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REPUBLIC OF KENYA

Sessional Paper No. 6 of 1970

**LAND CONSOLIDATION AND
REGISTRATION IN KENYA**

Three Shillings - 1970

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LAND CONSOLIDATION AND REGISTRATION IN KENYA

INTRODUCTION

On the 11th September 1964, the President made his now famous television broadcast in which he urged a return to the land which he described as Kenya's greatest asset. He emphasized not only that it must be put to its maximum production, but that also there must be secure rights in it, and to this end the present programme of consolidation and registration of land must be accelerated. In March 1965 the Kenya Government requested capital and technical assistance from the British Government in order to implement a broad programme of agricultural development in Kenya. The first objective in this programme was to establish the preconditions for a rapid rise in productivity in Kenya's farming areas. The most important of such preconditions is a satisfactory system of land tenure which can only be achieved by a basic reform in the present tribal system of land tenure, to be accomplished through an acceleration of the present process of land consolidation and registration. With the first objective in mind the British Government was asked to assist in assembling a small team of specialists to prepare a thorough and detailed report on land consolidation and registration as practised hitherto and make recommendations for its acceleration. Their report would form the basis of a formal application by the Kenya Government to the British Government for the requisite financial support for a specific programme of accelerated land consolidation and registration.

2. The British Government agreed to provide a team of specialists to study this subject. Following discussions between Ministers of both Governments on the broad programme for agricultural development in Kenya, the British Government had offered Kenya financial aid for land transfer and for general development during the years 1966 to 1970, amounting to £18 million additional to existing commitments. Approximately one-third of this total was to be allocated to land purchase, and the balance to development projects to be agreed between the two Governments. The British Government indicated that it was willing to consider financing an accelerated programme of land consolidation and registration, as recommended by the team of specialists, from within this overall sum of £18 million of financial aid, but that this offer was conditional upon the Kenya Government's ability to obtain funds for agricultural credit and to make available the necessary advisory services for the areas where registration would be effected.

3. A team of six specialists was appointed, under the chairmanship of Mr. J. C. D. Lawrance, O.B.E., and included three members

from Kenya. Their terms of reference were, *inter alia*, to recommend a realistic programme for the acceleration of land consolidation and registration and to examine the extent of the resources needed to stimulate productivity. The recommendations arising from their report were for consideration by both Governments to determine the extent to which the proposed programme of consolidation and registration is to be financed by the British Government loan.

4. On the 22nd November 1965, the Lawrance Mission assembled in Kenya, and on the 25th March 1966, it completed its report entitled "A Report of the Mission on Land Consolidation and Registration in Kenya 1965-1966", more commonly known as the "Lawrance Report". It will be referred to in this paper as "The Report".

5. The report describes with admirable clarity the complexities of the problems which the Mission were asked to consider. In its general survey of the historical background it is concise and informative and it presents a most adequate description of the methods used and the difficulties encountered in the consolidation, adjudication and registration of land. It has been printed and has been made available to the public, and it will undoubtedly serve as a most useful textbook for those interested in this or similar problems elsewhere. This report is a mine of valuable statistical information on the progress of the land consolidation and registration work, the number and type of staff involved and the costs of the operation. The Government wishes to record its appreciation of the work of the Chairman and Members of the Mission and of their Secretary. As will be seen from the appendices to the report the Mission carried out a strenuous and exacting programme of visits and discussions in their examination of this most complex assignment on which they were able to bring to bear a wealth of experience and expert knowledge acquired in part in tackling similar problems elsewhere.

6. The first draft of this Sessional Paper was prepared in November 1966 and detailed discussion on its content was held throughout the following year. For various reasons the publication of the Sessional Paper was delayed until 1970 during which time the Government, having accepted the majority of the Mission's recommendations, proceeded to implement them. For example, legislation as proposed by the Mission has either been enacted or amended. The necessary increases of staff in the Departments concerned are progressively being made together with some amelioration in the terms and conditions of service and methods of operation. The four-year programme proposed by the mission has been adopted, in the main, and apart from delays occasioned in the registration of the range areas the rate of progress envisaged by the Mission has been maintained. With these facts in mind this Sessional Paper must be read as expressing the Government's views on the recommendations of the Mission as at the end of 1967 when the Sessional Paper was first ready for publication. To introduce comment on the implementation of these recommendations would be irrelevant to the purpose of the Sessional Paper which, although now late in time, provides the necessary administrative link in the chain of the events between the publication of the Mission's report and the acceptance or rejection of their recommendations. In accepting almost all the Mission's recommendations the Government

was satisfied at the time that their implementation would be most beneficial to the agricultural development of the country. The pattern of events over the intervening period between the first draft of this Sessional Paper and its publication has justified this opinion.

PART I—INTRODUCTION

7. The first three chapters of Part I require no comment except to note that they provide a clear description of the background to the appointment of the Mission, of the nature of communal and individual ownership of land in Kenya, and of Government policy regarding individualization of customary tenure. The definitions proposed in Chapter IV are noted and accepted.

PART II—THE PRESENT LAND REFORM PROGRAMME

Chapter V—Progress and Costs of the Land Reform Programme

8. The Government notes the summary of the progress made so far in land consolidation and registration together with an appreciation of the costs of the operation to date. Between 1956 and the end of 1965 a total of 1,630,597 acres of land have been registered in the former Non-scheduled Areas. The Mission have sought to work out the costs of this operation in order to gain some idea of what the future programme will cost. The Government accepts the Mission's views that ascertainment of the true cost of the programme so far is extremely difficult and that in consequence some, if not all, of the figures given must be treated with reserve. They can only amount to an approximation of costs although they do nevertheless give a useful indication of the cost of the work carried out in different areas where separate procedures were followed.

Chapter VI—The Economic and Social Effects of the Land Reform Programme

9. The Government agrees generally with the views expressed in this chapter, while retaining certain reservations on a few points, which are dealt with more fully later in the report, and in this paper.

Chapter VII—Public Attitudes to Land Reform Programme

10. The Mission's views on the public's attitude to the land reform programme are accepted as a shrewd and accurate summary of the situation, except that it is probably true to say that the opposition to it existing at the time of the Mission's inquiries has largely abated in some areas, and it is hoped that it will continue to decrease as the object of land adjudication and registration becomes more widely understood and appreciated.

Chapter VIII—Alternative Forms of Tenure and Circumstances in which Registration of Land is Inappropriate

11. The stated justification for the present policy of land consolidation and registration is the beneficial effect on agricultural development expected to result from its application. The Mission rightly point out, however, that consolidation does not necessarily provide a general panacea for the ills arising from the misuse of land. The

Paras. 91-93.

Government agrees that there are instances where registration of land in the name of individuals can even be harmful to agricultural development, and accept the Mission's recommendation that before a programme of land consolidation and registration is undertaken in any particular area, a careful study should first be made to ascertain whether or not it is desirable. In any future programme of land reform a careful survey will be undertaken of the extent to which the adverse effects of fragmentation make consolidation a necessary preliminary to registration, and also to discover where consolidation is technically practicable. The attitude of the people towards consolidation generally will be considered also.

The Government agrees with the Mission's recommendation that where consolidation is found to be desirable and practicable, fragments should not be registered until consolidation has been effected.

Paras. 94-95.

12. Consolidation of holdings necessitates the regrouping of land in an attempt to ensure that as many as possible of the holdings are sufficiently large to be developed as economic farming units. It has been suggested in the past that registration should be withheld from plots which fall below what is deemed to be a minimum economic size (this would vary, of course, according to district, and according to land use); and that a landholder occupying such a plot considered too small for registration should surrender his plot (to be taken over by some other landowner, to make up an economic unit), and should be compensated with land elsewhere. The Government notes with satisfaction that the Mission, after emphasizing that these sub-economic plots create a serious problem for the Government, admits that the time is not ripe for measures of this sort, which would have enormous financial, social and political implications, and in addition would be contrary to principles enshrined in the Constitution.

Paras. 96-100.

13. Individualization of holdings may, in certain circumstances, be most undesirable—the blocks of land in Central Nyanza used for the exclusive cultivation of sugar are an example of this. As the Mission point out, the satisfactory cultivation of this crop on a large scale necessitates mechanical cultivation which only becomes feasible if there is a sufficiently large and compact block of land devoted exclusively to this crop. At the moment these blocks are cultivated by co-operative societies formed under the auspices of the traditional land authorities (the *Jokakwaro* Elders), with some mechanized cultivation provided by the local sugar factory. The Government agrees with the Mission that to break up these blocks into individual holdings could put an end to the satisfactory cultivation of sugar in these areas, since mechanical cultivation of large areas might be hampered by the fact that any individual title holder could opt out of the block cultivation, and plant some other crop. The recommendation that land cultivated in this manner should be set apart is accepted. The land would be registered in the name of co-operatives, companies or syndicates, and it is expected that most, if not all, of the original members of the *Jokakwaro* would continue to participate in its cultivation as before, on co-operative lines; there should be no difficulty in filling the places of such of them as did not wish to continue growing sugar there.

14. Cotton cultivation in blocks does not rely so critically on mechanized cultivation, and the Government agrees that group registration in these instances is not so important. The type of registration best suited for these cotton blocks is a matter of choice for the people cultivating them.

15. Owing largely to the difficulties over water supplies throughout the greater part of the Masai pastoral areas, and other range areas where the land is held on a communal basis, establishment of individual ranches will, in some areas, not be feasible for many years to come and, therefore, registration of land in those areas, if it is to be done in the near future, will generally have to be on the basis of group ranches, which would clearly offer the most efficient land use in present circumstances. Registration would be carried out first in those areas where large numbers of people request registration in group ranches.

Paras. 101-110.

16. The Government has, for some considerable time past, been gravely concerned at the illegal individualization of holdings by the Masai County Councils, purporting to give large blocks of land to certain individuals who in consequence are claiming the right to have them registered in their names. The Government has repeatedly stressed that such "grants" are quite contrary to the law and the Constitution, which vests the land in the county councils in trust for all people living in the area, with no powers to grant individual land rights. The Masai as a whole appear to be unaware of the significance of these allocations which, if continued, will lead to a large landless class amongst the Masai. The Government is of the opinion that the establishment of group ranches, registered as such, is the only satisfactory means of ensuring that all the people obtain their fair share of the land, while at the same time encouraging higher standards of land use thus making the Masai concerned more credit-worthy for the grant of loans for developing the land. It is the Government's policy, therefore, to encourage the registration of group ranches, and where demand for this is strong, to see that all land rights in that area are adjudicated *ab initio*, with priority over claims to individual ranches. These latter claims will be considered later, where claimants can establish rights according to law.

17. In certain areas there are instances where members of other tribes have come on to the land and farmed it for many years, with the approval and acceptance of the dominant tribe in that area. When the implementation of the land reform programme has been started in these areas the dominant tribe has refused to allow the "acceptees" the benefit of registration. The Government joins the Mission in deploring this parochial attitude which exemplifies one of the most undesirable aspects of tribalism. While it is obviously desirable that acceptees should be admitted to rights of land registration in their districts of adoption only with the agreement of the dominant tribes in these districts, the Government cannot possibly agree to land registration being applied in such a way as to throw out large groups of landless ex-acceptees with no land rights in their districts of origin. It has therefore been necessary to suspend the registration of land in these areas until a solution to this problem has been found that is satisfactory to all concerned.

Para. 111.

Paras. 112-116.

18. The Mission refer to the question of titles on land where irrigation schemes have been initiated by Government at great expense. In order to make the heavy capital cost of irrigation works worth while a high degree of supervision and planning is necessary. If individual titles are issued the degree of supervision and control that can be exercised is greatly reduced, and the difficulty and cost of acquiring similar land for future irrigation schemes is greatly increased. The Mission therefore suggest that this land should be set apart and after the extinction of all rights should be let on lease or licence to approved farmers, subject to detailed conditions covering development of the land and use of the water. The Government agrees with this recommendation.

PART III—LEGISLATION AND PROCESSES INVOLVED IN THE LAND REFORM PROGRAMME

Chapter IX—Adjudication Before 1959

Paras. 117-126.

19. This chapter consists of a survey of adjudication up to and including the time when the Working Party on African Land Tenure 1957-1958 submitted their Report* on this subject, which led to the enactment of the Native Lands Registration Ordinance of 1959. This chapter is largely historical and needs no further comment except in one respect. The Mission recommend that further adjudication of the remaining claims to land at the Coast should be carried out under the new Adjudication Act. The Government does not agree with this recommendation because it is expected that these outstanding claims will be settled by the end of 1968, and such benefits as might accrue from changing over to the Adjudication Act would be outweighed by the uncertainty and confusion which such a change would be likely to create in the minds of both the public concerned, and the staff adjudicating the claims.

Chapter X—Adjudication in Consolidation Areas under the Land Adjudication Act

Paras. 127-132.

20. The Mission point out that a characteristic feature of the Land Adjudication Act is that it provides for adjudication, consolidation and the redistribution of land in one process, with much of the work done by committees drawn from among the people in each adjudication section. The method of adjudication is described by the Mission who note that it was originally devised for use in Central Province and that its application outside this Province has not been particularly successful.

Paras. 133-136.

21. The process of fragment gathering under this Act in Taita has not been particularly successful and has met with opposition. The Mission have recommended that in Taita the current schemes should be completed and their value assessed before new ones are initiated. Since the Mission's visit the opposition to Land Consolidation has died away in Taita District and the Government, therefore, does not accept the recommendation to discontinue work in that District. It also has some reservations on the recommendation that in hilly areas fragments might be assessed not only by area but by comparative value also. It may be necessary to try this in areas, such as Taita, where there is a natural fear that consolidation may result in the exchange of high-potential land for land of lower potential. Whilst

* Report of Working Party on African Land Tenure 1957-1958. (Government Printer of Kenya.)

noting this recommendation the Government would prefer, if possible, to avoid the introduction on any general basis of an entirely new and more complicated method of assessment which, if administered by inexperienced staff, might lead to considerable injustices in the allocation of new plots.

22. The Mission were asked to consider three possible amendments to the Land Adjudication Act. They were as follows:

Paras. 137-139.

- (i) to reduce the period in which claims should be submitted under section 7 (2) from six months to three;
- (ii) to amend section 15 (2) (a) to leave it to the discretion of the Adjudication Officer as to whether a Consolidation Committee's Executive Officer is required to enter the acreage figures in the Record of Existing Rights in any particular adjudication section; and
- (iii) to make it an offence not to comply with an order to demarcate the boundaries of a plot.

The Government agrees with the Mission's recommendations on all three points:—

- (i) that it is unnecessary to stipulate a minimum time limit—all that is needed is a reasonable period at the discretion of the Adjudication Officer;
- (ii) that all the landowners are naturally interested to know their acreage figures, and the section should not be amended; and
- (iii) that this proposal to amend the Act be accepted, and provision be included in the Land Adjudication Act making failure to obey orders to demarcate a boundary an offence under the Act. The urgent need for the demarcation of boundaries, and the Government's assessment of its importance is considered later.

23. The Mission propose that the existing Adjudication Act should be re-titled Land Consolidation Act, since it provides for that process; this would leave the title "Land Adjudication Act" free for the new Act proposed by the Mission, covering the process to be carried out in unfragmented areas where consolidation is not required. The only comment here is that Land Consolidation and Adjudication Act would seem to be a more suitable title for the existing Act. The Mission consider that it will not be long before a new land consolidation act will be needed to effect consolidation of sub-economic small-holdings in areas already registered. While the Government agrees that the existence on the registers of such a large number of extremely sub-economic holdings (down to half an acre or less!) constitutes a serious problems, it is strongly opposed to anything in the nature of expropriation of land, which is contrary to principles enshrined in the Constitution but which would be necessary if a policy were to be formulated of consolidation of sub-economic fragments in the ownership of different individuals.

Para. 140.

Chapter XI—Adjudication in Non-Consolidation Areas and the Proposed New Act

24. The comments of the Mission on the working of the existing Land Adjudication Act are noted and accepted. The new Act proposed

Paras. 141-148.

by the Mission is specifically designed for those areas where adjudication only is required, and it is to be applied by the Minister in strict accordance with a programme of priorities prepared by the Standing Committee of officials, dealt with at paragraph 78 below, and approved by the Development Committee of the Cabinet. It is the Government's intention that the new Act will not be applied to entire districts but rather to limited areas in which work under the Act is expected to take place within twelve months. Premature application of the Act can cause trouble and unnecessary expense, and is to be avoided; the Act will contain provisions for areas that have already been gazetted adjudication sections under the Act to be degazetted if found to be unready. Declaring only limited areas to be adjudication sections will avoid the present anomaly whereby under section 8 of the Act land suits in African Courts are stayed in a whole district, and then allowed, by blanket consent of the Adjudication Officer in those parts of the districts where adjudication work is not to be started for some time.

Para. 149. 25. The Government agrees with the recommendation that the proposed new Act should be applied to unregistered land everywhere except for land at the Coast to which reference has already been made at paragraph 19 above.

Paras. 150-151. 26. The Government notes the observations of the Mission on the danger of granting absolute title to land in schemes of land distribution (not consolidation of existing holdings) before there is any guarantee that the persons settled will make proper use of it. Their remarks on the necessity for the clear physical demarcation of boundaries are endorsed but the Government does not agree with their statement that the system of land registration in Kenya depends on effective occupation.

Paras. 154-157. 27. The proposed new Act should correct many anomalies. For example the Adjudication Officer will have power to intervene of his own motion at any stage in the adjudication proceedings and to summon and swear witnesses in the course of his investigations. Also the powers and duties of the Demarcation and Recording Officers will be clearly set out in the Act.

Paras. 158-166. 28. The Mission recommend substantial changes in the functions of the committees under the new Act. These recommendations are accepted. It is generally agreed that the work of the committees has been a special feature of land reform in Kenya and their work has been generally successful. The proposals which the Mission make will undoubtedly assist the work of the Adjudication Officer. The work of the committees hitherto has been four-fold. First, they have to investigate each individual's claim to rights in the land. Secondly, they have to set aside land for the needs of the community. Thirdly, if consolidation is to take place they have to arrange for the allocations of land. And lastly, they are responsible for the preparation of the adjudication register, the basis of the registered title. Admittedly there have been shortcomings in their work, notably in the matter of adjudication on the rights of minorities in certain areas, but the system of committees is firmly established, and the Government

agrees with the Mission that their functions should be written into the Act, and that they should continue to assist the Adjudication Officer. Where there is no land consolidation involved they no longer have to allocate land and their work is more judicial than executive: where there is an actual dispute as to boundaries or ownership they should be called upon to adjudicate, but they should not waste time adjudicating on claims not in dispute; in addition they will have certain advisory functions.

29. The Government also agrees with the Mission's recommendations that the members of a committee should be drawn from a large panel, that a committee should consist of not less than five members, and that they should receive no pay for their work.

Paras. 167-170.

30. The recommendations for simplifying the appeals procedure are accepted. Under the new Act an appeal will lie from the decision of a committee to the Arbitration Board. It is also agreed that the minimum period from the declaration of an adjudication section to the moment when the adjudication record for the section becomes final should be six months, although the record may be completed and made available for objections at any time within this period. The period for lodging these objections will be limited to two months unless a longer period is required to complete the six months' period from the declaration of the section.

Paras. 172-176.

31. The Government is unable to accept the Mission's recommendation concerning the amendment of entries in the register made on first registration, since if this recommendation were accepted much of the benefit bestowed by the registration of titles would be lost, particularly the guaranteed certainty of ownership. It is the Government's view however that the purpose which the Mission had in mind when expressing their views on this particular point may substantially be met by providing a right of appeal against the decision on an objection to the Record of Existing Rights or the Adjudication Register. This would be exercisable within sixty days after the date of the decision and would be heard by the Minister for Lands and Settlement. Under this new arrangement registration of a title under the Registered Land Act would not be effected until any appeal had been disposed of. The provision of this right of appeal would ensure that all who had valid grounds for challenging the Record of Existing Rights or Adjudication Register had ample opportunity for doing so.

Chapter XII—Land Planning in Adjudication

32. The importance of this chapter of the Report is not to be gauged by its brevity. The Mission lay great emphasis on land planning and rightly say that consolidation offers "a unique opportunity" for skeletal planning. The Government entirely agrees with their emphasis on this aspect of land-use planning, which is concerned with the layout of villages, public buildings, water supplies, soil conservation, roads, etc. The complexities of planning on this scale, particularly in distribution areas, is such that it cannot be left to haphazard ideas tardily emerging from officers in the course of their other duties. The Government accepts the recommendation that the Agriculture Department and Town Planning Department should turn their full attention to these opportunities; the Mission recom-

Paras. 177-182.

mend the appointment of two Planning Officers for this purpose to the Town Planning Department, but the Government considers that it may also be necessary to strengthen the Agriculture Department to enable it to provide the necessary staff for work on the agricultural aspect of planning in these areas. Land Consolidation Officers will be required to seek the advice of Town Planning, and Agricultural Planning Officers, when preparing new layouts for adjudication schemes. The Government considers however that the provision of the necessary land for the proper planning and development of the areas concerned remains the responsibility of the appropriate county councils and land consolidation committees and that such land must be provided by them as part of the land consolidation and registration process.

Chapter XIII—Adjudication Fees

Paras. 183-185.

33. The Mission were specifically asked to make recommendations as to the proportion of the cost of consolidation and registration which should be met by the landowner. They have rightly pointed out that in a non-consolidation area the landowner who merely acquires a registered title to his plot is understandably dissatisfied at having to pay for something which he may not have asked for in the first place, and probably has no immediate intention of utilizing.

Paras. 186-190.

34. It is, in fact, the Government, or rather the people as a whole, not necessarily individual persons, who benefit from systematic adjudication and registration. The process of registration provides a source of revenue for the Government which will increase as transactions involving the registries increase. There are other administrative advantages which also arise from this process.

35. It is agreed that fees should continue to be charged, and that they should be calculated, as at present, on an acreage basis. However, the present method of fee collection is undesirable, expensive, and often ineffectual. Fee collectors who tour the countryside are not the answer to the problem, and their laudable persistence in collecting small sums over widely scattered areas is incompatible with the image of advancement, efficiency, and the general well-being of the public which Government seeks to establish. It is doubtful whether the total fees collected by them amounts to more than their salaries! The Government therefore accepts the recommendation that collection by fee collectors should be abandoned. It does not, however, consider that it is practicable in present circumstances to enter the amount payable in fees as a charge against the title in the Register. It considers that the same objective can be more easily and cheaply achieved by other means. It is therefore proposed that whenever fees are fully paid a note to that effect shall be made in the Register, and that in the absence of such a note it shall be presumed that fees are outstanding and no transaction shall be registered nor land certificate issued until they have been paid. Provision for the application of this procedure to both existing registered titles and titles to be registered in the future will be made by suitably amending the Registered Land Act.

Paras. 191-195.

36. The Government agrees with the Mission's recommendation that the fees should remain unchanged, except that the upper limit on fees for large holdings should be discontinued; there is no parti-

cular reason why a landowner fortunate enough to possess a large holding should pay less per acre for the work involved in its consolidation and registration. Group ranches may prove to be an exception to this recommendation, bearing in mind the great reduction in cost per acre to be expected owing to their considerable size. The recommendation that there should be a new type of fee for disputed cases is also accepted. The complainant who wishes to bring his dispute before a committee for determination should be made to pay and if successful he can recover his fee from the defendant. The Government therefore proposes to charge a complainant an initial fee of Sh. 15 for any case brought before a committee for hearing, and a further fee of Sh. 30 if the case proceeds on appeal to an arbitration board.

37. The Mission expresses the view that accurate mapping is desirable, but the Government is of the opinion that for the successful implementation of a programme of land registration it is in fact essential that the final registry maps of the areas registered should be of a high standard of accuracy. Circumstances have hitherto made it the invariable practice in all land consolidation and adjudication areas to base initial registration on demarcation maps of a generally low standard of accuracy and subsequently to carry out comprehensive re-mapping to acceptable standards of accuracy by what has become generally known as the "re-fly procedure". This automatic duplication of effort in every case was costly and time-consuming and the Mission has expressed the view that the "re-fly procedure" should be suspended, and have made no recommendation for its resumption. The Government is in full accord with the view that this automatic duplication of effort should be avoided and is indeed of the opinion that the term "re-fly", indicative as it is of a repetitive process, should henceforth be abandoned.

38. The Mission have, however, coupled with their recommendation for the suspension of the "re-fly" a suggested procedure for the production of initial registry maps which would, in their opinion, in every case make these maps suitable for prolonged if not indefinite use. The survey and mapping procedure which the Mission advocate is one which is recognized as having many positive merits, not the least important of which is speed. The Government does not, however, share the Mission's view that these initial demarcation and registration maps will in every case be adequate to meet long-term requirements: their accuracy will not, in every case, be of such a high standard as to permit the maps being used for the relocation of missing boundaries. While initially the difficulty thereby created may not be an unduly serious one, it is essential in the Government's view that in the long term, there should be maps covering all land adjudication and registration areas which define the boundaries of the registered holdings with a degree of accuracy which is beyond valid dispute.

39. The Government therefore considers that the Survey of Kenya should continue to produce accurate maps, in support of title to land, at their best possible speed and that, as soon as this can be done, they should be provided with the necessary staff and funds for this purpose. It is initially accepted for this purpose that as a general criterion 90 per cent of hedges shall be in existence before re-mapping is carried out, in some, and it is hoped, an increasing number of

cases it will be possible for accurate maps to be produced at the outset, as the Mission envisaged, but where this is not the case the Survey of Kenya will produce accurate maps, as soon as staff and funds permit, as an integral part of their programme in support of land adjudication and registration. The responsibility for advising the Government on the adequacy or otherwise of the initial demarcation and registration maps in any given area for long-term needs will rest, of course, with the technical departments concerned.

Para. 201.

40. The recommendation that the measurement of fragments by compass and chain in Meru should be discontinued is accepted.

Paras. 205-206.

41. The proposal that Survey Department should be responsible for the demarcation of holdings from an allocation map prepared under the direction of the Land Consolidation Department, is accepted in principle, because this is a survey process. However, in accepting this proposal the Government is aware that its implementation may be difficult: administrative arrangements between the Survey and Land Consolidation Departments may cause a number of problems. The Government considers that the Land Consolidation Department's Junior Survey Assistants should work under the close supervision of the Survey of Kenya, but not, as recommended by the Mission, transferred to that department as this would lead to some problems of staff administration.

Paras. 207-208.

42. The Government is unable to accept the Mission's opinion that the existing demarcation maps in consolidation areas are satisfactory. The staffing of the Survey of Kenya is such, however, that it agrees with the Mission that it is desirable for the production of accurate maps to be suspended, but only until staff and funds permit a resumption.

Para. 210.

43. It is agreed that the maps in Nyanza and Western Provinces which have been produced from photographs at a contact scale of 1/12,500 have not been satisfactory. The recommendations that the boundaries should be re-identified on enlarged photographs, and that fresh maps should be prepared are accepted. The area involved is larger than the Mission state, and it is believed to be in the region of 500,000 acres as opposed to 300,000 acres.

Para. 211.

44. The recommendation that, in those enclosure areas where there is little height variation, demarcation maps should in future be prepared by marking up boundaries on air photographs enlarged to a scale 1:2,500 is accepted. However, it must be emphasized that such maps, being little more than diagrams, only serve as a temporary expedient until such time as accurate maps can be prepared. It is essential for the furtherance of the accelerated programme that boundaries should be demarcated, and Government intends to do everything possible to ensure this.

Para. 212.

45. The mapping procedures recommended for use in hilly parts of enclosure areas would produce accurate maps but the Government for budgetary and technical-procedure reasons is unable to accept the Mission's recommendation as it stands. The recommended maps would be produced by the same process as the re-fly maps but would be even more expensive to produce and would hold up registration

since they are to be produced before registration. The Government therefore prefers to adopt for hilly areas the same policy as for flat areas.

46. The Government accepts the recommendation that the Survey of Kenya should produce base maps, and carry out the demarcation surveys in distribution areas where communal land is being allocated to individuals.

Para. 213.

47. The recommendation that the Survey of Kenya should take over the responsibility for boundary relocations, and the survey of subdivisions, is accepted. In addition it is also accepted that the full costs of survey should be borne by any landowner who, on subdividing his land, stipulates that an exact acreage should be laid out by the surveyor.

Paras. 215-216.

48. In these two paragraphs the Mission reiterate their arguments in favour of accepting a more rudimentary form of map for registry purposes. They quite rightly describe the function of a registry map as being four-fold, namely, to assist in identifying the plot on the ground, to assist in relocating boundaries, to enable subdivisions to be made, and for the calculation of plot areas. The Government does not agree that the initial demarcation map can be relied upon to fulfil, in every case, these essential functions, particularly that of enabling boundaries to be relocated, and it is for this reason that the Government accepts the need to provide, as soon as funds and staff permit, for the production of accurate maps whenever the inadequacies of the initial ones make this necessary. It fully agrees with the Mission's views on the need for the proper demarcation of boundaries. The higher the percentage of boundaries marked the more rapidly and economically can maps be prepared from aerial photographs, and the sooner the Survey process be completed.

Paras. 217-218.

Chapter XV—Registration of Title

49. In these paragraphs the Mission have traced the historical background leading up to the enactment of the Registered Land Act of 1963.

Paras. 219-230.

50. Provision is made in section 6 of the Act for an alphabetical index to be kept, at the discretion of the Chief Land Registrar, of the names of proprietors of land, leases or charges showing the numbers of the parcels of land in which they are interested. No such index has yet been made and the Mission recommend that one should be opened in each Land Registry, without delay. The Government agrees with the argument adduced by the Mission in support of this recommendation, and proposes to implement it as soon as possible.

Paras. 231-233.

51. Regarding their proposal to change the form of registry binder, the Government has accepted and put this recommendation into effect. It is also agreed that the register pages should be serially numbered.

52. The Mission point out that a number of serious errors and omissions have occurred in the compiling of the register. The Government accepts the Mission's recommendations that the register should never be compiled without the demarcation map, and that checking of the entries in the register should be carried out at once, and in

Paras. 234-236.

the land registry in question; this latter point touches on the question of staff, which is considered later, along with other recommendations for increases in staff.

Para. 237.

53. As at present worded section 11 (2) of the Act requires a separate register form to be compiled for every landowner, and for every person who is entitled to the benefit of any interest, lease, charge, or other encumbrance. In practice, registers are being compiled in respect only of each parcel of land shown on the demarcation plan, and of each lease requiring registration under the Act. The Mission recommend that as this is all that is required the Act should be amended to fit the present practice, and to make it clear that the register is a register of land, not of every possible interest or title to land, and the Government accepts this recommendation.

Para. 238.

54. The Government intends to apply the Registered Land Act as widely as possible, and accepts the Mission's recommendations on this point, but the speed at which this can be done is limited by the staff available.

Paras. 240-255.

55. In these paragraphs the Mission discuss registered dealings and emphasize the importance of the Presentation Book. The Government accepts their views on these points, and also on overriding interests, and the need for inspection of the land as part of any transaction.

56. The Mission make certain recommendations for the amendment of the Registered Land Act:—

- (i) Deletion of section 18 (2) to remove the implication that there is a hiatus in the production of registry maps by the Director of Surveys. They consider such maps will be readily available to registries in the form of demarcation maps now to be prepared by the Survey Department, obviating the need for provision in the Act for maps produced otherwise than by the Director of Surveys.
- (ii) Sections 21 and 25 to be amended to give the Registrar the powers to order demarcation of plot boundaries, which they consider he may well need when he "indicates" a boundary under section 21 (2), or when there is a subdivision under section 25 (2).
- (iii) Section 23 (1) to be amended to make it an offence, with a prescribed penalty, to fail to maintain a boundary: this subsection at present merely imposes on each landowner the duty of maintaining his boundaries, without prescribing a penalty for failure to do so.
- (iv) Section 23 (2) empowering the Registrar to order the demarcation of boundaries to be deleted, since this provision is now to be transferred to more appropriate sections, as at (ii) above.
- (v) Section 23 (3) empowering the Registrar to allocate responsibility for maintenance of features demarcating a common boundary between plots to be deleted.

57. The Government does not accept the proposal to delete section 18 (2) since it may well prove necessary on occasions, to introduce provisional registry maps produced otherwise than by the Director of Surveys. The Government accepts the recommendations in respect of

sections 21, 23 and 25 to the extent only that they relate to a more logical arrangement of the sections, but does not agree to any reduction in the Registrar's powers to order demarcation and maintenance of boundaries.

58. The Mission consider that the Sh. 25 land certificate misleads the public who have tended to attach to them an importance which they do not possess since it is the entry in the register which proves title, not the certificate. The Government agrees with this and accepts the recommendation that the issue of this certificate should be abandoned, since it gives no more information than a Sh. 5 search certificate.

Paras. 256-264.

59. The views expressed by the Mission on the transmission and inheritance of land are accepted. The Government is reviewing the question of succession, and the issue of succession orders by African Courts. An officer has recently been provided by the British Government on technical assistance terms, to study, in Kenya, the serious problems of inheritance and subdivision which arise on the death of a landowner subject to customary law, and which threaten to undermine the work of land reform. Legislation by itself will probably not provide an answer, since the problem is essentially a social one, but legislation can undoubtedly assist. This in turn involves an increase in staff in the Attorney-General's Department, which is considered later.

Paras. 265-268.

60. In these paragraphs the Mission recommended a number of further amendments to the Registered Land Act, on which the Government's proposals are as follows:—

Paras. 269-276.

- (i) To cover the appointment, removal and replacement of "Group Representatives" recommended for inclusion in the proposed Adjudication Act (Para. 98 of the Report).
- (ii) To repeal section 141 by means of the Limitation of Actions Bill, 1967.
- (iii) The Government considers that all reasonable steps should be taken to ensure that the Record of Existing Rights and the Adjudication Register faithfully represent the rights and interests of those whose land has been adjudicated. It has therefore been decided, as already stated in para. 31 of this paper, that an additional period of 60 days in each case should be allowed following the determination of objections to the Record of Existing Rights or the Adjudication Register for the lodging of appeals to the Minister for Lands and Settlement, and that until that period has elapsed, the preparation and opening of the Land Register should be postponed. In any case, where at the end of the period for the lodging of appeals against the Adjudication Register, appeal proceedings are still pending or are in progress, the registration of the affected properties will be deferred until the appeals have been heard and determined.
- (iv) To replace "fraudulently" with "wilfully" in section 155, since any intentional defacement of the Register should be an offence.

Chapter XVI—Control of Dealings in Land

Paras. 277-283.

61. The Mission were invited to consider the draft of a new Land Control Bill which is relevant to their investigations into the refragmentation of holdings. Their comments on the background, purpose and extent of previous legislation dealing with land control are contained in these paragraphs, and the Government agrees with their observations.

Paras. 286-291.

62. The Government accepts that it is necessary to protect new title-owners from unscrupulous persons seeking to acquire an interest in their land, and, to that end, to confine the lending of money, on the security of land, to the banks and other recognized financial institutions. It is also agreed that the functions of the Land Control Boards should be written into the law, and that those relevant to the former special areas should be included. The Government also agrees that it is not practicable to lay down rigid rules specifying minimum economic sizes of holdings permitted to be registered, and that proposed subdivisions should be considered individually as and when they arise. The basic criterion to be considered in each case is the effect that such a subdivision will have on agricultural development.

Paras. 292-294.

63. The Government accepts, in general, the recommendation that the composition and chairmanship of boards, and their appeals procedure should revert to the lines laid down in the Land Control (Native Lands) Act 1959. (The District Commissioner to be chairman, a few of the members to be departmental officers and local council representatives, and up to a dozen or so to be local farmers; appeals to be to the Provincial Commissioner's appeals board.) A new Land Control Act drafted on these lines came into operation on the 12th December, 1967.

Chapter XVII—General Comments on Staff Involved in the Land Reform Programme

64. The Mission have made a number of specific recommendations for considerable increases in the staff of the departments that will be involved in carrying out the accelerated programme of land consolidation and registration proposed by them. They have also recommended the upgrading of cadres in the Land Consolidation Department. The Government recognizes that for the Land Reform programme to proceed at the pace envisaged by the Mission very substantial increases in staff are required. The upgradings and increases in establishment and in the number of posts on pensionable or contract terms, proposed by the Mission have been given careful consideration by the Government and the new grading and establishments required for 1967-68 have been agreed.

THE LAND CONSOLIDATION DEPARTMENT

Paras. 298-302.

65. The Government agrees that the work of this department must be confined to land adjudication, and the preparatory work for it. It should be free from all responsibilities arising in registered areas, such as fee collection, hedge inspection or survey of subdivisions. The strain at present imposed on the department by dispersal of its staff in widely scattered areas is referred to at paragraph 78 below, but in this particular respect the Government is determined that staff of

this department shall not also be dispersed on functions for which it is not responsible. It is agreed that new terminology for the posts in this department is required, and this will be applied when the new gradings come into force.

66. At the moment the Land Consolidation Department headquarters staffing situation is such that, even with the department at its present size, any form of regular supervision to be effected by touring is out of question. The rapid expansion of the department involving recruitment of a large number of inexperienced officers will underline the great importance of adequate supervision of officers in the field, and the Government now has under consideration detailed proposals for strengthening this headquarters staff.

Paras. 305-307.

67. It is the Government's intention to investigate the method and type of training which new entrants will require. The length of the course, syllabus, preparation of manuals for their guidance in the field, and all such other related matters are under consideration. The Government agrees that the training of Junior Survey Assistants, who are to remain with the Land Consolidation Department, and not be transferred to the Survey Department as recommended by the Mission, should take place in the field.

Para. 309.

THE SURVEY OF KENYA

68. To effect the proposals made so far the Survey of Kenya will require to have its staff increased. The shortage of professional surveyors can be met to a limited extent by increasing the size of the Directorate of Overseas Surveys team working on control surveys in Kenya. The expansion of the Directorate of Overseas Surveys team will only provide a partial solution to the staffing problem of this department because these officers will be more concerned with advanced and specialized survey processes. Consideration will also be given to placing some of the work with private surveyors, and firms on contract, both for ground and aerial survey.

Paras. 311-315.

THE LANDS DEPARTMENT

69. Amongst the staffing recommendations at present under consideration by the Government is the Mission's proposal to increase the staff of this department by two registry inspectors, who are required to supervise the work of Assistant Land Registrars in charge of District Registries, and particularly at the time of compilation of the Register, so as to reduce to a minimum the large number of clerical errors which are apt to occur at that time. The Government also accepts the recommendation that District Land Registries should be opened at the appropriate stage in those districts where in the foreseeable future the number of titles to be issued is likely materially to exceed 20,000.

Paras. 316-321.

70. The additional staff to man these new registries will need training, and a comprehensive manual on registry procedure must be produced for their guidance. The increase in the number of registries will also entail additional clerical and subordinate staff.

OTHER DEPARTMENTS

71. Additional staff will also be required for the Attorney-General's Department to deal with all the new and amending legislation called for in the implementation of the accelerated programme—virtually

every existing statute in respect of land, land use, land control, etc., will need to be reviewed and amended: a consultant on Succession, and a Senior State Council and State Council specializing on land law will be needed, and should be recruited as soon as possible as registration may well be held up for lack of the necessary legislation.

72. Reference has already been made at paragraph 32 above to additional Town Planning and Agricultural Planning staff required.

PART VI—THE FUTURE LAND REFORM PROGRAMME

Chapter XVIII—Establishing Priorities or the Programme of Land Reform

Paras. 322-328.

73. The Mission have considered the question of priorities in establishing a programme of land reform, and in so doing have suggested four criteria to be taken into consideration. The first is the increase in agricultural production in the area that can be expected from the adjudication and registration of land holdings in that area. The Government does not accept the Mission's view that land tenure reform by itself is unlikely to achieve very much, but does agree that the most important factor contributing to increased production is the agricultural follow-up programme of agricultural extension services and development credit. The benefits of land reform lie in the resultant security of tenure, and the consequent investment of capital, better land use and access to credit facilities. In this respect, however, the Government believe that the benefits of secure tenure will only be achieved if accurate registry maps are available and in order to ensure their early availability proposes to approach the problems of survey and mapping in the manner indicated earlier in this paper.

Paras. 329-331.

74. The second criterion is real evidence of a will amongst the people to co-operate in a land reform programme. The Government accepts this proposition.

Paras. 332-334.

75. The third criterion is security of tenure. This leads to social security and economic benefits, but the Government notes that the Mission consider that security of tenure for one section of the people could lead to insecurity for another section, namely, the landless who must be accommodated in other ways. This is true, and, whilst accepting this third criterion for priority for land reform, the Government wishes to emphasize that it is determined to take whatever action is needed to prevent the proposed land reform programme from generating the insecurity envisaged by the Mission.

Paras. 335-337.

76. The fourth criterion is the probable cost of the operation in new areas (which must be kept down by efficient deployment of staff, and by economical forward planning of aerial photography). The cost of the accelerated programme is discussed at paragraphs 85 to 88 below.

77. The Government accepts these four criteria as being the principal factors to be taken into account in allocating priorities for land tenure reform to different areas of the country.

78. The Mission recommend that a standing committee of officials should be established by the Development Committee of the Cabinet for the express purpose of formulating a long-term programme of land reform for acceptance by the Development Committee. The Government fully accepts this proposal and agrees that the committee should meet at least once a year to review the next year's programme. In particular the effect of this committee would be to relieve the departments concerned in the Land Reform Programme of sporadic and ill-conceived demands (often inspired by self-interest), for the programme to be initiated in a particular area, which would not qualify for priority on the basis of the four criteria discussed above. A co-ordinated programme, once approved by the Development Committee, could only be varied by that committee. It is agreed that this would prevent the excessive dispersal of staff, and keep down costs.

Paras. 338-342.

79. The Government notes with interest the priority groups proposed by the Mission, and accepts, generally, the considerations on which they have been based. The actual grouping of districts into priorities A, B, C, D and E, was adopted as a first draft by the committee of officials, which was established at the beginning of February 1967, and whose draft 1967-68 programme has already been approved by the Development Committee.

Paras. 343-349.

Chapter XIV—Problems in Drawing up an Accelerated Programme

80. The Government notes the reluctance of the Mission to attempt an assessment of the area of land suitable for registration, and agrees that an overall assessment is hardly necessary since the recommendations made are confined to a four-year period up to mid-1970. It is accepted that there are probably over 30 million acres suitable for registration which will occupy to the full the staff concerned for a period far in excess of the period contemplated.

Paras. 350-355.

81. The Government agrees with the Mission that the one factor which is likely to limit the acceleration of the land reform programme is shortage of suitable manpower for the necessary expansion of staff in the departments involved in the programme, particularly in the Land Consolidation Department, and especially in the senior grades. The Mission recommend that the staff of this department should be increased by 10 per cent, 25 per cent, 33 per cent and 33 per cent respectively in each of the four years between 1966/67 and 1969/70, and in principle the Government accepts these recommendations. However, since the accelerated programme will not be initiated before 1st July 1967, the Government now has under consideration staff increases in that department of the order of 10 per cent, 20 per cent and 25 per cent for the years 1967-68, 1968-69 and 1969-70 respectively. This projected rate of expansion would be reviewed from time to time by the standing committee of officials mentioned at paragraph 78 above. The Government accepts, in principle, the Mission's proposals for increases in the staff of the Land Consolidation Department; the accelerated programme cannot be implemented without this increase.

Paras. 356-365.

Chapter XX—The Detailed Programme

82. On the basis of the figure of 360,000 acres estimated as being brought on to the register in the year 1965-66, the Mission calculate that if the recommended procedures and increases in staff, are imple-

mented it should be possible to effect new registration of *agricultural* land over the four years of the plan as follows:—

						<i>Acres</i>
1966-67	..	..	..	..	..	414,000
1967-68	..	..	..	..	..	533,000
1968-69	..	..	..	..	..	733,000
1969-70	..	..	..	..	..	1,016,000
Four-year total	..	..	..	..	..	<u>2,696,000</u>

However, a considerable part of the acreage each year will consist of, not agricultural land, but range land which the Mission estimate can be adjudicated and registered about 50 times as quickly as agricultural land, since the technical problem of survey will be much simpler, and since holdings will be very much larger. The four-year programme thus becomes:—

<i>Year</i>					<i>Agricultural</i>	<i>Range</i>	<i>Total</i>
1966-67	..	..	..	..	415,000	—	414,000
1967-68	..	..	..	..	508,000	1,250,000	1,758,000
1968-69	..	..	..	..	698,000	1,750,000	2,448,000
1969-70	..	..	..	..	975,000	2,056,000	3,031,000
TOTAL	..	..	..	..	<u>2,595,000</u>	<u>5,056,000</u>	<u>7,651,000</u>

If this programme, which is set out in detail by districts in Table 8 of the Report, is fully implemented it will produce a surplus of eligible farmers with registered holdings in those areas designated to receive assistance in the first phase of the Smallholder Credit, and the Range Development programmes. The total area registered by mid-1970 inclusive of land already on the register by the end of 1965-66, should amount to a total of about 9½ million acres.

83. The Government accepts the detailed programme suggested by the Mission, but clearly, as the Mission themselves state, as experience is gained in the operation of the accelerated scheme this programme will almost certainly have to be modified by the standing committee of officials. In fact, considerable modifications will be needed at the outset, to take account of the delay of one year that has occurred in getting the programme under way.

Chapter XXI—The Staff Implications and the Cost of the Detailed Programme

Para. 380.

84. In estimating the total cost of the detailed programme the Mission have made separate estimates for the three distinct parts of the process—Survey, Adjudication and Registration.

COST OF SURVEYS

Paras. 381-390.

85. In these paragraphs the Mission make a number of detailed recommendations covering the programming of map production, which are accepted. The Government also accepts their recommendations as to staff increases required and, in broad terms, their estimates of costs of surveys (worked out through Tables 12 and 13) at £996,755 subject to the following:—

- (i) The estimated cost of additional equipment required will be greater than the £15,000 included in Table 13 by the Mission.

- (ii) The Survey of Kenya estimate at 500,000 acres the area to be re-surveyed in Nyanza and Western Provinces, as against the figure of 300,000 acres estimated by the Mission, and that it will cost rather more than the figure of Sh. 2/60 per acre quoted by the Mission.
- (iii) No financial provision has been made for certain additional staff required, notably extra drawing office staff.
- (iv) The Survey of Kenya will require an additional sum of possibly £100,000 to cover these items over the period 1967 to 1970. A further sum of about £30,000 will be needed to cover the cost, over three years, of a team of 50 hedge inspectors, not included in the Mission's recommendations but which the Government considers to be an essential adjunct to the Survey Department, to ensure that as near as possible to 100 per cent of the plot boundaries are hedged before preparation of the first registry map. They will be responsible for enforcing any orders to hedge boundaries that may be issued.

COST OF ADJUDICATION

86. The Government accepts in principle the Mission's recommendations as to the increases in staff required in the Land Consolidation Department and the estimated costs of this section of the programme, over the four-year period, with one exception. The Mission's recommendation that the Junior Survey Assistants of the Land Consolidation Department should be transferred to the Survey Department is not accepted, owing to the difficulties which such a transfer would cause within the latter department whose own Junior Survey Assistants have a higher standard of education, and survey training, and are on a higher salary scale than those of the Land Consolidation Department. It is proposed, however, that the latter department's Junior Survey Assistants should be subject to the technical direction of the Survey of Kenya.

Paras. 391-396.

REGISTRY COSTS

87. The Mission's estimates of the cost of establishing and operating district land registries, totalling £70,658 over four years, are accepted by the Government.

Paras. 397-398.

OVERALL COSTS

88. The Mission's estimates of the total four-year costs work out at—

Paras. 399-401.

£	
996,755	for Surveys
70,658	for Registry
2,814,166	for Adjudication
Total ..	<u>£3,881,579</u>

In addition there will be certain additional expenditure involved as mentioned in paragraph 85 above. However, as the expansion of the Land Consolidation and Registration programme did not get under way until the 1st July 1967, gross expenditure on the whole four-year programme 1966-67 to 1969-70 is unlikely to exceed £3.3. million.

89. The Government agrees that it is not possible to make any reliable estimate of the probable revenue from adjudication, survey and committee hearing fees. Revenue derived from adjudication or registration processes will be negligible, and the Government will have to rely, for the implementation of this programme, almost entirely on loans from the British Government, repayable over a 25-year period. The general estimates and the phasing of expenditure proposed by the Mission cannot be considered as anything more than illustrative of what costs might be, and the Mission would undoubtedly agree with this observation. The planning and costing of the programme will be subject to constant review and amendment as the work proceeds.

PART V—FOLLOW-UP PROGRAMME OF AGRICULTURAL CREDIT AND EXTENSION

GENERAL

90. Under the heading "Follow-up Programme" the Mission's terms of reference require it to "assess the type and volume of credit and the level of extension services required to allow the new production potential (made possible by land tenure reform) to be realized". The Mission note that the U.K. Government has made its offer to finance an accelerated programme of land reform conditional on the Kenya Government's willingness and ability to devote resources to credit and extension services so as to take full advantage of the expenditure on land consolidation and registration. However, the Mission are unable to suggest with any degree of precision what quantities of credit and extension services are required in this connexion. In respect of credit, they review the operation of existing credit programmes, note constraints applicable to future expansion of credit, summarize two pending applications for overseas aid, and make general unquantified recommendations for expanding credit in spheres not covered by the Government's plans. On the side of extension, the Mission list the Ministry of Agriculture's provisional (February 1966) estimates of personnel requirements for the 1966/70 Development Plan, including the requirement for field staff, based on that Ministry's estimates of acceptable ratios of staff to number of smallholdings and cattle, and they compare these requirements with the projected output from training facilities.

91. The Mission's inability to provide quantitative estimates of the follow-up required is due to the data available in Kenya not permitting an assessment, within any reasonable margin of error, of the returns obtained by past expenditure on land reform, credit, and extension services. The Ministry of Economic Planning and Development is currently drawing up a survey programme designed to measure the impact of credit and extension services associated with the forthcoming World Bank-financed smallholder credit project, but it will take several years to derive significant results from this work.

92. Granted that no firm quantitative solution exists to the problem faced in Part V of the Report, the Mission might perhaps have gone somewhat further than it did. The relevant term of reference, and particularly the words "required to allow the new production potential to be realized", need careful study. Taken over all future time, the production potential of any given agricultural area is, practically speaking, infinite in relation to present output, and the level of credit

and extension services required is likewise unlimited. To have any useful meaning in the present situation the term of reference must be interpreted with a number of qualifications. In economic terms, the Mission were being asked to assess *the level of credit and extension services which needs to be provided within a foreseeable period of time in order that the total investment in land reform, credit, and extension services might earn an economic return commensurate with the marginal productivity of public development expenditure in Kenya*. The "foreseeable period of time" in question should not be restricted to the four years of the proposed land reform programme (the discussion of extension services in Chapter XXVIII falls into this error) because many farmers are not ready to take advantage of credit and extension services until some time after their land is registered, and the longer into the future credit and extension services are provided, the more production potential can be realized.

93. Reference to the marginal productivity of public development expenditure in Kenya is necessary because the allocation of financial and manpower resources to land reform, credit and extension services in the former African areas cannot be considered in isolation from competing demands in agriculture and all other sectors of the national economy, for such resources. Every shilling spent on land reform and agricultural follow-up in the relevant areas should result in the realization of some part of the production potential even though the direct financial return to the Government may be negative (as when a farmer defaults on a loan). But expenditure of money and manpower on land reform and follow-up is subject as is expenditure on anything else, to the law of diminishing returns, and the Kenya Government must decide at what point the use of an additional shilling or person in a different activity would serve the national objectives better than the use of that shilling or person in land reform and agricultural follow-up in the former African areas.

94. Estimates of the aggregate increase in output resulting from public development expenditure are not available. Probably the most useful measure of marginal productivity is the ratio between the sum of such expenditure plus private capital formation during the 1966/70 Plan period, and the projected increase in the Gross Domestic Product over the same period, which works out at roughly 4:1. Thus we need to determine the amount of credit and extension services required to ensure that the combined programme of land reform and follow-up produces within a reasonable period of time, say five years, an increase in annual output equal to about one-fourth of the cost of the programme. Taking the Mission's cost estimate of Sh. 22 per acre increased output of Sh. 5/50 per acre per annum is all that is required; this would be achieved if one-quarter of the farmers in a "representative" block of 100 ten-acre holdings were to increase their annual output by, say, 10 bags of maize or 150 gallons of milk each. If land consolidation and registration has the advantages attributed to it in Chapter VI of the Report—and the Government is convinced that it has—then provided the priorities for registration are right, there should be no difficulty about achieving this rate of increase in most areas, without intensifying credit and extension services beyond present levels.

95. This does not mean that additional responses, in the ratio of 1:4 or even more, might not be achieved by providing additional credit and extension services up to a certain level, but that is a separate question. Just as it would be possible, by accelerating land reform too rapidly, to spend money unproductively on it, so also could money be wasted on too hasty expansion of credit and extension services, whether or not preceded by land reform.

96. In several chapters of Part V the Mission stress the riskiness of lending to smallholders, even with security of land title, and suggest that the Government should expand credit in this field in the expectation of having to write off a substantial proportion of its investment, at least in the initial stages. The Government accepts the desirability of subsidizing smallholder credit schemes through extension services, which, at the level required to assist farmers to make good use of their loans, may cost anywhere up to one-third of the face value of the credit extended. However, the Government seriously questions whether a credit scheme where borrowers engage in substantial default is an economic use of resources. Even if borrowers earn an economic return on the credit and are able to repay their loans, but refuse to do so, the Government considers that the breakdown of financial discipline involved in such wilful default, with implications for the all-important human factor in economic development, offsets the benefits resulting from increased output. It is therefore the Government's policy to ensure that the expansion of smallholder credit does not outstrip the capacity of the Ministry of Agriculture and credit-giving agencies, notably the Agricultural Finance Corporation, to provide close supervision in both technical and financial aspects and thus hold defaults to a nominal level.

97. The Government's views on the Mission's specific recommendations in respect of credit and other matters discussed in Chapters XXII-XXVIII are presented in the following chapter-by-chapter breakdown.

Chapter XXII—Agricultural Credit and Extension

98. In this chapter the Mission state the need for extra credit and extension staff to develop the potential created by land reform. The Government's plans for providing this follow-up are outlined. Whilst the Government agrees that expansion of agricultural credit and extension services is essential, it does not accept that "measures of land reform do not of themselves promote significant development". As the Mission show in Chapter VI, land reform is a prerequisite for any development of the livestock industry in most parts of Kenya and for the orderly development of perennial cash crops; also security of tenure encourages the smallholder to invest in his land and effect permanent improvements, such as hedging and soil conservation works, even if credit is not available. In any case a registered title is virtually a prerequisite for credit from commercial banks and will be a requirement in the forthcoming expansion of smallholder credit to be financed by the World Bank.

Chapter XXIII—Existing Credit Programmes for Small Scale Farmers

99. This chapter presents a factual and accurate survey of existing smallholder credit facilities and their administration. From their

discussions with the commercial banks the Mission do not expect the bank's provision of credit to smallholders to increase in proportion to the rate of land registration.

Chapter XXIV—Some General Points on Credit for Small Scale Farmers

100. The Mission discuss the reasons for high interest rates on smallholder loans and conclude that a subsidy is required to keep these at a reasonable level. They also note that only a relatively small proportion of smallholders are likely to benefit from loans until such time as there is a substantial rise in the technical and managerial competence of the average farmer.

Chapter XXV—Future Credit Programmes

101. This chapter summarizes the Government's plans for expansion of credit in the smallholder and pastoral areas, describing two projects which were under consideration by overseas aid sources at the time of the Mission's visit to Kenya. Further comments on these schemes are made below.

Chapter XXVI—Development Finance and Credit for Farmers

102. The Mission recommends an unspecified increase in short-term crop finance for smallholders, and in particular that such loans should be handled entirely by the A.F.C. (Agricultural Finance Corporation, in process of becoming the Agricultural Credit and Mortgage Bank), which should have funds provided "for advances to small-scale farmers for a single season in respect of any crop for which suitable applications are received" (Para. 465). But the Mission admit that such operations involve high risks and the near certainty of having to write off substantial sums in the early years. The only other existing official sources of short-term finance comprise the Settlement Department's development loans programme, seasonal credit provided to coffee-growers by the Coffee Marketing Board—both special cases—and the Minimum Financial Return advances provided through the A.F.C. on wheat and maize where grown in lots of 15 acres or more; smallholders can qualify by pooling their holdings.

Paras. 463-466.

103. Administrative costs of running a short-term loan scheme on the lines envisaged by the Mission, with no limitation as to the type of crop, would be enormous, owing to the very large number of small acreages involved. The Government proposes, instead, to work through co-operative societies for the provision of short-term smallholder credit. This will be greatly facilitated by the broad programme of development of the co-operative movement in agriculture forming part of the 1966-70 Development Plan; the implementation of this programme is now well under way with the passage of the Co-operative Act, the advent of 27 Nordic co-operative experts, and the opening of the Co-operative College.

104. The Mission note that though almost all the loans to smallholders have been of medium term, the total sums involved have been modest. Commenting on the draft application to the World Bank for funds for Smallholder Credit Scheme the Mission recommend that additional medium-term loan finance be made available to

Paras. 467-472.

the A.F.C. for loans to small-scale farmers who may not qualify under that scheme. They criticize the Government's policy of restricting issues of new loans in districts with bad repayment records, in an attempt to rally public opinion against defaulters and force them to pay up; such a policy, they say, is likely to have the desired effect, but will, in fact, hold up desirable development by progressive farmers who cannot obtain loans.

105. The Mission consider that an inquiry should be held into the reasons for the unsatisfactory position regarding repayment of agrarian loans. The Government is aware of the shortcoming of the previous agrarian loan programme, which was administered by Agriculture Department staff along with their myriad other duties and did not receive the concentrated technical and financial supervision required to make it an economic proposition. Intensive supervision by Agriculture Department and A.F.C. staff making smallholder credit their full-time business in an integral part of the forthcoming World Bank financed scheme, and the Government is confident that this approach will largely overcome the problem of default. Meanwhile, a sample survey of past recipients of agrarian loans now being carried out in the Ministry of Economic Planning and Development will throw further light on this problem, as will the more extensive survey planned in connexion with the World Bank scheme.

106. The Mission recommend that all arrears of smallholder loans should be handed over to the A.F.C. for collection, and that the restrictions on new loans be lifted; in view of the reluctance of the A.F.C. to take over responsibility for long-outstanding loans the Mission suggest that such loans should be written off.

107. The Government, however, is determined to educate farmers in their responsibilities as borrowers and to ensure that its credit schemes have the administrative support necessary to ensure almost complete repayment. The mechanism for handling old debts and the role of the A.F.C. in this matter are now under consideration.

108. As regards medium-term loan finance, since the Report was written the World Bank has agreed to lend Kenya £1.3 million for a four-year smallholder loan programme from 1967-8 to 1970-71 involving a high degree of field administration. A much larger scheme will probably follow, once this one is successfully completed. Another important vehicle of smallholder credit is the tea development programme under the auspices of the Kenya Tea Development Authority. During the decade 1965-75 some 60,000 acres of registered smallholdings will be planted to tea; the number of farmers involved will be even greater, since the average holding under the authority is less than one acre. Also over the next five years the Chemelil Sugar Company will be providing credit for the establishment of 11,000 acres of sugar-cane in the Nandi and Central Nyanza districts. In so far as funds can be raised from other sources the Government will make credit available in smallholder areas not covered by the foregoing schemes. Taking all these programmes together, credit will be available for a fair proportion of the estimated 380,000 smallholdings to be registered under the Mission's programme. However, it is clearly impossible to provide loan funds to every individual farmer as his holding is registered; on the other hand it would be uneconomic to

hold down the rate of registration to match the level of loan funds available, thus denying to many thousands of farmers for many years to come, the benefits of registration *per se* which they could otherwise enjoy within the next few years.

109. Negotiations are proceeding with overseas aid agencies interested in the pastoral areas credit scheme, but no firm decision as to its probable size has yet been reached. In the pastoral areas credit scheme the acreage to be brought into the scheme is a higher percentage of the total area to be registered than in the smallholder scheme, and for this reason it will be the Government's policy to tie land registration in pastoral areas more closely to follow-up schemes to the extent of delaying registration of areas for which credit is not clearly available.

110. These paragraphs deal with long-term credit for permanent improvements on, or for purchases of agricultural land, where responsibility in the public sector has long rested with the Land and Agricultural Bank of Kenya, now being amalgamated with the Agricultural Finance Corporation into the Agricultural Credit and Mortgage Bank. The Mission note that Land Bank have thus far made very few loans on the security of registered land in the former African farming areas.

Paras. 473-476.

111. Commenting on the breakdown, in certain areas, owing to non-payment of fees, services such as water supplies, and artificial insemination required to support agricultural development, the Mission recommend that collection of fees should not be abandoned but a more efficient collection system introduced. The Government is satisfied that its plans in respect of these services, which are described in the 1966/70 Development Plan and elsewhere, are adequate to cope with the demands of accelerated development in registered areas. There is no intention to abandon collection of fees for these services.

Paras. 477-480.

112. In these paragraphs the Mission deal with "off-the-farm facilities", with particular reference to roads, marketing, and the co-operative movement. Apart from special road projects, financed by the World Bank, which are already serving tea and sugar producers, the Government's overall road programme takes full account of the needs of agricultural producers. The Mission give recognition to the relatively efficient organization of produce-marketing in Kenya; at the same time the Government is constantly striving to improve this aspect of agricultural industry. Mention has been made earlier of the progress already achieved in implementing the co-operative development programme in the 1966/70 Plan.

Paras. 481-487.

113. The Mission suggest that the Government should provide credit to enable rural traders to hold larger stocks of farm requisites. The Government's Small Traders' Loan Scheme, operated by the Industrial and Commercial Development Corporation, is intended amongst other objectives to help to meet this. Once there is a steady market to ensure rapid turnover of farm requisites the major share of the responsibility for providing credit to rural traders must be borne by the commercial banking system, which has adequate financial and administrative resources to administer such credit. The National Commercial Bank provided for in the 1966/70 Development Plan will help to ensure more ready availability of credit in areas not adequately served by existing commercial banks.

Chapter XXVII—Planning for Agricultural Investment

114. The Mission emphasize the need to plan a broad programme of agricultural investment so as to ensure that none of the necessary facilities has been omitted. They also stress the importance of appointing Provincial Planning Officers to take care of detailed local planning at Provincial level. Since the Report was written the first three of these officers have been appointed and taken up their posts.

Chapter XXVIII—Agricultural Extension

115. In this chapter the Mission review the Ministry of Agriculture's staffing position and in particular its ability to put in the field the trained staff required to provide adequate extension services for newly registered areas. The Mission is of the opinion that the Government will experience considerable difficulty in filling all the posts required for this purpose, owing to shortage of trained personnel and staff-training facilities. They recommend that consideration be given to devoting part of the £18 million U.K. 1966-70 loan to increased staff-training facilities.

116. Since the Report was written the Ministry of Agriculture's preliminary projections of 1966/70 overall staff requirements (on which the Mission's calculations were based), have been substantially reduced as they were found to include staff not required until after 1970. A detailed set of forecasts is now in preparation for the Agricultural Education Commission, which has indicated its intention to include them in its report, which is likely to be submitted shortly after the publication of this Sessional Paper. Pending this report no useful purpose would be served by attempting to make such projections here. It can, however, be stated as a matter of principle that the Government is acutely aware of the need to increase the density and quality of the agricultural field services, and has committed itself and the 1966/70 Development Plan to a number of investments in training facilities which will meet this objective during the 1970s, the crucial period for follow-up of the 1966/70 land consolidation and registration programme. These investments are: establishment of a Faculty of Agriculture at University College, Nairobi; expansion of Egerton College, Kenya's Agricultural diploma-granting institution at Njoro; establishment of a new 200-bed Agricultural Training College to turn out Agricultural Instructors, representing the cadre of trained extension staff in most direct and frequent contact with the farmers on the ground; and a 60-place expansion of the Animal Health and Industries Training Institute (AHITI) at Kabete, which turns out Animal Health Assistants and Artificial Inseminators. The Agricultural Education Commission has been asked to review these proposals and suggest any modifications and additions for the Government to consider incorporating before the projects are officially put forward for external aid.

117. In considering the needs of the farmers of newly registered holdings, by way of Agricultural training, advice and supervision, the Mission has looked only at the traditional methods, namely personal instruction and advice by visiting extension service staff. However, Kenya farmers can obtain agricultural education, in its broad sense, from a number of other sources of which the Mission has taken no account, e.g. the Press, the radio, commodity boards, commercial

firms, and, in particular, Farmer Training Centres of which thirty, with a total of 1,500 beds, are now in operation, with another four planned for 1966-70. The Commission on Agricultural Education has been asked to make recommendations for strengthening the system of farmer training. The Government is confident that the number of field extension staff to be recruited and trained, together with the aid of the other extension media available, will be adequate to cope with the accelerated development resulting from the land reform programme.

MINISTRY OF LANDS AND SETTLEMENT,
NAIROBI

1970.