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PETITIONS CONCERNING TANGANYIKA

Observations of the United Kingdom Government
as Administering Authority

Note by the Secretariat: These observations relate to the following petitions which have been summarized in Secretariat working paper T/C.2/L.117. The order of arrangement of the observations in the present document is the same as the order of arrangement of the petitions in the working paper.

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1. Petition from Representatives of the Wasangi (T/PET.2/184)

The allegations of this petition that the election of the present Chief of Usangi was not held according to native law and custom and was against the wishes of the people, are the same as those in the two previous petitions contained in documents T/PET.2/96 and T/PET.2/136, which were dealt with in the relevant observations of the Administering Authority in documents T/840 and T/953.Add.2, with regard to which the Council passed resolutions Nos. 329 (VIII) and 435 (X), respectively, deciding that no action was called for. Circumstances have not altered since the date of the earlier petitions and the overwhelming majority of the people continue to support the firm and just administration of the Chief.

2. The petitioners also allege that two village elders and one other person have been victimized by the Chief. The facts are as follows: "Ngasu ya Mshitu", the customary initiation ceremony of the Wapare, of whom the Wasangi

are a sub-division, contained obnoxious features which sometimes resulted in the death of the initiates, so that it was totally banned shortly after the expulsion of the German Administration. In 1948 representatives of the Wapare asked for the resumption of these ceremonies provided they were purged of these objectionable features, and the required permission was accordingly given to all Chiefdoms except Usangi and one other. In 1952 renewed representations resulted in permission being given to resume the ceremony in Usangi also, and the Native Authorities of Pare District issued orders under Section 9 of the Native Authority Ordinance (Chapter 72 of the Laws of Tanganyika) regulating the procedure for holding the ceremony in order to prevent the recrudescence of the objectionable features. One of these orders makes it obligatory for any person wishing to perform the ceremony known as "Tambiko la Ngoma ya Mshitu", which is the preliminary to the main ceremony of "Ngasu ya Mshitu", to obtain the prior written permission of the Native Authority.

3. The two illiterate elders referred to in the petition persuaded a literate member of their clan to write to the Native Authority that they intended to perform the ceremony "Tambiko la Ngoma ya Mshitu" and the intention was duly carried out, although no written permission had been obtained, and in spite of the fact that they were advised as to the requirements of the law. The writer of the letter was then prosecuted before the Usangi Court and found guilty of performing the "Tambiko la Ngoma ya Mshitu" without the prior written permission of the Native Authority. The District Commission quashed the case on review as the evidence showed that the writer had been used merely as an amanuensis by the two elders, who were then themselves prosecuted and found guilty of the offence. The elders made an appeal to the Pare Council Court which was allowed on the clearly erroneous grounds that the ceremony may be performed without written permission. This decision of the Pare Council Court was then revised by the District Commissioner, who upheld the original conviction, and the Provisional Commissioner refused leave to appeal further to the Central Court of Appeal as the case had been fully substantiated against the accused in the lower courts, but reduced the sentences as the accused were first offenders.

4. The elders were legally convicted in courts of competent jurisdiction, and there is no truth in the allegation that they were the subjects of victimisation by the Chief, who acted properly and in accordance with his legal powers.

5. It is submitted that it would be appropriate for Council to take no action on this petition.

2. Petition from Mr. Joseph Boehrer (T/PET.2/176)

The petitioner claims that in 1916, during the time of the German administration of Tanganyika, he bought the freehold of 300 hectares of land in the Morogoro District from the former German Government.

1. His claim however is not borne out by the relevant German documents available to the Tanganyika Government, from which it appears that in 1916 in reply to an application by the petitioner the Ostafrikanische Landgesellschaft (a company entrusted by the German Administration with the disposal of land in Tanganyika) stated that it was prepared to sell him 300 hectares of land in the Kikaki area of Morogoro District at Rupees 10 per hectare, and that if he made a definite contract payment would have to be made as to part in cash on completion of the contract and the balance three months, nine months and twelve months later. Nothing further appears to have transpired before the termination of German administration of the territory.

2. The petitioner claims that he completed the contract by the payment of Rupees 3,000 to the Company but he has been unable to produce any proof of this, nor is there any evidence of the holding of, or a finding by a Land Commission appointed by the German Administration which might be accepted by the Registrar of Titles as, a good root of title.

3. Under sub-section (1) of section 15 of the Land Registration Ordinance, 1953, (Ordinance No. 36 of 1953) a grant by the Ostafrikanische Landgesellschaft is deemed to constitute good root of title. In August 1952, the petitioner for the reasons set out in paragraph 3 was advised by the Tanganyika Government that it did not admit that he had a right to a freehold title to the land, and that if he wished to endeavour to substantiate his title he should avail himself of the legal machinery for investigating and adjudicating upon his claim, that is

to say, he should apply to the Registrar of Titles for first registration under the Land Registry Ordinance. This Ordinance has now been replaced by the Land Registration Ordinance, 1953, under which similar procedure is still open to him, but the petitioner has not taken advantage of it, and for this reason it is submitted that it would be inappropriate for council to take any action on this petition.
