well-established British settlement in these highlands, for without it there is no hope of successfully overcoming the immense problems which confront us... the British people in East Africa are the key-stone, the arch.\textsuperscript{75}

Thus, Governor Mitchell advocated a powerful white settlement in Kenya for the benefit of the Africans. For Mitchell, the British came to Africa to civilize the Africans and help them develop in every field of life, such as education, health and economy.

However, the aim of Mitchell contradicted with the aims of the settlers who grew powerful as their power was vested in the District Councils that had set out on the enactment of a bundle of measures to face the growing economic power of the Africans. Those restrictive measures aimed at depriving the Africans of their economic tools, the cattle and land, to convert them to wage labourers.

The settlers became powerful contenders of the colonial government owing to the Resident Labour Ordinance of 1937. The latter had marked a transfer of authority from the colonial authorities to the settler-controlled District Councils, which marked a political victory for the settlers.\textsuperscript{76} Those District Councils gave more authorities to the settlers to control squatters by eliminating their stocks and restraining their cultivated land. Those aims were not put into effect during the 1930s, since that coincided with the outbreak of the Second World War and because the settlers were much busy by concentrating their efforts on foodstuffs production as requested by the British authorities. It was only after the end of the war that the District Councils carried out their restrictive policy towards the squatters who represented a potential threat for the settlers in the White-Highlands of Kenya since the highlands contained the most arable lands, and had a mild climate adequate for the cultivation of different kinds of crops.

In 1944, a conference was held by the District Council Production Committee representatives that called for the end of the squatters’ recruitment and pressed for the

\textsuperscript{75} Ibid., p.46.
\textsuperscript{76} David Anderson and David Throup, op.cit., p.333.
adoption of an agreed policy. After three months, a conference of District Council chairmen was held and regarded that the decision taken by the former committee as being not very firm, and the delegates agreed to be too severe with the squatters and the Council decided to eliminate their stock from the White-highlands within five years, and that the resident labourers should be replaced by paid labourers who are not allowed to cultivate or rear stock. But the last decision taken by the District Councils was to eliminate immediately the squatters’ stock.

The decisions made to limit the squatters’ means of production had split the settler community, since some regarded the residence of the squatters with their cattle on farms as a threat to their economic existence; while, the proponents of the squatters’ rights regarded that the drastic measures taken against squatters would lead many of them to leave the farms; and with their departure, the poor settlers would lose a very cheap labour force, which was not in their interests. Because of the stringent decisions taken by the District Councils, many squatters, from 1944 to 1945, had left their areas to seek work on white farms where they could cultivate enough food to satisfy the needs of their families.

As the problem of the squatters aggravated, Wyn Harris, the Labour Commissioner, had alarmed the Chief Secretary that ‘the problem of the squatters is going to be one of the most serious problems in the country, and that it has already assumed in certain areas unmanageable proportions’. The Labour Commissioner was also aware that the decisions taken against the squatters would push them towards a violent opposition.

As Wyn Harris was unable to convince the council about the decisions taken against the squatters, the Labour Department waged a campaign to oblige the Secretariat of the State of the Colonies to reconsider or, to transfer the responsibility for controlling

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78 Ibid.
79 Ibid., p.97.
80 Ibid.
81 Ibid., p.101.
82 Ibid.
squatters from the Labour Department to the Field Administration or to the Agricultural Department.  

In spite of the stiffness of the District Councils and the reluctance of the Chief Secretary to find solutions to the squatters’ problem, Wyn Harris, the Labour Commissioner, took individual actions for the benefit of the squatters, who accepted new labour contracts to protect them from food shortage, and he ordered the attestation officers not to issue any new contracts unless wages in the semi–arid zones were increased by twelve shillings and the squatters were given two pounds of posho (a kind of food) for every day worked.  

Although Wyn Harris made every endeavour to protect the squatters’ interests, the District Councils were more adamant counterparts, and they, tenaciously, held sway in thwarting the actions taken by the Labour Department, which resulted in Wyn Harris’s transfer of the squatters’ responsibility to the Agricultural Department.

The squatters, on their part, did not stay still towards their problems and the draconian measures taken against them by the District Councils, but they reacted courageously by asking for meetings with colonial officials to discuss their problems. For example, on February 1947 a group of 30 squatters broke into the grounds of the Government House and confronted Governor Mitchell by complaining that their families were starving and questioning him why they had been expelled out of their shambas (small plots) while the settlers held so large farms. Other petitions were sent from the Squatters’ Association in Limuru District to the Secretary of State to ask for the Colonial Office’s intervention to save the squatters from the settlers’ abuses.

Governor Mitchell, on his part, advised the Colonial office not to respond to the squatters’ requests, but to ignore them in order not to make them believe that they could occupy the European lands without being punished, which would result in dangerous  

83 Ibid., p.102  
84 Ibid  
85 Ibid., p.110.
situations in the future. The advice of Mitchell to the Colonial Office by ignoring the Africans’ rights aimed at preserving the prestigious image of the firm colonial government.  

The abuses exercised by the settlers on the squatters and the reluctance of the Colonial Office to intervene had led the squatters to protest violently by taking revenge of the settlers by maiming their cattle, committing sabotage acts, or going on strikes, like the protest of 1947 which included about 400 squatters from Nairobi and Nakuru Districts. A great number of squatters had left the settlers’ farms to the forest reserves to escape the settlers and the authorities' harshness and in order to practise agriculture in a free way as previously done on the European farms.

Since the settlers regarded the squatters as a potential danger that they should get rid of, they tried by all means to tighten the situation around them by pressing the colonial government and the District Councils to issue resolutions that would deprive the Africans of their rights on the land and the stocks necessary for their subsistence; a classic case of that was the campaign held by the settlers in the Olenguruone District. So, to which extent was the Olenguruone District important for the squatters’ revolt?

4) The Olenguruone District and the Revolt of the Squatters for Land Rights

The Olenguruone was bought by the Government in 1939 to provide land for the squatters who did not want to be contracted under the 1937 Residents Native Labour Ordinance, or those who were made redundant by their own employers. Actually, the Olenguruone settlement was the largest area among the Masai land (see map5, p.107). This settlement was chosen to implement the Olenguruone scheme intended to solve the

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86 Ibid., p.111.
88 Ibid., p.107.
Map 5: The Kenyan Tribes and Alienated Areas:

The Olenguruone area.

Source: David W. Throup, op.cit. p.40.
problem of the landless and redundant ex-squatters. The squatters were allowed to reside under the conditions agreed by the Native Trust Land Board.\textsuperscript{89} The squatters as residents of the stated settlement were not considered tenants at will, but their staying there was centered on their agreement with the Government to settle there and not to acquire any rights to land. This ambitious initiative taken by the colonial Government to allot such form of settlement to the squatters had raised a kind of conflict between them and the Government. Most of the Olenguruone African settlers were Kikuyu.\textsuperscript{90} The latter, as many other African settlers, wanted the Government to recognize the land on which they resided as compensation to their lands alienated to the European settlers in the White-Highlands.\textsuperscript{91}

The British colonial authorities in Olenguruone had provided land for the Africans under a set of stringent measures. For example, the Olenguruone Africans were asked to cultivate certain kinds of crops and were banned from cultivating others, as it was the case with the Kikuyu who were forbidden from the cultivation of maize.\textsuperscript{92} Besides, the Africans were asked to follow rotation of cultivations while cultivating their lands in order to preserve them from soil erosion. Concerning the system of inheritance, the colonial authorities imposed on the Africans living in the Olenguruone settlement a system of inheritance rights that should not obey customs, but Government’s regulations, whereby land had to be inherited by the eldest son or the wife and should not be subdivided among the sons. The colonial Government was more firm about land possession in the Olenguruone and he forbade any sale, or rent mortgage of land.

The size of land granted to the Olenguruone Africans was very small. Eight acres of land were granted to the Africans in Olenguruone. The Africans regarded that the size of the granted land did not commensurate with the size of big families, but the Government refused to double the size to 16 acres. Additionally, the Government had to

\textsuperscript{89} Ibid.
\textsuperscript{90} Ibid., p.108.
\textsuperscript{91} Ibid., p.109.
\textsuperscript{92} Ibid., p.112.
keep into account the preservation of land from soil erosion, which was impossible to implement with large families.\textsuperscript{93}

Olenguruone was among the largest gatherings of the Kikuyu squatters. About 4000 Kikuyu were moved to this area in 1941. By 1944 the Kikuyu squatters made of it their centre of opposition to the Government, and it was in 1946 that the squatters and the landless Africans took a secret oath to struggle against the British colonial regime and the white settlers who were the source of the Africans’ sufferings, because of land alienation and the settlers’ backup of the oppressive policy implemented on the Kenyan peasants.\textsuperscript{94}

In fact, the pressure exerted by the colonial government on the African squatters in Olenguruone led them to revolt against it, and the causes of revolt were different. The main reasons that set the squatters against the government were the stiffening of the draconian measures related to land exploitation and possession that they regarded as unacceptable humiliations on the part of the colonial government, in addition to labour permits that the colonial government imposed on the squatters. Some of the problems that culminated in a direct clash between the Olenguruone Africans and the colonial authorities revolved around soil conservation measures taken in 1946\textsuperscript{95} by Colin Maher, the head of the Soil Conservation, to tighten the situation for the Olenguruone squatters and to subjugate them, which aroused their anger and led them to react vehemently towards governments’ recommendations by totally ignoring them, which resulted in the escalation of violence on the part of the squatters. The other causes of the problem dealt with the right to land that the Kikuyu in the Olenguruone wanted to apply according to the traditional ‘githaka’\textsuperscript{96} system of land acquisition. Additionally, the colonial government wanted the Olenguruone squatters to comply with soil conservations regulations, and with the regulations related to labour permits in Olenguruone. This implied that all Africans residents in the Olenguruone should acquire a labour permit from the colonial authorities to work there. But the African squatter residing in that

\textsuperscript{93} Ibid., p.118.
\textsuperscript{94} David W. Throup, op.cit., p120.
\textsuperscript{95} Ibid., p. 128.
\textsuperscript{96} Githaka: plot of land belonging to a sub-clan. David W. Throup. ibid., p.xvi.
region could not accept the stringent measures imposed on them and challenged the colonial authorities by exploiting the land, by setting fire to clear it, and cultivating forbidden crops, which led the colonial authorities to inflict punitive measures like evicting the Olenguruone squatters to a very inhospitable land known as ‘Yatta area’. The same sanction was applied to about 5,000 squatters from Nakuru and Naivasha Districts who were expelled to their home province in the Kiambu District. As a reaction, the squatters took a secret oath in order to fight against the colonial régime to restore their confiscated land. This secret oath gave birth to a secret Kenyan organization known under the name of the ‘Mau Mau’, which was responsible for the agrarian armed revolt that broke out in Kenya in 1952 and lasted until 1956. Actually, the preparations for the revolt started from Olenguruone but propagated through oath taking to other areas like Nairobi and the rift Valley where the Kikuyu Central Association (KCA) that was led by Jomo Kenyatta was active and with whom the Olenguruone African squatters rallied in order to face the British colonizer.

The acts of resistance taken by the squatters did not always depend on the use of violence, but sometimes pacific actions were taken to stop the machinery of production, and this was achieved by depriving the settlers of their main vector in wealth accumulation which was labour. A vivid example about this is what happened in Naivasha District in 1946 when the District-Labour Inspector came to ask the squatters to legalize their situation by signing their contracts, but they all refused to sign as they had taken their oath to refuse labor contracts. This event was reported by the District Commissioner of Nakuru and Naivasha Districts as he stated that

Taking full advantage of the power of oath swearing, many hundreds of the squatters were induced not to re-attest in the hope that either farming would be paralyzed’ or District Councils’ Resident labour Legislation jettisoned… it has become necessary to imprison 97 men from one farm…[Soysambu]… for a deliberate flouting of the laws and this on the day before the arrival in the District of the Under Secretary of State for the

98 Ibid., p.87.
99 Ibid., p. 83.
Colonies; the organizers thought their demonstration well timed.\textsuperscript{100}

Thus, resistance on Olenguruone farms, as it was noticed by Frank Furedi, spread to Kiambu in the Kikuyu reserves and culminated into protests in Nairobi in 1947. One year later, a decision was taken and implemented in March 1949 by the colonial authorities to expel the Kikuyu squatters from the Olenguruone area.\textsuperscript{101} By 1952, the District Commissioners were busy preparing harsher measures towards the squatters to limit the size of the plots of land and ban the Africans from owning any stock in some areas.\textsuperscript{102}

Owing to the stringent measures taken by the colonial government to subjugate the African squatters, the British administration took preventive measures in 1952, in order to counter any attacks that would be waged by the Mau Mau militants. For this reason, a declaration of emergency was made on 20 October 1952\textsuperscript{103} and a military operation labelled ‘Operation Jock Scot’ was waged on the squatters to suppress their activism, whereby many prominent leaders were arrested, like those belonging to the Kenya African Union (KAU) such as Dedan Kimathi, whose detention led the Mau Mau militants to wage guerrilla actions in the forest reserves of the White Highlands that included about 21, 143 Kikuyu squatters.\textsuperscript{104}

A second military operation called ‘Anvil’ took place between 24 April and 09 May 1954. It was waged under the command of General George Erskine who had a considerable experience in counter-insurgencies. The operation was successful in cutting off support for the Mau Mau from the city.

\textsuperscript{100} Ibid., p. 84.
\textsuperscript{101} Ibid., p.110.
\textsuperscript{102} Ibid., p.112.
\textsuperscript{103} Ibid., p.118.
\textsuperscript{104} Tabitha Kanogo, op.cit., p.127.
In fact, the Mau Mau revolt, in spite of its tenacity, lasted for four years, through which, the Mau Mau guerrilla was completely put down by 1956. But its end had marked the beginning of new life for the African squatters and the commencement of the demise of British colonialism in Kenya that, since the outbreak of that revolt, tried to be more careful in dealing with the Kenyan cause by opening the door to political activism that paved the way to independence through the political awareness of the political elites who had led Kenya safely to the shore of freedom.

To conclude, during the 1920s and until the end of the Second World War, Kenya was hit by different crises sometimes economic like the 1929 Great Depression that struck many industrialized nations across the globe; and sometimes, it was hit by natural disasters like drought, and locusts that impacted seriously on the cash crop production that formed the backbone of Kenya’s economy, due to the profits generated from the exportation of cash crops to overseas markets. Those disasters had also their impacts on the labour market that were reflected in the decrease of the number of recruited labourers on Europeans farms, since the revenues extracted from cash crops production during war time and during the Great Depression could not cover the wages of labourers. Those impediments had compelled Great Britain and the other colonial powers to have recourse to compulsory labour in order to curb their expenditures. The exaggerated resort to compulsory labour by Great Britain and other colonial powers led the International Labour Organization to hold a convention in Geneva on 28 June 1930 in order to regulate it did not explicitly ban it - ignoring the immoral exploitation of the Africans.

The 1930s was not only a period of disasters and failure, but also an era marked by some economic improvements achieved owing to the discovery of gold in Kakamega District which gave an impetus to Kenya’s economy. Although this economic ease did not last for a long time, it was very welcomed by the Africans; however, gold mines in Kakamega had negatively impacted on agricultural labour, since thousands of Africans had left the European farms to work in gold mines. On the agricultural scale, the

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Africans continued to increase their cultivated acreage throughout the years of the Depression\textsuperscript{106}. Some historians like David Anderson reported that other historians like Mosley and Kitching had noticed that the Africans’ production during the 1930s had increased significantly.\textsuperscript{107}

The Africans were always present to sustain the colonial economy whenever they were asked by the colonial government and this was very a pronounced feature during the Second World War and during the 1940s when the government set an emergency plan for the war through which it solicited the Europeans as well as the Africans to double their efforts in producing foodstuff necessary to feed the British troops in the battlefields. At the same time, Africans benefited from the help granted by the colonial authorities in the field of agriculture like grants in aid, the grant of seeds and supply with equipments like ploughs as well as through training campaigns set for the African farmers in order to help them improve their methods of cultivation to enhance production.

The Africans were not treated on equal footing with the settlers who manipulated the colonial authorities since the settlers exerted more pressure on the formers to favour them and in this way they tried to throttle the development of a powerful peasantry that they feared would become independent from their control. In order to achieve their goals, the settlers pressed the colonial authorities to pass stringent measures against the African to displace them which culminated in riots, protests and armed struggle like the breakout of the famous Mau Mau war in 1952 that marked the end of British colonialism in Kenya.


\textsuperscript{107} Ibid.
CONCLUSION

Before the British invasion of Kenya, the Africans were leading a traditional life. Although the coastal area of Kenya fell under the rule of the Arab Sultan of Oman, this did not prevent most the African tribes to practise their traditions and to behave as they used to do before the arrival of the Arabs to East Africa, since the former’s interest was directed towards trade and mainly to the slaves trade, but not towards the seizure of the Africans’ lands. The Africans, even with the coming of the Arabs, still shared land on communal basis and conducted communal labour under the authority of their chiefs as stipulated by tradition.

During the 1830s, voices rose in Europe to call for the Abolition of slave trade. This abolition campaign was led by Great Britain, which seized the humanitarian cause to intervene in certain areas in Africa and mainly in its eastern coast where Zanzibar was a stage for Great Britain to implement its expansionist projects. The slave trade was just an excuse for Great Britain in order to meddle in Zanzibar’s affairs. The former started to exert pressure on Zanzibar’s Sultan to free his slaves by signing with him and his successors anti-slavery treaties, knowing that Zanzibar’s economy rested on the use of slaves that were exploited in clove cultivation, which dealt a severe blow to the Zanzibar’s economy after the slaves were freed. This, consequently, weakened Zanzibar economically and politically and opened the door to Great Britain to hold a foothold there and expand its control inland of East Africa and specifically in Kenya.

The British presence in East Africa became official after the Berlin Conference was held in 1885. This latter helped in dividing Africa between the European powers by delimiting for each colonizer its sphere of influence within which he could practise his commercial activities and impose his political control. The European colonial powers acted in their spheres of interests through chartered companies that were granted charters by their home countries to act on their behalf. For instance, Great Britain acted in East Africa through the British East Africa Company that was chartered in 1888 to conduct the commercial affairs of the British Empire therein. Additionally, the role of
the British East Africa Company was to build a railway extending from Kenya to Uganda to generate profits from taxes levied on the transport of goods and to supplant the slave trade with legitimate trade of goods. In order to build the infrastructures necessary to launch the economy of the nascent colony of Kenya, the colonial government confiscated the Africans’ land that was used for the construction of the railway, the administrative buildings, and was granted to the settlers to exploit it in the cultivation of cash crops that Kenya exported to generate profits for the colonial treasury. In this way, the African owners were reduced to mere labourers in the settlers’ farms.

In order to alienate the land for the settlers’ benefits, the colonial government issued circulars, and regulations, and established a judicial system to impose order and confiscate land with the force of law. Those circulars and regulations were used to deprive the African labourers from their means of subsistence which was the land. In this way, the African labourers became very weak and were obliged to work for the European settlers according to the conditions set by the formers and without being objected by the colonial government.

Not only were the Africans stripped of their lands, but they were also deprived of their rights to move freely in their country and to choose the kind of labour they wished to practise. The ‘Kipande pass’ was a vivid example of the humiliation exercised by the British on the Africans. Actually, the Kipande was the invention of the British colonial system whose role was to control the mobility and disposal of the African labourers to put them at the service of their masters and ensure the survival of the colonial economy that depended on cheap labour.

The Africans were always subject to harsh measures taken against them by the colonial government, but whenever they were prevented from progressing, they tried to circumvent the stringent measures imposed by colonial government on them. The emergence of the squatters labour system is a case in point. This system is not just a proof of challenge raised by the Africans against the colonial authorities’ decisions, but also a proof of the Africans adaptability to the changing measures imposed by the
colonial government on them. The squatters system had proved to the Europeans that the Africans were not the savage men as they had always been described and regarded by the British and European officials; by contrast, the Africans gave a realistic image about how they could co-operate with certain settlers to help in farming and in this way contribute to the British colonial economy.

The keenness of the African labourers could be seen very clearly, through the different crises that struck Kenya starting with the 1929 Great Depression, the First World War and the Second World. During all those crises, the Africans had proved their efficiency. And because of the Africans’ ability to be competitive at the economic level, especially in cash crop production, the settlers tried to hinder their progress by acting though the District Councils to exert their influence over the colonial government, in order to force it to pass stringent regulations to weaken and deter the African producers from competing in the production of certain crops that were reserved only for the settlers.

The colonial government tried to some extent to show some fairness towards the Africans from the late 1930s until the end of the Second World War through the implementation of a ‘Welfare and Development policy’. This latter did not serve too much the interests of the Africans because of the contradictory aims it included. It was a paradoxical policy that; on the one hand, pretended to improve the living standards of the Africans and, on the other hand, it imposed stringent on them especially at economic level. This could be exemplified through the measure taken for soil conservation, under which the colonial government argued to protect the Africans interests by preserving their land from erosion. The same argument was emphasized strongly by the settler’s who seized it in order to push the government to impose draconian measures on the Africans so as to reduce the size of land in their possession with the view to mitigate their competitiveness as cash crop producers.

Moreover, the Africans were subject to inhuman measures taken by the colonial authorities against them such as land alienation that took place until Kenya’s independence. Many Africans were displaced to remote areas in the colony, as they
were dispossessed of their land or because they did not comply with the labour regulations imposed on them. But this situation aroused the anger of the Africans and pushed them to act violently through riots, protests and even through secret armed organization that emerged during the 1950s, like the Mau Mau armed revolt that had shaken the balance of power in favour of the Africans. Although, this revolt was crushed by the British but its psychological effect was positively great on the Africans who reinforced their political activism to fight against the British colonizers by putting more pressure on it, which culminated in Kenya’s independence on 12 December, 1963.
Appendix One

The Crown land Ordinance 1915 defined the Crown Land Ordinance as:

“All land subject to the control of his majesty by virtue of his majesty’s protectorate and all which shall have been acquired for the service or otherwise and should include all the land occupied by the native tribes of the protectorate and all land reserved for the use of any tribe”.

Appendix Two

The CROWN LANDS ORDINANCE, 1902

(Reproduced for easy reference)

1. This Ordinance may be cited as the Crown Lands Ordinance, 1902.

2. All conveyances, leases and licences for the temporary occupation of Crown land made on behalf of His Majesty shall be made, and all proceedings, notices, and documents under this Ordinance shall be taken or drawn, in the name of the Commissioner, and save as therein otherwise provided shall be deemed to be made under and subject to the provisions of this Ordinance and of any rules for the time being in force under this Ordinance.

3. A conveyance, lease, or licence for the temporary occupation of Crown land under this Ordinance shall not confer any right to minerals in or under the said land, or to the waters of any river or lake.

Sales

4. The Commissioner shall not sell to any purchaser more than 1,000 acres of Crown land in one lot without the approval of the Secretary of State, but nothing herein shall invalidate any sale.

5. (1) Where an agreement has been entered into for the sale of Crown land and the portion of the price therein mentioned paid the land shall vest in the purchaser, but the Commissioner shall have a lien on the land for the balance of the purchase money.

   (2) If the balance of the purchase money is not paid within six months from the date of the agreement, or within such other period as may be specified in the agreement, the land shall revert to the Commissioner, and all money paid shall be forfeited.

   (3) No purchaser of Crown land shall be entitled to a conveyance until the whole of the purchase money has been paid.

6. The Commissioner may require a purchaser of Crown land to erect reasonable boundary-marks. If any purchaser of Crown land under the Ordinance fails to erect such boundary-marks as may be prescribed, the Commissioner may direct their erection, and may recover the cost of their erection from the purchaser.

7. Any purchaser of Crown land who fails to maintain, and any person, whether the owner of the land or not, who moves, or attempts to move, or in any way tampers with the boundary-marks of land purchased from the Crown, shall be guilty of an offence, and shall be liable to a fine not exceeding 1,000 rupees, or to two months’ imprisonment of either kind, or both.
8. The Commissioner may at any time enter upon and view the state of any land sold under the provisions of this Ordinance.

9. (1) If any land sold under the provisions of this Ordinance appears to the Commissioner to have been unoccupied for a period exceeding twelve months, he may give notice that, if within the next six months the owner does not appear and afford reasonable proof that he intends to use and develop the land to a reasonable extent, the land will be forfeited.

(2) Such notice shall be published in the Gazette, and a copy shall be affixed to the land, and, if the address of the owner of the land is known, a copy shall be sent by post to him at that address.

(3) If the owner does not appear within the six months, or if, having appeared, he fails to afford reasonable proof that he intends to use and develop the land to a reasonable extent the Commissioner shall by notice in the Gazette declare the land forfeited, and the land shall thereupon revert to the Commissioner.

Leases

10. No lease of Crown land shall exceed ninety-nine years.

11. In the absence of special provision to the contrary contained in the lease, all buildings on Crown land leased, whether erected by the lessee or not, shall, on the determination of the lease, pass to the Commissioner without payment of compensation.

12. In every lease under this Ordinance there shall by virtue of this Ordinance be implied covenants by the Commissioner:—

(a) That he has full power to grant the lease.
(b) That the lessee, paying the rent and fulfilling the covenants therein contained, shall quietly hold and enjoy the premises without any lawful interruption by the Commissioner or any person claiming under him, except so far as the laws in force for the time being in the Protectorate may permit.

13. In every lease under this Ordinance there shall, by virtue of this Ordinance, be implied covenants by the lessee:—

(a) That he will pay the rent or royalties thereby reserved at the time, and in the manner therein provided.
(b) That he will pay any taxes or charges that may be imposed upon the land or on the buildings or huts thereon.
(c) That he will allow the Commissioner, or any person acting under his directions or in virtue of his duties as a public officer of the Protectorate, to enter and view the land leased.
14. Except where expressly varied or excepted, there shall, by virtue of this Ordinance, be implied in every lease under this Ordinance covenants by the lessee:—

(a) Not to assign, except by will, the land leased, or any part thereof, without the previous consent of the Commissioner.

(b) To keep in reasonable repair all buildings erected before the commencement of and included in the lease.

(c) To allow roads made by the lessee upon the land leased to be used for the public service.

(d) *To permit travellers to encamp with their servants, animals, waggons and baggage, for a period not exceeding forty-eight hours, on any part of the land leased which is uncultivated, and which is not within a quarter of a mile of a dwelling-house, and to allow them access, with their servants and animals, to any river, stream or lake upon the land leased.

(e) To use and develop the natural resources of the land leased with all reasonable speed, having regard to all the circumstances of the case.

15. In all building leases granted under this Ordinance there shall, by virtue of this Ordinance, be implied, unless such covenants are expressly varied or excepted, covenants by the lessee:—

(a) To erect the buildings specified in the lease and in the manner and within the period therein provided.

(b) To erect such buildings of good and substantial materials, having regard to all the circumstances.

(c) To provide reasonable drainage and water supply, having regard to the situation and purpose of the building and the health of the neighbourhood.

(d) To keep the buildings erected in good and substantial repair.

(e) To deliver up the buildings in good and substantial repair on the determination of the lease.

16. In all leases under this Ordinance of areas of land for the purposes of agriculture or breeding or raising cattle, or for the growth of india-rubber, cotton, tobacco or other vegetable productions, or as a timber forest, there shall, by virtue of this Ordinance, be implied, unless such covenants are expressly varied or excepted, covenants by the lessee:—

(a) To improve and develop the resources of the land in a prudent and business-like manner, and to abstain from the undue destruction or exhaustion of any timber, trees or plants for the sale or cultivation of which the land is leased.
(b) That the lessee, his servants and agents, will not interfere with the settlements or villages of the natives, or with land allotted for native settlements or villages, and, so far as possible, will avoid all quarrels with the natives in or near the land leased.

(c) To refer disputes between the lessee, his servants or agents, and the natives in villages or settlements in or near the land leased to the Collector of the district.

17. Every covenant, whether express or implied, in a lease under this Ordinance, which is binding upon a lessee, shall, unless it is otherwise provided in the lease, be binding upon all persons claiming an interest in the land leased whose title is derived through or under the lessee.

18. (1) If the rent or royalties or any part thereof reserved in a lease under this Ordinance shall at any time be unpaid for the space of twenty-one days after the same has become due, or if there shall be any breach of the lessee’s covenants, whether express or implied, the Commissioner may serve a notice upon the lessee specifying the rent or royalties in arrear or the covenant of which a breach has been committed, and at any time after one month from the service of the notice may commence an action in the High Court for the recovery of the premises, and, on proof of the facts, the High Court shall, subject to relief upon such terms as may appear just, declare the lease forfeited, and the Commissioner may re-enter upon the land.

(2) The notice shall either be served personally upon the lessee, or shall be published in the Gazette, and a copy thereof affixed to the premises.

19. For any breach of covenants by the Commissioner, whether express or implied, in a lease under this Ordinance, the lessee shall be entitled to commence an action for damages.

Licences for Temporary Occupation

20. (1) The Commissioner may issue licences to natives, or to such other persons, not being Europeans or Americans, as he may think fit, to occupy Crown land and to erect thereon a hut or huts or other temporary erection.

(2) A licence under this section shall not permit the occupation of more than five acres of land.

(3) Unless it is expressly provided otherwise, a licence under this section shall continue for one year and thenceforward until the expiration of any three months’ notice to quit:

Provided that such notice to quit may be served upon the licensee at any time after the expiration of nine months from the date of the licence.
(4) The rent payable under any licence under this section shall be payable monthly, or at such other period as the licence shall provide.

(5) The benefit of a licence under this section may, with the consent of the Commissioner, be transferred by the licensee, and such transfer and the consent thereto shall be endorsed on the licence.

21. The occupant of any Crown land under a licence under section 20 may remove any hut or other building erected by him during his occupation of the land at any time before the licence expires.

22. If the rent payable under any licence granted under section 20 is unpaid for one month after it became due, or if any tax or taxes imposed upon the land, or upon the huts erected on the land, or upon the licensee, are unpaid for two months after they became due, or if the occupant of such land fails to keep the land in a reasonably clean condition, the Commissioner may reject the licensee from the land, and the licence shall be forfeited.

Compensation

23. (1) The Commissioner may at any time enter upon any land sold or leased under this Ordinance, and there set up telegraph poles and place telegraph lines across such land, or may lay sewers, water-pipes, or electric lines therein, without paying compensation, but making good all damage.

(2) The Commissioner shall not be entitled under this section to interfere with any dwelling-house.

24. Where any sale or lease of land under this Ordinance transfers more than 100 acres the Commissioner may at any time hereafter enter upon such land and construct railways, canals and roads for the benefit of the public across such land without making compensation for the land, but compensation shall be payable for all buildings destroyed or damaged.

25. Where any sale or lease of land under this Ordinance transfers less than 100 acres, the Commissioner may at any time hereafter enter upon such land and construct railways, canals and roads for the benefit of the public across such land, paying compensation for the land.

26. The Commissioner may at any time hereafter enter upon any land sold or leased under this Ordinance, and there construct railway stations, sidings or any other public works, paying compensation for the land.

27. (1) The Commissioner may at any time hereafter enter upon any land sold or leased under this Ordinance, and take there from stone and other materials for the making or repairing of roads, railways, canals or other public works.

(2) If the materials are taken from cultivated land, compensation shall be payable by the Commissioner, but not otherwise.

28. The Commissioner may by writing under his hand authorize contractors, their servants and agents, to exercise the powers conferred upon him by sections 23-28 inclusive of this Ordinance.
29. (1) Travellers shall be allowed to encamp with their servants, animals, waggons, and baggage, for a period not exceeding forty-eight hours, on any land purchased or leased from the Crown under this Ordinance, which is uncultivated, and which is not within a quarter of a mile of a dwelling-house, and shall be allowed access with their servants and animals to any river, stream, or lake upon the land.

(2) Any person refusing to allow travellers to encamp, or to have access to water, under this section, or interfering with travellers who are encamped, or any traveller refusing after request from the owner or lessee of the land to depart after the expiration of the forty-eight hours, or interfering in any way with the comfort or convenience of the owner or lessee of the land, shall be guilty of an offence, and shall be liable to a fine not exceeding 1,000 rupees or to imprisonment of either kind not exceeding two months or to both.

30. In all dealings with Crown land regard shall be had to the rights and requirements of the natives, and in particular the Commissioner shall not sell or lease any land in the actual occupation of the natives.

31. (1) The Commissioner may grant leases of areas of land containing native villages or settlements without specifically 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) The Commissioner may allot for the purpose of native settlements or villages portions of the land so leased, and when and so long as these portions are so occupied, they shall be deemed to be excluded from the lease.

(3) Any land within an area leased which has been in the occupation of natives shall, on ceasing to be so occupied, pass to the lessees.

(4) Disputes between lessees of land and natives occupying land within or near the area leased shall be referred to the Collector of the district.

(5) Claims by lessees for reduction of rent on account of diminution of the amount of land leased, or for other compensation on account of the exercise of the powers conferred by this section, and claims by the Commissioner for an increase of rent on account of the vacating of land formerly occupied by natives, shall be referred to the arbitration of a Judge of the High Court under section 525 of the Indian Code of Civil Procedure.

(6) Any doubts that may arise as to whether any land is or is not included in any native settlement or village, or in lands allotted for that purpose, shall be decided by the Collector of the district.

7) Either the lessee of the land or the natives, if dissatisfied with the decision of the Collector, may appeal to the Sub-Commissioner of the province, whose decision shall be final.
32. (1) In all conveyances, leases and licences for the temporary occupation of Crown land, and in all agreements, notices and documents relating to such land, “Commissioner” shall include the holder of that office for the time being, a person duly appointed to act for him, and a person lawfully exercising for the time being the powers and authorities of that office.

(2) In this Ordinance, in all rules made hereunder, and in all conveyances, leases and licences for the temporary occupation of Crown land, and in all agreements, notices and documents relating to such land, “purchaser” and “lessee”, unless it is otherwise specified, or unless the context otherwise requires, include personal representatives and assigns.

33. The Commissioner may make rules with regard to the following matters, and generally for carrying into effect the provisions of this Ordinance, and may apply such rules in whole or in part to the whole or to any district or districts of the Protectorate:

(a) The procedure to be followed in the case of applications for a conveyance, lease or licence for the temporary occupation of Crown land respectively.

(b) The officers by whom, and the manner in which, the powers conferred by this Ordinance shall be carried out.

(c) The survey of Crown land for a conveyance, lease or licence for the temporary occupation of which an application is made, and prescribing the fees to be paid for such survey by the applicant.

(d) The demarcation and maintenance of the boundaries of Crown land which is sold, let, or temporarily occupied under a licence.

(e) The procedure to be followed where land sold under the provisions of this Ordinance is forfeited under section 9.

(f) The procedure to be followed for the settlement and payment of compensation under this Ordinance.

34. The Commissioner may by rules under this Ordinance prescribe the forms of conveyances, leases, and licences for the temporary occupation of Crown land, and of all other documents or notices under this Ordinance, and from time to time may vary, change, or withdraw the prescribed forms:

Provided that nothing herein shall prevent the Commissioner from departing from the prescribed form in any particular instance.

35. The East Africa Land Regulations, 1897, are hereby repealed.
Appendix Three

1904 MASAI AGREEMENT

AGREEMENT, dated 10th August, 1904, between HIS MAJESTY’S COMMISSIONER for the EAST AFRICA PROTECTORATE and the CHIEFS of the MASAI TRIBE.

We, the Undersigned, being the Lybons and Chiefs (representatives) of the existing clans and sections of the Masai tribes in East Africa Protectorate, having, this 9th day of August, 1904, met Sir Donald Stewart, His Majesty's Commissioner for the East Africa Protectorate and discussed fully the question of a land settlement scheme for the Masai, have, of our own free will, decided that it is for our best interests to remove our people, flocks, and herds into definite reservations away from the railway line, and away from any land that may be thrown open to European settlement.

We have, after having already discussed the matter with Mr. Hobley at Naivasha and Mr. Ainsworth at Nairobi, given this matter every consideration, and we recognize that the Government, in taking up this question, are taking into consideration our best interests.

Now we, being fully satisfied that the proposals for our removal to definite and final reserves are for the undoubted good of our race, have agreed as follows:-

That the Elburgu, Gekunuki, Loita, Damat, and Laitutok sections shall remove absolutely to Laikipia, and the boundaries of the Settlement shall be, approximately, as follows:-

On the north, by the Loroghi Mountains.
On the west, by the Laikipia (Ndoror) Escarpment.
On the south, by the Lesuswa or Nyam and Guaso Narok Rivers.
On the east, by Kisima (approximate).

And by the removal of the foregoing sections to the reserve we undertake to vacate the whole of the Rift Valley, to be used by the Government for the purposes of European settlement. Further, that the Kaptei, Matapatu, Ndogalani, and Sigrarri sections shall remove into the territory originally occupied by them to the south of Donyo Lamuyu (Ngongo), and the Kisearian stream, and to comprise within the area the Donyo Lamuyu, Ndogalani, and Matapatu Mountains, and the Donyo Narok, and to extend to Sosian on the west.

In addition to the foregoing, Lenana, as Chief Lybon, and his successors, to be allowed to occupy the land lying in between the Mbagathi and Kisearian streams from Donyo Lamuyu to the point where both streams meet, with the exception of land already occupied by Mr. Oulton, Mr. McQueen, and Mr. Paterson.

In addition to the foregoing, we asked that a right of road to include certain access to water be granted to us to allow of our keeping up communications between the two reserved areas, and further, that we be allowed to retain control of at least 5 square miles
of land (at a point on the slopes of Kinangop to be pointed out by Legalishu and Masakondi), whereat we can carry out our circumcision rites and ceremonies, in accordance with the custom of our ancestors.

We ask, as a most important point in this arrangement, that the Government will establish and maintain a station on Laikipia, and that officers whom we know and trust may be appointed to look after us there.

Also that the Government will pay reasonable compensation for any Masai cultivation at present existing near Nairobi.

In conclusion, we wish to state that we are quite satisfied with the foregoing arrangement, and we bind ourselves and our successors, as well as our people, to observe them.

We would, however, ask that the settlement now arrived at shall be enduring so long as the Masai as a race shall exist, and that European or other settlers shall not be allowed to take up land in the Settlements.

In confirmation of this Agreement, which has been read and fully explained to us, we hereby set our marks against our names, as under:

LANANA, Son of Mbatian, Lybon of all the Masai.
MASAKONDI, Son of Arariti, Lybon at Naivasha.
Signed at Nairobi, August 15, 1904:--
LEMANI, Elmura of Matapatu.
LETEREGI, ditto.
LELMURUA, Leganan of Kapte.
LAKOMBE, Elmura of Kapte.
LIMOISONG, Elmura of Ndogalani
LISIARI, Elmura of Ndogalani.
MEPAKU, Head El Moran of Matapatu.
LAMBARI, Leganon of Ndogalani.
Naivasha, representing Elburgu, Gekunuku, Loita, Damat, and Laitutok:--
LEGALISHU, Leganon of Elburgu.
OLMUZEZA, ditto.
OLAINOMODO, ditto.
OLOTGIA, ditto.
OLIETI, ditto.
LANAIRUGU, ditto.
LINGALDU, ditto.
GINOMUN, ditto.
LIWALA, Leganan of Gekunuki.
LEMOBIGI, Leganan of Laitutok.
Signed at Nairobi, August 15, 1904:--
SABORI, Elmura of Elburgu.

We, the undersigned, were interpreters in this Agreement:
C. W. HOBLEY, (Swahili).
MWE s/o LITHIGU (Masai).
LYBICH s/o KERETU (Masai).
WAZIRI-BIN-MWYNBEGO (Masai).
I, Donald Stewart, K.C.M.G., His Majesty's Commissioner for the East Africa Protectorate, hereby agree to the foregoing, provided the Secretary of State approves of
the Agreement, and in witness thereof I have this 10th day of August, 1904, set my hand
and seal.

D. Stewart

We, the undersigned officers of the East Africa Protectorate, hereby certify that we were
present at the meeting between His Majesty's Commissioner and the Masai at Nairobi
on the 15th August, 1904, and we further heard this document explained to them, and
witnessed their marks affixed to same:

C. W. HOBLEY,
Acting Deputy Commissioner.

JOHN AINSWORTH,
His Majesty's Sub-Commissioner. Ukamba.

T. T. GILKISON,
Acting Land Officer.

W. J. MONSON,
Acting Secretary to the Administration.

I, the undersigned, hereby certify that I translated the contents of this document to the
Masai Lybich, who, I believe, interpreted it correctly to the Masai assembled at both
Naivasha and Nairobi.

JOHN AINSWORTH,
His Majesty's Sub-Commissioner.

Source: reprinted from East Africa Protectorate, Correspondence Relating to the Masai,
Command Paper No. 20360. Received 28 March 1910, House of Commons
Parliamentary Papers, 1911 Volume LII pp., 730-731.
Appendix Four

1911 MAASAI AGREEMENT

AGREEMENT

We, the undersigned, being the Paramount Chief of all the Masai and his regents and the representatives of that portion of the Masai tribe living in the Northern Masai Reserve, as defined in the agreement entered into with the late Sir Donald William Stewart, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, His Majesty's Commissioner for the East Africa Protectorate, on the ninth day of August, one thousand and nine hundred and four, and more particularly set out in the Proclamation of May thirtieth one thousand nine hundred and six and published in the Official Gazette of June first one thousand nine hundred and six, do hereby on our own behalf and on behalf of our people, whose representatives we are, being satisfied that it is to the best interest of their tribe that the Masai people should inhabit one area and should not be divided into two sections as must arise under the agreement aforesaid whereby they were reserved to the Masai tribe two separate and distinct areas of land, enter of our own free will into the following agreement with Sir Edouard Percy Cranwill Girouard, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Member of the Distinguished Service Order, Governor and Commander in Chief of the East Africa Protectorate, hereinafter referred to as the Governor.

We agree to vacate at such time as the Governor may direct the Northern Masai Reserve which we have hitherto inhabited and occupied and to remove by such routes as the Governor may notify to us our people, herds and flocks to such area on the south side of the Uganda Railway as the Governor may locate to us the said area being bounded approximately as follows and as shown on the attached map.

(Not reproduced)

On the south by the Anglo-German frontier:
On the west by the Ol-orukuti Range, by the Amala River, otherwise called Eng-are-dabash or Eng-are-e-’n-gipai, by the eastern and northern boundaries of the Sotik Native Reserve, and by a line drawn from the most northerly point of the northern boundary of the Sotik Native Reserve to the south-western boundary of the land set aside for Mr. E. Powys Cobb on Mau;
On the north by the southern and eastern boundaries of the said land set aside for Mr. E. Powys Cobb, and by a straight line drawn from the north-eastern boundary of the said land to the highest point of Mount Suswas otherwise called Ol-doinyo onyoke;
On the east by the southern Masai Native Reserve as defined in the Proclamation dated June eighteenth one thousand nine hundred and six, and published in the Official Gazette of July first one thousand nine hundred and six.

Providing that nothing in this agreement contained shall be deemed to deprive the Masai tribe of the rights reserved to it under the agreement of August ninth one thousand nine hundred and four aforesaid to the land on the slopes of Kinopop whereon the circumcision rights and ceremonies may be held.
In witness whereof and in confirmation of this agreement which has been fully explained to us we hereby set our marks (finger impressions) against our names as under:

Mark of SEGII, son of Ol-onana (Lenana), Paramount Chief of all the Masai.
Mark of OL-LE-GELESHO (Legalishu), Regent during the minority of Segi, head of the Molelyan Clan, and chief spokesman (Ol-aigwenani) of the Il-Kitoip (Il-Merisho) age-grade of the Purko Masai.
Mark of NGAROYA, Regent during the minority of Segi, of the Aiser Clan.
Mark of OL-LE-YEL, head of the Mokosen Clan of the Purko Masai, and one of the spokesmen (Ol-sigwenani) of the Il-Kitoip (Il-Merisho) age-grade of the Purko Masai.
Mark of OL-LE-TURERE, head of the Mokosen Clan of the Purko Masai.
Mark of OL-LE-MALIT, one of Masikondi’s representatives, of the Lughumae branch of the Aiser Clan of the Purko Masai.
Mark of OL-LE-MATIPE, one of Masikondi’s representatives, of the Lughumae branch of the Aiser Clan of the Purko Masai.
Mark of OL-LE-NAKOLA, head of the Tarosero Clan of the Purko Masai.
Mark of OL-LE-NAIGISA, head of the Aiser Clan of the Purko Masai.
Mark of MARMAROI, uncle and personal attendant of Segi.
Mark of SABURI, The Prime Minister of the late Chief Ol-onana (Lenana) and principal elder of the Southern Masai Reserve.
Mark of AGALI, uncle of Segi, representing the Loita Masai.
Mark of OL-LE-TANYAI of the Tarosero Clan, chief spokesman (Ol-sigwenani) of the Lamek (Meitaroni) agegrade of the Purko Masai.

The above set their marks to this agreement at Nairobi on the fourth day of April nineteen hundred and seven.

A. C. HOLLIS,
Secretary, Native Affairs.

OL-LE-MASIKONDI, head of the Lughumas section of the Aiser Clan: chief elder of the Purko Masai, called in the former treaty of 01 Oiboni of the Purko Masai.

OL-LE-BATIET, head of the Aiser Clan of the Purko Masai on Laikipia, Ol aigwenani of the age known as Il Merisho.

The above set their marks to this agreement at Rumuruti on the 13th day of April nineteen hundred and eleven.

E. D. BROWN
Assistant District Commissioner,
Laikipia.

Witnesses:
J. M. COLLYER
D/C. Laikipia.

His Mark: OL-LE-LENGIRI, of the Aiser Clan Purko Masai.
His Mark: OL-LE-GESHEEN, head of Tarosero Clan of Purko Masai.

His Mark: OL-LE-SALON, brother of Ol-le-Kotikosh, as a deputy for Ol-le-Kotikosh.

The above set their marks to this agreement at Rumuruti on 19th. day of April 1911.

E. D. BROWNE,
A.D.C., i/c Laikipia.

We, the undersigned, certify that we correctly interpreted this document to the Chief, Regents, and Representatives of the Masai who were present at the meeting at Nairobi.
A. C. HOLLIS,
OL-LE-TINKA, of the Il-Aiser Clan.
We the undersigned certify that we have correctly interpreted this document to the
Representatives of the Masai at Rumuruti.
A. J. M. COLLYER,
District Commissioner.
OL LE TINKA. His mark.

In consideration of the above, I, Edouard Percy Cranwill Girouard, Knight Commander
of the Most Distinguished Order of Saint Michael and Saint George, Member of the
Distinguished Service Order, Governor and Commander in Chief of the East Africa
Protectorate, agree on behalf of His Majesty's Government but subject to the approval
of His Majesty's Principal Secretary of State for the Colonies to reserve for the
exclusive use of the Masai tribe the area on the south side of the Uganda Railway as
defined above and as shown on the attached map, which area is coadunate with the
Southern Masai Native Reserve and to further extend the existing Southern Masai
Native Reserve by an addition of an area of approximately three thousand and one
hundred square miles, such area as shown on the accompanying map the approximate
boundaries being on the south the Anglo-German Frontier, on the west the eastern
boundary of the aforesaid Southern Masai Reserve, on the north and east by the
Uganda Railway zone from the Athi River to Sultan Hamud Railway Station thence in a
line drawn from the said station to the north-west point of the Chiulu Range thence
along the Chiulu Range to the south-eastern extremity thereof thence by a straight line
to the meeting point of the Eng-are-Rongai River and the Tsavo Rivers thence by the
Eng-are-Rongai River to the Anglo-German frontier and to undertake on behalf of His
Majesty's Government to endeavour to remove all European settlers from the said areas
and not to lease or grant any land within the said areas (except such land as may be
required for mining purposes or for any public purpose) without the sanction of the
Paramount Chief and the representatives of the Masai tribe.
In witness whereof I have hereunto set my hand and official seal this twenty-sixth day
of April one thousand nine hundred and eleven.

Signed sealed and delivered by the within named Sir Edouard Percy Cranwill Girouard
in the presence of

C. HOLLIS
E. P. C. GIROUARD

We, the undersigned were present at a meeting between His Excellency the Governor
and the Masai at Nairobi on the fourth day of April one thousand nine hundred and
eleven, and we heard this document explained to the Chief and the representatives of the
Masai who entered into this agreement of their own free will and with full knowledge of
the contents thereof.

R. M. COMBE
Crown Advocate.

C. W. HOBLEY,
Provincial Commissioner, Ukamba.

JOHN AINSWORTH,
Provincial Commissioner, Nyanza.

C. R. W. LANE,
The action having been set down for argument on a preliminary point of law only on the issue of jurisdiction as raised on the pleadings by the Attorney-General, the only question that I have now to decide is whether the claims of the plaintiffs are recognisable by this court.

Mr. Home (Forester v. Secretary of State 1. A., 1872, p. 10; Musgrave v. Pulido, 5 App. Cases, p. 102) has argued on their behalf that it is not sufficient for the government merely to plead "Act of State," but that it is incumbent on the court to scrutinise those acts which are alleged to be Acts of State so as to be able to decide whether they in fact are or are not Acts of State, and that for this purpose it will be necessary to take evidence generally; and particularly, on the point of the alleged fiduciary relationship between the Secretary of State and the Masai tribe, he wishes to put in evidence speeches in the House of Commons.

I agree that the court must satisfy itself as to the real nature of the acts which are claimed to be Acts of State, but here all the facts relied on are fully set out by the defendants in the pleadings, so that, in my view, the court is in a position to form an opinion regarding their true nature without the necessity of taking evidence generally, or considering speeches in the House of Commons, which do not create legal obligations.

Now, for the contention of the government to succeed it must be shown on the facts pleaded that the acts of which the plaintiffs complain are really such Acts of State as are not cognisable by any municipal court.

These facts are shortly as follows:-

In 1904 the then Commissioner of the Protectorate entered into an agreement with the Chief and certain representatives of the Masai tribe by which, inter alia, it was arranged
that certain sections of the tribe should remove to a reserve at Laikipia. This removal took place and the tribe was consequently divided in two.

In 1911, the then Governor of the Protectorate entered into another agreement with the Chief, his regents, and certain representatives of that portion of the tribe living at Laikipia, by which it was arranged that the sections of the tribe which under the former agreement had removed to Laikipia should move south into one reserve with the remainder of the tribe.

Both of these agreements were made by the government acting on instructions from, and with the sanction of, the Secretary of State.

The Attorney-General contends that these agreements were in effect treaties while the plaintiffs prefer to call them agreements, though in their concise statement the 1904 agreement, on which they rely, is called by them a treaty. For the present I will call them agreements.

Now, both these agreements were entered into by the representatives of the Crown in the East Africa Protectorate, in which the King exercises powers by virtue of the Foreign Jurisdiction Act, 1890, and for which with the advice of his Privy Council he ordered in 1902 that-

"The Commissioner shall administer the Government of East Africa in the name and on behalf of His Majesty, and shall do and execute in due manner all things that shall belong to his said command, and to the trust thereby reposed in him, according to the several powers and authorities granted or appointed to him by virtue of this Order and of his commission, and according to such instructions as may from time to time be given to him under His Majesty's Sign Manual and Signet, or by Order of His Majesty in Council, or by His Majesty through a Secretary of State, and according to such laws as are or shall hereafter be in force in the Protectorate." (Order in Council 1902(3).)

The Commissioner therefore in 1904, and the Governor (with like powers) in 1911, were both consequently acting within their authority in entering into the agreements mentioned "on the instructions of His Majesty through a Secretary of State."

Now, the other parties to these agreements were persons whom the Commissioner and Governor, acting on behalf of the Crown, chose as representatives of the Masai tribe who with the Crown could enter into such agreements. The Masai tribe as living within the limits of the East Africa Protectorate are not subjects of the Crown, nor is East Africa British territory. But East Africa being a Protectorate in which the Crown has jurisdiction is in relation to the Crown a foreign country under its protection, and its native inhabitants are not subjects owing allegiance to the Crown but protected foreigners, who, in return for that protection, owe obedience.

For this view as to the status of a protectorate "which has never been acquired by settlement, or ceded to, or conquered, or annexed by His Majesty, or recognised by His Majesty as part of his dominions," and of the status of the native inhabitants thereof, I need only refer to the case of the King v. the Earl of Crewe (2 K. B., 1910, p. 577).

The real parties to these two agreements are therefore on one side the Crown, and on the other the Paramount Chief and leading representatives of a native tribe in a foreign country under the protection of the Crown.

The main matters which are the subject of the agreements are the areas which the protecting power of the country is to reserve for that tribe as apart and distinct from the subjects of the Crown living in the same country.

In my opinion there is here no legal contract as alleged between the Protectorate Government and the Masai signatories of the agreements, but the agreements are in fact
treaties between the Crown and the representatives of the Masai, a foreign tribe living under its protection. I will now consider the plaintiffs' claims and the acts of which they complain.

The plaintiffs claim as individuals and also on behalf of the Masai of Laikipia, and also on behalf of the Masai tribe generally, that the treaty made between the Masai and His Majesty's late Commissioner, Sir Donald Stewart, in 1904, is still in force and effect, and that the obligations undertaken therein are still binding on His Majesty's Government. The defendants Nos. 2-19 are brought on the record as signatories to the agreement made in 1911 whereby they agreed that they and the other Masai should leave Laikipia; these defendants having no authority to enter into such an agreement and such agreement being void except as regard the said defendants.

The first three plaintiffs and the other Masai of Laikipia have been and are being wrongfully removed from the Laikipia district in breach of the said agreement of 1904. The plaintiffs therefore claim:

I. A declaration against the defendants Nos. 1, 20 and 21 that the plaintiff and the other Masai of Laikipia and the other members of the Masai tribe generally, with the exception of the defendants Nos. 2 to 19 inclusive, are still entitled to:

(a) The Laikipia district extended as aforesaid as equitable tenants in common in unbarable entail; and
(b) To an easement of road as aforesaid between the Northern and Southern Masai Reserves; and
(c) That the 1911 agreement is not binding on the plaintiffs and the other Masai of Laikipia and the other members of the Masai tribe generally with the exception of the defendants Nos. 2-19.

II To £5,000 damages against the 1st defendant for failing to provide the road as agreed in the 1904 agreement; and

III To an inquiry as to damages against the 1st, the 20th, and 21st defendants-

(a) arising from the death of stock occasioned by such stock being illegally removed from the Laikipia district;
(b) arising from the depreciation on the value of stock wrongfully removed from the said Laikipia district.

IV. All necessary accounts and inquiries and such further and other relief as the nature of the case may require.

V. As against the 20th and 21st defendants an injunction restraining them from preventing the return of the plaintiffs and their stock to the Laikipia district; and against them compelling any of the Laikipia Masai and their stock to move from the said Laikipia district.

VI. Costs.

The above reliefs with the exception of No. V are claimed against the Crown, and Nos. I, III and V also against the 20th and 21st defendants on the grounds that the government having by the 1904 agreement become trustees for the Masai, they failed to execute their trust, but entered into another agreement in 1911 contrary to the former one and derogatory to the interests of their castor qua trusts, and that the later agreement was obtained by duress, and is further not binding as it has not received the approval of the tribe, and that the losses they allege they have suffered are due to the government executing the terms of the second agreement in violation of the first, which still continued to exist.

Now, are the acts of defendants complained of by the plaintiffs Acts of State?
The answer to this is, in my opinion, contained in my finding that both the agreements are in fact treaties. For it follows from that finding that there was no such contractual relationship as alleged between the parties, and that in this action the plaintiffs are seeking by means of the court to enforce the provisions of a treaty. The Paramount Chief himself could not bring such an action, still less can his people (Feather v. Queen, 35 L. J. K. B., 208 and Buron v. Denman, 2 Excheq. 167).

As regards the plea of duress and the want of approval of the tribe to the second agreement, as affecting its validity, it is not within the competence of this court, having held the agreement to be a treaty, to consider its validity as affected either by the pourparlers before its signature or a want of authority on the part of the signatories.

As to the alleged losses incurred by the plaintiffs, they themselves plead that defendants 20 and 21 were the agents of the government acting in pursuance of the orders of the government or Secretary of State in carrying out the second agreement, which pleading is accepted by both of these defendants as their defence. Such an action as against them is founded on tort and will not lie, and their acts in carrying out the terms of a treaty having been on instructions from and adopted by the government are as much Acts of State as the treaty itself. Relief V claimed as against these defendants for similar reasons is not one that this court could grant as it would in its crudest form be an injunction to officers of the government to prevent them carrying out an Act of State.

The remaining defendants on the record are merely nominal as signatories to the 1911 agreement and no relief is claimed as against them.

I hold therefore on the issue before me that the acts of the defendants complained of by the plaintiffs are in fact Acts of State which are not cognisable by a municipal court.

The Crown, acting through its Commissioner, first made one treaty with the Masai, and subsequently acting through the Governor modified that treaty by another, and I cannot do better than adapt to the present case the concluding words of Lord Kingstown in giving judgement in the Privy Council in the case of Secretary of State for India v. K. B. Sahaba (XIII Moore 22): "It may have been just or unjust, politic or impolitic, beneficial or injurious, taken as a whole, to those whose interests are affected. These are considerations into which this court cannot enter. It is sufficient to say that even if a wrong has been done, it is a wrong for which no municipal court of justice can afford a remedy."

The action is dismissed with costs.
R. W. HAMILTON.
26 May, 1913.

Appendix Five

Abolition Time Line – East Africa

2/23/1807  Britain abolishes the trade in slaves, illegal for British subjects to transport captive Africans for sale into slavery

1808 The United States does the same.

1822 Moresby Treaty with Said to abolish overseas, not land, slave trade; not fulfilled, used land route to continue (Liebowitz, p.132).

1834 British abolish slavery in British Colonies (Shillington, p. 236).
1833 says Carl Sahlberg and Lawrence James (p. 347).
Aug. 1, 1838 says Walvin (p. 143); some islands ended it in 1834, each colony gave effect separately.

1841 Joint treaty with allies to stop and board slave ships.

1845 British treaty with Said bin Sultan, anti-overseas slave trade.
1/1/1847 Treaty with Sultan of Muscat: Oman to prohibit slave trade from Africa; not enforced (Liebowitz, Appendix C).


1873 Frere and Kirk negotiate treaty with Bargash; slave trade illegal (Liebowitz, ix). Continues using land routes to Kilwa (p.180) and smuggling (p.181). Bargash needed Brits to protect him from brother Turki in Oman.
1874 Slavery abolished in Gold Coast.

4/18/1876 Proclamation of Sultan; slave trade abolished on Coast, Zanzibar and Pemba. Trying to address slaving by land routes. (Beachey, p.116). No way to enforce it.

12/9/1888 Sultan proclamation, illegal to hire out slaves.

10/1/1889 Sultan Khalifa declaration: Slaves brought in after 11/1/89 illegal. All children after 1/1/1890 born free. Ignored.

7/1890 Zanzibar declared a protectorate (Beachey, p.117).

8/1/1890 Slave trade suppressed: Abolished from Suez to Madagascar including Mombasa, but holding slaves is legal.(FO 881/8098/#72, Cave to Landsdown, Report on Slavery); Joint Powers Act. Exchange, sale or purchase prohibited by Sultan for domestic slaves. Slaves can purchase freedom

8/20/1890 Master must agree to free slave unless mistreated. Addendum to above.

6/3/1892 Tucker letter, says # of rescued slaves decreasing @ Freretown. But trade remains vigorous (Beachey, p. 230).

1893 Agreement: Slaves freed by HM Consulate-General are under his jurisdiction (concession from the Sultan) not of Sultan’s.

1895 & 99 Registration and control of portage to prevent slaves.

4/1/1897 Abolish legal status of slavery in Zanzibar & Pemba (not Mombasa and Coast). Two European commissioners (Last & Farler) to oversee emancipation. No rush to freedom (Beachey, p. 255).
6/1897 Debate in Commons re: legal status of slavery in Mombasa & environs; return of fugitives illegal.

4/1898 Decree of 1876 reinforced, all imported slaves illegally held.

1900 All persons born in Mombasa & coast, born free, 47,000 freed in Zanzibar & Pemba (Liebowitz, p. 248) 53,000 remaining – 12% emancipated since 1897 (Beachey, p. 255).

1902 Census of mainland – 15,039 slaves (Beachey, p. 259).

1907 Legal status of slavery abolished in Mombasa &

**Source:** Joan Plubell Mattia, A Thesis Submitted to the University of Birmingham for the Degree of Doctor of Philosophy, Department of Theology, School of Historical Studies, The University of Birmingham, 2007.
Appendix Seven

Commissioners and Governors

of the British East Africa Protectorate and Kenya

Commissioners of British East Africa (1895–1905)

1895–1900 Sir Arthur Henry Hardinge (1859–1933)
1904–1905 Sir Donald William Stewart (1860–1905)
1905 (Dec) James Hayes Sadler (1851–1922)

Governors of British East Africa (1905–1920)

1905–1909 James Hayes Sadler (1851–1922)
1909–1912 Sir (Édouard) Percy Cranwill Girouard (1867–1932)
1912–1917 Sir Henry Conway Belfield (1855–1923)
1917–1919 Sir Charles Calvert Bowring (1872–1945); acting governor
1919–1920 Sir Edward Northey (1868–1953)

Governors of Kenya (1920–1963)

1920–1922 Sir Edward Northey (1868–1953)
1922–1925 Sir Robert Thorne Coryndon (1870–1925)
1931–1937 Sir Joseph Aloysius Byrne (1874–1942)
1937–1939 Sir (Henry) Robert Moore Brooke-Popham (1878–1953)
1940–1944 Sir Henry Monck-Mason Moore (1887–1964)
1944–1952 Sir Philip Euen Mitchell (1890–1964)

Governor-general of Kenya (1963–1964)

Prime minister of Kenya (1963–1964)
1963–1964 Jomo Kenyatta (c.1895–1978); Kenya African National Union

Presidents of Kenya (1964–2000)
1964–1978 Jomo Kenyatta (c.1895–1978); Kenya African National Union
1978–[2002] Daniel arap Moi (b. 1924); Kenya African National Union


(accessed on December 15, 2013)
Appendix eight

COLONY AND PROTECTORATE OF KENYA.

LAND TENURE COMMISSION.

Report of the Commission appointed to enquire into the laws relating to the Crown Lands in East Africa.

Preliminary.

1. The Commission was appointed by His Excellency, Sir Edward Northey, Major General of His Majesty's forces, K C.M.G., C.B-, Governor of the Colony and Protectorate of Kenya, on the 6th day of August 1920 under the Commissions of Enquiry Ordinance 1912.

The following were the Commissioners appointed:—

(1) Hon. H. T. Martin, M.L.C., Commissioner of Lands, Chairman.
Hon. A. Holm, M.L.C., Director of Agriculture.
W. MacLellan Wilson Esq., Farmer, Kyambu.
J. C. Coverdale Esq., Surveyor and Land Agent, Nairobi.
Capt. F. O. B. Wilson, D.S.O., Farmer, Ulu.
(2) Hon. V. V. Phadke, M.L.C., Advocate, Nairobi.
Mr. H. J. Snelgar, Land Assistant, Land Department, was appointed Secretary to the Commission.

2. On the 22nd September 1920 Mr. Conway Harvey (5) was appointed an additional Commissioner.

3. On the 25th October 1920 Mr. Cowasjee Maneekji Dalal (6) was appointed an additional Commissioner.

4. It is with the greatest regret that we have to record the death on the 29th of December 1920 of Mr. B. G. Allen, one of the Commissioners.

5. The terms of reference to the Commission were:—
To investigate and make recommendations as to —
1. The principles to govern the delimitation of Native, Forest, and other Government reservations of Crown Lands.
3. The conversion of titles.
4. The Governor's right of veto.
5. The powers of officers administering the laws in relation to Crown Lands and the delegation of such powers.
6. Development conditions in leases or on alienation of Crown Lands.
7. Classification of rents.
8. The declaration of stock routes and outspans.
10. All such other matters relating to the tenure of Crown Lands as in the course of their investigation for the foregoing particulars to require revision or amendment.

6. The Commission met on twenty four occasions and examined sixty-six witnesses.

7. Eighty two people wrote letters to the Commission setting forth their views and making suggestions.

(1) M.L.C. means Member of the Legislative Council.
(2) No longer M.L.C. at time of report.
(3) Now Lieutenant Colonel.
(4) Resigned on 12th, January, 1922.
(5) Now M.L.C.
(6) Resigned 3rd November 1920.
8. In the Appendices (1) excisions have been made of matters which were not relevant to the terms of reference to the Commission.

9. It is apparent from our report that we have considered principles within the limits of our terms of reference, and that report not dealt with nor have we been influenced by extraneous matters such as racial distinctions or political controversies of any kind.

10. It will be observed that while we have in certain matters made detailed recommendations we have frequently only laid down general principles. Particularly in matters which we think should be dealt with either by or in definite co-operation with local bodies, we have considered it inadvisable to lay down hard and fast rules. Present conditions in this country are not stable and are liable to rapid change and in the administration of laws, particularly land laws, wide discretionary powers should be given to meet this variety and flux.

11. The Commissioners take this opportunity of thanking witnesses and others who furnished information or made suggestions during their enquiry.

12. We desire to place on record our appreciation of the highly satisfactory manner in which our Secretary, Mr. H. J. Snelgar, has performed his duties.

**TERM 1.**

(a) THE PRINCIPLES TO GOVERN THE DELIMITATION OF NATIVE RESERVES.

It is not apparent what has been the principle in the past of determining the actual alignment of the boundaries of Native Reserves. Possibly it has been a mixture of administrative convenience at a time when white settlement was embryonic, and of actual native occupation whether nomadic or permanent.

It is clear, however, that the boundaries of native reserves should be clearly defined and adhered to on a just principle; and by our term of reference we are concerned with this principle of delimitation and the method of settlement. Briefly, we state this principle to be one which should be based on beneficial occupation and the needs of
each tribe as they at present exist together with a sufficiency for the estimated increase in the next generation; and the method to be the appointment of a temporary Boundaries Commission, whose primary duty should be to clear up finally the allocation of a number of doubtful areas, some of which have been surveyed into farms and then handed back to the reserves, and some of which are subject to opposite opinions as to their proper disposal. This body should be of an independent composition, and should be presided over by a judicial officer. In considering the present needs of each tribe, we are faced with the problems of the increase of population, the waste of land owing to primitive methods of cultivation, large tracts of agricultural land being used for pastoral purposes, and the existence of large waterless areas. In view of the fact that the Reserves are limited, we consider that Government is committed to a policy of ensuring a better use of the land within the boundaries; and this policy we think should take the form of educating the natives to improved methods of intensive cultivation, by which means expansion can be provided for within the Reserves for many generations, once the boundaries have been established on the principle already referred to.

With regard to agricultural land being used for grazing, we think that it would be impossible to convert the tribe from pastoral habits to agricultural in a short space of time, so that it becomes necessary to allow them to continue in occupation of the land; although it might be found possible to introduce agricultural instruction and encouragement, and if that is done it will ease the position in many years to come when the tribe concerned would be looking out for expansion owing to an increase in their stock.

To consider the more effective use of land, to improve the capabilities of land by providing or increasing a water supply, and to define the present needs of the natives, would probably be functions of a Native Trust.

We consider, therefore, that a Native Land Trust should be established. This Trust should have considerable powers, and should administer the trust funds derived from the Reserves. The composition of this body is not a matter on which we consider we are called upon to recommend. The Trust should have power to grant leases for land in
Reserves to non-natives, without reference to the Secretary of State, the governing principle of such alienation being direct benefit to the native and the treatment of native produce, being designed to cover such purposes as posho mills and sugar factories.

(b) THE PRINCIPLES TO GOVERN THE DELIMITATION OF FOREST RESERVES.

We find that there are areas, probably considerable areas, of open land in the present Forest Reserves, which are neither immediately, nor in any certain future likely to be, required for such forest purposes as the planting of fuel trees or the grazing of departmental or concessionaires' cattle. Those areas are therefore lying idle and are likely to remain so indefinitely. We believe that the forest boundaries unavoidably, in the circumstances of the original surveys, were taken out somewhat roughly, and without any close examination of the ground. Thus we are told that on one hand there is included agricultural or pastoral land which might reasonably have been excised, and on the other hand there is timber on alienated land which should have been reserved.

(1) Not reproduced. These may be seen on personal application at the Land Dept.

(3)

In our opinion, the time has now come when every scrap of land to which the agricultural development of the country could be extended, should be earmarked and made available for future alienation. For this purpose a re-survey in doubtful areas should be undertaken as need arises and as circumstances permit, but separately from any protracted and expensive survey which may be instituted for the primary purpose of timber classification.

Inevitably, in our enquiries into the land requirements of the Forest Department, we have enquired into matters not immediately within our terms of reference; such matters for instance as the relation of the Department's staff, actual or probable, to the area it does or could effectively administer; or again, the possibility of planting up areas in native reserves with fuel trees to relieve the conserved supply; or the possibly
different effects of the continuity to forests of white settlement and native reserves respectively; and in fact the whole question of whether the existing system is likely to ensure reasonably full use being made of these very extensive forests. From the evidence before us, and particularly that of Professor Troup, we must accept the assumption that the Forest Department gradually strengthening itself as it gathers revenue from private enterprise, should be able in time to cover its whole field of work; and we therefore come to the conclusion that only such areas as are not required now or in the near future, for fuel-planting or gracing, should be excised from the Forest Reserve*.

(c) THE PRINCIPLES TO GOVERN THE DELIMITATION OF GAME RESERVES.

So long as it can be demonstrated that no area under crops or grazing is in any danger from the presence of a game reserve, and that the land so reserved is not required for any economic purpose incompatible with the preservation of Game, we consider that, if only from the point of view of science, the maintenance of such reserves is desirable in East Africa.

Where however there is any conflict of interest, the interest of agriculture (in the widened sense of the term) must prevail. We have two particular recommendations to make: (1) When Government is able to undertake wholesale measures in tackling the problem of disease among native cattle, it will be necessary to re-consider the continuance of game preservation in those areas which are reserved to natives and game in common. (2) That portion of southern game reserve which lies between Nairobi and the end of the Farm area down the Railway line, should be abandoned and any area given in exchange should be in a locality far removed from economic settlements.

The seven year time limit recommended under the head of "Other Government Reserves" in this term of reference, should also be applied to Game Reserves.
(d) THE PRINCIPLES TO GOVERN THE DELIMITATION OF OTHER GOVERNMENT RESERVES.

We consider that the system whereby Departmental Reserves take on the character of alienation in perpetuity, is uneconomical and should be discontinued. For example, - though there is no difficulty—in theory—in cancelling any such reserve, in practice, once the reserve is made, the Department concerned is permanently endowed with nine points of the law and may stand a protracted siege before being dislodged from some plot which is urgently required for a more important purpose.

Again, under the present system, it is possible for the object of the reservation to become non-existent, and the Land Office to be ignorant of the fact until chance reveals it. We are therefore of the opinion that Departments should, except in a few obvious cases, be called upon to show cause why their reserves should be renewed. Thus a reserve should not be made for more than, say, seven years, and when it is made, the reasons for it and a description of it, should be notified by gazette. At the end of the period, the reserve would lapse and the onus of the proof of the need for renewal would be on the Department.

TERM . 2.
THE METHOD OF ALIENATION OF CROWN LANDS.

The turning aside of capital from the cultivation of the land to its purchase is one of the chief vices of our French rural economy " (De Laverque). Our problem here is not a simple one; we have to consider the need for fair dealing without favour, the desirability of obtaining a hardworking and husbandlike type of settler at the initial stage of transfer from the Crown and the undesirability of setting up too cumbrous a machinery. But fair-dealing without any special safeguards is more to be expected than favouritism; the tendency, we, believe, is for the genuine farmer to possess the land; and the cumbrousness of the machine does not so much matter, once its task is done.

For the unbusinesslike realisation of the country's greatest asset, the remedy is, slow, however, unjust to individuals and ruinously expensive; and any too hard and fast
insistence on any one method of the disposal by Government of land, is apt to entail a
deal loss to the community which the future will find hard to make good, even if it
should rightly be called upon to do so.

We will cite two examples, one in Australia and the other in East Africa.

(4)

In Australia the expenditure of millions on the compulsory repurchase by the
State of land for closer settlement, which has been going on now for some twenty years,
is directly the result of the undue prolongation of a system of direct free grants on
demand.

In Nairobi and Mombasa at the present moment, the prevalent inflation of rents is
undoubtedly the result of a continued adherence to a system of occasionally selling
small parcels of town plots to the highest bidder. Let it be admitted that in Australia the
pioneer had to be rewarded, and that in East Africa revenue is hard to come by; but in
the one case a prudent reservation of land for auctioning in small lots might have
resulted in both revenue and development, while in our case here a direct distribution of
town plots to a degree commensurate with the demand and at a moderate fixed price, if
carried out a few years ago before the segregation of races controversy had made any
distribution impossible, might have produced a higher state of urban development and a
lower rate of rentals than we see in Kenya to-day.

There is a further consideration. Not only do circumstances vary in time; they
vary also in place. In other words, not only may one method of alienation not be
suitable equally at two different periods, but it may not even be suitable in the same
period to all cases. Thus whereas the auction system may operate well enough where a
large new settlement is being opened up remote from any existing interests, it may
operate very harshly in the case of the disposal of some small block, the acquisition of
which may be of vital importance to an adjoining land-holder and merely an opportunity
of squeezing to anybody else. It is true that a recent investigation of claims made on this
count did not reveal many which came to be substantiated; but we think the present
process of clear settlement will produce a gradually increasing number, particularly in
some of the purely grazing areas where the size of the farms appears to be on the small side.

At present, under our principal land law, the auction system prevails and any departure from it is clearly only contemplated in the case of "Special Purposes" leases. How far this idea has been found a sound basis for present day needs is best discovered by an examination of the objects, and their fulfillment to date, of the Soldier Settlement allotment.

This allotment was by far the most extensive undertaken in the country; whereas previous allotments as for instance the 1913 one, resulted in the alienation of sixty or seventy farms, the 1919-20 scheme comprised some fifteen hundred farms; its early history is therefore of interest.

Early in 1917 a Land Settlement Commission was appointed which eventually recommended the direct alienation to ex-Soldiers of all available land, free from premium. Applicants were to be selected by a Board whose powers were not apparently to include the power to allot a particular farm to one particular applicant in preference to another. In 1919 a definite scheme was launched; it provided for direct alienation, but by lottery, and to applicants selected by a Board; and further it was not considered possible in the financial circumstances of the country to give the land out free, but only on a more extended system of payments than that allowed under the principal law to previous settlers.

How different however was the problem in 1919 from what it was in 1913, the date of the last allotment, can be best seen by a comparison of the prices obtained in the pre-war auctions and those imposed under the Ex-Soldier scheme, taking into account that fact that in the latter case prices were so carefully and conservatively fixed that when the final adjustments had been made, complaints were practically eliminated. Such a comparison shows that land for instance, in the Trans Nzoia of the type which only fetched 60 to 75 cents an acre in 1913 was gladly taken up in 1919 for five rupees and more, while it was clear that an auction would have produced an even higher rate.
This is only an example for what had happened all over the country. Now in the prewar days the auction system on the whole meant that though a part of a farmer's capital went at once towards purchase, it was only a very small part.

The auction system would not entail a very considerable amount of capital being involved in purchase. It is true that long terms assist, but there still remains a heavy charge with prior rights, when the question of mortgage arises.

The problem of development condition? forms a separate term of reference and will be dealt with later; it is at any rate obvious that if the State is not going to realise part of the value of its land in immediate cash it must provide for a return in the future.

The question of the consideration we will leave for the present, and deal merely with the machinery of alienation. We believe that we have now come to a time when the greatest care must be exercised in the disposal of the large number of scattered parcels of land still indisposable of; in some cases the mode of alienation adopted by the Land Office under General Notice No. 79, 1920 for the Coastal Area appears to be a sound one; in different circumstances special claims might be, as indeed they have been recently, adjudicated on in a manner to exclude parties not interested in some special manner; as regards town-plots we think that auction should be the rule except in such special circumstances as have already been referred to.

The point is that for agricultural land also, auction is, by law, the rule, while for such land we think it should now be the exception. We think that the method of alienation, i.e., either direct, or by auction, or direct but on special claims, or by any other method which may appear more convenient, should not be particularized by law but should be left to the discretion of an authority, the creation of which we shall deal with under another head.
TERM . 3.

CONVERSION OF TITLES.

We have included under this head not only the more obvious forms of conversion, such as from agricultural to township title, but also changes of user within the operation of separate parts of a single ordinance; as for instance, the change from a Special Purpose to an Open Lease under the Crown Lands Ordinance 1915.

In fact we have practically included in our consideration the general question of covenants in titles.

We believe that under the conditions at present obtaining in this country, it is impossible to lay down very hard and fast rules within the rigid limits of legal deflation; as the law now stands, the Government has general powers of exemption, and we consider it would serve a useful purpose to indicate what we think are the principles to govern the exercise of these powers.

The case frequently arises of the holder of a Special Purpose Lease asking for conversion to an Open Lease, on the ground of requiring increased facilities for increasing capital; the strictly logical answer to such an application is to the effect that more general privileges of user entitle the State to an increased consideration for the land. There have been, we find, cases where the special object of the restricted lease has been fulfilled in so far that on the land has been erected permanent factory buildings of an efficient and expensive type, and for a considerable period genuine work of public utility has been carried on. In other words sufficient commitment to a special purpose has been undertaken by the lessees to justify the Government taking a risk of the grant of an open lease, opening the door to a defeating of the purpose of the original lease in result.
We think that in justice to genuine cases submitted, it is necessary for Government to take on the responsibility of discriminating between deserving and undeserving cases, since the only general rule possible might, as indeed it does in fact, operate harshly in cases fully deserving every possible kind of assistance. Land administration cannot be carried on by rule of thumb.

As regards such restricted titles of the future, we think that the alternative of definitely endorsing them with a clause freeing them from the restriction when so much development is completed, might be adopted as a separate form of title specifically mentioned in the law.

The question of allowing, as a right, conversion from agricultural to township title is a somewhat thorny subject in a young but growing country; we think however, that Kenya is sufficiently aged for the law to declare some definite policy in this respect. The Crown Lands Ordinance 1915 ignores the very existence of such a problem.

We are of the very carefully considered opinion, taking into account the reasonable rewards of the pioneer, that the time has now come when the conversion of such titles should be allowed as a right but subject to the unconditional surrender of the agricultural title prior to the issue of township leases which would be subject to the charges provided for such leases under the existing law. Provided however that it shall be competent for the authority to take into account, by the way of reduction of premium, how for the applicant is deserving of rebate in proportion to the amount of the development which he has carried out, and which has contributed to the creation of the township in question. We think that the assessment of such rebates would be one of the most important duties of the future land authority; we think too that the purpose of such a provision would be largely defeated unless supplemented by the strict enforcement of the right of re-entry in the cases of leases which are subject to development conditions, and taxation in the case of land which cannot be brought into use by any other means. We recognize, however, that the holder of an agricultural lease should have a definite right of conversion into township titles, provided that he complies with the Public Health Ordinance or any other relevant laws or policy dictated by the Government.
The case of conversion from agricultural to mining title should be sufficiently dealt with under the Mining Laws which are under revision at the present moment; the case of conversion from mining to agricultural title is hardly likely to arise in the immediate future; but if it does we have only to point out that the two forms of title are two different contracts and should be treated as such, the terms of the one in no way implying rights under the other. In other words we consider that what we understand to be British Columbian practice in this respect is a bad precedent and should not be followed.

Our guiding principle under this head is that where there has been honest development, a change of contract would be an opportunity for rendering assistance; where on the other hand there has been no such development, there should be no such assistance proffered, but non-development under the old contract should be paid for under the terms of the new contract.

(6)

TERM 4.

THE GOVERNOR'S POWER OF VETO.

The object of the provision made for this power is the prevention of the transfer of land for the use of one race to another race which the policy is to segregate in another area. It is not within our reference to comment on that policy, but we are properly concerned with the method of its execution as embodied in the law. If the present policy of segregation of race is to be continued, we consider that the only proper method is the drawing of definite territorial boundaries between the land-holdings of each race and referring to such in the law itself, to insert a provision prohibiting the transfer of land within them to a race other than that for which the land is reserved, the Governor-in-Council having powers of exemption.
The Governor's power of veto to enforce a policy of segregation then unnecessary, and a straightforward declaration of that policy is to be found, plain to see, in the body of the law.

**TERM . 5.**

**DELEGATION OF POWERS.**

Without of course diminishing the Governor's privilege of considering all matters in Executive Council, it appears to us that it should not be definitely incumbent on that body, as it is now, to have to advise His Excellency on so large a number of problems arising out of the administration of the land laws, as is at present the case. We recommend the creation of a Land Board as advisors in certain cases to the Governor, and in others to the Commissioner of Lands. We consider that certain matters which are required to be referred to the Governor should be so referred with the advice of a Board, that in certain other cases the Commissioner of Lands should in exercising his own powers of decision have the same Board to refer to.

The constitution of the Board is naturally a matter for His Excellency to decide, although we think that a suitable composition would be:—

1. Commissioner of Lands (chairman)
2. Director of Agriculture.
3. A member for highlands
   A member for the Coast

The board should have no co-opt for special questions.

The Board would have no domestic control of the Land Department, and would sit and consider matters as submitted by the Chairman, who would have the right to convene. The unofficial members of the Board would be unpaid, although travelling expenses on duty would be paid.

In any township to which the Municipal Corporation Ordinance applies, the Municipality would work in substitution for the Land Board.

The effect of these recommendations on the Crown Lands Ordinance, 1915, is as follows:—
(a) For "Governor " or " Governor-in-Council " read " Governor with the advice of the Land Board " in the following sections :-6 (II) to (V), 39, part V (I), 87 to 92.
(b) For " Governor-in-Council " or " Land Officer " read " Land Board " in the following sections:—25, 26, 27, 42, 43, 44. Section 156 might remain unaltered, although it is a proper function of the Land Board to make an initial valuation.

It is evident that the creation of a Land Board will relieve the Executive Council to a great extent, and will ensure that land matters secure an intensive consideration which is only possible by a body specialized in its subject and strengthened in its advice by exhaustive enquiries into the minutest detail.

Under this term of reference comes the signing of Crown Grants, which we consider might properly be done by the Commissioner of Lands, the necessary alterations being made in the Order in Council. Also the Commissioner of Lands should have power to delegate his existing authority to sign Temporary Occupation Licences, as in practice there is usually no reason why a District Commissioner should not make the grant direct to the licence without reference to the Land Officer.

TERM . 6.

DEVELOPMENT CONDITIONS IN LEASES OR ON ALIENATION OF CROWN LANDS.

The present development conditions in the Crown Lands Ordinance 1915 are wholly unsuited to the country, for it must be borne in mind that in laying down development conditions the type and capabilities of the land should be considered, as well as accessibility of markets. It is obviously unfair to stipulate development on a pecuniary basis per acre to meet

( 7 )

all classes of farms, from coffee estates to ranches, for farms adjoining the railway as well as for farms fifty miles from the line. And it is as unwise as it is unfair, for by the present law a lessee may comply with the development conditions in erecting an
elaborate house and neglecting bona fide improvements, thereby vitiating the purpose for which the land was leased. In effect this means a Government subsidy to a lessee at the expense of the country; moreover this subsidy is granted to the lessee of a farm which is suitable for intensive agriculture, and who merely keeps within the four corners of the law by an expenditure of the bare essential amount prescribed.

In general we consider that the present development conditions err on the side of leniency. In particular we disagree with section 43 (2) of the Crown Lands Ordinance 1915 which allows a lessee, merely on payment of the purchase price, to secure a lease over a large portion of his holding entirely free from development conditions, and that without his having done any development whatsoever on his farm.

A hypothetical case will make our point clearer, and will expose the grave danger which exists under the law as it stands. A lessee of 2000 acres subdivides his farm into ten small holdings of 200 acres each. He applies, with plausible argument, to concentrate his development on one portion of 200 acres. Having obtained nine leases free from development conditions (practically a freehold title) he allows the tenth area to be confiscated by Government. The disadvantage to the country is so apparent as to require no further elucidation. All subdivisions should bear development conditions pro rata to area.

In times of stress, alleviation of development conditions can be granted only by His Excellency. This, we consider, is likely to cause wholly unnecessary reference to His Excellency, which could very probably be obviated by constituting the Land Board the executive authority to deal with all matters appertaining to development.

The weight of evidence before us postulates stringent development conditions. While we decidedly agree with this principle, at any rate during the initial stages in the life of a farm, we are emphatically of the opinion that present pecuniary basis should be abolished, and that land should be classified according to the capabilities of the soil and the distance from the railway, ever bearing in mind the accessibility and availability of markets. Legislation is therefore only possible on the principle of development, and the
conditions should be prescribed by the Land Board, whose duty it should be to consult local bodies and to dictate conditions for each type of farm as alienated. We do not desire to lay down terms of reference to the Land Board, but we suggest as a suitable basis for development conditions productive improvements of stock or cultivation proportionate to the area of each farm on the lines mentioned above, and also that rusticity should be provided for in the event of a change in the market conditions, or accessibility to lines of communication. Development should be maintained during the term of a lease.

The Land Board should co-operate with the District Authorities to the fullest extent, and should have power to devolve certain functions on the local authority, particularly with regard to inspecting improvements and securing maintenance. We feel that it is unfortunate that so many areas exist in the country undeveloped owing to laxity in early grants, but it is doubtful if retrospective legislation could be introduced legally on those cases, apart from an undeveloped land tax.

The consideration of development conditions has per se led us to deliberate at some length on the question of freehold tenure. Our enquiries have not elicited the true value of freehold to the farmer, but the sentimental value cannot be denied. The sentimental value is especially in evidence as being of greater security in raising loans. Freehold tenure is undoubtedly in popular demand, and we consider that the demand should be met, as being of advantage to Government and ultimately to the community. The theory of the case is that when all land is freehold there will be no necessity for a land division of the Land Department, inasmuch as there would be no rents to collect, no development conditions to govern, and all disputes would be taken to a court of law. Thus the overhead charges of Government are to some extent reduced.

We consider without hesitation that a freehold title should be granted only after a number of years of development of the property. This, combined with the purchase price of the freehold, is a safeguard against the land being allowed to go back to prairie and to remain undeveloped. No grantee could afford to allow his asset to depreciate, or to allow his money.
to lie idle without an effort to obtain a return. The payment of a capital sum per aero effectively disposes of the doubt in the advisability of allowing freehold over largo stock areas.

Existing leasehold titles should be convertible into freehold, but as a quid pro quo the lessee would be obliged to comply with fresh development conditions stipulated :in each case by the Land Board.

Our concrete recommendation, therefore, is that all lessees should have the right, after say five years, of applying to the Land Board for a freehold title. If the development effected on the property were in conformity with the requirements of the Board, freehold would be allowed on the payment of a sum equivalent to the capitalization of the rent at five per cent; that is to say a sum would have to be paid to Government which if invested at five per cent would bring in the same amount as was being paid as rent. Where the purchase price of the lease had not been fully paid, this would have to be settled in full at the same time.

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We can express no opinion as to the amount of money likely to be received in this connection during the next few years, but we believe that the scheme would be acceptable to the public. In the event of our recommendations being adopted, however, we consider that the money should not on any account be spent by Government, but that it should be invested:—

(a) in securities bringing a return of not less than five per cent.
(b) in reducing a Government loan on which the Government is paying not less than five per cent.
(c) in a Land Bank.

On the principle that revenue derived from the land should be returned to the land, we feel that if all other endeavors to establish a land bank fail, we have here some nucleus to a land bank which would in time be of real advantage to the country.
In coming to our conclusions on the question of freehold, we have not omitted to take
cognizance of the fact that in 1945 a revision of rentals is due, and that the revision
would probably produce a greater sum than the interest on the capital amounts paid for
freehold and invested before that year. We feel, however, having no mandate from
posterity, that in 1945 the Government would be able to meet the loss, if more revenue
were required, by a property tax, although in fact the loss will be more than made up by
increased production and the influx of capital which will result in the introduction of a
system of freehold tenure, provided that freehold is an admitted corollary to
development.

TERM . 7.
CLASSIFICATION, OF RENTS.

While we would prefer a method of classification of rents according to the class of
land and distance from the railway, we consider that it is hardly necessary or advisable
now to depart from the present flat rate of ten cents per acre, owing to the fact that the
principle has been established under the Crown Lands Ordinance 1915 and accepted by
the public without demur. The upset price, development conditions, and provisions for
freehold, are sufficient determining factors in the value of a property, and no real
advantage is gained by a sliding scale of rents in addition.

The evidence we have taken on the question does not speak very forcibly on a
classification of rents; in fact many witnesses prefer the flat rate, and opine that a,
system of classification would be impracticable. We think however that the scheme for
periodical revaluation in the Ordinance is unsound, and will in fact not be brought into
practice. It is easy to foresee a period of unrest and anxiety just before the year of
revaluation, which would do harm to the country. After mature consideration, we
recommend that the fast rate of 10 cents per acre per annum stand, but that the provision
for revaluation be deleted.
TERM 8.

THE DECLARATION OF STOCK ROUTES AND OUTSPANS.

It is quite impossible for anyone to estimate for how long a time stock routes and out spans will be required, or how soon the railway and cold storage will replace the ox wagon and resting ground. We think it fair in the first place to enunciate the principle that in the event of an out span being no longer required as such, or for any other public purpose, the land should be first offered at the current market price to the original lessee from whom it was acquired.

Under the present law, a servitude is imposed on all lessees to allow travellers to camp on their land for forty-eight hours, with access to water, unless an outspan is adjoining or near to the farm. This provision is undoubtedly necessary in the earliest stages of settlement, but we think the time has now arrived when Government should endeavor to free lessees from this servitude.

We understand that stops are now being taken to devise a system of outspans and stocks routes, common to all kinds of stock. While we agree with this principle, and desire to see a suitable system established at the earliest moment, we feel that it is necessary to adopt a temporary expedient, in an endeavour to relieve land holders from the servitude of camping rights which is alike vexatious and a source of danger from infection.

The first step would be to grant exemption from this servitude in cases of hardship, action being taken on the advice of the local committee with the Veterinary Authorities.

The second step is to declare out spans where possible from available Crown Land, and to exempt the landholders from the servitude of camping rights where they are affected.
The final stage is a wholesale exemption from this servitude by a definite scheme of acquisition of land. This scheme however, should be tackled piecemeal. In releasing a lessee from the servitude of camping rights, it should be made clear that Government retains the right to acquire up to four per cent of his land free from compensation for public purposes, and that this right includes the resumption of land at any future date for camping grounds or rest houses if desired.

(9)

TERM 9.

THE ACQUISITION FOR LAND FOR PUBLIC PURPOSES.

Generally speaking we consider that the present law operates fairly to all concerned, but there are two points on which we desire to make recommendations. First, in the event of the acquisition of a portion of a farm rendering the remainder of the farm useless for the purpose for which it was alienated, Government should acquire the whole farm. We think this policy should be declared by Government, although in practice arbitration would most probably attain the same end by awarding a price for the portion equivalent to that for the whole farm. The surrenderor, however, should not be left with these remnants, which might conceivably be sold by Government to adjoining land owners. We do not say that Government should be forced to acquire a whole farm in such cases; it should have the right to acquire if desired.

Secondly, we think that section 45 of the Crown Lands Ordinance 1915 should be deleted. The modern tendency is to sub-divide, and purchasers of subdivisions should not be penalized more than lessees from the Crown. More especially do we consider this suggestion equitable in view of our previous recommendations that all sub-divisions should bear development conditions.
TERM . 10.
ANY OTHER MATTERS.

In the course of evidence, and in discussion on the previous terms of reference, we have had a large number of minor points under consideration, for example, the term of leases, water rights, foreshore, swamps, salt licks, layouts and subdivisions. In most of these cases our considered opinion is that no alteration of the law is necessary, and that they may safely be left to the policy dictated from time to time by Government. Where alteration of the law has been thought advisable, it has been found possible to include our recommendations in the previous terms of reference.

Signed. H. T. MARTIN (Chairman).
CONWAY HARVEY.
S. H. CHARRINGTON.
A. HOLM.
V. V. PHADKE.
W. McLELLAN WILSON.
J. C. COVERDALE.
Signed O. F. WATKINS.
H. J. Snelgar F. O. B. WILSON.
Secretary. R. B. COLE.
Nairobi, 81st. March, 1922,

NOTES.

1. The Hon: I. L. O. Gower was prevented from attending most of the meetings of the Commission owing to sickness, absence on leave in England, and pressure of legal work, He has therefore abstained from signing the report.

2. Mr. J. C. Coverdale appended the following note to his signature of the Report:— " While having signed and approved the Report of the Commission as a whole, I wish to point out that I am not in accord with the finding of the Committee on the subject the Land Board. It appears to me that the Commission is not fully alive to the importance and scope of this body which to my mind will be one of the most
responsible Boards of the country and, as an advisory Board to the Commissioner of Lands and also the Government, will be called on to adjudicate on all the important land questions of the Colony both as to policy and practice. In view of the fact that it is proposed to largely reduce the staff of the Land Department, and that the Board will decide many questions which are at present dealt with by the Executive Council. I consider it necessary that the Land Board should be stronger numerically and be most carefully selected. The present proposal is that the Commissioner of Lands, the Director of Agriculture and one Settler should constitute the Board, but I disagree with the suggestion both as to numbers and personnel. The Commissioner of Lands will be *ips.i facto* an essential member and Chairman.

The Director of Agriculture being head of another important Department will not have time to devote to a Board which will be sitting very frequently, and may have no particular knowledge of Land questions, but his experience would no doubt be available to the Board when special knowledge of his Department is required. The proposal for the usual unpaid Committee will not meet this case and I suggest that a Board of five members is required consisting of the Commissioner of Lands, the principal Land Ranger and three unofficial members, chosen for special knowledge and experience in land matters, the latter to be paid at the rate of £3-3s. per day.

The proposal for usual committee on which volunteers sit, without any recompense for their loss of time, is invariably futile and the work done in a perfunctory manner with no good result achieved."

3. Mr. V. V. Phadke, commenting on term of reference No. 6, prefers 3 1/2 to 5 per cent, as the basis for investtnent of monies derived from the purchase of freehold and adds:―" I believe that looking ahead, a 5 per cent, basis would mean loss to the state, as the rate interest of gilt-edged securities is likely in future to go down. The Bank rate has already gone down to 4 1/2 per cent."
4. The Hon: R. B. Cole disagrees with the principle in the second half of the fourth paragraph of term of reference No. 1 (a) and adds:—" this position should never occur. The and will carry so much stock and no more, as in any other country." With regard to term of reference No. 6, para 3, the Hon: R. B. Cole remarks:—" Then stock should be considered development; under existing regulations, where it is necessary to obtain several farms to run a small business in stock, a lessee would have to put a dip or woolshed or house on each piece or farm, which is unbusinesslike and absurd."

5. Capt. F. O. B. Wilson notes as follows:—

Note 1. Term No. 5 Delegation of Powers.

I agree with recommendations of the Commission as far as the fourth line but I do not agree with the creation of a Special Land Board. The Land Officer should have larger powers delegated to him by His Excellency for the administration of matters connected with his Department while in matters of the widest importance the Governor could if he thought desirable consult the Executive or Legislative Council. The Land Officer would no doubt in any case consult the various interests and Districts affected in problems that might from time to time arise; I consider that, to take an example, the Thika District Committee would be in a better position to tender useful advice on a matter connected with their District than would a member of the Land Board hailing from, say, Nakuru. The report as drafted appears to admit this in suggesting an alternative member for Coast and Highlands and again when it recommends that Municipalities should work in substitution for the Land Board in places where the Municipal Corporation applies. A further objection to the proposed Land Board is that I can see little prospect of unofficial members of the Land Board being able to spare the time for travelling from end to end of the country that would be necessary to enable them to form opinions based on knowledge of the actual District or Community affected.

Note 2. Principles to govern delimitations of Game Reserves.
I agree with the recommendations in the report up to and including (1)

As regards (2) I would suggest that a preferable course might be that of erecting a
game proof fence following the line of this Reserve along the Railway. The Game
Warden in evidence stated that such a fence exclusive of fencing posts could be erected
at a cost of £120 per mile.

Funds for this fence might be provided by the issue of a limited number of special
licenses to shoot in this Reserve the proceeds from which could be allocated to the
errection of the fence.

A Game Reserve where the general public can see the game under natural
conditions from the windows of a railway carriage is so obviously desirable from all
point.* of view that I consider that subject to the safe guarding of farmers adjoining
such reserve every effort should be made to retain it.

6 Minority report by the Hon. Colonel O. F. Watkins, O.B.E., D.S.O.

TERM. I.

(a) The principles to govern the delimitation of Native Reserves.

1. Extreme advocates of either of the two schools of thought, known for want of a
more accurate term as pro-native and anti-native, may well unite in maintaining that
there can be no principle in action opposed to native wishes other than the maxim "
Might is right." They would merely differ as to the correctness of the action. A more
moderate point of view is that under the Pax Britannica security of tenure of a smaller
area can reasonably be offered in place of the vicissitudes of settlement under inter-
tribal warfare, provided the smaller area thus offered is as much as the tribe can
reasonably occupy or U6e.

2. It is not apparent what has been the principle in the past of determining the
actual alignment of Native Reserves. In fact, it may be stated that no clear principle of
general application has been laid down, but varying methods have been adopted in
different districts without any very clearly thought out underlying policy.

3. It is obvious, however, that the boundaries of Native reserves should be defined
on some just principle, and by our terms of reference we are concerned with this
principle of delimitation. It is thought that it should be the needs of each tribe on the
basis of beneficial occupation, provided that this limitation of tribal territory is
accompanied by systematic agricultural education directed towards enabling the area thus limited, to support a larger population. It follows that the area allowed must be large enough to accommodate not only the present population but also the natural increase of the tribe during the two or three generations that must elapse before more progressive methods of agriculture can possibly be adopted to any appreciable extent.

4. I regret to have to differ from the majority of the Commission with regard to the appointment of any form of standing or temporary Boundaries Commission. The transport of such a Commission to remote areas must in many instances be a matter of difficulty and expense. In an enquiry into native rights it must depend, not on facts of occupation, but on evidence brought before it. The less sophisticated the native, the less will he appreciate the danger of neglecting to give evidence, and the pastoral peoples in particular are most unlikely to leave their herds and their seasonal grazing and travel perhaps for days to represent their tribe before European strangers, who choose to make enquiries regarding the boundaries of grazing which has been and is regularly used at other seasons as a matter of established right and custom, but which at the moment must appear to the Commission as totally uninhabited. I should regard such a Commission as more expensive and less adequate than simpler machinery.

5. If it is admitted that the Native has a prior right to as much land as he uses now and is likely to use for two or three generations, continuing to employ (present methods of cultivation, it follows that it is only the balance that is at the disposal of the Government. The ascertainment of this balance can, in my opinion, best be done by one Officer who has experience in weighing up evidence, and is himself of sufficiently long residence in the district to know and be known to and respected by local Chiefs, Missionaries, and Traders. Such a man, associated if possible with a few other officials or missionaries of long local residence, has at least a chance of approximating to the facts of existing settlement-and prospective needs.

6. Embodied in the majority report are some recommendations regarding the administration of native lands. Though these appear to me outside the terms of reference it is perhaps advisable to comment on them.
7. I am unable to agree that the improvement of the capabilities of land or the provision of ft water supply are properly the functions of a Native Trust. They appear to me rather legitimate objects on which to expend general revenue derived from native taxation. A Native Trust Fund should more properly be devoted to emergencies, such as famine or pestilence for which there is no provision in the est'mates, or to the encouragement of co-operative industry or enterprise, for which in a native community it is so hard to get funds.

8. I am, however, in full agreement that a Native Land Trust should be established. The definition of Crown Lands should be altered to exclude native reserves, which should be vested in this Trust. Revenue from leases and concessions should be paid into the Native Trust Fund already established by law, and the Land Trustees should include the Trustees of the Natives' Trust Fund.

9. Part VI of the Crown Lands Ordinance, 1915, should be altered to permit of the leasing of lands in Reserves to non-natives, where such leasing is of direct benefit to the native; as for instance the lease of land to a mission for an industrial school, or the lease of quarrying rights for stone or sand or lime or gravel, where these can bring in revenue without interference with native life. In fact the Trustees should be permitted to use in respect of native lands the same discretion, as regards temporary short-team alienation only, as a European lessee from the Crown uses in respect of his own holdings.

10. Once the general policy regarding such leases is laid down by the Trustees, and approved if thought advisable by the Secretary of State, discretion to grant leases in conformity therewith could be left to the Senior Commissioners advised by the legal advisers of the Government.

TERM. 1.

(b) I have to dissent from the premises that " the time has now come for every scrap of land to which agricultural development can be extended to be made available for future " alienation." In my opinion the time has come to call a halt, and see whether
the labour supply of the country is going to be adequate for present requirements. When some of the new soldier settlement farms are on the feet, and some of the new and struggling industries firmly established, it will be time enough to consider the relative advantages of forestry or agriculture in areas then available. In the interim having regard to the fact that the Forest Department depends on allocations from general revenue, it is improbable that any further areas will be afforested. The present is not a time for spending money on re-survey, not of immediate and present necessity. I, therefore, can only agree with the recommendation of the majority to the extent of saying that only tree-less areas, immediately required for other approved public purposes, should be surveyed and excised from the Forest Reserves.

TERM. 3.

I am of opinion that in private townships definite allotments of land for public purposes should be made, in proportions laid down by law, as a condition prior to conversion of title. (12) The fixing of the proportion does not appear to be a matter for the discretion of a Board.

TERM. 3.

In paragraph nine, after the first sentence, after "other" insert "since for instance it" "must be clear that no mining title in a native reserve could possibly be convertible to an agricultural title held by a non-native,"

TERM. 5.

In the majority report there would appear to the inadequate protection for native rights. The Commissioner of Lands might sign a lease conveying native rights without the matter coming to the knowledge of the District Administration or Native Affairs Department. At present proposed grants are considered by the Chief Native Commissioner in his as a
member of Executive Council, even if he has not been asked to express an opinion before the matter goes there. This safeguard is removed if the grant can be recommended to the Commissioner of Lands by a Land Board and the conveyance signed' by him without reference to any other Department. I am, therefore, in agreement with the formation of a Land Board provided it deals only with problems arising in areas gazetted as being within its sphere. Thus in practice lands in Native Reserves would be dealt with by the Native Land Trust recommended in Term No. 1. Newly-opened areas, or areas subject to inter-racial complications or claims would continue to be referred to Executive Council. The Land Board would deal only with areas of long-standing European settlement. Moreover, since a mistake as to which area land was in could not be rectified once a lease had been signed, I am opposed to giving this power to the Commissioner of Lands.

TERM . 6.

1. I am of opinion that an effort should be made to frame legislation enforcing development of existing holdings to accord with the original intention of the grant and to confiscate undeveloped properties.

2. I am also unable to agree with the opinion of the majority as regards freehold. Whatever may be the sentimental value of freehold, there seems to me every reason why the State should retain the power to insist on beneficial occupation or surrender. This principle has been laid down earlier in this report for native areas and must equally apply to non-native. In the recommendations of the majority there is nothing to prevent land from lying undeveloped in the hands of some heir of the original pioneer, who does not value it because he has spent nothing on it, and equally spends nothing on it because he does not value it. This must especially apply to small homestead farms, on which such an heir might not wish to live and which he might be unable to sell or lease at the price he considers he ought to get. Unless, therefore, some form of tenure can be devised which amounts to freehold with development conditions, I am unable to support the recommendations for the conversion of leasehold to freehold,
3. The manner in which the Government is to invest money accruing from Crown lands does not appear to me to come within the terms of reference, and I am unable to associate myself with recommendations on this head.

**TERM . 7.**

I do not agree that the provision for the re-evaluation of rents should be deleted. It may only be politic to apply it in special areas or particular cases, but I consider the provision should stand.

**TERM . 8.**

I consider the servitude should be retained as regards Government officials travelling on duty.

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Abstract

At the end of the nineteenth century, Kenya evinced the interest of the British Empire that colonized it under the civilizing argument. In fact, the British chose Kenya due to its strategic geographical location as being the Seagate to Asia, and because Great Britain wanted to control the Nile River, which, in addition to its importance as an outlet to the Mediterranean Sea, could be used as a rapid means of communications for military intervention. During their presence in Kenya, the British confiscated land from the Africans for the benefit of the settlers and for public use in order to implement Britain’s imperial projects. Consequently, the Africans were reduced to wage labourers who depended on wages granted from the colonial authorities, owing to the enactment of regulations and ordinances that were deployed to facilitate the alienation of land and recruitment of cheap labour. Land confiscation had resulted in the outbreak of the famous agrarian revolution in 1952 known as ‘Mau Mau revolution’. This latter, marked the collapse of British colonialism in Kenya, and gave birth to an overriding stout political activism that militated to bring Kenya’s independence on 12 December 1963 under the leadership of President Jomo Kenyata.

Keywords:

British Rule; Kenya; Settlement; Colonialism; Alienation; Regulations; Slavery; Forced Labour; Revolt.