

Recent Changes in Kenyan Land Tenure

By EDITH H. WHETHAM

REVIEW ARTICLE OF M. P. K. SORRENSON, *Land Reform in the Kikuyu Country*, Oxford U.P., Nairobi, 1967, 266 pp. 20s. in East Africa.

MR Sorrenson, of the University of Auckland, has recently published an account of land reform in the Kikuyu area of Kenya which describes the changes, voluntary and enforced, in land tenure over some eighty years ending in 1960. Neither he nor his publishers explain the interval of eight years during which his book was in gestation. This gap can be partly filled by the annual reports of the Department of Settlement in Kenya, from 1962-3 onwards, which describe the conversion of some million acres, formerly held by Europeans, into small farms for Africans, chiefly of the Kikuyu people. Taken together, these publications describe one of the most striking revolutions in land tenure which has occurred in recent years.

Mr Sorrenson discusses the conflicting traditions about the origins of Kikuyu settlement in the Fort Hall, Nyeri, and Kiambu areas of Kenya, settlement which may date to the sixteenth century but which was not completed until the end of the nineteenth century. By Kikuyu tradition, the original settlers acquired individual rights to the land they occupied after some form of purchase or lease had been made with the primitive people who then controlled these areas. On the death of each original Kikuyu settler, his rights in the land descended equally to all his sons, but one, usually the eldest, became the head of the family, with authority over the distribution of the land between branches and individuals of the group. Individual ownership was thus converted into collective ownership by families of varying size; within each family group, there were individual rights of occupation over the allotted land.

In order to protect land farmed by Africans from alienation, two ordinances in 1915 and 1921 declared that the Crown was the ultimate

owner of all land in Kenya, with its powers later vested in the Trust Lands Board set up in 1930. As a result, the Kikuyu found that neither families nor individuals could obtain written titles which they came to consider essential for protection against possible dispossession in favour of European settlers, and desirable for settling their own disputes over rights to land. As population increased in the Kikuyu area, so disputes increased between expanding and contracting branches of the same families, between inheritors of land let on tenancies and the descendants of the original tenants. By local custom, tenants might borrow land, giving in return a loan of goats; the land owner, or his heirs, regained possession of the land at any time by returning goats equivalent to the original number plus their estimated progeny, a form of lease which might have been designed to promote quarrels.

Although the Kikuyu were pressing for individual titles to their land all through the inter-war years, and although registration was recommended by the Kenya Land Commission in 1934, the Trust Lands Board regarded the preservation of existing customs as more important than economic development. Meanwhile, the increasing population had overflowed the land available for the Kikuyu. Some were working in Nairobi and other towns, leaving their families on their land; some were working on European farms, with small plots of crops and a few livestock of their own; some had taken land among other tribes, again with no security of tenure. After the Second World War, a number of officials suggested that consolidation of plots should be encouraged, with titles given to progressive farmers working upon the advice of the Ministry of Agriculture, but these suggestions and many others were lost in the administration in Nairobi.

Mr Sorrenson attributes much of the bitterness of the Mau-mau fighting to land feuds within the Kikuyu, feuds which might have

originated several generations earlier but which were intensified when the families working on European farms were sent back to their villages, at the beginning of the troubles. Then between June 1954 and October 1955, the major part of the Kikuyu was swept from its land into concentrated villages under military control, thus making a drastic break between families and their farms.

In the autumn of 1955, officers in the local administration decided to push through as rapidly as possible the consolidation of fragmented holdings, before the Kikuyu were returned to their land. Consolidation and registration of title were offered to the chiefs as the reward for loyalty to the administration, and as the first step towards improved farming under the Swynnerton plan. Dairy farming to supply liquid milk to the towns and butter for export, vegetables for local sale, and quotas for coffee production (hitherto reserved for European farms) were to provide various forms of intensive farming; these new enterprises would, it was hoped, absorb many of the half-employed and landless families, whose plight would be made conspicuous by land reform. Local committees of approved chiefs and their advisors were set up to record and register all claims upon land in their areas; staff were hastily trained in surveying the existing plots and in allocating them as consolidated units on to maps hastily drawn from aerial surveys, with certain areas set aside for common use—schools, markets, new roads, and so forth.

While the political and agricultural staff were carrying out these reforms at full speed, the Legal Department in Nairobi was arguing that titles to land could not be given under existing legislation, since African farmers were technically tenants at will of the Crown; the Colonial Office in London delayed any amendment to the legislation, pending firstly the report of the Royal Commission on East Africa, and then of the Arusha conference on land tenure. What was being done was therefore legalized provisionally in July 1956; the allotment of consolidated farms was open to appeal for two consecutive periods of thirty days, after which further legal suits over land titles were forbidden for three years. Consolidation was

virtually complete by the spring of 1959, though few farmers had by then received formal titles, which were recognized by later legislation to convey freeholds. The final process of checking allotments revealed an uncomfortable 'margin of error' both in the recording of rights and in the allotments, whose total sometimes exceeded the land available; some revision became necessary in the Fort Hall area, where such errors were largest (p. 144).

Apart from the speed of the consolidation, and the small size of the resulting farms, few of which exceeded five acres, the process inevitably asks for comparison with the enclosure movement in English history. Mr Sorrenson gives us some fascinating comments upon the by-products both of the procedure and of the final results. The strongest supporters of consolidation had been the larger landholders embarking upon commercial farming and concerned to reduce the innumerable disputes over rights to land. The bitterest opponents of consolidation were the landless families who lost what patches they had previously occupied as informal tenants. Many complaints were put forward from this class, alleging unfairness and corruption among the adjudicating committees, allotting land which might currently be under dispute. Local committees dealt differently with landless families; some gave gardens near villages taken out of the common allotment, while other committees simply ignored them. There were the inevitable difficulties with land of differing qualities, and especially with the re-allotment of the plots containing huts and banana trees. Further, family holdings were sometimes registered in the name of the head man, leaving to him the responsibility for subsequent distribution among grown sons and younger brothers; sometimes each adult man received a separate allotment, or brothers might be given adjacent farms registered in one name.

Given the existing density in the Kikuyu country, it was inevitable that most of the consolidated farms provided only a home and subsistence for the one, two, or more families who had previously shared the land under the authority of the senior man. Mr Sorrenson

refers (p. 202) to the official assumption that consolidation would automatically lead to improved farming, which seems to have occurred only on a small proportion of the larger holdings, themselves a small proportion of the total number of farms. Moreover, few subsequent changes in landholding have been registered, partly to avoid the official fees, partly to conceal the continuing fragmentation of holdings in defiance of the law. Nevertheless, consolidation and enclosure have stimulated some farmers to further improvements and have markedly reduced the incidence of legal disputes over land.

The continuing pressure of population in the Kikuyu country was partially relieved from 1961 onwards, when the new government, dominated by the Kikuyu, was faced with the virtual breakdown of farming on the European estates in the highlands. Many Europeans did not wish to live in Kenya after independence but could not find a buyer for their property at any price; many estates became swamped by squatters seeking to claim land in advance of official action; the supply of food for the towns and for export was threatened by a potential collapse in the most productive sector of Kenyan agriculture. The Kenyan government then took the heroic decision to buy up to one million acres of European-owned estates for conversion into small farms for Africans; it obtained loans from the United Kingdom and other overseas sources to finance the initial purchase.

From the start, this programme was intended to create occupying owners of consolidated farms, buying their land from the government on long-term mortgages. The experience gained in the previous land reform in the Kikuyu country was here most valuable; again at high speed, estates were surveyed, inventories made, new farms plotted on maps and marked upon the ground, local committees set up to select the new farmers from among the many applicants, while legal formalities were pushed aside to be concluded at some future date. Two types of holding were established—mainly subsistence holdings producing one

commodity for sale and repayment of debts, and small commercial farms each occupying one family full-time with occasional paid help, and adopting a combination of crops and livestock chosen according to the physical conditions of each area. These were designed to provide incomes of a hundred pounds or so at current prices and costs, over and above the servicing of the debts to the government. For various reasons, it was not possible to prevent some farms from being taken up by men with full-time jobs elsewhere, who either leave their families on the land or put in hired workers with no security of tenure, and no inducement to invest in improvements and intensified production.

Land reform in the 1950's and resettlement upon European-owned estates in the 1960's were both undertaken primarily for political reasons; the two situations, one before and one after the attainment of political independence, were both potentially explosive for the controlling government. In both cases, the government sided with a fairly small group of 'progressive' opinion among the Kikuyu, favouring small consolidated freeholds as an essential stage in developing commercial agriculture. In both cases, some farmers have taken the opportunity offered and are forging ahead with new crops, new livestock, new inputs of fertilizers, fencing, improved seeds, and the like; they are earning an income which gives a reasonable chance of paying off their debts and of setting up their families at a higher standard of life. In both cases, the change in land tenure has been imposed on numbers of more traditionally-minded people, many of whom will treat their new farms as subject to the customs which they have inherited. The Kenyan government has recently begun to tighten its control over its mortgagees who fail to develop their holdings and to repay their debts, even to the point of evicting a few of the most conspicuous defaulters.¹ But such a policy cannot run far ahead of public opinion, which may still regard a family as permanently attached to the land which it has once occupied, irrespective of such details as unpaid interest.

¹ Annual Reports of the Department of Settlement, Nairobi; J. Maina, *Land Settlement in Kenya*; J. MacArthur, *The Evaluation of Land Reform in Kenya*. F.A.O. World Land Reform, Rome, 1966.

Influenced by the Kikuyu example, farmers in adjacent areas are beginning to realize the advantages of consolidation, among them the fall in the frequency and costs of disputes over land. The Nandi, the Luo, and the Kipsigi are adopting voluntary schemes of consolidation of cultivated plots, which may also include the allocation among individuals of what has hitherto been regarded as common grazing land.¹ Once allocated, such farms may automatically tend to be regarded as freehold possessions, outside the control of any authority except the immediate family. Most areas in Kenya are less densely populated than the Kikuyu country; the consolidated farms are therefore larger and there are few families squeezed out of tenancies and unrecognized occupation of plots into landlessness and destitution.

Official policy in Kenya has therefore favoured the conversion of the variety of local customs over land into the European freeholds, each farmed by a single occupying family, and inherited intact by a single member of each succeeding generation. Customs may also move in this direction, but subdivision of

holdings may be practised for some time to come in the densely populated districts, where the alternative to the family farm is often migration in the hope of paid employment. But co-operative societies are also officially favoured as landholders for groups of workers engaged in farming the estates on which they formerly worked for the European owners; in these cases, the Kenyan government has again provided the capital both for buying the land and for the equipment and stocking. One area of some 130,000 acres of high land near Ol Kalou is now being run as a single unit under a group of technical officers, with the workers organized in about twenty co-operative societies, and a central union regarded as the future owner of the enterprise; it is hoped that the profits of the enterprise and the savings of the workers out of their wages will gradually repay the government loans. It is certainly wise to allow a variety of land tenures in the present circumstances, for physical conditions, existing customs over land, and the current state of development all vary so widely in different parts of these newly independent African countries.

¹ E. Huxley, *A New Earth*, London, 1960.

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