THE POSITION OF ALIENS IN EAST AFRICA
Daniel David Caroli Don Manjire

A thesis submitted in fulfillment for the Degree of Doctor of Philosophy in the University of Nairobi.

1974
This thesis is my original work and has not been presented for a degree in any other University.

[Signature]

This thesis has been submitted for examination with my approval as University supervisor.

[Signature]
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FOREWORD

My enthusiasm to embark upon a Ph.D. programme originated on 7th June, 1969 — the day I defended my Master's Thesis on the legal position of international officials. I had three topics in mind from which to choose one for a doctorate:

1) 'The Legal Basis of the United Nations Emergency Force';
2) 'The Legal Position of Aliens in East Africa'; and
3) 'Settlement of Boundary and other Disputes by International Officials'.

The topic I eventually decided upon was "THE POSITION OF ALIENS IN EAST AFRICA". The origins of my interest in the above-mentioned topic can, actually, be traced back to 1967/68, when the East African States began to implement in full force their post-independence declared policy of 'Africanization'. Non-citizen Asians were expelled en masse from East Africa. My immediate reaction to the expulsion appeared in the form of questions: Can Asians be thrown out of East Africa just because they are Asians and not Africans? Was there any internationally recognized standard of substantive justice which the East African States were under a duty to observe?

When, therefore, I decided to do research on the subject of aliens in East Africa, I was fully aware of the fact that there was no over-all assessment of the international legal position of aliens, most particularly of Asians, in the East African context. I was really convinced that it would be a good idea and a useful exercise if the problem of aliens in East Africa could be put into perspective.

I thought that the best way to tackle the problem was to try to place the question mainly in context both of the East...
African political, diplomatic and socio-economic situation, as well as the international law on the topic of aliens.

I also thought that it was necessary to explore the extent to which the law and practice in East Africa conforms to, or deviates from, the international law of aliens. To me, such a procedure meant that I had to study the Constitutions of Tanzania, Uganda and Kenya, and the other East African laws concerning such issues as citizenship, immigration, work permits, nationalisation, and business licensing.

To my great surprise, I have found that there are no clear rules of international law on the question of aliens. In fact, the imperfection of international law makes the situation of aliens - wherever they may be - very unfortunate and unclear. I have consequently proposed in the Thesis what I have felt should be the rule in this connection. I have also thought it useful to make recommendations for a better treatment of aliens in East Africa.

Armed with the above guidelines, I drew up a plan of the Thesis, which comprised five Chapters and a Conclusion. The starting point in Chapter One is the position of East Africa as terra nullius sine hominibus. Then Man's emplacement in the region occurs. First come those ethnic groups which are considered to be "native" in East Africa. The argument that Africans evolved from apes has not been analysed. I have also examined the emplacements in the region of Arabs, Asians and Europeans. Before 1947, the expression "Indian" was used to describe an inhabitant of India. Nowadays, the words "Indian" and "Asian" are used interchangeably.

The expression "European" or "Europeans" has been used to
mean the white race, and not just a person or people from Europe.

In my judgment, the following factors assist in determining the situation of aliens in East Africa:

1) The length of emplacement of people considered to be aliens in East Africa, i.e., the recentness of arrival of the alien in East Africa;

2) Ethnic or racial identity;

3) Alternative identity, i.e., the enjoyment of an alternative citizenship status; and

4) The functional position of the individual in the East African Society. What position can the individual occupy? What role can be play in East Africa and under what conditions can he play it? Thus the discussion in Chapter Two reveals that, by legal definition, aliens in East Africa are found among Asians and Europeans.

In Chapter Three, it has been established that Germany and Britain were the powers that eventually imposed their rule on East Africa. British and German colonial policies and practices had a common aim, which consisted of the divide and conquer policy, that was basically a method of imposing alien rule by force, and the determination to "civilize", i.e., to develop East Africa. Chapter Four examines the racial struggle for supremacy which existed between the Europeans and Asians in colonial East Africa. Chapter Five discusses the African reactions to alien rule in East Africa. The African struggles that culminated in independence for East Africa originated in the later, organized, African nationalism.

Chapter Six discusses the various contributions of
aliens in independent East Africa. The causes of racial tensions in East Africa are still centered upon the economic gap between the Africans and non-Africans. The position of Asians as middle-men par excellence is being seriously challenged. Its survival is uncertain. The position and role of Europeans have also changed considerably since independence.

State responsibility for aliens in East Africa, discussed in Chapter Seven, involves both the legal rights and the corresponding legal or moral duties of the East African States towards aliens, and of the latter towards the former. The East African States are under a duty, inter alia, to protect aliens in the region and to prevent every denial of justice to aliens. Chapter Eight analyses Britain's duties towards her East African subjects of Asian origin. In Chapter Nine, I have tackled the questions of human rights and the legal prevention of discrimination in the East African context. I have further made practical proposals for a better treatment of aliens in the region. I have also expressed my support for the international standard of treatment, without condoning the national treatment theory.

Revised conclusions appear in Chapter Ten. I have pointed out the conditions which must be fulfilled if the general position of aliens - and most particularly of resident Asian aliens - is to be improved in East Africa.
### Abbreviations of Titles of Institutions and Organs

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>A.G.O.</td>
<td>Attorney-General's Office</td>
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<tr>
<td>A.N.C.</td>
<td>African National Council</td>
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<tr>
<td>A.S., A.S.I.L.</td>
<td>American Society of International Law</td>
</tr>
<tr>
<td>B.B.C.</td>
<td>British Broadcasting Corporation</td>
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<tr>
<td>B.E.A.A.</td>
<td>British East Africa Association</td>
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<tr>
<td>BENELUX</td>
<td>Belgium, Netherlands and Luxembourg</td>
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<tr>
<td>CMCA, CMCON</td>
<td>Council for Mutual Economic Aid</td>
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<tr>
<td>C.M.S.</td>
<td>Church Missionary Society</td>
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<tr>
<td>C.O.</td>
<td>Colonial Office</td>
</tr>
<tr>
<td>C.R.C.</td>
<td>Community Relations Committee</td>
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<tr>
<td>D.P.</td>
<td>(Catholic) Democratic Party (Uganda)</td>
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<tr>
<td>E.A.C.</td>
<td>East African Community</td>
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<td>E.A.P.</td>
<td>East Africa Protectorate</td>
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<tr>
<td>E.C.H.R.</td>
<td>European Commission on Human Rights</td>
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<tr>
<td>ECOSOC</td>
<td>Economic and Social Council of the United Nations</td>
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<tr>
<td>F.O.</td>
<td>Foreign Office</td>
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<tr>
<td>I.B.E.A.</td>
<td>Imperial British East Africa Company</td>
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<td>I.C.B.</td>
<td>Immigration Control Board (Uganda)</td>
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<td>I.C.J.</td>
<td>International Commission of Jurists</td>
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<tr>
<td>I.C.J.</td>
<td>International Court of Justice</td>
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<tr>
<td>I.G.E.A.</td>
<td>Imperial German East Africa Company</td>
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<tr>
<td>I.L.C.</td>
<td>International Law Commission of the United Nations</td>
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<td>Acronym</td>
<td>Full Name</td>
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<tr>
<td>K.A.D.U.</td>
<td>Kenya African Democratic Union</td>
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<td>K.A.R.</td>
<td>King's African Rifles</td>
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<td>K.A.S.U.</td>
<td>Kenya African Study Union</td>
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<tr>
<td>K.A.U.</td>
<td>Kenya African Union</td>
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<tr>
<td>K.C.A.</td>
<td>Kikuyu Central Association</td>
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<tr>
<td>K.Y.M.</td>
<td>Kabaka Yekka Movement (Buganda)</td>
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<tr>
<td>K.P.U.</td>
<td>Kenya People's Union</td>
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<tr>
<td>L.H., L.G.N.</td>
<td>League of Nations</td>
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<tr>
<td>M.P.</td>
<td>Member of Parliament</td>
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<tr>
<td>M.A.T.O</td>
<td>North Atlantic Treaty Organization</td>
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<td>N.C.C.K.</td>
<td>National Christian Council of Kenya</td>
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<tr>
<td>O.A.S.</td>
<td>Organisation of American States</td>
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<td>O.U.P.</td>
<td>Oxford University Press</td>
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<td>P.C.A.</td>
<td>Permanent Court of Arbitration</td>
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<tr>
<td>P.C.I.J.</td>
<td>Permanent Court of International Justice</td>
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<tr>
<td>P.I.O.</td>
<td>Principal Immigration Officer</td>
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<tr>
<td>S.C.</td>
<td>Security Council</td>
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<tr>
<td>S.O.</td>
<td>Secretary-General</td>
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<tr>
<td>Sec.-Gen.</td>
<td>Secretary-General of the United Nations</td>
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<td>T.A.A.</td>
<td>Tanganyika African Association</td>
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<tr>
<td>T.A.N.U.</td>
<td>Tanganyika African National Union</td>
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<tr>
<td>T.N.S.</td>
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<tr>
<td>U.N.</td>
<td>United Nations</td>
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<tr>
<td>U.N.H.C.R.</td>
<td>United Nations High Commissioner for Refugees</td>
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<tr>
<td>U.N.C.</td>
<td>Uganda National Council</td>
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<tr>
<td>U.N.C.</td>
<td>Uganda National Congress (Party)</td>
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<tr>
<td>U.N.O.</td>
<td>United Nations Organisation</td>
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<tr>
<td>U.P.C.</td>
<td>Uganda People's Congress</td>
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<tr>
<td>U.T.P.</td>
<td>United Tanganyika Party</td>
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### Abbreviations of Works of Reference

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<tr>
<td>A.B.A.J.</td>
<td>American Bar Association Journal</td>
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<td>A.J.C.L.</td>
<td>American Journal of Comparative Law</td>
</tr>
<tr>
<td>A.J.I.L.</td>
<td>American Journal of International Law</td>
</tr>
<tr>
<td>A.Pol.Sci. Review</td>
<td>American Political Science Review</td>
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<td>B.C.</td>
<td>Bulletinul Official (Romanian Official Law Gazette, 1949)</td>
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<td>B.S.</td>
<td>British Survey</td>
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<tr>
<td>BYIL, BYBIL</td>
<td>British Year Book of International Law</td>
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<td>Can. Y.I.L.</td>
<td>Canadian Yearbook of International Law</td>
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<td>Cd. Cmd. Cmd</td>
<td>His/Her Majesty's (United Kingdom) Command Papers</td>
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<td>C.L.P.</td>
<td>Current Legal Problems</td>
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<tr>
<td>Dokumente DDR</td>
<td>Dokumente zur Aussenpolitik der Regierung der deutschen demokratischen Republik, 1954 - (Documents on Foreign Policy of the Government of the German Democratic Republic)</td>
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<tr>
<td>D.U.</td>
<td>Dziennik Ustaw (Polish Official Law Gazette 1920-)</td>
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<tr>
<td>D.V.</td>
<td>Durzhaven Vestnik (Official Law Gazette of Bulgaria until 1950, for Continuation see IPNS)</td>
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<tr>
<td>E.A.S.</td>
<td>East African Standard</td>
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<tr>
<td>Execo</td>
<td>Executive Council</td>
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<td>F.A.</td>
<td>Foreign Affairs</td>
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</table>
GAOR - United Nations General Assembly Official Records

OZ - Gazeta Dyptare (Albanian Official Law Gazette, 1944–)

Hansard - Hansard, "Parliamentary Debates, House of Lords/House of Commons (United Kingdom)

H.C. Deb. - House of Commons Debates (United Kingdom)

H.L. Deb. - House of Lords Debates (United Kingdom)

H.L.R. - Harvard Law Review

H.M.S.O. - His/Her Majesty's Stationery Office

H.R. - Hague Recueil; Académie de Droit International. Recueil des Cours, 1923– (The Hague)

I.C.L.Q. - International and Comparative Law Quarterly

I.L.C. Yearbook - International Law Commission Yearbook

Int. Leg. - International Legislation

Int. Org., I.O. - International Organisation

I.P.R.R. - Investiga na Prediciima na Narodnote Obrazane (Bulgarian Official Law Gazette 1950+ for previous years, see D.V.)


Law Q.R. - Law Quarterly Review (United Kingdom)

Legco - Legislative Council

L.N.T.S. - League of Nations Treaty Series

L.O.N. Doc. - League of Nations Document

New L.J. - New Law Journal

R.D.I. - (Recueil de Droit International)

M.E.O. - Akademia Nauk SSSR, Institut Mirowoi

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<th>Acronym</th>
<th>Description</th>
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<td>F.K.</td>
<td>Magyar Kozlony (Hungarian Official Law Gazette)</td>
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<td>L.M.O.J.</td>
<td>Polska Akademia Nauk (Polish Academy of Sciences)</td>
</tr>
<tr>
<td>P.A.N.</td>
<td>Polski Instytut Spraw Miedzynarodowych (Polish Institute of International Affairs)</td>
</tr>
<tr>
<td>P.I.S.W.</td>
<td>Planovoe Khosistvo (Planned Economy)</td>
</tr>
<tr>
<td>Pl. Kh.</td>
<td>Recueil des Cours de l'Academie de Droit International a la Haye</td>
</tr>
<tr>
<td>R.C.D.A.I., RCADI</td>
<td>Sbírka Zakonu Republiki Cezkoslovenské (Collection of Laws of the Czecho-slovak Republic, 1918)</td>
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<td>S.D.D. U.S.S.R.</td>
<td>Ministerstvo Inostrannykh Del, Sbornik deistvuiushchikh dogovorov, soglashenii i konvensii zakliuchenných SSSR s innostrannnymi gozudarstveni, 1924 - (Ministry of Foreign Affairs, Collection of Treaties, Agreements and Conventions in Force concluded by the USSR with Foreign Countries)</td>
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<td>S.E.M.P.</td>
<td>Sovetski Ezgodnik Mezhdunarodnogo Prava, 1958- (Soviet Yearbook of International Law, 1958 - Moscow)</td>
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<td>S.G.F.</td>
<td>Sovetskoe Gosudarstvo i Pravo (Soviet State and Law)</td>
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<td>S1</td>
<td>Slusbeni list Demokratske Federatsne Jugoslova (Yugoslav Official Gazette), 1946</td>
</tr>
<tr>
<td>SMT USSR</td>
<td>Sbornik Mezdunarodnikh Konventsií, Dogovorov, Soglashenii i Pravil Po Voprosam Torgovogo Moreplavania, 1959 (Collection of International Conventions, Treaties, Agreements and Regulations on Maritime Trade)</td>
</tr>
</tbody>
</table>
ACNOWLEDGEMENTS

Any real, exhaustive study and thorough understanding of
the position - whether legal, political, economic or otherwise -
of aliens in East Africa must be based, not upon political
utterances, for instance, which are usually emotional and often
very erratic, but upon extensive, original academic research
into the deep and primary sources of information available on
the topic currently under analysis. The lack of relevant,
written material, however, especially of a legal character, on
the subject has proved to be a major handicap to the present
writer.

In writing this thesis, I have received supervision, and
regularly sought advice from Professor Preston King. I owe
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an unwise choice, and since then for his extreme criticism -
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I should further like to thank especially Mr. Joseph A.
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of the thesis.

My debts to my bosses in the Kenya Ministry of Foreign
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have had of listening to their views on the legal and political
implications of my subject of research.

I further thank the Library staffs of the University of Nairobi and the Kenya Ministry of Foreign Affairs, for their kind co-operation and help. I also wish to thank all those who, with skill, good spirit and endless patience, have typed the draft chapters of the thesis.

Finally, I express my gratitude to Mrs. Nancy Kilonsi, who has typed the Thesis in its final form. I thank Mrs. Kilonsi for the high quality of her work, mind, and disposition.

Daniel D.C. Don Nanjira

Nairobi

September 13, 1974
CHAPTER ONE
HISTORICAL INTRODUCTION
THE BACKGROUND OF THE VARIOUS ETHNIC, RACIAL GROUPS
IN EAST AFRICA
THE AFRICAN BACKGROUND:

East Africa - Kenya, Uganda and Tanzania - has been inhabited by men from remotest antiquity. The remains of one of the earliest "Homo Sapiens" were, for instance, found near Lake Victoria, while the bones and tools of Stone Age man are plentiful in the Rift and other areas of East Africa. And long before the coming of the early alien traders and explorers, and the beginning of written histories of East Africa, the peoples of present-day Uganda, especially those of the three largest kingdoms - Buganda, Bunyoro and Toro - had committed to memory oral traditions celebrating their lineages, great events, and great men.

The point which must now be made is that the expressions "tribe" and "race" have conflicting meanings, which we must not examine more closely here. It will, therefore, suffice to indicate briefly the sense in which each of the two expressions will be used in this analysis. Thus the term "tribe" will be used to mean some form of sub-ordinate, social and cultural group. The expression "race" will, on the other hand, be used to refer to those large divisions of humans into physical types that are determined solely by some combination of skin, colour, facial characteristics, and other imponderables.

We also have no room here to discuss in detail the African background in East Africa, simply because our subject concerns aliens and their status in East Africa, vis-a-vis the treatment accorded to aliens in the light and practice of international law and diplomacy. In the present writer's strong
conviction, however, unless some mention is made at the offset of the background of those ethnic groups and races in East Africa which are considered to be "native" - as opposed to "visitors", "foreigners" or "aliens" - it will be difficult later on not only to distinguish aliens from natives and citizens in the three East African countries, but also to comprehend the highly complex relations among the races of East Africa: Africans, Arabs, Europeans and Asians.

The aboriginal peoples of East Africa are believed to have entered the African continent from the north east - through Arabia and Persia - about 10,000 years ago.¹

It is believed that the earliest or first inhabitants of East Africa, normally referred to as the Bushmen, were short in stature, and that the pygmies are the closest descendants of those inhabitants. Intermarriages among the aboriginal stocks produced mixed stocks such as the Bantu ethnic groups, which were the products of intermarriages between Negroid and Hamitic clusters. The latter can be divided into tribes, clans, lineages, classes, families, and so on. Hamites are (supposed) descendants of Ham. They originally came from Asia and include the Somalis, the Borens, the Galla and the Rendille.

A different mixing of Negro and Hamitic produced Nilotic tribes on influx of which came from the north - notably Egypt and the Sudan - and occupied the Upper Nile in Uganda, while one branch, notably the Luos, penetrated to the eastern shores of Lake Victoria in what are now Kenya and Tanganyika.

Similarly, the Cushitic peoples - the Somalis - from the Horn of Africa entered Kenya and northern Tanganyika from Ethiopia around 2,000 B.C. The invasions of Hamites continued, and became very strong between the 14th and 15th Centuries A.D. From the 15th to the 19th centuries, various Galla and Nilotic tribes arrived in East Africa via Ethiopia and down the East African coast. The presence of the Galla peoples in Africa can be traced as far back as 1000 B.C., when they arrived in Northern Somalia from Southern Arabia. While Cushites, Hamites and Nilotes and their "mixed result" were entering East Africa from the North and North-East, Bantu groups in Southern Africa advanced northwards, crossing Rhodesia and entering Tanganyika.

In the coastal regions, as we shall see, more than 3,000 years of contact introduced considerable Arab and Asian elements into the native people themselves, and also into their culture. Many of the tribes are loosely grouped together as Swahilis, and speak the Bantu language of that name. 'Swahili' means 'Coast People'. The word was derived from the Arabic expression 'Sahil', which means 'coast'. The Swahilis are the descendants of the Bantu, Persians and Arabs, although the strongest influences on Swahilis have come from Arabs. Swahilis are, in fact, a mixed race of varied hue and status, of Moslem and hybrid speech-Swahili - and of Afro-Indian, Afro-Persian, etc. origin.

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The Swahili language probably rose along the East African Coast during the period 12th to 16th centuries, when the Arab-Persian Islamic power was consolidated around the Indian Ocean in India, Iraq, Indonesia and Egypt. From the foregoing remarks, it is not difficult to see that the history of early immigration into East Africa is very confused and uncertain, owing, of course, to lack of sufficient archeological and documentary information. Most knowledge comes from linguistic studies and traditional oral legends that provide little sound material for historical reconstruction. What, however, is certain is that East Africa has been the meeting place of many ethnically diverse groups, most of them immigrants from the West and North.

Whereas the Bushmen were, according to the general belief, the first inhabitants of East Africa, Nilo-Hamites were the "immigrants" into East Africa. The Bantu-speakers have often been referred to as the earlier immigrants, while the Nilotes and Nilo-Hamites especially the Lugbara and Madi, both being Sudanic-speaking peoples from the region of Lake Chad, and the Luo—being Nilotic speakers who moved southward up the Nile Valley from the Sudan, were the later immigrants into East Africa. Therefore, the indigenous Africa peoples of East Africa can, on a linguistic basis, be classified mainly into four groups:— Nilotes; Nilo-Hamites; Bantu-speakers; and Cushites, i.e. Somalis.

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3For further information on this topic, see R. Coupland: "East Africa and its Invaders" - Oxford University Press, 1961, p. 15 et seq.
On a genetic basis, however, the same native groups in East Africa have come from three main stocks: the aboriginal stock, the Negro stock, and the Hamitic stock. At present, there are more than 132 native tribes in East Africa, of which more than 35, 37 and 120 inhabit Kenya, Uganda and Tanzania respectively.  

THE ARAB BACKGROUND:

Of the other ethnic races in East Africa, it is generally understood that both Arabs and Asians were the first "invaders" of East Africa, and that they were merchant adventurers who had learnt to use the 'monsoons' or trading winds between the Persian Gulf or the Arabian Coast and the East African Coast long before the Europeans had discovered the use of the monsoons. It has been argued, however, that Assyrians, Hindus, Jews and Phoenicians were the first visitors to East Africa, and that they came to that part of Africa long long before the birth of Christ. They were followed first by Greeks - between 247 B.C. and 45 A.D. - and then by Arabs in the 5th Century A.D. It has further been argued that Arabs and Persians were the first adventurers of East Africa whose contacts with the East African coast could be traced as far back as the 6th Century B.C. and even earlier, and that Indians joined them later. By the time the Greek merchant seaman of Berenike - wrote his book "Periplus of the Erythraean Sea" probably from Alexandria around 100 A.D., Arabs had already

4 For a detailed account of this subject, see "The Ethnographic Survey of East Africa" published by the International Institute, London, and edited by Daryll Forde.

5 The "Erythraean Sea" was the Greek name for the Indian Ocean. "Periplus" was a guide book for navigation and trade. The book, which was actually a minor's guide to the Red Sea and the Western Indian Ocean, described the voyage down the Red Sea and the African Coast. In the book, there was some mention of the character of the inhabitants, their form of Government and so on.
been well established on the east coast of Africa. They began to mix freely with natives, inter-married with them and learned the native languages. By 600 A.D. Arab and Persians had mastered the Indian Ocean region commercially - commerce having been their main cause of migration to that part of the world - and their settlements on the East African coast had been completed.

Thus out of these foreign settlements in East Africa resulted not only mixtures of culture, but also of architecture and pottery. Arab and Persian settlements on the East African coast were followed by their colonisation of the coast which, like the settlements, was a very long and gradual process started in remote antiquity and continued more or less steadily for centuries, on occasion by bands of fugitives, whether from local feuds along the Arabian and Persian littoral, or from the waves of war and conquest that swept from time to time through the backlands in the north, and sometimes also by zealots of some persecuted sect who, like the Puritan founders of New England, sought in the colonial field the religious freedom denied to them at home.

CONCLUSION

The above arguments lead the writer to conclude as follows:

The establishment of contacts with the east coast of Africa by the various adventurers - call them early "visitors", "invaders", etc. - did not mean immediate permanent settlement on that coast. Similarly, the term "Asians" referred at that time to all the Asiatic races mentioned above. Nowadays, the word

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"Asians" refers, as will be seen later, only to those people who come from, or whose ancestors were the native inhabitants of, the Indian sub-continent.

Arabs were the earliest visitors to East Africa. This is all the more true since the Arab and Persian elements in the colonial population on the east coast of Africa were eventually merged and thus became known simply as Arab.

**THE ASIAN BACKGROUND:**

If, on the other hand, we consider all the early invaders of East Africa to have been early foreign visitors or traders to East Africa, then Indians (Hindus) were definitely some of the invaders, whose connections with the East African coast go back very many centuries before Christ. By the time the Arabs colonized the eastern coast of Africa and thus, like any other colonists elsewhere, became an aristocracy of race, Indians were already residents of that part of Africa.

According to George Delf, the "Periplus of the Erythraean Sea" was written around A.D. 80, when Indian and Arab trading ships had been navigating along the coast of Africa for a long time already.

It seems almost certain, however, that Indian contacts with, and even settlements on the east coast of Africa can be traced much earlier than A.D. 80, and that Indian connections with the East African coast as mentioned in the "Periplus" were from the very start most welcome to the Arabs, since the latter proved to be poorer businessmen than the former. Indians thus became from the very early days the masters of finance, the

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8 See footnote 5 *Supra*
banks, money-lenders, and money-changers. They also became very closely associated with the Arabs, and this was because of the similar and even identical interests which the two minority races developed in East Africa.

From the foregoing arguments, it is difficult to say who is and who is not an alien in East Africa. The backgrounds of each of the various racial groups in East Africa reveal that all the groups have inhabited East Africa for centuries. One must, therefore, be very careful when stating that Asians—and for that matter Arabs—are aliens in East Africa. If such a statement is made, then the criteria determining the alienage of these two racial groups in the region must be clearly given. Otherwise the statement would not be correct. In the writer's view, Arabs and Asians in East Africa cannot be called aliens just because they happen to be brown, and not black people. The fact is that Arab emplacement in East Africa is, in many cases, older than that of many of the so-called indigenous peoples of East Africa. Similarly, the connections of Asians with East Africa are, really, just as old as those of the Arabs.

The question before us then is too great and significant to be treated lightly. It will, therefore, be discussed in greater detail in the next Chapter. What, however, must be stated with certainty here is that the definition of who is, and who is not an alien in East Africa is a matter of legal definition. The real question that arises, then, is why and how some aliens became citizens in East Africa, while others did not. Provisions for the regulation of this complex but important question were included in the British Nationality Act of 1948, and later in the nationality laws of the East African nations as at, or after their independence.
The above laws localized Arabs who inhabited East Africa permanently and bestowed upon them East African citizenship by the "automatic method". Those Arabs who fell outside this category were described as aliens in East Africa. As for the Asians, they were defined as aliens in East Africa, despite their permanent residence in East Africa and long connections with the region, as archeological evidence shows. Also, trade between Indians and the East African coast was carried out for many centuries. Indians were constantly at the heart of the economic activity which brought the influences of a wider world to the east coast of Africa. The Indian merchants were over the centuries the main suppliers to East Africa of goods such as cotton cloth, metal ware, grain beads and sundry manufactured articles. India also supplied to East Africa capital and skill for Indian financiers, sailors, pilots and administrators constantly visited East Africa. East Africa in turn supplied to India economic items, such as ivory, gold, iron, gum copal, hides, horns, copra, ambergris and incense.

Indian links with Africa were also part of the stories narrated in the 15th and 14th centuries by famous travellers such as Marco Polo (1254 - 1325), a famous Italian adventurer from Venice. Similar stories were narrated later still by the Portuguese, whose records also mention the significant role of Indian traders who largely carried out and controlled trade in Afro-Asian settlements all along the East African coast, and the Western Indian city of Cambay as the main entrepôt of the ivory trade during the 16th and 17th Centuries.

The Portuguese found ancient Indian commerce with East Africa at one of its most prosperous peaks. The Indians were
playing a key economic role along the East African coast, although they had not yet penetrated into the interior, or made contacts with its Bantu and other tribal state systems. Thus by the 16th and 17th Centuries, Indian contacts with the East African coast had been fully established, and Indian labour was used to construct forts at the coast.

These early Indian "invaders" of East Africa were temporary visitors. Trading, visiting or establishing contacts with East Africa did not mean permanent settlement in that region of Africa. We can talk of real Indian immigration and/or settlement in East Africa only as from the 19th Century. Even here, the word "settlement" only indicates a progressive act of settling on the part of the Asian immigrants. For, it was only in the 19th Century that the Asian immigrant became progressively less of a temporary visitor, attracted to East Africa by, as will become clear, the prospects of a settler in an increasing stake and commitment in the East African territories.

During the 19th Century, the traditional Indian trade connections with the East African coast were revived after the prolonged visitudes of Portuguese rule and of recurrent hostilities in the Indian Ocean among seamen of rival Powers. The revival of Indian commercial enterprise along the East African coast was encouraged both by the recovery of their (Indian) former influence in Zanzibar by the Inas of Muscat.

9 For detailed information about early Indian contacts with East Africa, see inter alia, Freeman-Grenville Gray, "History of East Africa", Vol. I, Chapters IV and V.

and by the establishment of British rule in India, and the emergence of British naval supremacy in the Indian Ocean after the Napoleonic Wars.

Most of the Indian merchants came to East Africa from the British protected state of Kutch. They were not liable to direct British jurisdiction. However, between 1811 and 1826, Britain initiated a policy of support for Indian Merchants trading under the British flag and engaged in legitimate commerce. 11

During the 19th century also the growth of British influence and the activities of the Indian traders were quite closely interrelated. This relationship was, for example, defined by Sir John Kirk in his evidence to the Sanders Committee as follows: "It was entirely through the Indian traders that resulted in our position in East Africa."

11 Source: Op. Cit., pp. 3; and Op. Cit., pp. 157 - 8. See also Gray: "The British at Mombasa", pp 60, 84 - 5, 130 - 131, and 139 - 140. This British policy was reinforced by the opening of a British Consulate in Zanzibar in 1941. That, however, should be emphasized now is that Indian traders from Kutch, Porbandar and Surat had for a long time been traditionally very active in the Persian Gulf and the Indian Ocean before Europeans established themselves in those areas. In fact, a very large number of Hindu and Mohammedan traders from Kutch and elsewhere in India were settled in Zanzibar many years before the English acquired any interest, whether commercial or political, in the place. Bhatias and Khojas, for example, showed long ancestries. In short, the Indians were under the undisputed rule of Muscat authorities until apparently 1845, when they began to claim British protection. See also H. Bennett: "Americans in Zanzibar, 1845 - 65", in Tanganyika Notes and Records (Sept. 1961) p. 123.
According to General Rigby's report published in 1860, about 5,000 British Indian subjects resided in Zanzibar dominions, and through their hands, most of the whole of the foreign trade passed. They had settlements at all the towns on the East African Coast, at the Comoro Isles and on the West Coast of Madagascar. The number of Asian settlers in the coastal regions of East Africa had greatly increased during the few years preceding 1860.

Thus although Indian contacts with the east coast of Africa go back many centuries, and some though not the majority of the early Indian travellers came and settled in Eastern Africa in those early days, and were well established in it by early 19th century, it must be emphasised that real and permanent Indian immigration and settlements in East Africa began at the end of the 19th century and at the turn of this century.

The Indian immigration was a direct result of, and grew rapidly following the European colonization of East Africa. The indentured or hired Indian labour system in British and even other colonial possessions was started in 1834. With the

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12 See "Report of the Committee on Emigration from India to the Crown Colonies and Protectorates" Part I 02, 5192 (1910) p. 32.
J. G. Markat: "History of the Asians in East Africa C. 1845 to 1845" (Oxford, Clarendon Press, 1961);
Increasing demands for labour in East Africa, the application of the system was sanctioned by the Indian Government and extended to East Africa after the decision to construct the Uganda Railway was taken and implemented in 1895. In the same year, there were already more than 15,000 Asians in what became known as the British East Africa Protectorate. This clearly shows that the construction of the Railway starting in 1895 did not originate Indian presence in East Africa. In fact, by the building of the Railway, a few Indian traders had already, as we shall shortly see, advanced far inland from the coast of East Africa. Under those circumstances, it remained for the Indian Government to legalise the emigration of Indian nationals to the outside world. This the Government did in 1885, by an act called the Indian Emigration Act of 1885. This Act permitted Indians to travel without any restrictions, to East and/or elsewhere. Thus skilled Asian workers could be recruited even in what later became known as German East Africa, particularly for work on the construction of the German East African Railway.

In 1896, the Indian Government amended the 1885 Emigration Act, thereby specially legalising and encouraging Indian emigration to East Africa, particularly for the construction of the Uganda Railway, and under 5-year contract terms as approved by the Indian Government. In January and February, 1896, for

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15 For a fuller account on the indentured system, see H. Gunston: "Indians Overseas in British Territories, 1834 - 1854", (Oxford, 1953), pp. 174 and 179.
example, more than 1000 indentured Indian labourers recruited on contract terms for the Uganda Railway arrived in Mombasa. Thus from 1896 onwards, Asian emigration to East Africa, especially to provide manpower on the Railway, was accelerated. Agents were established in several Indian towns such as Karachi and Calcutta, which dealt with coolie emigration and shipment to East Africa for the Railway. Between 1899 and 1900, most of the emigration for the Kenya-Uganda Railway occurred from the Port of Karachi. 5,280 labourers and artisans, for example, were shipped for the Railway from Bombay, whereas 20,835 were shipped from Karachi, to East Africa. All this took place between 1895 and 1900.

From the foregoing discussion, one can safely deduce that the reasons for the immigration of Asians to, followed by their settlements in East Africa were mainly commercial. They included the following: aspirations for trade prosperity for both the immigrants and their kith and kin in East Africa and at home; the search for better living standards than those in their native, poor regions at home, such as the dry and arid Kutch; enhanced pay for recruited Asian soldiers; and the lack of enough, local manpower on the Uganda Railway, which forced the British Government to import in large numbers Indian coolies—"hired" labourers—from India, and encourage the voluntary Indian immigration to Eastern and even Southern Africa. Furthermore, encouragement of Indian immigration to East Africa occurred in 1893 after the signing of the so-called Heligoland Treaty. The conditions which led to the signing of the Treaty will be examined in Chapter Three.

It should be remembered that without the coolie (the "coolie" comes from Hindu word 'quli' which means "labourer") labour, there would certainly not have been any Kenya-Uganda
railway for many years. What, however, should also be carefully noted at this juncture is that the main aim of the Indian labourers on the Railway was not merely to construct and complete the Railway successfully, and in such a short time. The principal attraction for those voluntary recruits to proceed to East Africa lay in the prospect of obtaining employment and earning more than they could for the same kind of work in India. Thus the Indians in East Africa became wealthy businessmen not so much because of "commercial charm and hobby" as because of the economic pressures of the poor regions they hailed from in their country of origin. It was precisely because of those economic pressures that the Asians were forced to leave their country and travel to East Africa and seek a "commercial opportunity" in that part of Africa, as a principal source of livelihood for themselves.

It has already been indicated that the Asian immigrants to East Africa came from various parts of India, although most of them hailed from the western regions of that country. Punjab and Gujarat were the main sources of supply, and the immigrants from those areas were mostly Moslems. The other sources of India immigration to East Africa included these:

- Bombay - Moslems;
- Surat - Moslems;
- Kutch, Jamnagar and Porpundar - both Moslems and Hindus;
- Goa - Catholics.

Bombay, Surat, Kuch, Jamnagar and Porpundar produced the great Indian merchants and financiers along the East African Coast. Commonly known as "Banyan" or "Hindu", they were members of the traditionally seafaring and trading castes and sects from their respective areas, whose ancestors had enjoyed enormous commercial experiences in Western Indian Regions and familiarized
themselves with the trade along the coast of East Africa in small sailing vessels for many years. The Kutch Indians of Hindu castes were known as "Bhatties", whereas "Bhoras", "Nemans" and "Khojas" were Muslims. The Khojas split into two sects after 1866; the Lamillas, the majority of whom follow the Aga Khan, and the Ithna-Asheri, who do not recognize the Aga Khan as their spiritual leader. In later 19th Century, the Muslims exceeded the Hindus in population. However, the two religious sects eventually settled in East Africa, just like the "Parses" and "Goans" (Roman Catholics), "Singhalese" (Buddhists) and "Beluchis" (Muslims). The Beluchis in East Africa were mainly members of the Sultans' army and police.

From the above analysis, it can again be deduced with fair accuracy that the stimulation of Asian immigration into East Africa in the 19th century occurred in two ways: as a result of the European colonization of that part of Africa - for maintenance of law and order ("pacification exercises"), coolie labour, clerical jobs, surveying, administration, and so on ("sought or promoted immigration"); and as a result of private initiative ("private immigration") in order to exploit the opportunities opened up by colonization. Most of the Asians who immigrated to East Africa belonged to this second category. The majority of them though very industrious, were very poor and uneducated. The typical form of their early activities was a small shop known as the duka. The word duka was derived from the Indian term dukap, which means a shop. The owners of shops were known as dukawalla (dukawallah), that is shopkeepers.

17 For detailed information about the various Asian communities in Zanzibar, for instance, see James Christie: "Cholera Epidemics in East Africa" - London (1876) pp. 335 - 344.
With regard to the areas of original Indian settlements in East Africa, it is generally believed that these early settlements occurred along the East African coast, particularly at Zanzibar, Kilwa, Bagamoyo, Pangani, Tanga, Mombasa and Malindi. Later, however, some Indian settlements took place at Lindi, Dar-es-Salaam, the Comoro Isles, the West Coast of Madagascar, and Cape Guardafui. Asian arrivals and settlements at the coastal areas of East Africa assumed a special form between 1806 and 1856, when Seyyid Seid, the ruler of Oman, wishing to control East African trade by a commercial empire, moved his headquarters from Muscat to Zanzibar in 1840 and successfully built up a commercially prosperous empire around Zanzibar. His East African dominions were situated between Cape Guardafui and Cape Delgado. Seid claimed control over Pemba, for instance, and other coastal Islands, but he effectively controlled Zanzibar, Kilwa and Mafia only. Seid further introduced foreign interests in East Africa, especially Kenyan capitalists, who took advantage of the Sultan's offers.

During Seid's rule over East Africa, therefore, the Asian population there grew steadily, especially in Zanzibar and along the other coastal areas of East Africa. In 1841, for example, the local Asian population in East Africa had risen to about 1,200, and in 1866, there were more than 6,000 Asians residing in Zanzibar. It appears, however, that the Asian population in East Africa declined in the 1870s, since their numbers were estimated by Sir John Kirk and Frederic Holoword at 3,668 and 4,257 in 1871 and 1875 respectively. But nevertheless by 1873, before European influences had been established in East Africa, every dukawallah along the East African coast was an Asian, and in 1873, there were more than 1,600,000 pounds sterling being Indian total capital in Zanzibar Island. Ten years later,
there was a large influx of Asian immigrants to East Africa, despite the many problems caused by diseases, and the lack of organised rationing, medical facilities, police force, and so on. These handicaps forced the British authorities to import additional manpower from India to East Africa. About 5000 subordinate Indian employees were consequently recruited to work on the Uganda Railway between 1896 and 1901, in addition to the coolies. During this period, a number of those other Asians who voluntarily came to East Africa were eventually employed on the Railway as "petty constructors". All of these Asian immigrants were sometimes referred to as the "alien army" of Indian indentured workers, artisans, and subordinate staff.

The growth of the Asian population in East Africa became rapid at the turn of the 19th century and the beginning of this century, as the following figures of Indian immigrants into East Africa - to work on the Uganda Railway - clearly show:

**TABLE I:**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>NO. OF COOLIES IMPORTED</th>
<th>NO. REPATRIATED</th>
<th>NO. INVALIDATED</th>
<th>DEATHS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1896-7</td>
<td>4,269</td>
<td></td>
<td>200</td>
<td>121</td>
</tr>
<tr>
<td>1897-8</td>
<td>7,131</td>
<td></td>
<td>705</td>
<td>340</td>
</tr>
<tr>
<td>1898-9</td>
<td>15,593</td>
<td>775</td>
<td>1,206</td>
<td>611</td>
</tr>
<tr>
<td>1899-1900</td>
<td>23,379</td>
<td>2,761</td>
<td>3,424</td>
<td>1,164</td>
</tr>
<tr>
<td>1900-1901</td>
<td>31,646</td>
<td>4,109</td>
<td>5,811</td>
<td>1,934</td>
</tr>
<tr>
<td>1901-2</td>
<td>31,923</td>
<td>9,616</td>
<td>6,354</td>
<td>2,567</td>
</tr>
<tr>
<td>1902-3</td>
<td>31,983</td>
<td>16,312</td>
<td>4,454</td>
<td>2,493</td>
</tr>
</tbody>
</table>
As it can be observed from the above table, during the period between 1896, when the first group of Indian coolies arrived in Mombasa, and 1901, the year the Uganda Railway was completed, about 32,000 Indian workers were recruited for service on the railways on three-year contract terms, and at an average overall cost of 30 rupees (Rs) per month per coolie. About 10 to 15 per cent of the coolies renewed their contracts or returned to India. That is, 16,312 indentured Indians returned to India at the end of their contracts; 6,724 stayed on in East Africa; 6,454 were invalidated home; and 2,495 died as a result of the many tropical diseases that obviously slowed down work as the railway pushed through forests, swamps, and plains. In 1898 the 'Man-Eaters of Tsavo' began to terrorise the coolies camps, and thus added to the already existing hazards: malaria, dysentery, scurvy, ulcers and jiggers. In fact, 28 coolies and an unspecified number of Africans were killed and eaten by lions. It is also worth remembering that nearly all of the Indian coolies who decided to remain in East Africa lived in Mombasa. They were to cost the British Colonial Administration 40/- each per month, including wages, medical treatment, rations, and return passages from India.

The years from about 1886 to 1945 were crucial for the process of transforming the scattered Asian commercial population along the coast into a major settlement in the interior of East Africa. The partition of East Africa (vide infra) initiated a shift of emphasis from the coast to the interior and, as a result, to a direct association of the British Asians with the imperial effort in the hinterland. This formed the background to the unprecedented and increasing influx of Asian immigrants into East Africa during the colonial period, until...
the enforcement of identical immigration restrictions in the colonial territories. As for Asian immigration to East Africa, it was restricted in the inter-war period (1920's and 1930's) by the British Colonial Administration, and during World War II, in 1944. The restrictions imposed on Asians were not so much as a result of the effects of the two World Wars, but because of the colonial allegations that Asians were exploiting both colonists and African natives, economically in particular. It should, however, also be noted that considerable Asian settlements in East Africa had already occurred long before the Second World War.

The emplacement of British Indian troops in East Africa during the 1890's helped to strengthen the growing Asian presence in the East African interior and contributed to future immigration from the Punjab, where most of the soldiers originated from.

Moreover, the short-lived influx of a large number of Indian troops and their array of "camp-followers" boosted the enterprise of some Asian traders who established dukas in the vicinity of their camps or became official agents for the supply of provisions, transport services, and so on.

The German colonial authorities in German East Africa similarly sought successfully to encourage Asian immigration into their colonial territory to be legalized, as had been the case in British East Africa, where Asian immigration had been legalized by the Government of India Notifications of May, 1896, and January, 1902. In German East Africa, the immigration was made legal in 1900 and 1901 and was followed, as in British East Africa, by Asian settlements. On the whole,
however, German East Africa was dependent on the services of voluntary Asian immigrants, sometimes described as "passenger" or "free" Indian immigrants, who flowed into East Africa at a steadily increasing rate. To be remembered at this juncture also is the fact that the voluntary Asian immigrants to East Africa were not restricted by the 1885 Indian Emigration Act, for they were not regarded as 'emigrants'. The Indian migrants thus freely went to Mozambique and Natal in South Africa as well.

In East Africa, the main reason for Asian penetration into the mainland was the changing economic pattern from the coast to the interior, following the partition of East Africa in 1886. This will be discussed at a later stage. Now, it suffices to note that Asian penetration into the East African hinterland was slow but steady, and its origins could be traced as early as 1886, and even earlier.

Huss Murti, for instance, an Indian pioneer trader, went as far inland as 'Unyangema' in Tabora area, in 1823.

The Protector of Emigrants at Bombay had this to report in 1896:-

"The people are flocking to Africa of their own free will, at their own expense, and on the chance of doing better there ... Many classes and professions are represented in the exodus ... numbers of Indians are going to East African ports, not as Emigrants, but as Adventurers ... many have embarked for Mombasa in the hope of finding work on the Uganda Railway or in connection with trade and wants that will spring up with the Railway construction."19

Among the pioneer Indian traders who had already penetrated into the interior of East Africa, four deserve a special

19 Bombay Archives, General Department, Bombay Government,' Vol. 120c of 11 July, 1896. No reliable statistics are available on this voluntary emigration, but figures vary from over 600 in 1898 to about 2000 in 1901.
Allidina Viera (1863 - 1916), came from Kutch. He traded and travelled especially in Uganda and through German East Africa, the British East Africa Protectorate, and parts of the Congo Free State, as well as Southern Sudan. In 1877, Viera arrived in Zanzibar and soon moved on to Bagamoyo. He reached Kampala in 1898 and established commercial branches in it and in Dar-es-Salaam, Mombasa, Tabora, Uji, Kitima (in the Congo) and elsewhere. Viera traded in ivory, hides and skins, chillies, groundnuts, sesame (Sesamum), cotton, and other locally produced items and food-stuffs. When the Uganda Railway was completed in 1901, Allidina’s enterprise was greatly facilitated, and many Indian agents acted as his assistants.

By 1902, Allidina had already established trading stations in the interior of East Africa - in Uganda - some twenty years before the Railway reached Lake Victoria. He was the pioneer of the Asian enterprise on the East African mainland.

At about the same time, two other Asian pioneer traders, Adamjee Alibboy and M.G. Furi were well established in Machakos, now a town in Kambaland, about forty miles from Nairobi.

Mr. A.M. Jeevanjee (1856 - 1939) was another outstanding Asian pioneer trader who launched a determined expansion into the East African interior. Jeevanjee started business seriously at Mombasa in 1891. He was the starter of the “East African Standard” at Mombasa about 1899/1900. The Paper was later sold in 1903 to become the “Mombasa Times” and subsequently the “East African Standard” at Nairobi.26

Apart from these pioneer Asian traders in East Africa, there were other Asian traders who, though not as potential as Maram and Jeevajee, also penetrated into the mainland of East Africa and established trading centres there. These "petty" Asian traders were the real founders of Asian commercial enterprise in the interior of East Africa, and they helped to establish commerce, in a small way; then in a larger way in areas where no trade had existed previously. Shops (dukan), trading centres, and Indian bazaars were consequently established in various districts, in the East African interior. In Nairobi, for example, an Indian bazaar was established in 1899.\(^\text{21}\) Indian commercial businesses were stimulated after the commencement of the construction of the Uganda Railway, along which were established temporary dukas, where a large body of Asian immigrants existed. Barter economy was replaced by money economy after the introduction of the Indian rupee currency. The letter and pice in turn replaced the Maria Theresa dollars (thalers), which were the principal currency in circulation in the 19th century in East Africa. The replacement process at that time was gradual. The Indian rupee thus laid the foundations of a modern, money-based economy in East Africa. It helped to solve some of the problems facing the establishment of colonial administration in the East African territories, particularly those regarding the collection of taxes, or the payment of employees. In this way, things exchanged in kind were henceforward to be exchanged in money.

In German East Africa, the population of Asian traders had

\(^\text{21}\) Bazaar Street in the centre of Nairobi was later created in the vicinity of the former Indian bazaar, and on 30th May 1973, Bazaar Street was renamed "Machara Street". "Machara" is a Swahili word meaning "commerce".
also grown to about 3,000 by the turn of the 19th century.

Most of them were concentrated, as in the neighbouring British East Africa Protectorate, at the coastal settlements including Lindi and Dar-es-Salaam. A growing number of them had, however, opened stores and agencies along the caravan routes and the advancing railways, with Ujiji and Tabora representing major concentrations of their population in the interior.

The caravan route from Mombasa through Lamu and Kinama was also used by the Asian traders who penetrated into Uganda before the completion of the Uganda Railway. Donkeys and carts were used as means of transporting goods. In 1899, for instance, some Mill Hill Fathers used the transport facilities provided by the Indians in order to carry their goods from Nairobi to Uganda.

CONCLUSIONS:

The earliest Asian contacts with the East African coast were purely commercial, and mainly temporary in character. Thus before their settlements in East Africa, Asians had for many centuries played prominent roles in the commerce of the East African coast. They had, for instance, financed Arab and Swahili caravans into the East African interior, trading in ivory, spices, gold, and so on. They had also lent money to, and advised, the Sultans. But the Asians hardly ventured into the hinterland.

Up to 1886, therefore, Asian connections with East Africa were limited to coastal areas where they eventually settled.

For a fuller account of this subject, see H.P. Gale: "Uganda and the Mill Hill Fathers" - London, (1939) pp. 185 - 188.
"permanently" before penetrating into the mainland of East Africa after 1886. In fact, the Asians had not themselves settled more than a few miles from the coast before, as we shall see at a later stage, protectorates were declared over the East African territories.

Asians arrived and settled in the East African coastal regions long before the days of European settlements in that part of Africa. When the Europeans arrived, settled and colonized East Africa, the Asians, Arabs and African natives were forced to adjust themselves to the changed atmosphere in the new, colonized East African society. In the imperial policy to draw on the resources of the Indian empire for the opening of these territories lay the seeds for the subsequent emergence of Asian settlements in the East African mainland, spearheaded by the indentured immigrants, the subordinate staff, and above all the traders.

It is, therefore, obvious that the early years of colonial period, especially the last decade of the 19th century, were of great importance for the penetration into the East African mainland by Indian immigrants. The latter could generally be divided into three categories: skilled and semi-skilled staff; troops; and traders. They were all associated with the imperial efforts in the colonized territories of Eastern Africa.

Asians were instrumental in the building of shops in remote parts of the country. In this way, they pushed trade, modern goods and the beginnings of the monetary system into the interior. Many Asian immigrants to East Africa came as shop assistants, to work for their kinmen, though of course the immigrants had ambitions of starting their own shops. Many
did that in due course. Other Indian and Goan immigrants came as clerks, retailers, wholesalers, artisans, accountants, surveyors, administrators, and the like, but most of these also harboured ambitions of moving into trade, especially in the vicinity of railway stations. It is hence unquestionable that the present strong commercial position of Asians in East Africa had its origins in the very early days of Asian settlement in Eastern Africa. As the volume of trade steadily increased, Asians became more and more prosperous until European opposition to them as "intruders and exploiters" of East Africa was launched against them.

In the writer's view, the criticism and opposition of the Europeans to the Asian immigrants were not justifiable, for till 1903, East Africa was actually a "Native Protectorate" with Asian settlement. It was, therefore, quite irrational for the Europeans to blame the Asians for having, under such circumstances, made a position for themselves in the region. In fact, the Asians materially assisted the Colonial Administration in the early days of the development of the Protectorate by "working on the railway, building houses, and taking contracts at a time when there was practically no one else to do so."

The main consequence of the building of the Uganda Railway was thus a further development of European and Asian colonization of East Africa. From the beginning, Asian settlers in East Africa were also far more numerous than Europeans. The former established shops (dukas) at stations along the Uganda Railway which, by 1898, had penetrated about 100 miles up-country. In 1899, the Railway reached the swampy area—later to be known as Nairobi—a famous trading town along the Railway—where a bazaar was opened. One can hence safely state that, in the British Colonial Office Confidential Paper No.879/92/414, p.169
Of about 32,000 Asians, for instance, who were imported from India to work on the Railway, about 2,000 of those who stayed on in East Africa continued to work with the Railway. Others moved on to other parts of East Africa—excluding Kibon that was a special settlement near Lake Victoria.

There were other Asian influences which were felt especially in British East Africa. They included: the introduction in the interior of the British Protectorate of the Indian rupee currency long before used at the east coast of Africa; the application to the East Africa Protectorate of Indian legal codes by the East African Order in Council of 1897; and the use, as we shall see shortly, of Indian troops in all the significant military campaigns in the two Protectorates against: the Mezru Arab on the coast who rebelled against the colonists and sacked Mombasa in 1896; the Sudanese mutineers; Kabaka Mwanga of Buganda; Kabarage of Bunyoro and the Handy and Ogaden Somalis to Kisumu in 1900 - 1900. When the local forces comprising Indian, Swahili and loyal Sudanese troops failed to control the rebellions, Indian reinforcements were then sought from India, and in March, 1896, 700 troops were despatched from Bombay to Mombasa. In 1897, additional reinforcements were also sought from India following the mutiny of Sudanese troops in Uganda. 360 troops finally arrived in East Africa in the following year, but returned to India after performing their "required functions in East Africa." 

The position of Asians in East Africa was further internationalized by the growing nationalism in India, coupled with the deplorable treatment of the Indians in some overseas British colonial territories.

It must be stressed at this juncture that the real importance of the role in East Africa of the Asians who were indentured to work on the Kenya-Uganda Railway lay in the stimulation which their officially sponsored immigration, and the Asian presence in the interior initiated by it, provided for the future Asian immigration to East Africa. For, in addition to the indentured workers and British Indian troops mentioned above, there continued to rise the number of other voluntary immigrants to East Africa whose main attraction was also the prospect of enhanced pay. Soldiers in fact used to receive Rs. 18 per month. They were also contracted on a three-year tour of duty for the Uganda Railway, the Government Caravans, and in the Coast Province.

From the turn of the 20th century to the early 1930s, however, Asian immigration though steady, was slow. After the 1930s, there was almost a cessation of that immigration, partly owing to the economic depression and the Second World War. After the war, Asian immigration again picked up dramatically and continued to rise rapidly until the imposition of the legislative bans as we have seen above. The following table will help to illustrate the growth of the Asian population in East Africa between 1917 and 1961:

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26 See, on this question Anirudha Gupta: "Indians Abroad - in Asia and Africa" in 'Africa Quarterly', New Delhi, 1968.
From all the foregoing arguments, it can be deduced as follows:— the Asian immigration into East Africa must be accepted as a recent occurrence which was largely connected with the colonization of East Africa by the European Powers, especially the British, who determined and encouraged the immigration and pattern of Asian activities in Eastern Africa. It is also true that the early Asian immigrants to East Africa saved as much as they could from their meagre earnings, in order to build up enough capital to launch their own independent businesses. It is further a fact that many of the imported coolies and other Indian immigrants to East Africa came mainly from a few well-defined areas of India. Most of them came from Kutch, Punjab and Gujerat in Western India. Most of them were Muslims, as we have already observed, and thus Muslim still remains an imported religious sect among the Asian communities in East Africa. In the Asian ethnic group in East Africa must also be included Goans, whose original home was the tiny former Portuguese colony of Goa, situated to the south of Bombay. A good number of Goans, as a fact almost all of them have retained their traditional religion of Catholicism. Thus only fragments and isolated
groups from many districts in India established themselves in Africa. As a result of this situation, the Indian immigrants in Africa could not use their wealth in getting prestige locally in Africa.

We shall conclude our discussion of the Asian background in East Africa by affirming that the problem of Indians in the region was closely connected with the European colonization of East Africa, slavery, legal definition, and racial awareness in that region. The Colonial Power—the United Kingdom—introduced the Asian population in East Africa but did not nationalize it, as was the case with the Arabs. The writer is of the view that, given a different kind of legal definition, Indians might not have been regarded as aliens in East Africa. Thus, the difference between Arabs and Indians was brought about by:

a) the legal definition, and

b) the Colonial Power at that time.

THE EUROPEAN BACKGROUND:

The last group of the four ethnic, racial groups in East Africa which deserves our treatment here is that of Europeans. However, the European background in East Africa does not, in the writer's view, need any elaboration here, since European immigration to East Africa was highly connected with, and greatly encouraged by, the colonization of East Africa by the European Powers. For this reason, the real impact of Europeans on East Africa;
Africa will be discussed in detail in Chapter Three. Here, what must be remembered are three points. First, European arrivals and settlements in Eastern Africa are, for all practical purposes, very recent phenomena. For, although they took place both before and after the colonization of East Africa, they occurred mainly in the 19th century, but especially in mid-19th century, when European influences and interests were making themselves felt in the East African interior, where rivalries of the various European Powers—particularly Franco-English rivalry—had already taken shape. Second, European emigration to East Africa was caused by many forces. These included the following:

Commence: in search of wealth and industrial expansion;

Strategy: politics, the quest for knowledge (discovery), and so on;

The broad outflow of imperial influence—national pride; development of the East African territories politically, agriculturally, economically, educationally, and so on, so as to provide, eventually, raw materials so badly needed by Europe, and so on; Humanitarianism: check and abolition of slavery and the slave trade (especially by Britain); and the Bible—Missionaries. Finally, origins of European arrivals and settlements in East Africa must be traced between the 19th and 19th centuries.

Footnote 28: First came the Explorers: Burton, Speke, Grant, Stanley, and others. Then came the Missionaries that were followed by the British East Africa Company—a nominally independent Company that was intended to administer and promote commerce in East Africa for the mother country, Britain. Thus, both explorers and missionaries had similar and interwoven interests, humanitarian for instance, for the spread of the Gospel and the abolition of the trade in human beings; and explorers often had commercial, political, and even colonial interests.
Vasco da Gama, a Portuguese explorer, arrived at the east coast of Africa in 1498. Other Portuguese explorers followed him soon. Portugal's main interest in East Africa was in commerce, and hence the Portuguese aimed mainly at establishing sovereignty over the East African coast. Soon after De Gama's arrival at the coast, the Portuguese seized control of the Sofala gold trade. Their unwillingness to penetrate into the East African interior, as well as their ruthlessness, brutality and perfidiousness towards the native coastal inhabitants, clearly showed that the Portuguese were not interested in a long (political) colonisation of East Africa, and that even if they had wanted to do so, they would not have been successful.

Similarly, France's main interest in East Africa was, initially at least, in trade. French 'commercial' connections with East Africa can be traced back to the Napoleonic Wars and even earlier, and the connections were maintained till the end of the Wars. French traders with Arabs had "constant intercourse" among themselves. At Zanzibar and Kilwa, French was widely spoken, and it thus enabled French trade with Muscat and Seyyid Said's African ports to be increased. The result of the increase was the conclusion in 1822 of an agreement for the regulation of the trade. A French Consulate was consequently established at Zanzibar. It had branches elsewhere at the coast, at Lamu, for instance. A commercial treaty

Vide Chapter Three, Infra.

The French were, however, sceptical when Sultan Said began to establish commercial relations with other Western nations, and to conclude treaties, with the United States in 1856, for instance, and with Britain in 1899. The French then began to press for equal opportunity and treatment - privileges and safeguards - with the British and Germans.
was later signed by Said, the Imam of Muscat, and the French Emperor on 17th November, 1844. Most of the Articles of the treaty were identical with those of the corresponding Articles of the British Treaty, signed with the same Imam.

However, as years passed by, French interests in East Africa increased. France developed, with the years, strategic, labour, naval and even political interests along the Indian Ocean region, both before and after the Revolutionary and Napoleonic Wars, and in the 1840s. Thus the French, unlike as we shall see below the Germans and Americans at that time, were interested not only in trade, but also in politics in East Africa and in the Indian Ocean area as a whole. The French presence in East Africa frightened Sultan Said, who could then do little to resist the determined French aggression without British help and interference. He, therefore, claimed sovereignty ('suzerainty') over "all places on the continent of Africa between Mogadishu and Cape Delgado together with the adjacent islands now subject to our rule."31

It is worth noting here that French trade at the East African coast, like that of the other "invaders" of East Africa, was not limited to material goods such as ivory and gold. It included trade in human beings, in complete violation of international treaties such as the Morosey Treaty of 1822, and national laws such as the French law of 1818 and the French Abolition Act of 1831.

This is not the place to discuss the question of slavery and the slave trade in Eastern Africa, but when dealing with the European background in East Africa, one cannot help to mention in passing the European involvement in the slave trade at that time. Two aspects of the problem must be born in mind

at this juncture. First, it must be remembered that responsibility for the trade in East Africa did not just lie with the Arabs and Portuguese. The Spanish, French, and even British also engaged themselves in the trade. Second, the initiative to end the trade was taken by Britain, which "mobilized" the other nations and successfully persuaded them to prevent and eventually abolish the trade in human beings. This was done by means of treaties and agreements. In 1807, for example, the British Parliament passed an Act that illegalized the slave trade for any British subject or in any British ship. In 1811, the slave trade was made a felony punishable by transportation. Britain then urged Portugal, Spain, and France to sign treaties in 1815, 1917 and 1818 respectively with Britain by which the trade was to be limited, prohibited and then completely terminated. Complete abolition of the slave trade by Portugal did not occur until 1850. That meant that the Anglo-Portuguese anti-slave Treaty of 1815 only limited the trade. It should also be remembered that the Atlantic Powers that signed anti-slave treaties did so only after hard persuasion and bribery by Britain. For example, Portugal received £300,000 indemnity from Britain, and the latter cancelled her Portugal's "war-debt" of £400,000. Similarly, Britain bribed Spain with £400,000.

Termination of the slave trade was supposed to be achieved in 1845 when, on October 2nd, an agreement was signed by Sultan Said and Hemerton, the British Consular and Political Agent at Zanzibar for the termination of the trade in the Sultan's dominions. The new agreement was to enter into force on January 1st, 1847. Anti-slave trade agreements were also signed between Britain and one of Sayyid's successor sons, Said Barakah.
In 1873, for instance, Said Berghash and Britain concluded an anti-slave treaty by which the trade was, in theory at least, brought to an end, although in practice it did continue. Thus East Africa began to feel British presence and influence not only from the commercial point of view, but also from the politico-humanitarian viewpoint. All this happened in mid-19th century for, very little was known about East Africa in England throughout the 18th century, and even far on into the 19th century. Between 1798, and 1812, the East African coast was "attacked" by British warships, which actually happened to be there owing to the Napoleonic Wars taking place in Europe at that time.

The English visitors to the East African coast met with tragedy when bands of native warriors approached the former, and sometimes stripped them of their clothes, and speared or arrowed them. The first English "invasion" of East Africa (1798) was thus later repelled with losses. The English had visited the coast in a ship "Leopard" with Lt. Meares as Captain. He and others were murdered by the African warriors.

On 9th July, 1798, a British naval squadron of 3 ships: 'Leopard', 'Daedalus' and 'Cretes' was despatched from Portsmouth to the Red Sea to do what it would to frustrate Napoleon's designs to attack India from Egypt. Commodore Blankett was the commander of the squadron. He was a keenly interested in expanding British trade wherever Britain established sea-power. On 7th January, 1799, Bombay was reached, and on 5th March, 1799, the squadron started to sail back to the Red Sea. By 1812, other British naval ships had also visited the east coast of Africa. Objectives of the British "invasions" had included obtaining
information on the physical features and population of the East African Coast and interior, examining the rivers in that region, particularly the Rogues River, and finding out what might have happened to Mungo Park and Friedrich Hornemann. It was later found out that the former had died in the spring of 1805 in Western Sudan. His death was unknown until 1812. Hornemann died in 1800 in Fezzan. His death was not known till 1822.

After the Napoleonic Wars in Europe, Britain became firmly and predominantly established in the Indian Ocean. In the first decade of the European peace following the Wars, however - in the early 19th century - Britain was not interested, even politically, in establishing herself in East Africa. The French position in that part of Africa hence never worried the British. The latter's political interests in East Africa were aroused after 1841, following the increase in East Africa of British subjects from India. Britain thus became primarily concerned with protecting, as far as might be, her Indian subjects at the East African Coast on political grounds, and the natives of East Africa, on humanitarian grounds, from Arab traders and raiders.

Apart from the Portuguese, French and English, other European visitors to East Africa included the Greeks, Poles, Jews, Americans and Germans. They also had commercial aims, mainly.

The effects of the Napoleonic Wars were also felt in Germany whose industry and trade, like that of any other European nation, suffered disturbances, restriction and destruction.
Germany was forced to look for new commercial markets in the outer world. In 1822, therefore, a German cargo ship, the 'Mentor', left for America and was expected to sail around the world in two years. Another German ship, the 'Alph', sailed at Zanziber in 1844, on its return voyage from the Red Sea. Trade had indeed been opened up in East Africa by Germany. The German visitors to East Africa were also welcomed by sultan Said, and after the latter's death in 1856, his immediate successor son Majid concluded a Treaty of Amity, Commerce and Navigation with William Henry O'Swald, Polenipotentiaary of the Hanseatic (German) Republics of Lubeck, Bremen and Hamburg. Needless to say, William H.O'Swald succeeded his father Willhelm O'Swald, who had died in 1859.

The Americans likewise opened up great commerce in the Indian Ocean region, in and after the 18th century. In fact, from 1826 onwards, American 'whaling' and other ships in East African waters were frequently recorded. Americans later negotiated with Sultan Seyyid a settlement on the East African Coast. An agreement to that effect was signed between the Sultan and the USA on 21st September, 1833. The agreement was called the Treaty of Amity and Commerce "between the United States of America and His Majesty Syud Saeed bin Sultan of Muscat and His Dependencies." Syud Saeed alias Seyyid Said was a self-styled name of Salim who, born in 1791, became the Ruler of Oman from 1806 to 1856.

In Article II of the Treaty, it was provided that American citizens should be free to come and go, and buy and sell in all the Sultan's ports without any interference by his or his officers as to the fixing of prices or otherwise.
American presence on the East African coast was first of all a commercial one. This was followed by a consular-diplomatic one, as outlined in Article IX of the Treaty. The USA could, and did establish consulates in the coastal ports of the Sultanate, and by the principle of 'extra-territoriality', American consular authorities only could deal with disputes and other affairs involving American citizens in the 'American territory'. Consular-diplomatic privileges and immunities were accorded to the American Consulate. The Treaty between the USA and Said established such good relations between the two that Said cordially invited American citizens "to come and trade in my dominions." 32

Sultan Majid's Treaty with Germany was quite similar to his father's Treaty with the United States. There were, however, two exceptions. First, whereas the American citizens had been accorded the right to reside in the Sultan's dominions, the Henneseatic citizens, like the French and British subjects, could buy, sell or hire land or houses therein. Second, the Henneseatic Treaty - as the Majid/German Treaty was called - like the French and British ones, empowered the Sultan to appoint his consuls, and entitled his subjects to trade and reside in the countries concerned. These provisions undoubtedly emphasized diplomatic equality and reciprocity, unlike provisions in the Said/USA Treaty.

THE MIS IONARY INVOLVEMENT IN EAST AFRICA

European Protestant and Roman Catholic Missionaries arrived and established themselves at the east coast of Africa in early

19th century. Their aims, under the cover of "preaching the Word of God and converting the heathen to God", were many and varied, and included scientific, economic, political, colonial and humanitarian aims, and the elimination of poverty, ignorance and disease. The same aims were nurtured by explorers, who were, as we have seen in footnote 28 above, also interested in the conversion, education and general development of Africa. Thus missionaries, explorers, traders, and later settlers besides administrators who came to Africa often had coinciding adventures, and sometimes the same people played different roles simultaneously. For example, Henry Morton Stanley was an explorer, journalist (of African exploration), and did missionary work as well. Similarly, empire builders in Africa and elsewhere such as Lord Lugard and Cecil Rhodes, philanthropic societies and chartered companies performed many different functions at the same time.

Commerce, then, and exploration - science - and religion "attacked" Africa side by side. German missionaries were foremost. German men like Hornemann (1798), "Rupell (1824), Barth (1850) and Vogel" (1833), crossed the Sahara as well as the Libyan and Nubian deserts from North Africa.

A particularly interesting alien missionary "invasion" of Africa occurred in East Africa between 1844 and 1850. Germany Missionaries, Johann Ludwig Krapf (b. 1810) and Johann Rebmann (b.1820) were the first Europeans to explore equatorial East Africa at any distance from the coast. They were, like many other German Missionaries - such as Barth, sent by the British Government, and Hornemann, sent by the African Association in London - agents of a British institution called the Church Missionary Society (CMS).
On 7th January, 1844, Krapf arrived in Zanzibar from Aden via Mombasa. He was the first Christian Minister since the fall of the Portuguese Empire to come to mid-East Africa with the intention of settling there. The small European community already settled in Zanzibar, as well as the British Consul Hemerton and U.S. Consul Waters and Seyyid Said very warmly welcomed Krapf. Said gave Krapf a 'passport' in which the following particulars were outlined:

"This comes from Seyyid Said. Greetings to all our subjects, friends and governors. This letter is written on behalf of Dr. Krapf, the German, a good man who wishes to convert the world to God. Behave well to him and be everywhere serviceable to him." 33

Wherever he went, Krapf was friendly welcomed, even by the Nyika, probably the most warlike and powerful tribe at that time, stretching from the coast into the interior of East Africa. Krapf and Rebmann slowly moved into the mainland of East Africa. They established their first mission station inland at Rabi "Nabi" - "New" Rabi - a place about 15 miles from Mombasa and 300 ft. above sea-level.

On 11th May, 1848 Rebmann became the first European to see Mt. Kilimanjaro. Similarly, Krapf heard, during one of his exploratory voyages into the East African mainland, in November, 1849, of a second snow-mountain away in the north, named 'Kegnia'. On December 3rd, 1849, Krapf could very clearly see the 'Kegnia', and observed two large horns or pillars, as it were, rising over an enormous mountain to the north-west of the Kilimanjaro, covered with a white substance.


34 Krapf, Op. Cit., p.127
Alien religious and other penetration into the interior thus occurred in mid-19th century. In Buganda (Uganda), for example, origins of European presence can be traced back to 1862, when the first explorers - Captain J.H. Speke and Grant - arrived in Buganda. Speke visited Kabaka Muteesa's Court in February, and Grant joined him in May, 1862. Ten years later, Sir Samuel Baker, the first agent of an Imperial Power to enter Uganda, arrived in the Kingdom of Bunyoro. Baker was followed by Henry Stanley, the famous explorer and journalist, who arrived in Buganda in 1875, and was greatly impressed by Kabaka Suna’s successor son Mutesa, because of the latter’s intelligence and apparent interest in religious discussions.

After successfully convincing Mutesa, Stanley wrote to the "Daily Telegraph" in England to advertise Buganda's thirst for Christianity and the need to have missionaries in East Africa to preach the Word of God there. His call appeared in the English newspaper in November, 1875. The appeal was directed to all English missionary societies which were urged to send their representatives to Buganda.

Following Stanley's appeal, many missionaries - Protestants and Roman Catholics alike - responded readily, and many of them left England and arrived in Buganda between 1876 and 1879.

In 1876, 8 missionaries of the Church Missionary Society (CMS) set off for Buganda. Only Wilson reached his destination - Mutesa's capital in Buganda in June, 1877. The other 7 died of fever or of attacks. In 1876, Mackay joined Wilson in Buganda. In February, 1879, the second group of Protestant Missionaries, Litchfield, Person and Pelwin, arrived in Buganda and were warmly welcomed by Mutesa. They were followed a week later by a third group of missionaries.
this time Roman Catholic, French White Fathers, who entered Uganda from the south. However, Father Lourdel and Brother Amans had reached Kabaka Mutesa's capital in 1876, under Cardinal Lavigerie's Government. They were followed by three more white Fathers.

What is noteworthy here is that the King of Buganda - Mutesa - very warmly welcomed the missionaries, because he saw in Christianity the possibility of a new political power which might prove a useful weapon against Egyptian advance southwards from the north, and the Arab influx from the east. It is also worth remembering that Christianity was not the only alien religion in East Africa at that time. By 1879, Islam had already received converts in the East African interior. The consequence of the three religious "invasions" of East Africa was the division of African natives into traditional believers and "foreign", international believers. Thanks to the missionary impact, closer relations between natives and Europeans were established.

What, therefore, can be said and written with certainty is that the European missionaries impressed the inland kings (paramount chiefs like Mumia) and their subjects, and the missionary settlements paved the way for further European settlements in the East African region. As we have seen, serious European immigration and settlement in East Africa occurred in the period between the second half of the 19th century and the first half of the 20th century. The immigration and settlement were closely connected with the colonization of East Africa by the European nations. We shall, therefore, look at this issue again when discussing the question of alien rule in East Africa.
The first European arrivals in East Africa occurred in the late 15th century A.D., when the Portuguese visited the East African coast on their way to India. Between 1498 and 1750, there was a long struggle of supremacy between the Portuguese and Arabs, for, before the advent of the former, the East African coastal lands were controlled by the latter. The Portuguese eventually lost in the struggle and were driven out of the coast into Mozambique, without having advanced into the mainland of East Africa.

The first Europeans, however, to show an interest and penetrate into the interior of East Africa were missionaries of the Church Missionary Society, in the persons of Rebmann and Krapf, both being German nationals. The penetration took place in the 19th century, and hence the first real contacts between Africans and Europeans occurred in the 19th century. Rebmann and Krapf were soon followed by three English explorers: Richard Burton, John Hanning Speke and J.A. Grant. Rebmann was the first European to see Mt. Kilimanjaro on 11th May, 1847, whereas Krapf was the first European to see Mt. Kenya on 3rd December, 1849.

More missionaries visited East Africa after 1860. Dr. David Livingstone, for instance, an English missionary and explorer, set out in 1866 on his long journey for Lake Nyasa in order to expose the horrors of slavery and the slave trade and to destroy them. The missionary campaign against the trade was later taken up by certain European nations, led by the United Kingdom. The latter signed an agreement with Sultan Seyyid Said in 1822, which authorized British warships patrolling the East African coast to search Arab vessels for slaves. When
the Kenya-Uganda Railway reached Lake Victoria, Europeans started to settle in Kenya. For example, Lord Delamere came to Kenya from Somaliland in 1897 and settled in, as we shall see at a later stage, what became known as the "White Highlands". Similarly, Colonel Grogan came to Kenya from the Cape of Good Hope and settled near Kilimanjaro.

Americans were the first Western nation to have consular representation in Zanzibar in 1830. Later, liberal and other groups made contacts with East Africa. However, European settlers in East Africa resented American moves as an endeavour to usurp their own declining position. Thus some of the leaders of the US liberal organizations - such as Garvey and his associates - were banned from entering what later became known as Kenya, by the Kenya (Colonial) Government.

Although American nationals were discriminated against by Europeans - especially the British, French and German - it should be born in mind that the present writer has used, and will continue to use throughout this thesis, the term "European" to mean simply the white man. The term will not be limited to Englishmen, or Frenchmen or Germans, although these were, of course, the main Colonizers of East Africa.
CHAPTER TWO
LEGAL DETERMINATION AND CLASSIFICATION OF ALIENS IN THE EAST AFRICAN TERRITORIES

The question who is an alien in East Africa is, from the standpoint of international law, principally one for the laws of Kenya, Uganda and Tanzania to determine. At a glance, this question seems to be far too easy, and the answer to it far too obvious, to present any complication at all. When we examine it more closely, however, we find that it is a tricky question, unlimited to legal definition. Its implications are, undoubtedly, many and varied, and obviously include sociological, economic, diplomatic and political factors. This is not, fortunately, the place to elaborate these factors. Their treatment may come later. For the moment, we need to devote the whole of this Chapter solely to the discussion of the legal implications of the question in the light of East African law and the practice of the East African States vis-a-vis the general principles laid down in the international law of aliens. Problems of nationality and citizenship are automatically involved.

Attempts have been made, and continue to be made, both at the national and international levels, to reach a legal, uniform definition of nationality and citizenship. Lack of uniformity still reigns, but despite it, it is satisfying to note that some progress has been made since the beginning of the inter-war period.
For example, the Hague Codification Conference of 1930 adopted a Convention relating to the Conflict of Nationality Laws and Two Protocols on, respectively, Military Obligations and Double Nationality as well as a Certain Case of Statelessness, and a Special Protocol with regard to Statelessness. The Hague Convention laid down the following stipulations concerning nationality and citizenship:

"Nationality should be distinguished from the following:

(a) Race;
(b) Membership or citizenship of the States or provinces of a federation. This local citizenship falls short of the international status of nationality, although it may entitle the holder eventually to claim these fuller and wider rights;
(c) The right to diplomatic protection; and
(d) Rights of citizenship."

It is interesting to note that, under the former German "Nuremberg Laws" passed by the Nazi Government on 15th September, 1935, a distinction was drawn between a German subject ("staatsangehöriger") and a German citizen ("Reichsbürger"). According to these laws, a German subject could only obtain the status of full citizenship only if he proved that he was of Teutonic blood and was willing to serve the German nation. Thus, as non-Aryans, Jews were denied full German citizenship. However, it must be pointed out at this juncture that disabilities in citizenship, even of a serious nature, should

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1 The Hague Convention on the Conflict of Nationality Law was signed at the Hague on 12th April, 1930. It entered into force on 1st July, 1937.

2 See Encyclopaedia Britannica, Volume 10, p.333.
these words are used interchangeably in municipal as well as international law.

In the British Commonwealth, the expression "subject" is used to denote membership of the Commonwealth, and comprises certain privileges. "Subject" and "national" are used interchangeably with "citizen".

The use, however, of 'nationality' interchangeably with 'citizenship' has its own justifiable challenges. According to Maximilian Koessler, for instance:

"Nationality is the status of belonging to a State for certain purposes of international law".

From Koessler's definition of nationality, it can be deduced that nationality does not necessarily involve the "right or privilege of exercising civil or political functions", for instance. Therefore, a distinction can be made, and is sometimes made, between nationality and citizenship. For instance, according to the United States Nationality Act of 1940.

"... (a) The term 'national' means a person owing permanent allegiance to a State. The term 'national of the United States' means:

1. a citizen of the United States, or
2. a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

It does not include an alien."

Thus groups of people may be nationals of a State for international purposes, though not citizens for domestic purposes, as was held to be the case with the Jews of Russia.


in the "Lobens Vs. Perini and the Austrian State Case". 7

Many other conclusions can be drawn about the legal definition of citizenship and nationality, generally. For example, we can safely conclude that, although the expression "nationality" as the primary legal connection between an individual and a State is drawn from municipal law, it is generally used for different purposes, and in different contexts, both in municipal law and international law.

The right to determine nationality and citizenship of a person rests solely with the State in whose territory the person resides. The above right thus results from the famous principle of State Territorial Sovereignty. A state determines nationality and citizenship by its domestic jurisdiction.

Municipal laws such as constitutions, immigration and deportation laws not only regulate the status of nationality or citizenship, but they also determine other similar issues such as the acquisition or loss of nationality or citizenship, naturalization, expatriation, extradition, admission and expulsion of aliens, treatment of aliens, and so on.

It must not be forgotten, however, that these issues, though regulated by municipal law, are governed by principles of international law. For, treaty obligations may restrict the competence of a State as to the determination of nationality or citizenship. No State may, for instance, arbitrarily impose its nationality or citizenship on persons outside its territory, having no connection with it, or on persons residing

7 See 'Annual Digest of Public International Law Cases' (1920-1930), Case No. 131, op. cit.
in its territory without any intention of permanently living there.

A number of existing International Instruments support in full the foregoing observations. According to the Hague Convention, for instance, of 1930 on Certain Questions Relating to the Conflict of Laws, nationality should be determined by each State concerned, and in accordance with the domestic jurisdiction of that State. The Universal Declaration of Human Rights, approved by the United Nations General Assembly at its 3rd Session in Paris on 10th December, 1948, also provided in Article 15 thus:

"1. Everyone has a right to nationality.
2. No one shall be arbitrarily deprived of his nationality nor the right to change his nationality."

Since, however, the Declaration is not a treaty, it does not impose any legal obligation, and an individual is hence entitled to a particular nationality just because he has a right to nationality. Similarly, as we shall see shortly, aliens have no natural right to become citizens. Nationality or citizenship can, therefore, be possessed by aliens only after conferring nationality/citizenship to them.

The 1948 Declaration on Human Rights provided, therefore, a moral entitlement, as opposed to a legal entitlement to nationality.

The essence of nationality is, then, that a foreigner or alien remains a guest in the host State until his naturalization.

It is, however, interesting to note that in common law nations.

For a detailed account on this subject, see, for instance:
2. E. Weigl, "Nationality and Statelessness in International Law", Stevens and Sons Ltd., London, 1950;
3. 23 A.J.I.L. "Special Supplement", 11(1929), and
the distinction between 'subject', 'national', or 'citizen' and 'alien' is important only for purposes of franchise, immigration, and the like. In these cases, stress should not be placed upon nationality, but on allegiance.

Today, States are, as we have seen, grouped into different types of nationality as a result of the lack of uniformity in State nationality laws. Four doctrines have been expounded on the acquisition of nationality:

The first group of States provide that a person's nationality should be determined by the nationality of his parents at birth. This is referred to as the *jus sanguinis* ("law of the blood") doctrine. The second group of States provide that nationality should be determined both by *jus sanguinis* (parentage) and by the State of the territory of birth. This is referred to as the *jus soli* ("law of the soil") doctrine. The third group of States provide that nationality should be determined principally by *jus sanguinis* (parentage) and partly by the State of the territory of birth (*jus soli*).

The fourth group of States provide that nationality should be determined principally by *jus soli* and partly by *jus sanguinis*.

An interesting argument is that, if the nationality of a person raises doubt, then the final decision rests with the municipal law of the state to which the person claims to belong, or to which it is alleged that he belongs. This argument confirms an earlier argument that the acquisition of nationality and citizenship, *inter alia*, fall within the domestic jurisdiction of the country of residence, which is free to exercise its discretion to grant, or refuse citizenship to aliens. Hence the length of the "alien period" between the time of immigration and the time of acquiring (if granted) citizenship depends entirely on the discretion of the receiving State.
situation will be examined in another place. What should be emphasized now is that apart from the four main doctrines on the acquisition of nationality or citizenship, there are other though less practised methods of acquiring these qualifications. Foremost among these other ways are:-

naturalization, i.e., admission to citizenship by marriage, legislation, or by official grant of nationality on application to the State authorities; option; entry into the public service of the State concerned; and assumption by the inhabitants of a subjugated or conquered or ceded territory of the nationality of the victorious State, or of the State to which a territory is ceded.

It should be remembered that the doctrine of jius soli is practised mainly by the United Kingdom, United States, and the Latin American States. The jius sanguinis method is mainly applied by the European States, for example, France and West Germany in the West, and the Socialist States, the Soviet Union, for instance.

We should further remember that the term 'nationality' does not just connote the quality of belonging of a physical or natural person only to a population of a certain State. Nationality also implies a tie between a person and a comparable entity, for example, a Trust Corporation, Mandated Territory, or a Free State - 'a national of Danzig', for instance. Finally, we must not forget that personality is not limited to physical or natural persons. It must be extended to include legal persons as well. This is important especially when dealing with aliens.
To take the example of corporations as defined by Osborn and Beckett, a corporation is a collection of natural persons having in the estimation of the law an existence, and rights and duties distinct from those of the individuals who form it. From this definition, it is evident that a corporation is a legal civil person, and, though not an individual, it can also be an alien. However, the nationality, legal status and so on of a corporation are all a matter of Private International Law, and as such, most, though not all, of the effects of being a "citizen" of a State, or an "alien" are not applicable to corporations, as for instance, political rights, duties of allegiance or military service, which do not exist in the field of corporations. What is significant and should emphatically be stated here is the test of nationality. In this case, a State has a duty, under Public International Law, to protect its own nationals only, be they natural/physical or artificial/legal/persons. In which case legal persons, whether national or international, can be both of a private and public nature. The word "alien" thus necessarily refers both to physical persons and international organisations outside their own territory. Furthermore, some legal persons which are not sovereign States - the primary subjects of international law - have international legal capacity, which enables them to possess specific treaty-making powers; these are international institutions which can also conclude treaties bilaterally or multilaterally, i.e., inter se or with States, and are thus endowed with international privileges and immunities. This "privileged" situation makes certain international

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organisations subjects of international law and capable of possessing rights and duties. It also gives them the capacity to bring international claims before international tribunals. This "privileged" situation does not, however, give every international person the capacity to conclude treaties.11

In the same way that the expressions "national" and "citizen" have been used interchangeably, the terms "alien", "foreigner", "foreign national", and "foreign citizen" have likewise been used interchangeably to mean the same thing. In this writer's opinion, however, the terms "alien" and "foreigner", though synonyms, cannot be used interchangeably or synonymically all the time and in all cases.

In the writer's judgement, therefore, clear-cut distinctions occur, and must hence be made among the expressions "foreigner", "immigrant", "alien", and other such terms. It is unquestionable that all these expressions pertain to a person who does not belong either at all, or as yet to the group the person finds himself in the midst of.

The term "foreigner" specifically indicates, in the writer's understanding, that someone is a native or citizen of a nation other than the one he is now living in or visiting, and has no intention of becoming the foreign country's citizen, or of remaining in the foreign country permanently.

An immigrant is, on the other hand, a foreigner who usually resides, or intends to reside or remain permanently in his new

country. He may or may not have the intention of becoming a
citizen of his country of residence.

An alien is, on the contrary, an immigrant who resides in
another country permanently, although not yet a citizen, by
naturalization, of course, of that country, but who has the
definite intention of becoming a citizen of that country? Whether
or not he may be granted the citizenship of that
country is a different matter, which depends on the will of
the State of residence. Until, therefore, an "immigrant"
becomes a citizen of the host country - providing that is his
intention - he is known legally as an "alien". If and when
he does become a citizen, he is no longer an alien, but he
might still be regarded as an 'immigrant' by others, so long
as his speech, clothes, or living habits reflect his country
of origin and remain in contrast to the national norm in the
country of domicile. Thus those unduly fearful of what is
foreign and especially of people of foreign origin ("the
xenophobic") or unfriendly onlookers could, in fact, call such
a naturalized citizen a "foreigner" ("bloody foreigner") to
express their own intolerance for any departure from the norm.

To sum up, many attempts have been made to define an alien,
and some of the good ones have included those given in the
British Nationality Act, 1914 (Section 27(1), and Section 1 of
the United States Nationality Act (B U. S.C., Sec.103). In
both these acts, an alien was defined as "any person not a
native, born or naturalized citizen....."

1See the views expressed on this definition in Webster's
New Twentieth Century Dictionary second edition - the
If we take the word "alien" to mean a person who is not
the subject of a particular State where he resides, then, at
common law, an alien is the subject of a foreign State, for he
"was not born within the allegiance of the Crown".\textsuperscript{13} In the
eyes of the State of domicile, everybody living within the
State's sphere of jurisdiction but without its nationality by
either \textit{jus soli} (q.v.), or \textit{jus sanguinis} (q.v.), is an alien.
This alienage is hence determined by the fact of not being that
State's national. Whereas for the foreign State the non-
national individual is an alien, for his State, the individual
is a citizen abroad, and hence he remains at the personal
supremacy of his home State. \textsuperscript{14}

However, so long as the individual remains a non-national
in a foreign country, his legal status in that country is, as
it has been explained earlier, necessarily governed by the law
of the State in which he, as an alien, now resides, whether
temporarily or permanently. Since, however, the acquisition
by the same individual of a new domicile makes his legal status
a concern of international law, this law is more concerned
about the position of aliens, and their treatment, generally,
and it actually gives more "command" to the host State than
in the case of nationals and their own States.

The citizenship and nationality laws of the East African
States were modelled entirely on the British Nationality Act,
1948,\textsuperscript{15} and changed only to fit into the altered circumstances

\textsuperscript{13}Osborn: "Concise Law Dictionary", pp. 22-33
\textsuperscript{14}Cazenove: "International Law" Vol.1, pp. 619-620
\textsuperscript{15}See Chapter 56 in "Laws, Reports, Statutes, 1948" (Vol.11)
p.p. 1261-1265, published by His Majesty's Stationery
in which the three former British Colonial territories found themselves at and after independence:
- Tanganyika: 9th Dec. 1961;
- Zanzibar: 10th Dec. 1963;
- Union (Day) between Tanganyika and Zanzibar: 26th April, 1964;
  - Renamed "Tanzania" -
  29th October, 1964; and
- Uganda: 9th October, 1962;

The British Nationality Act was enacted on 30th July, 1948 to make provision for British nationality of the United Kingdom and Colonies and for purposes connected with the matters aforesaid. In the Act, it was provided in subsection (1) of Section 32 that "unless the context otherwise requires the following expressions have the meanings hereby respectively ascribed to them, that is to say:
- "Alien" means a person who is not a British subject, a British protected person or a citizen of Eire";
- "British protected person" means a person who is a member of a class of persons declared by Order in Council made in relation to any protectorate, protected State, mandated territory or trust territory to be for the purposes of this Act British protected persons by virtue of their connection with that protectorate, State or territory;
- "Colony" does not include any country mentioned in subsection (3) of Section 1 of this Act;
- "Foreign Country" means a country other than the United Kingdom, a colony, a country mentioned in subsection (3) of Section 1 of this Act, Eire, a protectorate, a protected State, a mandated territory, and a trust territory;
- "Mandated Territory" means a territory administered by the Government of any part of His Majesty's dominions in accordance with the mandate from the League of Nations;
"Minor" means a person who has not attained the age of 21 years;

"Naturalized person" means a person who became a British subject or citizen of Eire by virtue of a certificate of naturalization granted to him or in which his name was included;

"Prescribed" means prescribed by regulations made under this Act;

"Protected State" and "Protectorate" mean a State or territory so declared by His Majesty's Order in Council and under His Majesty's protection through His Government in the United Kingdom;

"Trust Territory" means a territory administered by the Government of any part of His Majesty's dominions under the trusteeship system of the United Nations;

"United Kingdom Mandated Territory" and "United Kingdom Trust Territory" mean respectively a mandated territory and a trust territory administered by His Majesty's Government in the United Kingdom."

Other key provisions in the same Act include sections 1 and 2, which read as follows:-

Section 1.-(1) Every person who under this Act is a citizen of the United Kingdom and Colonies, or who under any enactment for the time being in force in any country mentioned in subsection (3) of this section is a citizen of that country shall, by virtue of that citizenship, have the status of a British subject.

(2) Any person having the status aforesaid may be known either as a British subject or as a Commonwealth citizen; and accordingly in this Act and in any other enactment or
instrument whatever, whether passed or made before or after the commencement of this Act, the expression 'British subject' and the expression "Commonwealth citizen" shall have the same meaning.

(3) The countries hereinbefore referred to are: Canada, Australia, New Zealand, the Union of South Africa, Newfoundland, India, Pakistan, Southern Rhodesia and Ceylon.

Section 3 (1): Any citizen of one who immediately before the commencement of this Act was also a British subject shall not, by reason of anything contained in section 1 of this Act, be deemed to have ceased to be a British subject if at any time he gives notice in writing to the Secretary of State claiming to remain a British subject on all or any of the following grounds:

(a) that he is or has been in Crown service under His Majesty's Government in the United Kingdom;
(b) that he is the holder of a British passport issued by His Majesty's Government in the United Kingdom or the Government of any colony, protectorate, United Kingdom Mandated Territory or United Kingdom Trust Territory;
(c) that he has associations by way of descent, residence or otherwise with the United Kingdom or with any colony or protectorate or any such territory as aforesaid.

(2) A claim under the foregoing subsection may be made on behalf of a child under 16 years of age by any person who satisfies the Secretary of State that he is a parent or guardian of the child.

(3) If, by any enactment for the time being in force in any of the countries mentioned in subsection (3) of Section 1
of this Act, provision corresponding to the foregoing provisions of this Section is made for enabling citizens of Eire to claim to remain British subjects, any person who by virtue of that enactment is a British subject shall be deemed also to be a British subject by virtue of this section."

It is fascinating to note that the same interpretation as given to each of the above legal expressions occurs in all the citizenship/nationality laws of the three East African states. Thus "an alien" in East Africa, according to the laws, "is a person who is not a Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland."

The Uganda Aliens (Registration and Control) Act currently in force, which is entitled: "An Act to Provide for the Registration and Control of Aliens",

provided in Section 2 thus:

"In this Act, "alien" means a person who is not a citizen of Uganda or a Commonwealth citizen within the meaning of section 13 of the Constitution, or a protected person within the meaning of section 2 of the Uganda Citizenship Act, or a citizen of the Republic of Ireland."

It is further of interest to note that, although the Kenya Citizenship Laws in force until the end of 1972 did not define an alien in Kenya _ex presso verbis_, conclusions could nevertheless be drawn from the existing laws that an alien in Kenya was a person as defined in the above Citizenship Acts of Tanzania and Uganda. 17


With the adoption, however, of the so-called **Aliens Restriction Act** (No. 5), 1973 (date of assent: 15th March; date of commencement: 18th March, 1973) early in 1973, there is now in Section 2 of the aforesaid Act, an **expressio verbo** definition of an alien in Kenya, which reads:

"In this Act, unless the context otherwise requires -

"**Alien** means any person who is not a citizen of Kenya." 18

This definition, if analyzed from the East African viewpoint and experience, no doubt acceptable, and can hence be applied, to Tanzania and Uganda as well. But the acceptance and application of such a definition in the Kenya - and for that matter - East African context can be justified only if, as of course it appears to be the case here, such legal definition of an alien is a matter of East African Government policy or, as is often the case, the terms "**Alien**, "**foreigner**, "**immigrant**" and the like are considered to have the same meaning just in order to avoid their abstractness, ambiguity, confusion and complexity in meaning. Otherwise, these words are not always identical. However, because of the complexity in meaning of the legal expressions "**Alien**" and "**foreigner**", and of the wide range in their implications, and also because their antonyms are "**citizen**", "**inhabitant**", and "**native**", we shall, for the purposes of this research, use the terms "**foreigner**" and "**alien**" interchangeably. Similarly, the expression "**national**" will be used interchangeably with "**citizen**".

18(a) See "Republic of Kenya Acts, 1973" (Nairobi)
(b) See the arguments in sections 37, 93 and 95 of the Kenya Constitution as drawn up in 1961 and amended in 1964; and Part III and Section 11 (1) of Part IV of "The Kenya Citizenship Act." (Revised Edition, 1967), Chapter 170 - 'Government Printer', Nairobi.
In the East African practice, therefore, an African national of any of the three East African States living in one of them which is not his home country is not, in the present writer's strong view and judgement, an alien. He should not, therefore, be called an alien _sensu stricto_ in the country of his domicile or residence. He can live in his host country as long as he wants and even permanently - provided that is the wish of the host State and the person in question fulfills the conditions of his "survival" in that State - but he will neither be an alien, nor a citizen - which, obviously, he is not - of that State. He is, then, to the writer's mind, a foreigner there. It is nevertheless undeniable that from the legal standpoint, such a person should not be described as a "foreigner" but as an "immigrant".

To take the Tanzania experience as an example. As we have seen, the citizenship laws currently in force in the United Republic of Tanzania provide that "an alien in that Republic is a person who is not a Commonwealth citizen, a British protected person or citizen of the Republic of Ireland." 19

No doubt, this definition of an alien in Tanzania is very broad indeed, in fact so much so that it would not be surprising, in practice, to classify as aliens in Tanzania some of the categories of the people implied in the above definition as non-alien. The same applies to aliens in Kenya and Uganda. But nevertheless the main argument here, and what is of significance now is that a Ugandan or Kenyan African national living in

Tanzania, and vice-versa, is not, in the writer's view, and
cannot be, for all practical purposes, an alien in his country
of residence, but a foreigner in that country.

Whereas the Constitutions of Uganda and Kenya contain
provisions on citizenship, human rights and fundamental freedoms
of the individual, that of Tanzania does not. The Interim
Constitution of Tanzania (1965) currently in force does not
contain any chapter on citizenship or "Bill of Rights". The
only mention about rights appears in the Preamble to the
Constitution, while the question of citizenship and nationality
has been regulated by a series of Acts enacted at various times -
both before and after the Union of Tanganyika and Zanzibar.

We are mainly concerned with those laws ("Acts of Union")
which deal with matters of citizenship, nationality and
alienage in the Republic of Tanzania.

Chapter 557, for example, of the "Tanganyika Revised Laws,"26
is entitled "An Act which Ratified the Articles of Union
between the Republic of Tanganyika and the People's Republic
of Zanzibar, to provide for the Government of the United
Republic of Tanganyika and of Zanzibar, to make provision for
the Modification and Amendment of the Constitution and Laws
of Tanganyika for the purpose of giving effect to the Union
and the said Articles, and for matters connected therewith
and incidental thereto".

Chapter 500 of the same Tanganyika Revised Laws (1964)
contains an Act, known as the 'Republic of Tanganyika

26 Vol. XIII (1964) printed and published by the 'Government
Printer', Dar-es-Salaam.
Consequential, Transitional and Temporary Provisions) Act, 1962. This Act repealed and amended some of the laws then in force. In subsection (1) of Section 26 of the same Act, it is provided that the existing citizenship laws (Chapter 1 of the existing Constitution set out in the Second Schedule to the Tanganyika (Constitution) Order in Council, 1961: 'Government Notice' No. 415, 1961), as amended in accordance with the Third Schedule to the said Act, shall continue to be the law after the commencement of the Republic of Tanganyika, and shall have effect as if it were an Act of Parliament and shall be printed accordingly. Subsection (2) of the same Section 26 provides that references in any other law to Chapter I of the existing Constitution or to any provision thereof shall be read and construed as references to the 'Tanganyika Citizenship Act,' 1961, and to the corresponding provision of that Act.

Thus the 'Tanganyika Citizenship Act' and 'Citizenship Ordinance', both adopted in 1961, were the two laws relating to citizenship, enacted to give effect to the provisions of subsection (1) of Section 26 referred to above. A Presidential decree, known as the 'Extension and Amendment of Law (No.5) Decree', 21 was signed on 3rd November, 1964. By this Decree, which appears under Section 8 of the "Acts of Union" of Tanganyika and Zanzibar, the existing citizenship laws of Tanganyika were amended and extended, except sections 1 and 2 of the 'Tanganyika Citizenship Act, 1961', to Zanzibar as part of the law thereof. This means that only sections 5 to 11 inclusive of the amended

(1961) 'Citizenship Act' were extended to Zanzibar.22

For the purposes of determining any person as a citizen of the United Republic of Tanzania, the extension of the laws of Tanganyika then in force concerning citizenship would be deemed to have come into force on Union Day, that is, April 26th, 1964. In this way, the 1964 (No.5) Decree also repealed the existing citizenship law of Zanzibar.

However, it was clearly stated in the said Decree that nothing in any such amendment as provided for in subsections (1) and (2) of Section 2 of the said Decree "shall be construed as depriving any person entitled or eligible, in accordance with the Citizenship Act, 1961, or the Tanganyika Citizenship Ordinance, 1961, as in force prior to the commencement of this Decree, to be registered as a citizen of Tanganyika, of such entitlement or eligibility to be registered as a citizen of the United Republic of Tanzania in accordance with such laws".

This provision refers specifically to categories of people referred to in sections 1 and 2 of the revised Citizenship Act, 1961, which were not extended to Zanzibar. Section 1 of the aforesaid Act reads:

"Section (1) Every person who, having been born in Tanganyika is on the 9th day of December, 1961, a citizen of the United Kingdom and Colonies or a British protected person, shall become a citizen of Tanganyika on the 9th day of December, 1961:

Provided that a person shall not become a citizen of Tanganyika by virtue of this subsection if neither of his parents was born in Tanganyika.

2. Every person who, having been born outside Tanganyika, is on the 9th day of December, 1961, a citizen of the United Kingdom and Colonies, or a British protected person shall, if his father becomes, or would but for his death have become,

22 See 'Government Notice' No. 652 (1964), First Schedule.
A citizen of Tanganyika in accordance with the provisions of subsection (1) of this section, become a citizen of Tanganyika on the 9th day of December, 1961.

Section 2(1) Any person who, but for the provision to subsection (1) of section 1 of this Act, would be a citizen of Tanganyika by virtue of that subsection, shall be entitled, upon making application before the specified date in such manner as may be prescribed by Parliament, to be registered as a citizen of Tanganyika.

Provided that a person who has not attained the age of 21 years (other than a married woman) may not himself make an application under this subsection, but an application may be made on his behalf by his parent or guardian.

(2) Any woman who, on the 9th day of December, 1961, is or has been married to a person -

(a) who becomes a Tanganyika citizen by virtue of section 1 of this Act; or

(b) who, having died before the 9th day of December, 1961, would, but for his death, have become a citizen of Tanganyika by virtue of that section shall be entitled, upon making application in such manner as may be prescribed by Parliament, to be registered as a citizen of Tanganyika.

(3) Any woman who, on the 9th day of December, 1961, is married to a person who subsequently becomes a citizen of Tanganyika by registration under subsection (1) of this section shall be entitled, upon making application before the specified date in such manner as may be prescribed by Parliament, to be registered as a citizen of Tanganyika.

(4) Any woman who, on the 9th day of December, 1961, is married to a person who becomes, or would, but for his death, have become entitled to be registered as a citizen of Tanganyika under subsection (1) of this section, but whose marriage has been terminated by death or dissolution, shall be entitled, upon making application before the specified date in such manner as may be prescribed by Parliament, to be registered as a citizen of Tanganyika.

(5) Any person who, on the 9th day of December, 1961, is a citizen of the United Kingdom and Colonies, having become such citizen by virtue of his having been naturalized or registered in Tanganyika under the British Nationality Act, 1948, shall be entitled, upon making application before the specified date in such manner as may be prescribed by Parliament, to be registered as a citizen of Tanganyika.

Provided that a person who has not attained the age of 21 years (other than a married woman) may not himself make an application, but this may be made on his behalf by his parent or guardian.

(6) In this section, "the specified date" means -

(a) in relation to a person to whom subsection (1) of this section refers, the 9th day of December, 1961;

(b) in relation to a woman to whom subsection (3) of this section refers, the expiration of such period after her husband is registered as a citizen of Tanganyika as may be prescribed by or under an Act of Parliament.
(c) In relation to a woman to whom subsection (4) of this section refers, the 9th day of December, 1963;
(d) in relation to a person to whom subsection (5) of this section refers, the 9th day of December, 1963, or such later date as may in any particular case be prescribed by or under an Act of Parliament.

Very similar provisions exist in the nationality/citizenship laws of Uganda (as at October 9th, 1962) and Kenya (as at December, 1963). Furthermore, the same laws of the three East African countries contain other identical, legislative provisions on such questions as loss of nationality, dual citizenship, renunciation and deprivation of nationality, acquisition of nationality/citizenship by registration or naturalization, and the interpretations given to the legal expressions used in the East African nations.

Thus: a "citizen by birth" of any of the East African countries is a person whose parents and/or grandparents and he, himself, were born in the country in question, and were citizens of that country or of the United Kingdom and Colonies at the time of that country's independence. The writer prefers to call these "automatic citizens at independence". A "citizen by descent" in any of the Countries of East African is a person who is a citizen of that country -

(a) if his father is a citizen of the same country otherwise than by descent; or
(b) the person was both born outside the country before independence and his father was a citizen of that country otherwise than by descent, and at the same time the person was, at the independence of the same country, a citizen of the United Kingdom and Colonies, or a British protected person - but only if his father became, or would but for his death have become, a citizen...
of the said country by birth.

In the case of Tanzania alone, a citizen by descent also means a person who is a citizen of the Tanzania by virtue of the combined effect of his being a Zanzibar subject by descent in accordance with the former law of Zanzibar, and that law remained in force until immediately before Union Day, and of paragraph 2 of the Fourth Schedule to the Presidential Decree (No. 54 of 1964). Also, the expressions "Zanzibar subject by birth" and "Zanzibar subject by descent" were to be construed in accordance with the former law of Zanzibar.

A "minor" means a person who has not attained full age or the age of majority, that is, 21 years commencing with the relevant anniversary of the day of his birth. Similarly, a person of full capacity means one who is not of unsound mind. A "protected person" is any person who, under any enactment for the time being in force in any country that is part of the Commonwealth, is a protected person of that country.

In the East African laws, the following countries have been enumerated as 'Commonwealth countries': The United Kingdom and Colonies, Canada, Australia, New Zealand, India, Pakistan, Ceylon (now Sri Lanka), Ghana, Malaysia, Cyprus, Malta, Nigeria, Sierra Leone, Singapore, Jamaica, Trinidad and Tobago, Uganda, Kenya, Tanzania, Malawi, Zambia, Gambia, Guyana, Botswana, Lesotho, Barbados, Swaziland, Mauritius and Rhodesia. It should also be remembered that the Parliament of any of the three East African countries has power to determine - by an Act - which other country not included in the above list, can be given the status of a Commonwealth country. It should further be remembered that nations of Bangladesh type- which recently
came into existence as a result of a split from the mother, Commonwealth country - are not included in the above list, owing mainly to the recentness of birth of such nations.

In the eyes of the East African citizenship laws, a "foreign country" is a country (other than the Republic of Ireland) that is not part of the Commonwealth. Also a birth of a person on a registered ship or aircraft shall, by East African Law, be deemed to have occurred in the place or country in which the ship or aircraft was registered. Similarly, any mention in the nationality laws of the East African nations of "the Minister" refers to the Minister for the also being responsible for matters relating to citizenship of the nation in question. Finally, a consulate of an East African State may as an office or a consular officer of the Government of that State where a register of births or residents is kept, or, such (other) office as may be prescribed.

The expression "Africa" is defined in the Uganda Constitution only. In section 23 of that Constitution, it is provided that the term "Africa" means a person who is a member of an indigenous African tribe or community of Uganda, or a body corporate or unincorporate entirely composed of such persons.

The powers of Parliament are the same in the three East African countries: Parliament makes provisions for the acquisition of citizenship/nationality (of an East African State) by persons not eligible or who are no longer eligible to become citizens; for the deprivation of citizenship other than by birth; for the renunciation of citizenship of an East African country, and so on.
Thus the Parliaments of Kenya, Uganda and Tanzania have a very large say in the determination, acquisition or loss of East African citizenship. Parliamentary approval of the methods of determining or acquiring/losing such citizenship is a sine non qua condition for any effective result of such exercises, which Parliament approves normally by an "Act of Parliament". The Minister responsible, however, has also power to approve, for instance, citizenship by registration, by a statutory order, if he is satisfied that such citizenship will not be detrimental to established State/Government policy. The decision of the Minister in such matters is final. In East Africa, citizenship is determined by *jus soli* and *jus acquisitio*, and their combinations. However, the East African countries mainly use the method of *jus soli* - citizenship by birth - which applies normally to people who acquire what has already been referred to as East African "automatic" citizenship. For the purposes of this thesis, the term "East African citizenship (citizen)" will be used to mean the citizenship (citizen) or nationality (national) of any of the countries of East Africa: Tanzania, Kenya and Uganda.

The other methods of acquiring East African citizenship are registration, naturalization, and a special grant of citizenship or as an honour. Acquisition of citizenship by a special grant takes place under special circumstances. This was the case, for instance, when President Idi Amin of Uganda granted Uganda citizenship to the world famous singer Miria Makeba of South Africa, when she visited Uganda early in 1975.

At independence, those categories of people in East Africa considered as aliens thereof had to apply for citizenship of the newly independent East African country in which they found
themselves. Their applications had to appear in a manner prescribed by Parliament, and before a specified date. If granted citizenship, they became citizens by registration or naturalisation. Certificates of registration or naturalisation were effective on the day they were issued. If refused citizenship, the people remained aliens.

The question of alien women married to East African citizens deserves a special mention here. East African nationality laws have regulated the question as follows. An alien woman married to a citizen of an East African State, or to a person who, but for his death before the independence of the State, would have become a citizen of that State on independence day, can become a citizen of the East African State by registration or naturalisation, provided she fulfils certain set conditions, for example, giving up within a specified date, her citizenship of any other country. The conditions for registration and naturalisation are quite similar in each of the East African nations. The only discernible difference between naturalisation and registration is that, whereas naturalisation is normally the method of acquiring East African citizenship by aliens only, registration is the method of acquiring such citizenship by the following categories of people who may or may not be aliens:

(a) Minor children of East African citizens, who may not themselves apply for citizenship by registration, but for whom their parent or guardian may apply. If a minor is a married woman, she is considered to be of full age;

(b) People who acquire East African citizenship as a special offer; either by the Minister or the Head of State;

(c) Alien wives of East African citizens;
(d) People of African descent; and

(e) African citizens/nationals of non-Commonwealth African countries.

All aliens who wish to become East African citizens must submit their applications not only in a prescribed manner but also before a specified date, prescribed by Parliament. The expression "specified" date" has confusing interpretations. However, when we examine it in a very broad perspective, we find that the term refers to the period of time within which those categories of people, who could not obtain East African citizenship by the "automatic" method, had to apply for that citizenship and renounce any other citizenship which they might be possessing at the time of independence of the East African countries. Needless to say, the same principles applied to alien wives of East African citizens.

Thus for some people, the specified date for their becoming East African citizens was Independence Day. Under this category fell those people who had been born in the East African territories before independence, and were citizens on the eve of independence of the United Kingdom and Colonies or British protected persons. Included also in the same category were people who had been born outside the East African territories, but whose fathers became, or would but for their deaths, have become citizens of East Africa by birth at independence. Alien wives of East African citizens could also fall under this category.

A person who is a citizen of an East African country by registration or naturalization ceases to be such a citizen after the expiration of 3 months (12 months in Tanzania), or if he is of unsound mind, after the expiration of such period as may be prescribed by or under an Act of Parliament, if he attains the
age of maturity, or is an alien wife of an East African citizen by registration or naturalisation, or he or she is immediately after the date of becoming an East African citizen also a citizen of a country other than any of the three East African countries. The condition, therefore, of her/his retaining East African citizenship is the renunciation of her/his other citizenship. It should be noted here that, in the case of former Kenyan subjects, the specified date for them is the attainment of 22 years or 12th January, 1966, whichever is the later case.

In the case of a naturalized or registered citizen in East Africa by virtue of the British Nationality Act, 1948, the specified date for him was a period of two years or a later date prescribed under, or by an Act of Parliament. Many people fell under this category and they were given two years after independence within which to make up their minds and apply for East African citizenship and renounce any other citizenship they might possess. Non-citizens had hence an option at independence either to become East African citizens, or to remain British subjects. The argument of the East African Governments since the independence of the three countries has constantly been that the vast majority of the aliens chose the second alternative. Of those aliens who applied for East African citizenship, some were lucky, and were granted the citizenship. Those who were unfortunate in this group had to remain non-citizens, and hence British subjects. It is important to note now that the latter have bitterly complained, though not

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*See "United Republic of Tanganyika Citizenship Act", Cap. 59, Section 6, subsection (3) paragraph b, and subsection (6) paragraph a, c, and d.*
"loudly", against the East African Governments' behaviour towards them. They have also challenged the East African Governments' argument that the vast majority of British subjects, especially Asians, chose to remain British subjects. These poor people have thus argued that they were terribly limited in their option to become East African citizens. Are the complaints of this group of people justifiable? That is the question.

However, this sensitive issue is, as we have seen, one of East African Government policy or decision, which is final.

From the immediately preceding observations, one can safely conclude that the completely "lucky ones" were those people who were born in East Africa and had no option as regards citizenship. They automatically become East African citizens. They automatically become East African citizens, and thus the alien status in East Africa did not apply to them.

As has been stressed before, Africans and Arabs born in East Africa belonged to this category of people, for these two ethnic, racial groups were considered to be "the indigenous inhabitants of East Africa."

According to the nationality laws of the East African States, an alien acquires East African citizenship by registration or naturalization of course - if he possesses certain qualifications, that is, if he fulfils certain set conditions. For the sake of convenience and ease of reference, the writer has divided these conditions into two groups. Under group one fall "common" conditions, i.e. those conditions that are exactly the same in the citizenship laws mentioned above. Under group two will be placed those conditions which are "characteristic only" of each of the countries of East Africa. It must be stressed at this juncture, however, that the division of the set conditions into
two groups should not in any way impair the validity of our
hitherto and future repeated assertions that the legislative
provisions in the afore-mentioned citizenship laws are identical.

To start with the common conditions. An alien can acquire
the citizenship - by naturalization or registration - of any of
the East African countries if he fulfils the following requirements:

- Attainment of full age and capacity;
- Making application to the Minister in the prescribed manner;
- Making a declaration in writing in the prescribed form of his
  willingness to renounce any other nationality or citizenship
  he may possess, and taking an oath of allegiance in the form
  specified in the First Schedule attached to this Chapter (no dual
  nationality);
- Possession of a good character;
- Satisfying the Minister that he (the alien) would be a suitable citizen;
- Ordinary and lawful residence in the East African country
  concerned throughout the period of 12 months immediately
  preceding the date of application to the Minister. But during,
  or in the 7 years immediately preceding the said period of
  12 months, residence in that country for a period of, or periods
  amounting in the aggregate to more than four years;
- The intention, if registered or naturalized, to remain in the
  East African country permanently; and the condition of being not
  an enemy alien. Registration is effective on the same day the
  alien is registered. Similarly, naturalization is effective on
  the date of grant of a certificate of naturalization. On the
  questions of naturalization and registration, it should also
  be noted that a person who, at the age of 21 (or a wife) is a
  citizen of an East African country by registration, and is also
  a citizen of some other country must, if his East African
citizenship is to be effective and valid, renounce his other citizenship and take an oath of allegiance, within three months after his acquisition of an East African citizenship, or within such further period as an Act of Parliament may prescribe, or as the Minister or his appointed officer may permit. This means that a naturalised or registered citizen of any of the countries of East Africa must produce, within the period specified above, enough evidence of his renunciation of any other citizenship/nationality he may have possessed before becoming a citizen of an East African nation.

On the question of citizenship by registration alone, the Minister has power to decide on, and allow the registration of a minor child as a citizen of an East African country where, obviously, that Minister exercises that power.

As for the second group of conditions, characteristic of Tanzania alone are the following:

Birth outside Tanzania but of a father who was a citizen of Tanzania by descent at the time of the person's birth; ordinary residence in the country for 5 years; and adequate knowledge of Swahili or the English language, in the Minister's judgment. Characteristic of Kenya alone are the following conditions:

Adequate knowledge of the Swahili language, in the Minister's judgment; and ordinary and lawful residence in Kenya for a period of, or for periods amounting in the aggregate to, not less than 4 years in the 7 years immediately preceding the fore-aid period of 12 months.

Characteristic of Uganda alone are the following conditions:

Adequate knowledge of a prescribed vernacular language or of the English language; being a wife of a Uganda citizen, who acquired on 8th October, 1962, Uganda citizenship by registration, on application in the prescribed manner. Uganda
citizenship by registration may be granted to a national of an African non-Commonwealth country if the Minister is convinced that reciprocal provisions are, or may be made in respect of Uganda citizens under the law of that country.

Other similar stipulations provided for in the East African nationality laws concern matters of renunciation and deprivation of the citizenship of each of the states of East Africa. Thus the renunciation by a person himself, or the deprivation of the citizenship of an East African country does not affect that person's liability for any offence committed by him before the renunciation or deprivation of his citizenship. Further, the renunciation of such citizenship can be effective only if it is done under set conditions: it can be done only by an East African citizen of full age and capacity, who is also:

(a) A citizen of any country to which sections 7, 13 and 96 of the Constitutions of Tanzania, Uganda and Kenya respectively apply, or of the Republic of Ireland;
(b) A national of a foreign country; who
(c) Makes a declaration in the prescribed manner of renunciation of the citizenship of an East African country.

The Minister may, however, refuse registration of such renunciation if the latter is declared during a war in which that country may be engaged, or if the declaration is contrary to that country's public policy.

We have seen above that deprivation in East Africa is only of citizenship by registration or naturalization, and that deprivation is done by the Minister's order from citizens of full age and capacity. The reasons for deprivation of the citizenship of an East African country are many and varied. Thus a registered or naturalized citizen of an East African country shall be deprived of his citizenship, if the Minister is convinced that
fully grown and capable citizens:

Acquired such citizenship by means of false representation, fraud or the concealment of any material fact; has shown by act or speech to be disaffected or disloyal towards an East African nation of which he is a citizen; has, at any time while a citizen of an East African country, voluntarily claimed and exercised in a foreign country or in any other country under the law of which provision is in force for conferring on its own citizens rights not available to Commonwealth citizens generally, any right available to him under the law of that country, being a right accorded exclusively to its own citizens, and that it is not conducive to the public good that he should continue to be a citizen of the East African country in question; has, during any war in which his East African country was engaged, unlawfully traded or communicated with any enemy, or been engaged in, or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war; has, within 7 years of his being naturalized (in Tanzania and Uganda); 5 years commencing with the date of the registration or naturalization (in Kenya), been sentenced in any country to imprisonment to a term of not less than 12 months (in Tanzania and Uganda); or a term of or exceeding 12 months has been imposed on that citizen by a court in any country or has been substituted by a competent authority for some other sentence imposed on him by such a court (in Kenya); has been ordinarily resident in foreign countries for a continuous period of 7 years and during that period, he has not registered annually, in the prescribed manner, with a consulate of Tanzania/Uganda, or by notice written to the Minister, his intention to retain his Tanzanian/Ugandan citizenship (in Tanzania and Uganda); a continuous period of 7 years and during that period, he has
neither been at any time in the service of Kenya or of an international organisation of which Kenya was a member, nor registered annually --- with a Kenya Consulate --- his intention to retain his Kenya citizenship (in Kenya).

In all the above cases, the decision of the responsible Minister in any of the three countries of East Africa is final, especially in cases of deprivation of citizenship by naturalisation or registration, where the Minister is satisfied that it is not conducive to the public good that that person should continue to be a citizen of an East African State where the Minister exercises his power of decision. Furthermore, the Minister, if in the special circumstances of any particular case he thinks fit, may, as regards naturalisation:

(1) allow a continuous period of 12 months ending not more than 6 months before the date of application, to be reckoned for the purposes of, and in accordance with the provisions set out in sub-paragraph 1(a) of the Second Schedule to each of the Citizenship Acts (of Tanzania and Uganda), as though it had immediately preceded that date.

The above sub-paragraph (a) enumerates, as one of the qualifications for naturalisation of an alien who applies thereof, residence in any of the countries of East Africa, throughout the period of 12 months immediately preceding the date of application to the Minister.

(4) The Minister may also allow, under special circumstances, periods of residence earlier than 8 years before the date of application, to be reckoned in computing the aggregate mentioned in the Second Schedule referred to above, that in, that during or in the 7 years immediately preceding the said period of 12 months, the alien in question has ordinarily and lawfully resided in an East African country for a period of, or periods amounting in the...
aggregate to, not less than:–
(a) 4 years (in Kenya); or
(b) 5 years (in Tanzania and Uganda).

It should be noted here that, although the Kenya Citizenship Act, 1957 – currently in force – does not contain a Schedule on "Qualifications for Naturalisation", provisions on these qualifications are scattered throughout the Kenya Constitution.

SCHEDULES TO THE CITIZENSHIP ACTS OF THE EAST AFRICAN COUNTRIES:

The Schedules to the Citizenship/Nationality Acts of Kenya, Uganda and Tanzania can be explained simply as follows:
The First Schedule concerns the "Oath of Allegiance", and it is the same for the three nations; The Second Schedule which is the same for Uganda and Tanzania only, is entitled: "Qualifications for Naturalisation;
The Second Schedule in the Kenya Citizenship Act is entitled: "Declaration Concerning Citizenship;
"The Third Schedule in the Kenya Citizenship Act is entitled: "Declaration Concerning Residence";
The Third Schedule which is the same for Uganda and Tanzania is entitled: "Declaration Concerning Citizenship", and The Fourth Schedule which is the same for Uganda and Tanzania is entitled: "Declaration Concerning Residence".

The Result of the above comparison is something like this:

<table>
<thead>
<tr>
<th>UGANDA AND TANZANIA</th>
<th>KENYA</th>
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<tbody>
<tr>
<td>First Schedule</td>
<td>First Schedule</td>
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<tr>
<td>Second Schedule</td>
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<tr>
<td>Third Schedule</td>
<td>Third Schedule</td>
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<tr>
<td>Fourth Schedule</td>
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</tbody>
</table>

See: (1) "Tanzania Citizenship Act," Ibid.;
(2) "Kenya Citizenship Act," Ibid.;
(3) "Uganda Citizenship Act," Ibid.
CONTENTS OF THE SCHEDULES:

Note: although the headings appear in different Schedules, the contents are the same in the corresponding Schedules.

FIRST SCHEDULE:

OATH OF ALLEGIANCE:

"I ——— do swear that I will be faithful and bear true allegiance to the Republic of ——— (insert name of East African country) and that I will support and uphold the Constitution of ——— (insert name of East African country) as by law established.

TO HELP ME GOD"

SECOND SCHEDULE:

QUALIFICATIONS FOR NATURALIZATION:

We saw these above when we were dealing with the set conditions (qualifications, requirements) for naturalization or registration.

THIRD SCHEDULE:

DECLARATION CONCERNING CITIZENSHIP:

"I ———(full name in block capitals) do solemnly and sincerely declare:

1. That I was born at ——— in ———(insert name of country)
   and am of or over the age of 21 years.
2. That I am a citizen of ———(insert name of East African country) by birth/descent/registration/naturalization
   and am also a national of ———(insert name of country)
   by birth/descent/registration/naturalization/marriage.
3. That as I am desirous of retaining my status as a citizen of ———(insert name of East African country), I hereby renounce
   so far as it lies within my power my status as a citizen/national of ———(insert the name of country) and any claim, I have
   to the protection of that country.

....../82
...Signature of Applicant...

Declared at ...................................this ..................................day of ..................................................19 .......

*........................................Magistrate/Commissioner for Oaths*

**SCHEDULE:**

**DECLARATION CONCERNING RESIDENCE:**

"I, ........................................ of ........................................, do solemnly

and sincerely declare:--

"I. That so far as it lies within my power, I have

renounced my citizenship/nationality of .............(insert

name of country) and intend to reside permanently in .............

(insert name of East African country) if permitted.

"2. That although I have renounced my citizenship/

nationality of .............(insert name of country) and intend

my domicile of choice to be .............(insert name of East

African country), it may be necessary in the course of my

employment as ............./an self-employed to be absent from time

to time from .............(insert name of East African country)."

...Signature of Applicant...

Declared at ...................................this ..................................day of ..................................................19 .......

*........................................Magistrate/Commissioner for Oaths*

* Delete paragraphs or words not applicable.*
From the foregoing observations, it can generally be concluded that the practice of the East African countries—Tanzania, Uganda, and Kenya—re: the question of legal determination and classification of aliens in East Africa conforms to the general rules of international law laid down on the question. Thus in East Africa, aliens can be classified into three broad groups:

Group one consists of **aliens in transit**, i.e., those who cross one East African State's territory to reach another State. Group two comprises **aliens on route**; these stay on in one East African country's territory for a limited period of time, for business and other purposes. Such people are usually known as the **exhabitantes temporales** of the State.

Under the third group fall aliens who stay and reside in an East African country temporarily or permanently. This class of aliens can, in turn, be divided into two groups which, actually comprise people who are allowed to take up permanent residence in the East African State concerned. Group one consists of resident aliens and domiciled aliens. Under group two fall *immigrants,* that is, people who, as we have seen, intend to remain in the East African country permanently and to acquire in due time the citizenship/nationality of the East African country of residence.

It would, however, be a sweeping statement to say that the East African experience does not go against some of the rules of international law regulating questions of nationality and alienage. Such deviation of the East African law and practice from the international law rules may be justified, or even unjustified, depending on whether or not the issues in question fall exclusively under domestic jurisdiction, or international
law, and the East African State concerned adopts a "self-styled" Government policy that is implemented in complete defiance or disregard of the rules of international law.

Although the question who is or who is not an alien in East African is principally a matter of legal determination and definition, the role of other forces in the determination of the situation of aliens in East Africa cannot, and should not be overlooked or underestimated. No doubt, the problem has, a part from legal implications, political repercussions. But the writer is of the view that any really useful analysis of the problem must take into consideration not only the legal and political implications of the question, but also economic, diplomatic and even sociological perspectives.

From what we have seen in this Chapter and in Chapter One of this research, we can safely conclude that four factors assist in determining generally the situation of aliens in East Africa:

1. The length of emplacement of persons considered to be aliens in East Africa; i.e., the recentness of arrival of the alien in East Africa;

2. Ethnicity or racial difference, i.e., ethnic or racial identity;

3. Alternative identity, i.e., the enjoyment of an alternative citizenship status. This is purely a matter to be decided by the Governments of the East African States. Also, where there is no option there is no alienage; and

4. The functional position of the individual in the East African society: What position can the individual occupy in East Africa? What can he do and under what conditions can he do it? In other words, to qualify a person as an alien, racial identity (identification) alone is not enough. Other considerations must
also be taken into account. For example, his role, his recentness of arrival and the like. In the writer's judgement, it is among the Asian and European racial groups that aliens in East Africa are, by legal definition, found. Asians and Europeans were the immigrant races in East Africa. They were, and are still the ethnic minority groups in East Africa. They are distinguished from Africans physically and culturally. However, Arabs should also be grouped under the category of the minority alien group but, because Arabs have resided in East Africa the longest of any minority group, they can quite safely be considered and have rightly been considered to be non-aliens in East Africa.

Before independence, the ethnic minorities in East Africa were classified under one general group — "British subjects". However, distinctions were made between British citizens — those who lived in the then Kenya Colony — and British protected persons — those who inhabited the then Uganda Protectorate and Tanganyika Trust Territory. What these alien ethnic minorities (especially the Europeans) did (and therefore their position) in the colonized territories of East Africa will be the topic of discussion in the next Chapter.
The imposition by foreign Governments of their control on East Africa was piecemeal and in this process, four elements were crucial. The first was the element of the migration of alien peoples to East Africa. The second was the element of the establishment by these peoples of colonies in East Africa. The third was the element of subjugation and exploitation by the newcomers of the newly colonized peoples. Last but not least in the colonization process was the element of the ultimate duty of the colonizers to develop the colonized peoples and their territories.

From the foregoing remarks, one can safely deduce that East Africa was fitted into the colonial framework in the normal way. Thus East Africa became a colony in the older and stricter meaning of the term. For, the East African region was inhabited by alien groups of people who, having migrated to, and settled in East Africa, i.e. beyond the boundaries of their native countries, retained political connections with, that is, remained loyal to, their mother countries. East Africa also became a colony, in the common usage of the expression. That is, East African lands became outlying possessions of national states, as we shall see at a later stage in this Chapter, the administrations of which were carried on under systems distinct from, but subordinate to, the Governments of the national territories. In this wider sense, the East African colonial territories became non-self-governing territories. While on this subject, we should note in passing that, after the creation of the United Nations Organization (UNO), the expression 'non-self-governing
The expression "alien rule" has been used to mean "European colonial rule".

In the case of East Africa, however, it should be remembered that the colonization of the region was shared by Europeans and Asians. The fact of the colonization of East Africa by Asians has escaped the attention of many people, including those who claim to be authorities on East African affairs. It also needs to be stressed here that, as we established in Chapter Two above, it is among the Europeans and Asians of East Africa that aliens are, by legal definition, to be found.

The first alien attempt to administer and develop an East African territory - economically, and even politically - actually occurred in 1876. Mackinson, Burton, Kirk, Gerald Keller and their other fellow countrymen - a group of "influential (British) gentlemen" - believed that the promotion of commerce in other things would be one of the best ways of checking and eventually eradicating the trade in human beings. In April, 1877, therefore,

1 For useful accounts on the question of colonization of East Africa, see generally:


Mackinnon and his companions sent Gerald Waller to Zanzibar to present a draft concession to Sultan Berghash of Zanzibar. In that draft, the Sultan was informed of the would-be concessionaires' intention to occupy his territory between the coast and Lake Victoria in his name, to protect it from any invasion and to develop it without costing his Government anything. It was clear that in the concession, Mackinnon and his colleagues sought both economic and political control of all of Berghash's mainland dominions. The Sultan readily agreed to the proposals of the would-be concessionaires, and their society thenceforth exercised all the powers of a colonial government. Thus, in line with Berghash's consent, Mackinnon's society appointed officials and officers of justice; passed laws for the government to the districts; raised an armed force for the protection of the aforesaid districts; concluded treaties/agreements with the neighbouring Governments or subordinate or other chiefs; acquired and regulated the disposal of land not yet occupied, and appointed commissioners to rule, in the name, or on behalf of His Highness the Sultan of Zanzibar, any districts in the Sultan's territorial possessions. The society also levied and collected taxes as might be necessary for the maintenance and support of such local governments, forces, administration of justice, improvement of roads, water communication, or other public works, defensive or otherwise; and for the liquidation of debts and payment of interest on the capital expended. Thus in 1877-8, a real and easy chance was offered of bringing all of the Sultan's East African dominions under British political and economic control, not against the Sultan's will, but at his own invitation.
Having thus obtained the unanimous consent of his fellow countrymen, Mackinnon organized in 1887 the British East Africa Association (B.E.A.A.). He then obtained, on behalf of his newly formed Association, a 50 year lease from the Sultan of Zanzibar to administer his 10-mile Coastal Belt. In 1888, the B.E.A.A. was reorganized and became what has been referred to as the Imperial British East Africa Company (I.B.E.A.A.).

On 3rd September, 1888, Queen Victoria granted the Company a Royal Charter - giving Charter rights - to exploit the vast hinterland of British East Africa. It should also be stressed that in 1888, the Company under the direction of Sir George Mackenzie, undertook the government of the vast East African region between the Mombasa Coast and what was then the Victoria Nyanza. In this way, the I.B.E.A.A. was entrusted with the early work (1888-1895) of the administration of British East Africa. In 1890, the I.B.E.A.A. assumed the direct administration of Uganda. That is, the Company’s rights were extended, following the Meligolond Treaty, to Uganda.

With regard to German East Africa, the company that was responsible for the administration of the area was the so-called Imperial German East Africa Company (I.G.E.A.) (Deutsche Ost-Afrika Gesellschaft, or Deutsche Ost-Afrikanische Gesellschaft). This Company was the result of merging Gesellschaft für Deutsche Kolonialverein (the German Colonization Society), founded in 1884, early, by Dr. Karl Peters, and the German East Africa Company, founded by the same Peters on 19th February, 1885. On 27th February, 1885, the German Kaiser and King of Prussia, issued an official notice of the extension of his protection to the territories acquired, or which might further be acquired, in East Africa. On the same day, the same
Kaiser Wilhelm, after Bismarck's request, signed a "Charter of protection" (Schutzbrief), taking the territories acquired by Peters, under the Kaiser's and Bismarck's imperial legal, commercial, political, administrative and other protection. Peters' Colonization Society was thus granted complete jurisdiction over the natives besides German and other nationals in the German sphere of influence.

Owing, however, to lack of funds, both the I.A.E.A. and I.C.E.A. failed in their duties. They consequently withdrew their colonisation of their respective areas of control. This fact will become clearer in the course of this Chapter.

As for the Coastal Zone, the Sultan asserted his readiness and ability to control his undoubted inheritance. His normal sovereignty was maintained. When, however, the British Government took over the full control and direct administration of the British colonial acquisitions in East Africa, it placed by agreement as we have seen, the lease of the Strip which the Company was relinquishing under the Foreign Office. The latter then assumed direct responsibility for the Strip's administration.

From the above observations, one can safely state that the element of bankruptcy was the main reason for the transfer of direct colonial administration of British and German East Africa from the two Chartered Companies to their respective Governments. Soon after the withdrawals of the Companies, the British and German Governments started to manage directly their respective colonial territories in East Africa.

These differences to the exact date when the Imperial German East Africa Company handed over its administration of German East Africa to the German Government. Several dates appear in
Thus, according to some authors, the origins of the German Government's direct administration of the German colony can be traced to 23rd May, 1887, when Speckmann Lune, a German administrator, arrived in Dar-es-Salam. Other German administrators followed him in the following years. However, the I.G.E.A. continued to administer the German territory until 1st April, 1890, when the German Government officially took over full and direct control of the colony from the Company. According to other authors, the formal transfer of direct responsibility from the Company to the German Government took place on 20th November, 1890. That transfer was done by agreement between the Company and the Reich. The third date given in the year 1891, when, according to the belief of yet other authors, the German Government declared a protectorate over, and thereby assumed full control and direct administration of, German East Africa. It is believed that the German Government assumed direct responsibility for its East African colonial territory in the same year that the British Government did, i.e., in 1895.

However, whatever the contract in the dates, four things are clear. First, the establishment of the German (Government) colonial rule in German East Africa was done in two phases. In phase one, German colonial rule was established at the east coast of East Africa between November, 1890 and 1891. In phase two, spreading from 1891 to 1895, German rule was established in the interior of East Africa. There were three stages in the process. The German colonial administrators entered into treaties with local chiefs. Then the administrators, who were actually military men, set up military posts on the coast, for instance, set up military posts on the coast.

1. J. Flint: in 'History of East Africa I' page 387 - C.U.P. (1963); and

routes, at maritime trade centres, and the like. Finally, the colonial military Government was replaced by a Government of civilian district officers, who exercised both executive and judicial powers. Second, the management of the German and British colonies in East Africa was placed at first under the Foreign Offices of the Governments of the two countries. Third, new Departments were created later in Britain and Germany specifically for the direct management of all colonial affairs. Thus, in the case of Britain, the new Department was called the Colonial Office (C.O.). At this juncture, it should be noted that the Colonial Office assumed direct responsibility for the British territory between the East African coast and Lake Victoria on 1st April, 1905. In the same year also, the administration of the Uganda Protectorate was passed from the Foreign to the Colonial Office. It should also be remembered that transfer of responsibility from the F.O. to the C.O. followed the absolute confusion that existed over land settlement. In this way, the British territory, along with Uganda and Somaliland, were put under a new so-called East African Department of the Colonial Office. Hence the main reason for the transfer of management of the British colonial territories from the F.O. to the C.O. was to stop the administrative confusion that had been caused by an influx of settlers into the highlands during the last years of the F.O. rule.

In the case of Germany, a new Colonial Office was created in May, 1907, and the administration of the German East Africa Protectorate was delegated to a Secretary of State. We should note now that, before the creation of the Colonial Office, all the German Colonial affairs affecting German East Africa had, for one hundred and six years (1801-1907), been placed under the
direction of the German Chancellor through a Controller (a Director after 1894) of the Colonial Department in the German Foreign Office. Finally, the assumption by the Colonising Governments of direct responsibility for their colonies in East Africa was immediately followed by proclamations of protectorates over the colonial territories. Thus the Governments' acts of proclaiming the above protectorates officially ended the functions of the Chartered Companies in East Africa.

As in the German practice, the establishment by the British of protectorates in British East Africa was a very important step in the process of imposing alien rule in East Africa. In the writer's view, therefore, it is necessary to outline that process here in the following manner.

On 1st April, 1893, a British provisional protection or protectorate was proclaimed over Buganda. It was then that the first British colonial administration was established on an East African mainland. The person who did that job was Sir Gerald Portal, the British Consular-General in Zanzibar, whom the British Government had sent to Uganda in March, 1893, to make a report on the feasibility of the British Government's retaining Uganda, after the withdrawal of the impoverished IDIA. Portal, like other British officials, aided with Kabaka (King) Mwanga of Buganda and fought against the other Uganda Kingdoms - Toro, Bunyoro, Ankole and Busoga. These Kingdoms lost the battles, and hence Portal strongly advised the British Government not to withdraw from Uganda.

On 1st April, 1894, a British protectorate was assumed over Buganda. This followed an acceptance by the British Parliament of Portal's strong recommendations against any British withdrawal from that territory. In the following years, that British protectorate was extended to the other parts of Uganda. The extension was done because of military necessity. On 18th June, 1894, the British Government officially accepted and endorsed the British protectorate previously declared over Buganda, with a maintenance of British garrisons in Bunyoro and Toro. Ankole would also be protected, but there was to be no British responsibility over these three kingdoms. In August, 1894, the British Parliament (Gladstone was Prime Minister) confirmed, i.e., made permanent, the official British protectorate over Buganda. That confirmation gave Buganda the new name of the "Kingdom of Uganda".

Another important event that occurred in 1894 was the signing of the Anglo-German agreement that fixed the western boundary to divide the British from the Belgian 'sphere of influence'. The border was fixed at 30°E and along the Nile-Congo watershed. On 13th April, 1896, relationships were established between the Central Government and the Uganda provinces (kingdoms) on the one hand, and the Kingdoms inter se. Thus, the Kingdoms of Ankole, Bunyoro, Busoga and Toro were officially added to the Buganda Protectorate in June, 1896. But it should be remembered that the British protectorate over the whole of Uganda was actually affected on the 13th April of that year. It should also be remembered that, on 30th June, 1896, the British protectorate

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was extended to the whole of Bunyoro, and the British Special Commissioner, later Governor, was given overall authority in the five provinces.

African resistance to British rule in Bunyoro was very strong and constant. But after a long fighting, King Kaberega of Bunyoro was defeated. Both Kaberega and Kabaka Wanga of Buganda were taken and exiled in 1899 to the Seychelles by the British colonialists. The question of African resistance to colonial rule in East Africa will be analysed in Chapter Five. Here, it suffices to stress that up to 1894, British overrule in Uganda was confined to Buganda, and British influence in it was gradual. The period between 1894 and 1919 saw the consolidation of the Uganda Protectorate. The British rejected Buganda’s demands for autonomy and independence from the rest of Uganda. Thus the British declaration of a protectorate over Buganda marked the beginning of the formation of the territorial unit that became Uganda. This was obviously the result of the support given to Buganda by the British during Buganda’s battles with its neighbouring Kingdoms. The latter suffered territorial annexations to Buganda and the British. In this way, Buganda’s territorial borders were extended, and a united Uganda came into existence.

As for the imposition of British rule on the area between Uganda and the coast of East Africa, the following events should be remembered. The British Government knew that the IDIA Company could no longer function properly, owing of course to the bankrupt condition the Company found itself in. So, the British Government asked the Company in 1894 to surrender its Charter and concession in return for a £250,000 compensation.

In March, 1895, the Company accepted the British Government's proposal, and a British protectorate was proclaimed at Zomba over the British colonial territory between the east coast of Africa and Uganda on 1st July, 1895.7

Thenceforth, that territory was to be known as the East Africa Protectorate (E.A.P.). Precisely, that area of land lay between the Tana and Umba Rivers. In 1896, the area was joined with the Coast Protectorate, and the resulting merger was referred to simply as the "East Africa Protectorate".

Thus the E.A.P. comprised two portions: the protectorate area and the colony area. The former portion was, as has been explained, that part of East African territory which the British held on lease from the Sultan of Zanzibar. Apart from being known as the Coast Protectorate, it was also referred to as the "Coastal Strip", the "Coastal Belt", and the "Coastal Zone". The Sultan of Zanzibar exercised authority over the Strip. From 1920, it became known as the "Kenya Protectorate", following a British Order-in-Council issued in the same year.8 That arrangement between the British Government and the Sultan of Zanzibar meant that the Coast Protectorate would in the future be administered as an integral part of the colony area, i.e., the territory between the Coastal Strip and Uganda.

While on Zanzibar, two points are worth noting - the status of Zanzibar at that time, and the legal basis of the

7 In his "Origins of European Settlement in Kenya" - O.U.P., Nairobi, 1966 - Morrenson gives June 15th as the date of the proclamation of British Protectorate over the territory.
To see the contribution (row 190) of 1978. For instance, concerning 1977–1978.

People who were to be exposed to the pollution from the chemical plant are now in the zone. In 1960, the chemical plant was given the name of "The Honey Processors", and the name has been carried over. In 1960, the chemical plant was worth over the zone. In 1960, the chemical plant was carried over. Though the election of the chemical plant under British Petroleum, its order had been under the 1964/1929. A British Order-in-Council was issued on the.

Although the situation was brought under British Petroleum, the question arose whether the law and integrated. In that way, the public funds and received direct power. "Look after it, maintain a situation over the date. Thus, position controlled the great.

The government to administer the date with the great.

A situation with the great for the administration of the great. From the "position" drop, it was clear that the Burton ended in December 1969. A "position" however, it was earlier the Izan had grown because of the great.

The procedure of the Burton was reached in March June 1969. To the great at some point above the great or the situation of the great. However, the Burton needed to fall under a procedure. A great, but by a representative, who sees the Burton as necessary. In January we can consider it.

We see that the situation of a procedure is necessary. By considering the only the procedure. The other procedure, the great for the reference was justified. The procedure of the great. A general we need to refer to as a great decision.
As for the second portion or the Colony area of the East Africa Protectorate, it was the more important part of the Protectorate. The Colony area was constituted a Crown Colony in 1920. From the following year (i.e., 1921) onwards, the name "Kenya" was applied to the E.A.P. as a whole. The expression "Colony and Protectorate of Kenya" began to be used.

What must be remembered now is that the division between "Kenya Colony" and "Kenya Protectorate" was nondescript. It was nominal because, as we have seen, the Protectorate was administered as an integral part of the Colony. In fact, the latter's Legislative Council (Legco) legislated also for the Protectorate.

The period 1896 and 1903 was nasty for the British colonial administrators. Instead of administering the newly acquired colonial possessions, they actually tried to pacify the warlike tribes in that area of the African continent. The first British serious thought to develop the E.A.P. was nurtured between 1901 and 1903. Ironically, however, the new E.A.P. was at first administered from Zanzibar. Arthur Hardinge, the British Consul-General in Zanzibar, became the first British High Commissioner of the E.A.P. British supremacy was thus ensured on the coast of East Africa, and the Commissioner now had power over both the Protectorate and the Colony of Kenya. Hardinge combined the two posts in order to avoid additional expenses. Following the completion of the Uganda Railway in 1901, the centre of government and commercial activity was transferred from Mombasa to Nairobi in 1906/7. In 1905, the government was officially moved from Mombasa to Nairobi.
To sum up. To the British, the interior of the East Africa Protectorate was, up to 1902, simply the road to Uganda: Mombasa–Teita (Taib) Hills –Masakosu–South Kiasnu–Lake Baringo–Uasin Gishu plateau–Mumia’s–Buganda. That route was called the "Solarter Road". The East Africa Protectorate was regarded as an appendage to Mombasa. Thus, the British believed that the significance of the E.A.P. lay solely in its value as a corridor or conduit to the fertile country around Lake Victoria. The E.A.P. actually extended inland only up to the eastern wall of the Rift Valley. In Kavirondo on the north-west corner of the Lake, a Protectorate official had been posted in 1894, to Paramount Chief Mumia’s, the traders’ entrepôt, to maintain a supply post on the road to Uganda. Mumia himself was thereupon glad to transform his former association with the coastal traders into an alliance with the British.

Wherever they went and established themselves, the colonizers soon realized that to satisfy their demands and realize their objectives and plans, would undoubtedly be a tough and challenging task. They realized that the task could not be performed without such ado. It thus became clear to them that the fulfilment or otherwise of their colonial aims and aspirations depended on many things. It depended, for example, on the kinds of people that were colonized, on their attitudes towards their new, alien masters, on the functional nature of the doctrines and attitudes which these masters evolved and adopted towards the colonized peoples, and so on. In the circumstances, the Colonizing Powers were forced to lay down certain kinds of colonial policies and practices which serve as
instruments for imposing their colonial rule on the colonised peoples and their territories.

Portugal, for instance, insisted that its colonies were provinces of the mother country and in no sense subordinate to it. Portugal maintained — and still maintains — intact a doctrine and policy of assimilation characterised by little education, political evolution, or economic development.

As for Belgium, she fostered the rapid industrial and commercial development of the Congo, but Belgium did not start a process of technical and political education for the native, African population until some five years before she granted independence to her colony in 1960.

With regard to the United States, the policy was that its main colonial possessions should either be admitted to the Union (as was the case with Alaska and Hawaii in 1959), or achieve self-government accompanied by military, economic, and foreign policy links with the State Department in Washington (as occurred with Puerto Rico). For its Pacific Ocean possessions and Trust Territories, however, the United States had no plans for independence.

With regard to the other Super Power — the Soviet Union — it is of interest to note that it denied having colonies, and insisted that culturally, non-Slav regions were freely federated with the totality. The Soviet policy in Central Asia combined systematic assimilation of tribal and Islamic socio-economic institutions with a shifting policy of encouraging, alternatively, local cultural autonomy and rassification.

The French colonial policy and practice was quite different. France denied, for many years, the possibility of adaptation and autonomous development for its colonies. She insisted formally on the full assimilation of colonial inhabitants and their territory into the French cultural and political system. No local self-government was allowed in any French colony, and thus administration was controlled from Paris. Educational policy aimed at the training of a small elite of colonial subjects as good Frenchmen. After 1945, however, 'assimilation' as a goal was replaced by 'association'. In the period following the Second World War, France granted full independence to most of its colonies, including Morocco, Tunisia and Algeria in Africa.

France also admitted that self-government within the Federal French Union was desirable, and accordingly widened the franchise in her colonies, reduced the privileges of French-identified natives and increased local legislative and executive powers. It should be borne in mind that France, like most of the other Colonial Powers, conceded independence to her colonies only as a result of war, or the menace of it. Thus, wishing to avoid full independence for most of her colonies, France preferred a federal tie through colonial and metropolitan representation in the purely advisory organs of the French Union, the closest possible relations with Algeria, and special military and economic ties with Morocco and Tunisia.

It should also be stressed here that, as in the case of Britain, the severest cases of colonial conflict occurred when the French metropolitan Government sought to mediate between nationally self-conscious natives and alienable groups of European immigrants unwilling to adjust to African
nationalism. The French Constitution of the 5th Republic, enacted on 4th October, 1958, provided for self-determination on the part of Overseas Territories. Of the eighteen Territories existing at that time, only Guinea chose complete independence with no association with France. Five voted to remain as Overseas Territories, and the remaining twelve (all African) voted to become autonomous republics within the new French Community. These, while continuing their association with France through the Community, became independent by the end of 1960.

With regard to British and German colonial policies and practices in East Africa, it is essential to point out that, broadly speaking, the common aim in these colonial policies consisted of two significant elements: the divide et impera ("divide and rule") policy, which was basically a method of imposing alien rule by force; and the determination to suppress and eventually abolish slavery and the slave trade, and to protect British and German interests in East Africa. This central aim and policy of the German and British Colonial Powers will become clearer in the course of this analysis.

At this juncture, however, two points should be mentioned and remembered. The first concerns the belief of Britain's born leader and greatest colonial administrator in Africa - Frederick William Lugard (1858-1945). Captain, later Lord, Lugard believed that it was the duty of the white man to assist the African. Lord Lugard's desire to help prevent the continuance of the slave trade was the main reason that urged him to go to Africa. His belief that the white man had a moral obligation to 'civilize' i.e. to develop the African had been expressed by Dr. David Livingston, who had declared his aim as an being to introduce the Negro family into the body corporate of nations.
Thus, from the beliefs of the early European visitors to East Africa, it appears that, not only the missionaries like Livingston, or the explorers like Lugard, but also the businessmen - like Mackinnon - had, as their primary aim, to develop ('civilize') East Africa rather than to make a profit in that region of the world.

The second point is that the divide-and-rule policy was expounded in the "indirect rule" system, which we shall be examining shortly. What must be stressed now is the fact that the divide-and-rule policy not only promoted sharp, tribal divisions, and differences in the colonies, it also encouraged corruption in the colonized societies. In Kenya, for instance, the system of "Native Reserves" introduced by the British colonial administrators encouraged tribalism particularly after World War I. The policy of "Native Reserve" called for the protection of Africans in their own area, and to be given the same security there as the Europeans in the White Highlands. The divide-and-rule policy impoverished the African, divided Africans and made them not only hate, but also envy and compete with one another. It was a system of local government that promoted the evil policy of tribal and racial reservations and preservations within tribal and racial borders. Successive British Governments promoted racial policy in East Africa, but especially in what became known as Kenya. In the latter, also called the "white man's country", the Europeans dominated politics and economic power. The white settlers believed that Kenya and the other East African territories would remain in their hands indefinitely.

They regarded Africans as servants and farm workers who provided a cheap labour force. That prediction was, as we shall see, false. The Africans rejected the racial discrimination policy right from the start of alien rule in East Africa. In the eyes of the Africans, the European colonial policies in East Africa were hypocritical. For, the declared Government policies were quite opposed to the practised policies, i.e., to the actual practices, of the colonial administrators in East Africa. Thus in the case of Britain, successive British Governments for a long time did nothing to stop the white settler exploitation of the native peoples in East Africa. The settlers were always supported in their exploitative plans both by the colonial administrators and the British Governments.

That was definitely against the historic and long declared purpose of British colonial policy. The policy was one favouring fair representation of all the major communities in the local legislatures, which have always been the organs of self-government.

The main British interest then in East Africa was political. The British officials, therefore, rightly believed that their ultimate task was to promote and spread British rule in East Africa. Thus, according to the historically declared purpose of British colonial policy, the primary duty and aim of British colonial rule in East Africa was to promote the well-being and advancement of all the colonial peoples. It was essentially to safeguard native interests and train Africans in such a way that they should eventually stand on their own feet. The significance of this British colonial policy hence undoubtedly lay in one thing only. The thing was that the eventual achievement of self-rule by the colonial peoples and territories con-
Concerned was the main objective of British colonial policy in general. Self-rule in East Africa had hence to include a proper provision for all the main communities which had made their home in that part of Africa.

Because of the great challenge to that objective from the white settlers, it was absolutely essential that Britain should maintain her control until the assistance given to the indigenous peoples in developing their own resources and institutions had set them so far on the road to progress that they could take their full part, together with the political and economic life of the East African region.13

When we examine British colonial policy in East Africa from the historical viewpoint, we find that up to 1896, the policy consisted of communications and strategy. The first British colonial, administrative involvements in East Africa were caused not only by the desire - as we have seen - to abolish slavery and the slave trade in that region of Africa, but also by three other factors:— Britain's wish to control Egypt, the headwaters of the Nile (the Nile Valley and the white Nile) and Uganda; the need to secure the sea-route (Suez Route) to India, and Britain's determination to control the territory between Lake Victoria and the East African Coast—(what became the E.A.14). The French were Britain's greatest menace. To secure communications with Uganda, the British Rosebery (Prime Minister) Government decided, in June 1895, to construct the Uganda Railway to link the coast of Africa to the interior of East Africa.

13 For views supporting this argument, see, for instance, the speech by the British Secretary of State for the Colonies delivered in the House of Commons on 19th December, 1896 — Col. 1162
In the East Africa Protectorate, the purpose of British policy was not limited to the fulfilment of what was regarded as Britain's moral obligation of bringing prosperity to the native inhabitants of the Protectorate. It was also to work for the rapid financial welfare of the Protectorate through encouragement of immigration, especially of the European settlers and of capital investment, by European, mainly.

As for British colonial policy in the British territory of Uganda, the special thing about Uganda was that, comparatively speaking, Uganda's successive Governors stressed the need to develop Africans and their land and economy. The Africans had to be consulted before any alienation of their land could be effected, for instance, Developments in Uganda were hence the reverse of those in Kenya and Tanganyika. Explaining, for instance, the British colonial administration's policy towards local government authorities, the 1951 Uganda Protectorate Report declared:

"They (i.e., local government authorities) are designed to ensure the closest co-operation between chiefs and people, to provide the people as a whole with some experience of local government on democratic lines, to promote the growth of executive responsibility and, in the case of the Agreement Districts (i.e., the Ankole, Busoga, Enyoro and Toro Kingdoms), to supplement the traditional personal relations between ruler and ruled with more democratic institutions."14

From the contents of the Report, we see that even as late as the 1950's British colonial policy still had, as its core, the idea of self-determination "within the British Community". Thus, according to the 1950 British Colonial Report, the central purpose of British policy was still to guide the colonial territories to responsible self-government within the Commonwealth, an

in conditions ensuring to the colonial peoples both a fair standard of living and freedom from aggression from any quarter. It must be re-emphasized here that the avowed aim of that policy was ultimate self-rule and eventual independence.

In the case of Uganda, the obstacle to British policy was, of course, Buganda's strong separatist attitudes. The Lukiko (Parliament) in Buganda and the entire people there demanded an increased isolation and a strengthening of the special position of Buganda, which would eventually emerge as a separate entity. This was in 1953. The British, however, rejected Buganda's demands for autonomy and separate statehood. That was indeed in line with the British overall policy in Uganda, which was to unite all the Uganda Kingdoms into one country and to develop Uganda primarily as an African country. In the East African context, therefore, the British developed Uganda uniquely on an individual basis. They encouraged the development of agriculture and the growth of cash crops. From the foregoing arguments, one can safely deduce as follows:

The declared British colonial policy (rule) in East Africa was essentially a Pax Britannica policy. The essence of the "Pax Britannica" lay in bringing peace, prosperity and justice to the less fortunate peoples of East Africa. After the creation of the British Commonwealth, the British colonial policy was dominated by the hope of persuading its restive non-European colonial peoples to remain affiliated with Britain through the Commonwealth. Britain's long-range purposes of colonial policy included:

a) Education calculated to train a class of native leaders capable of manning the institutions of self-government and a modern economy;
b) Economic development and foreign investments to raise the living standards of the colonial peoples, and to develop agricultural, mining, and simple industrial facilities, sufficient to assure the colony an income from the world market when the colony achieved independence; and

c) The gradual introduction of self-government, advancing from self-rule at the village and district level to the establishment of colonial legislatures with elected majorities and increasing autonomous powers, and ending with the choice of a native cabinet from among the freely elected parliamentarians. At that stage, independence was achieved, and the former colony was free to decide whether to remain in the British Commonwealth. Burma and Ireland thus refused to remain in the Commonwealth. Other former British colonies accepted Commonwealth membership. Kenya, Uganda, Tanganyika and Zanzibar were among the latter group.

Britain sought to export her institutions and values, but permitted native groups to adapt these to their requirements as they saw fit. Colonial reforms were sometimes accelerated by unrest in the colonies and, as we shall see, by pressure from the United Nations.

The German colonial policy in East Africa was quite different. The Germans ruled Tanganyika with a very tough hand. Their rule was very harsh. They were ruthless and unflexible in character, and austere colonial administrators. The Germans had to be tough because African resistance was strong and persistent. The Swahilis described the German administrator Zelewski as "Brundo"—'the hammer'. Edward von Liebert, for example, who became Governor of German East Africa in 1896, summed up the attitude of the German administra-
ratators by saying that it was impossible in Africa to get on without cruelty. The brutalities of the Germans, their use of the Kiboko - 'the whip of hippopotamus-hide' and the frequency with which the death sentence was lightly awarded were characteristic of the perfidious methods of German colonial rule in East Africa.

The German administrator Von Weizsämmel, for instance, could "neither bribe a single tribe in German East Africa to side with him, nor play off missionary against missionary", and thus "a seed had been sown which was to bear fruit in the years of tribulation lasting until 1907."15

Of all the German colonial administrators in German East Africa, Dr. Karl Peters is the best remembered. And this is because Peters was an exceptionally cruel and ruthless administrator. His methods of rule were unacceptable not only to the Africans, Arabs and Asians, but also to the German settlers in German East Africa. At home, the German Social Democrats in the Reichstag (Parliament) also bitterly opposed Peters' inhuman methods of colonial rule. Peters kept a harem of African women, and mercilessly killed those that escaped and were recaptured later. Peters even castrated those that followed up their wives or fiancées he had accumulated to himself. The Africans remembered Peters as "Mkono-ma-damu", that is, 'the man with the bloodstained hands'. Peters was eventually indicted by a German judge "for excessive cruelty to Africans and for misuse of official power."

Peters died in 1918, but was rehabilitated by Herr Hitler in 1934 as a "model though stern, colonial administrator". Adolf Hitler then issued a series of propaganda stamps in honour of Ern Peters.

German colonial policies and practices in East Africa were hence characterised, among other things, by:

(a) Extreme cruelty exercised by the German colonists towards the Africans;

(b) Extreme cruelty of the German agents, called akifaa - who were Swahilis and Arabs - while administering groups of villages;

c) Expropriation of the African lands and the granting to them to the German Emperor (Crown);

d) Forced labour of the Africans on the alien settler plantations, and of the Government public workers (abundant but priceless African labour force); and

e) The introduction of a hut tax of 3 Indian rupees per year, despite the fact that the Africans had no money.

We shall see that these colonial policies and practices sparked off a series of African negative reactions against the German colonial rule in German East Africa. The African grievances reached a climax after 1894, and ended up in numerous rebellions against the alien rule in East Africa.

What must be remembered now is that the system of harsh, direct rule was started in German East Africa by the Imperial German East Africa Company. It must also be remembered that the harsh system of colonial rule, together with the land alienation and forced labour policies applied by the German colonial administrators, not only caused the rebellions, they also caused a take-over of direct colonial administration.
first by the Foreign Office, and later by the Colonial Office in the Imperial German Government. That formally happened, it will be remembered, in 1891—the year when Karl Peters was appointed as the Imperial High Commissioner for Kilimanjaro.

At this juncture, we should also remember that German East Africa was far behind, economically, its neighbouring British Protectorates. The reasons for that situation were: the devastation and expense of perennial military operations; the lack of an adequate system of transportation; and the drastic fall in the world price of rubber which was a vital commodity for the German territory in East Africa. It should finally be remembered that the central German colonial policy in East Africa and indeed elsewhere was that of "direct rule". The British basic colonial policy was, on the other hand, for a long time that of "indirect rule". In fact, the indirect rule system was started by the British. The indirect rule system was, however, later applied also by the Germans in their colonies. Thus, these two types of rule were available to the German and British Colonial Powers. The direct rule system was first applied by the Chartered Companies, on behalf of the Colonising Power. And when direct management of the colony was transferred to the Colonising Government, direct rule was done by the Government's colonial administrators, who were mainly civil or ex-civil servants, retired army officers and the like.

The indirect rule system was applied by traditional and other (appointed) local rulers. It should be noted here that the system of indirect rule continued to function even after the transfer of direct control and administration to the Government of the Colonial Power concerned. By the
expression "indirect rule" was generally meant the heavy reliance by the early colonial administrators upon the work of the local "officials" who functioned under 'instruction'. Indirect rule was, therefore, a system of mixed administration. It was considered a practical solution to the problems of administering colonial territories where communications were poor, and the number of European functionaries meagre. The Colonial Powers used the already established, traditional African authorities where possible as the basis of local government, while European officials occupied higher posts in the Administration. The ultimate responsibility for government was hence retained by the Europeans.

Thus, owing to lack of trained administrative officers, colonies were governed "quite cheaply" by using traditional authorities at middle and lower levels - chiefs, emirs, sultans, or other traditional rulers in service as agents of imperialism, collecting taxes of the central government, and administering a mixture of its laws together with their own. This is why the indirect rule policy was regarded as a kind of 'native administration'. The system was formulated when a colonial country or territory became a protectorate or protected state.

In East Africa, the early colonial administrators relied on the Sultan of Zanzibar's former system of officials, which the Germans in German East Africa tended to favour, or tried to use the established African political institutions. What we must remember is that, in areas such as Buganda, only a few of the African authorities were seemingly important. That led to the use of some, and not all, of the local rulers as a means of governing. The indirect rule system, it should...
be restricted, was applied mainly in British colonies. It was, for instance, very well developed in the British Protectorate of Northern Nigeria by the system's pioneer Lord Lugard and his pupil, Sir Donald Cameron under him. Lugard also applied the policy in Zanzibar and in Uganda's Buganda Protectorate. Sir Cameron also applied the system in Tanganyika Trust Territory, as we shall see below. The system was also applied by Sir Harry Hamilton Johnston in the Protectorate of Buganda. Incidentally, Lugard, Cameron and Johnston were the leading exponents of the British initiated policy of indirect rule. In general, however, the indirect rule system was closely associated with Lugard's name.

As has been explained, the Germans imitated the British and inscribed the indirect rule policy in their own (German) colonial policies. In what later became Tanganyika in East Africa, the system of indirect rule was adopted during German colonial rule in that territory. The territory was divided into 21 districts administered by 21 German administrative officers: an Administrative German Officer, who was the Head of a District; an Akio (usually an Arab or a Swahili), who was the sub-head of a sub-district. The Akio was usually an alien to the people he controlled; Headmen, and a Jumba - (a sub-headman). All these administrative officials aimed at the elimination of tribalism in German East Africa. It should at this juncture be noted that the present lack of open tribal clashes in Tanganyika owes its origins to the German colonial rulers, who deserve praise for that marvellous achievement. The Germans were harsh administrators, but they established a principle - lack of open tribalism from which Tanganyika (or Tanzania for that
German East Africa was actually ruled from Berlin through a Governor assisted by an official Advisory Council. The indirect rule system under German rule over their East African territory was also adopted further south in Bukoba and Ruanda-Urundi. There, strong local rulers existed whom the Germans utilized. During the First World War, the Belgians fought against the Germans in East Africa. The Germans were, as we have seen, conquered, and German East Africa was divided between the British and the Belgians.

The origins of British administration over German East Africa can actually be traced to the end of 1916, when Mr. later Sir, Horace Byatt was appointed administrator over the northern half of the country that Britain controlled. Byatt introduced an ad hoc administration. In January 1919, Byatt's rule was extended to the whole of the country. In July, 1920, British administration over Tanganyika took on a more formal basis by the promulgation of a Tanganyika Order-in-Council. By that Order, Byatt's title was changed to that of Governor. He thus became the first British Governor of Tanganyika. Thenceforth, he would have the power to make ordinances "for the good government of the country", with the advice of a completely official Executive Council, comprising: the Chief Secretary, the Attorney-General, the Principal Medical Officer, the Treasurer, and a High Court for Criminal and civil cases.

Sir Horace Byatt was succeeded by Sir Donald Cameron in 1928. Sir Cameron's name is the greatest in the history of British rule in Tanganyika. Before coming to East Africa, Cameron had, as has been explained, served in Nigeria under
Lord Lugard. Cameron had greatly been influenced by his boss's (Lugard's) system of indirect rule. Disagreeing, therefore, with Byatt's method of direct rule, Cameron introduced a system of indirect rule in Tanganyika, which Cameron called 'Local Native Administration'. The idea was to give certain responsibilities to traditional rulers in Tanganyika, while keeping ultimate local power in the hands of the officers in his administration. The system was hence a method of governing the Tanganyika Africans through their own indigenous or native institutions, instead of communicating to them directly. Cameron asserted that his system was based on expediency. Administrative officers were, as has been explained, scarce, and money short. Hence traditional institutions had to be preserved and improved.

Cameron advanced the belief that Africa was to be left entirely for the Africans, who should be given every opportunity to participate in public affairs affecting them, whether directly or indirectly. He strongly believed that one day Africans would, or should, rule not only Tanganyika, but the whole of East Africa as well. Cameron's central aim was hence to develop, or make Africans govern themselves eventually. All foreigners, i.e. Europeans, Asians and even Arabs had to remember that all the time. Cameron's dream came true 56 years later when Tanganyika's rule was transferred to Africans (1961). That transfer was followed by other transfers of power to Africans in Uganda (1962) and Zanzibar and Kenya (1963).

Sir Cameron was an austere but competent administrator. In his method of 'Native Administration' in Tanganyika, he first selected the most able natives that were accepted to the African people. Cameron endowed the chiefs with administrative
duties and powers. The hut tax and poll tax, the native court and market fees, besides the ferry tolls, were thenceforth to be collected according to clearly defined rules. Governor Cameron personally talked to Africans in Tanganyika and attended baraza (meetings) summoned by chiefs. That Cameron's style and practice had never been known during the rule of his predecessors. In fact, Africans in Tanganyika had never seen a Governor before Cameron. On 7th December, 1926, Cameron inaugurated a Legislative Council (Legco) of 26 members. Of these, 13 were senior officials of the Government, and 7 were nominated members - 5 Europeans and 2 Asians.

After 1928, unfortunately, Cameron decided to exclude Africans from the Legco and they would thenceforth be represented in the Legco by the Governor, the Chief Secretary, and the Secretary for Native Affairs. No doubt, Cameron's decision to deny Africans direct representation in the Legco was contrary to his initially declared stand on the pre-eminent position of Africans in the British colonial territory of Tanganyika. The reasons given for the exclusion of Africans from the Legislative Council was the lack of sufficient knowledge of the English language. Education therefore conditioned indirect rule and the preparation for self-rule and eventual independence. That was why the Cameron Administration in Tanganyika placed the greatest emphasis on education. The idea was to elevate Africans to the first and top place.
Cameron was the second Governor of Tanganyika. He was, however, the first Governor of Tanganyika Territory. He ruled from 1925 to 1931. Cameron left Tanganyika in 1931, after having strongly opposed the idea of 'Closer Union' in East Africa, that was penetrating slowly into Tanganyika. Cameron had further abolished in 1928 the whipping and flogging of Africans by administrative colonial officers. He had banned head porterage and had also sponsored and supported the foundation of the Tanganyika African Association (T.A.A.).

T.A.A. was an African political organization created to operate in urban areas where the Germans had destroyed it above the point of its revival. T.A.A.'s main aim was to provide Africans with a further means of developing self-reliance and responsibility.

In the 1950's - from the late 1940's - the British Government streamlined Native Administration and introduced democratic methods in Tanganyika. Every tribe had its own tribal council, court and other tribal institutions, schools, dispensaries, and so on, based on the elective principle. All decisions were to be taken by the Chief-in-Council, and not just by the Chief alone.

The system of indirect rule had its own pros and cons. The pros of the system included the following:

(a) Owing to lack of finances, the European (British) administrative officers could not be employed to communicate with African peoples, whom, after all, they regarded to be primitive. Hence the lack of funds and of enough trained personnel did not allow for a system of direct rule.

(b) The indigenous institutions were undoubtedly democratic, for, all the members of a tribe understood their purpose and
participated in their institutions. British forms could be grafted on these institutions in due course, and could eventually bring modern democracy to East Africa as a practical and workable form of government.

The cons of the indirect rule method were many and varied. Many mistakes were made, especially when newly arrived European functionaries picked apparently influential tribal figures to act as links in the chain of command. Despite the endeavours of the colonial administrators to promote native rule, there were impediments when new provincial administrations were introduced. The Provincial Commissioners and the District Commissioners superseded the native authorities. The other disadvantages of the indirect rule method included these:

(a) The indirect rule system did, as was explained above, encourage tribalism, which has always been one of the greatest diseases in the developing and former colonial societies. The strict demarcation of tribal boundaries in Kenya was a good case in point. The system thus encouraged and strengthened tribal splits and led to "regionalism" (majimbo).

(b) The indirect rule method was also, as we have observed, an enforcement of the divide-and-rule policy, by which tribal groups were set to fight against one another.

(c) The system further made people turn inwards to their tribe, and hence backwards to the past, instead of forward and outwards to the ideas of nationhood and Pan-Africanism.

(d) The system deterred progress towards East African unity.

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For further information about Cameron and the indirect rule system, see Judith Listowel, Op. Cit., page 75 ff.
(e) Cameron's exclusion of Africans from the Lepco in Tanganyika and inclusion in it of more foreigners - after 1929 - on the grounds that Africans could not speak English was the lamest of excuses.

(f) Lastly, but not least, the system of indirect rule failed to train Africans for "Western" posts, especially in the civil service.

As we have observed, the British assumed, particularly after World War I, that they would rule East Africa for a very long time. The Germans were, on the other hand, pioneers in the scientific search for, and introduction of, new crops such as sisal and coffee. The colonists soon realised that they had challenging responsibilities to raise the living standards of the East African inhabitants and to introduce better farming methods, better medical, transport and educational facilities, and so on.

The question of administrative and structural organisation of the colonies in East Africa needs a closer examination here. As years passed by, a colonial administration in East Africa was developed both at the centralised and decentralised levels. We have seen that, before being replaced by the British, the Germans had divided German East Africa into twenty one districts, nineteen of which were civil, and two military districts. Each one of them had been placed under a German District Administrator called Bezirksamtmann. Under the latter, there had been lower administrative officers, both at the vertical and horizontal levels.
The British also adopted a similar administrative and governmental policy in East Africa. The British High Commissioner, for example, divided, as far back as 1895, the East African Protectorate in four provinces, and districts, with Sub-Commissioners and District Officers respectively at their head. The provinces were: Seyyidie, Tanaland, Jubaland and Ugambe. The first three stood along the coastline, where one single Coast Province now stands. Most of the hinterland between Mombasa and the Rift Valley constituted Ugambe Province. In 1925, however, Jubaland Province was ceded to Italy, as a reward for Italy’s support of the allied cause in World War I. The Government Departments of the Hardinge Administration were formed and manned mainly by the former IBEA Company’s staff. The body that advised and assisted Hardinge in the government of the Protectorate was called the East African Protectorate Council, which Hardinge had formed once he became High Commissioner of the Protectorate. The Council consisted of Hardinge as its Chairman, and Senior British Officials in Zanzibar. They included Lloyd Mathews, the Sultan’s First Minister. The institution of High Commissioner was replaced by that of Governor. The Governor was, in reality, the overall administrator of the Colony. He was the Colony’s Commander-in-Chief of the Armed Forces, and had immense statutory and discretionary powers. He was answerable only to the Colonial Secretary in London.

At the decentralized level, there were organs of provincial, district and local administration. Provinces were headed by Provincial Commissioners, and Districts by District Commissioners. Under the latter worked District Officers and under these were the police and armed forces. The British policy in the early years of Kenya Colony is fully discussed in: (a) C.H. Mungoan: “British Rule in Kenya: 1895 - 1912 - C.U.P., London, 1966 (b) Marjorie L. Ridley: “British Policy in Kenya Colony” - Thomas Nelson and Sons, New York, 1937, represented by Frank Cass and Co. Ltd., London, 1966.
Provincial Administrators had great powers over day-to-day affairs of Africans within their respective geographical areas. The duties of the administrators included: supervising the collection of hut or poll taxes; supervising Native Authorities; making, or authorizing Native Authorities to make local regulations controlling Native Courts; and performing the role of magistrates to natives. The colonial administrators in East Africa enacted statutory instruments and regulations for the smooth administration of the colonies. The Councils of Elders, established before alien rule was imposed in East Africa, were broadly utilized, as organs in spheres with which they were familiar, i.e. the Native Tribunals.

In Kenya, for example, a Village Headmen Ordinance was enacted in 1902. The Ordinance provided for the appointment of "official headmen", whose responsibility would be to maintain and keep public roads in repair. The headmen were referred to as "chiefs", although they held the position of chiefs in a few cases only. By the Native Authority Ordinances of 1912 and 1937, the powers of the headmen were extended. They now became responsible for the execution of official policy in such matters as the control of grazing, the cutting of timber, and the manufacture of liquor. The headmen were simultaneously the principal agents for tax collection in what were called the Native Land Units. The area under a headman became known as a "location". And by an amendment in 1924 to the 1912 Native Authority Ordinance, the institution of the Local Native Council was brought into existence. The District Commissioner became Chairman and Chief Executive Authority, and an African his Deputy, of the Council. At first, each tribe had a separate Local Native Council. Later, however, one Council only existed in each District.
The main job of the Councils was to levy rates and pass resolutions on issues affecting purely local native administration. The resolutions had the legal effect of by-laws once they were approved by the Governor. From 1948 onwards, local councils assumed responsibility for the construction and maintenance of dispensaries, cattle dips, markets, all primary education, and the maintenance of smaller roads. Another ordinance was enacted in 1950. By that ordinance, called the African District Councils Ordinance 12, African District Councils (ADCs) were created. Thereafter, the Local Native Councils (LNCs) became known as the African District Councils. These ranked with the Municipalities and District Councils in the European areas as organs of the Kenya Local Government Board. The District Commissioner (D.C.) still remained the Chairman of the ADC, and African members to the Council were appointed by the Provincial Commissioner (PC).

Two observations must be made and remembered here. The first is that the application of the Local Native Councils (later ADCs) procedure was the most characteristic feature of the British policy in the administration of African affairs in East Africa during the colonial period. The second is that the system of local administration — or, for that matter, local government — as introduced by the British in East Africa has been withheld unto to-day.

At the decentralised level also, native tribunals were set up by the British Native Courts Regulations of 1897. Administrative officers were authorised to try all cases arising within a radius of 15 miles from a Government post. Outside this radius, certain tribal authorities were given contemporaneous jurisdiction. Native tribunals had, as their main duty, to administer native law and custom, but subject to reasonable
supervision. In 1907, and 1911, a Courts Ordinance and Tribal Rules respectively were enacted. Their central purpose was to empower the Councils of Elders, constituted under native law and custom, to exercise judicial powers.

Administrative procedures at the decentralised level in Uganda, Tanganyika and Zanzibar were similar to that in Kenya. In Tanganyika, Sir Donald Cameron was, as has been narrated, the father of native, local administration. He brought to Tanganyika the practices he had formulated during a service of sixteen years in Nigeria. Cameron made maximum use of the native authorities; chiefs and other natives, native councils and any groups of natives declared as such by the colonial Government in Tanganyika. There were also native courts which, as in neighboring Kenya, were the judicial organs of local administration. Municipal and Provincial Councils were also in existence.

In Zanzibar, local administration was performed by the akida ("political agents"), liwilim ("headmen", formerly "governors") and shehas ("elders" or "chiefs"). The liwilim, akidas and shehas were, in that order, a hierarchy of officials in Zanzibar. The last in that hierarchy were Africans appointed as headmen, but the Africans were responsible only for the control of other Africans. The native courts set up in Zanzibar administered Muslim law.

In Uganda, especially Buganda, a strong system of local administration already existed before the advent of the Europeans. In Buganda Kingdom, a well-established political organisation familiar to Europeans was in existence long before the alien arrivals. When the Europeans arrived, they used that strong traditional system as a kind of local rule. When the British signed an Agreement with the Buganda Ruler in 1900 and with the Rulers of the other Uganda Kingdoms in the following years, the
British created, in the then Uganda Protectorate, a system of local administration of three different types:

1. That existing in Buganda state (in Buganda Province);
2. That of the three Agreement States of Ankole, Toro and Bunyoro in the Western Province; and
3. That existing in the remaining 8 districts of the Uganda Protectorate, in the Eastern and Northern Provinces.

Native courts were also established in Uganda.

At the centralized level of colonial administration in East Africa after 1919, there were four essential organs: the Governor, the Legislative Council (Legco), the Executive Council/Exco) and the Judiciary.

The Judiciary was appointed by the British Colonial Secretary on behalf of the British Crown, but on the advice and consent of the Governor and Chief Justice. Although the Governor had no power over the High Court, the Crown's prerogative of mercy was vested in the Governor.

Constitutionally, the main task of the Legislative Council was to advise the Governor—its Chairman—but the Legco also made laws. Actually, the Governor had the duty to make laws "with the advice and consent of the Legislative Council"18. Such laws would be styled "ordinances", and the enacting words would be:

"Enacted by the Governor of ..." (e.g., Tanganyika). The Legislative Council comprised two classes of members: ex officio members and "unofficial" members.

The ex officio members were actually officials, i.e., British civil servants from the British Colonial Office. The "unofficial" members were non-civil servants appointed by the Governor of the Colony in question. It should, however, be noted

18 See, for detailed information, the "British Order in Council" of March, 1926.
that, in practice, all the Legco members were nominated by the Governor of the Colony concerned.

As for the Executive Councils in the colonies, each one of them usually consisted of three classes of members: *ex officio* members were those on the government side. They were in charge of the various governmental departments. Whitehall, London "know" of them. They all worked under the direction and responsibility of the Government. The so-called 'official' members were those whom the Governor appointed in (their) personal capacity to the Exco. The 'unofficial' members were *ex officio* members of the Legco on the government side, but unofficial members of the Exco (after 1957). One point is noteworthy here. The officials or *ex officio* members as they were popularly known, were initially the only persons with the right to belong to the Executive Council. The unofficials enjoyed that right only from 1918. At the beginning of colonial rule, these unofficials were European only.

There were five indispensable officials (*ex officio*) members of the Exco: - the Governor, who was the Council's Chairman; the Chief Secretary, who was the Head of the Civil Service. His was a role of Permanent Secretaries in all the Governmental Departments, answerable to the Governor; the Treasurer, who was in charge of Government finances; The Attorney-General - the Governor's legal adviser; and the Director of Medical and Sanitary Services, who was responsible for health matters. The development over the years of the institution of Exco turned these officials into Ministers. In Tanganyika, as we have explained, *ex officio* members became known as Ministers as from 1957, whereas the unofficials became Assistant Ministers, although they did not sit in the Executive Council.
A significant and most sensitive issue that occupied a special place in the history of European colonial policies and practices in East Africa was the question of land. Broadly speaking, land problems were similar in all the four territories of East Africa. However, cases existed which were characteristic of each of the said territories. Because of these particular cases, the writer deems it necessary to examine the land question as it existed in each of the four territories. It is only in this way that we can get a clear picture of the most important problem of land before and during the alien colonisation of Zanzibar, Tanganyika, Uganda and Kenya. The fact is that in all these territories, Africans owned land from time immemorial by custom and tradition. Africans therefore had, for many years, what one may call traditional rights to occupy the land they dwelled on and tilled.

In Zanzibar, for example, the traditional land tenure system practised by the Africans did not recognise any type of land alienation. This was still the situation even as late as the 1950's. As for the Arabs, however, they were allowed to possess — and they did possess land for more than one and a half centuries before independence — either by purchase, by grants from the Sultan, or by simple occupation. In these cases, land rights were not legally defined, but they were equivalent to freehold.

The African traditional and customary land tenure systems underwent great changes during the Anglo-German colonisation of East Africa. Those changes were brought about when the Germans and British introduced new, alien land policies in East Africa. This was done by legislation: ordinances, Orders-in-Council, and decrees were enacted by which land alienation was affected.
Thus in Zanzibar, it became compulsory to register all land transactions, although no system of record titles, nor a cadastral survey, existed. Because, however, Zanzibar was, by constitution, an Arab state under the protection of British Government, there was no claim by the British Crown to the disposal of any land in Zanzibar. But nevertheless legal arrangements were made between the British and the Sultan of Zanzibar concerning the occupation of Zanzibari land. In 1921, a decree, known as the Public Land Decree, was enacted. The Decree contained three key provisions:

(a) The Sultan was given full powers and rights over all waste besides unoccupied land and all land occupied according to tribal or local customs;

(b) Subject to compensation, the British Resident in Zanzibar could occupy any such land on behalf of the Sultan; and

(c) To be valid, any document authorising the disposition of such land required the 'ratification' of a (British) District Commissioner in Zanzibar. Another noteworthy land decree enacted in Zanzibar was the so-called "Land Alienation Decree No. 9 of 1939". By that Decree, no attachment of debt of African or Arab lands, or their produce, was allowed, and all land alienation was subjected to the control of a Board appointed by the British Resident in Zanzibar.

In what is now Tanzania, traditional land tenure systems were also retained, although with some modifications. What the alien colonial Governments (German and British) did was to enforce the existing traditional laws and make some changes in them. Customary land tenure methods differed from one tribe to another. For example, land sales were executed...
from the consent of the seller's kinmen, or of superior authorities - the Native Authorities. The European colonizers enacted rules to regulate succession and rents. Provisions were made for the registration of land, and for the collection of registration fees. Land rules to protect peasants were also introduced.

Under the Germans, documents of land titles were issued in German East Africa. As far back as November 20th, 1895, a German Imperial Decree proclaimed that all land in the German East Africa Protectorate was Crown Land. However, the right of the Crown was subject to the rights of private individuals and corporate bodies (juristische person) or of chiefs and native communities. The Imperial Decree further provided for the establishment of native reserves - for the cultivation of the natives. It also provided for the appointment of Land Commissions which would demarcate the native reserves. The result of this German land policy in German East Africa was heavy losses by the local African tribes of vast areas of land, which were alienated from them as Crown Land.19

When the British took over the administration of Tanganyika from the Germans, they also introduced their own land policy as they thought fit. That was all the more necessary, since the mandatory agreement (vide infra) under which the British Government assumed direct responsibility for German East Africa (Tanganyika) in 1920, vaguely outlined the policy to be adopted concerning rights in the native lands. The Agreement merely declared that no rights were to be enacted in favour of non-natives without the prior consent of the public authorities.

The wise thing that the Administering Authority did from the start was its adoption of a careful policy with regard to the extension of European settlement in Tanganyika Territory. Priority was thus given to native rights from the beginning, and even in the ordinances that were enacted over the years, emphasis was all the time placed upon the need to develop the native tribes, using, inter alia, the lands the Africans had occupied and utilized from time immemorial.

In 1920, a Tanganyika Order-in-Council was enacted which vested in the Governor the land of the territory of Tanganyika. In 1923, a Land Ordinance was enacted in which three major stipulations were laid down:

(a) All lands in Tanganyika were proclaimed to be public lands to be administered for the common benefit of the territory's inhabitants. Acquired lands were however, an exception;

(b) To be valid, however, the title to the occupation and utilization of any such lands required the consent of the Governor;

(c) Henceforth, the title would take the form of a certificate granting a right of occupancy for not more than 99 years. It was also provided that such title could be granted both to Africans and non-Africans.

When Sir Cameron became the Governor of Tanganyika, he adopted a land policy similar to the one he and Lugard had applied in Nigeria. In 1926, Governor Cameron made it quite clear at the East African Governors' Conference that he was not ready to adopt the policy of "Native-Reserves" as practised in neighbouring Kenya. In the same year, however, Cameron's Government offered 40,000 acres of land for occupation by non-natives.
in the Iringa District of Tanganyika. A particularly important land law enacted in colonised Tanganyika was the Land Ordinance of 1950. The main aim of the Ordinance was to require control (over land) which, while recognising African customary rights over land, would enable the Colonising Government to intervene in order to prevent undue alienation of land to non-Africans. That meant that, after 1950, an individual title over land could be secured only by the grant of a right of occupancy. Local Boards existed which comprised Africans only. An omni-racial Land Utilisation Board was established in 1950, whose aim was to recommend "on the measures to be adopted to encourage and develop a suitable system of agricultural land tenure for Africans giving the stability and continuity, required by modern conditions". In 1953, a Government notice was issued to the effect that Africans lawfully using or occupying land according to custom and tradition had rights of occupancy, even though no document had been issued.21

In Uganda, developments on the question of land were as follows. In 1922, the Buganda Kabaka signed an Agreement with the IBM. By that Agreement, the Kabaka was bound not to alienate African land rights to Europeans without the Company's consent. In 1994, the British still affirmed that the proclamation of a protectorate over Buganda did not give the British Crown any legal powers over the control of land. The turning point occurred in 1999, when the British Government decided to claim control over waste or unoccupied land in those Uganda Protectorates where no "settled" form of government existed, and land had not been appropriated either by the Sovereign, or by individuals.

21 See:— (a) Government Circular No. 4 of 1954; and
(b) Lord Hailey, Ibid.
The above stipulation mainly affected Ankole, Bunyoro, and Toro. For, the terms of the Buganda Agreement of 1900 clearly indicated that Buganda came under the class of a "settled" government, and all of Buganda's land which was not occupied was a gift of the Kabaka. A few months later, the British reached agreements with the Mukam and Chiefs of Toro, and in 1901 with the Muben of Ankole. There is no room here to elaborate the theme of the agreements concluded between the British Government and the Uganda Kingdom Rulers. What we must, however, remember is that, in the cases of the Kingdoms other than Buganda, the view was that these Kingdoms lacked a settled form of government holding the same position as the Kabaka of Buganda.

If we examine closely the provisions in the Uganda Agreements dealing with the question of land, we find that the Buganda Agreement reserved 3,000 sq. miles of land for the benefit of the Kabaka and his Chiefs, about 3,700 persons in number. The reserved land was not regarded to be a grant, but merely as property to which the British Crown had no claim. It was this land that became known, over the years, as the Buganda Mailo lands. It is, at this juncture, noteworthy that in 1908, an ordinance called the Buganda Mailo Law was enacted which granted to Chiefs and private land owners a right approximating to freehold. However, transfers to non-Africans required the previous consent of the Governor of Uganda and the Government of Buganda. All the remaining lands and forests of Buganda were vested by the Agreement in the Uganda Colonial Administration.

As for Ankole and Toro, the (British) Agreements with these merely stated that all "waste and uncultivated lands" would belong to the British Government. In their case only, small areas were
granted to the Rulers and a few prominent Chiefs.

The British land policy in Uganda was also outlined in other legal instruments, of which the following are noteworthy: the Uganda Lands Order-in-Council of 1902; the Crown Lands Ordinance of 1903; the Uganda Land Ordinance of 1910; and the so-called "Agreement" of 1930. The Lands Order-in-Council adopted by the British Government in 1902 gave that Government greater powers over land in Uganda. It was similar to the East Africa (Lands) Order-in-Council of 1902, concerning lands in the East Africa Protectorate. We shall turn to this soon. By "public" lands was meant all unoccupied lands. The Crown Lands Ordinance of 1903 detailed the terms upon which the land rights granted by the Order-in-Council of 1902 would be exercised. The Land Ordinance of 1910 paved the way for land grants for European enterprise. That meant that the Uganda colonial Administration could lease or sell Crown Lands inhabited by natives, but natives actually in occupation of any of the Crown lands could continue occupying the lands as of right until arrangements had been made for their removal, or for the payment of compensation to them. After that, the status of the natives would be that of tenants-at-will (Of the Crown).

Based on the Crown Lands Ordinance of 1903, was the Crown Lands Declaration of 1922. That Declaration defined as "Crown Land" all land not held on any documentary title. The so-called "announcement" of 1930 was an important legal instrument regulating land issues. It stipulated thus:

(a) All Crown land outside Buganda townships and trading centres would be regarded as being held in trust for the benefit of the Africans;
(b) No land appropriations would be made without full consultation with the African Local Government in question;
(c) Land alienations to non-Africans, barring small areas for residential purposes, would not be made except for undertakings which would promote the well-being of the inhabitants of the territory.

From the above stipulations, it is clear that the 1950 land "Announcement" had the intention of developing Uganda primarily as an African country, and not for non-African settlement. Since 1950, Crown Land was described as "African Trust Land". In 1956, the Colonial Administration enacted a law declaring all lands thither-to held as Crown Lands (barring those gazetted in townships) to be "African lands". Those who wanted to have a registrable title would get it. Full freedoms for the transfer of registered holdings to members of tribes and other communities would be decided by local Land Boards, to be set up for that and other similar purposes.

The story of colonial land policy in what is now Kenya is very quarrelsome. The history of land rights in that part of East Africa originated in the days when the IGEA Company obtained, as we have indicated above, rights over land from the Sultan of Zanzibar in 1887. Right from the beginning of the colonization of the East Africa Protectorate, the European and other alien settlers were able to acquire lands either by purchase from chiefs, or from the IGEA. Land regulations in the EAP were basically similar to those in neighbouring Uganda. In 1890, the British Government started to implement the view that the declaration of a protectorate enabled the British Crown to claim sovereign rights then in existence. This meant that the Crown was given the right to dispose of "unoccupied" lands.

With the construction of the Uganda Railway commencing in 1895, the resources of the EAP became very strained. This...
situation, plus the feeling that the highlands were well situated for European settlement and occupation, besides the British Government's plan to settle coolies on the lands opened up by the Railway, led the British Government to endorse the policy of European Settlement proposed by Sir Charles Eliot, the R.A.P.'s High Commissioner.

In 1901, the British colonial Administration in the E.A.P. enacted an East Africa (Lands) Order-in-Council. That Order introduced a definite control over land for the purpose of colonization. It hence gave the British Crown wider powers over land in the E.A.P. The land required for disposal had first to be brought into the class of Crown property, i.e., "all public lands" which for the time being were subject to the control of the Crown. As in Uganda, the expression "public lands" in the E.A.P. simply meant all those unoccupied lands over which the Protectorate would thenceforward have powers of control.

In 1902, an important legislation called the East Africa Order-in-Council was enacted. That Order established the terms under which "Crown lands" could be granted. It also permitted the lease or sale of Crown lands. Up to 640 acres could be granted. In 1902 also, a Crown Lands Ordinance was enacted in the Protectorate. The Ordinance confirmed the terms of the aforementioned East Africa Order, and provided that, in all dealings with Crown land, regard should be had to the rights and requirements of the natives. In particular, the E.A.P. High Commissioner should not sell or lease any land in the actual occupation of the natives. This significant provision led to the appointment, by the Kenya Administration in 1904, of a local committee which recommended the establishment of Reserves for Africans.
The ideas of registration of land boundaries and land transactions in Kenya were introduced in 1929 and 1942 respectively.

A short comparative analysis of colonial land policies in East Africa is essential. The above arguments enable us to state as follows. Zanzibar's 'special' (constitutional) status as an Arab State under the British Government's protection hindered not only the British Crown from claiming lands in Zanzibar, but also the British Government from formulating any land policy in Zanzibar, in the same manner as it did in Kenya, Uganda and Tanganyika.

As in Tanganyika, the question of land rights in Uganda was not influenced to the same extent as it was in Kenya by a policy of colonisation. Similarly, no serious 'alien-native' clashes over land existed in Uganda or Tanganyika as in Kenya. The main reason for this situation was the fact that the areas best suited for colonisation had been withdrawn from Uganda and transferred to Kenya in 1902 - as has been explained above.

The same can be said of Tanganyika. The problem of alienation of land (to aliens) in Tanganyika was not as serious as in neighbouring Kenya. There were three major reasons for this situation:

1) The Administration in Tanganyika favoured African priorities. In Kenya, the Administration favoured European priorities.

2) In Tanganyika, compensation and good conditions were given to the Africans who lost or leased their traditionally possessed lands to aliens. In Kenya, nothing of the sort existed.

3) In Tanganyika, land could not - especially from 1952 onwards - be allocated for non-African settlement unless it was not likely to be required for non-African occupation in the foreseeable future. Land was to be used for the development of Africans. In Kenya, the idea was to demarcate as "native
reserves' the worst land and allocate it to Africans, while the best land was to be delimited exclusively for the development and utilisation of the Europeans.

CONCLUSIONS AND OBSERVATIONS.

Alien rule in East Africa was imposed by the British and Germans. It should, however, be remembered that other European Powers also desired to impose their colonial rule on East Africans and their territories. The Belgians, for example, showed keen interest in the East African region as far back as 1876, a date that marked the beginning of the first European rivalry for the region. The Belgian interest in East Africa, however, as advocated by King Leopold II, was mainly directed towards Zanzibar. That interest became pronounced following the establishment of the African International Association of Europe, (A.I.A.) on 12th - 15th September, 1876. At the end of 1877, a Belgian expedition arrived at Zanzibar, and in 1879, Lt. Cambier established stations at Tabora and Karanga on Lake Tanganyika. He was soon followed by other Belgian expeditions. Between 1880 and 1884, three more Belgian expeditions were sent by King Leopold to explore East Africa. In 1884, however, Belgian interest in East Africa began to fade away and to be redirected to the Congo.

The French also scrambled for East Africa between 1878 and 1881. In 1878, for instance, a French priest, the Abbe Michel-Alexandre Deboise, reached Zanzibar and travelled on to Ujiji and Tabora. And in 1880, other Frenchmen visited East Africa. France, however, eventually found herself in the South, where she established protectorates over Madagascar and the Comoro Islands.
By 1885, therefore, the European rivalry for East Africa had reached a climax, and with the disappearance from the scene of Belgium and France, it became clear that competition for that region would mainly be between Germany and Britain. It also became evident that the rival Powers must quickly find some reasonable way of settling their quarrels over the East African territory, if "illegal" irruptions into each other's sphere of influence, and a subsequent break of war between Britain and Germany were to be avoided. Of all the possible ways of settling the territorial disputes between Britain and Germany regarding East Africa, the best available to them was obviously the "treaty method." This method was intensively applied by the alien Powers in East Africa, during what one may call the great treaty period of East Africa.

The period of the partition of East Africa by treaty actually started about 1844 and ended around 1906. This period can be divided into sub-periods as follows:

1844-1885: when the six European states—Belgium, Britain, France, Germany, Italy and Portugal—keenly interested in occupying East Africa—exerted maximum efforts to implement their expansionist policies and to satisfy their colonial ambitions;

1886-1906: which closed the treaty period and introduced the proper period of the imposition of colonial rule in East Africa. The colonial treaties in East Africa were of different types, and were concluded either between the Sultan of Zanzibar and the alien European Powers, or the alien Powers inter se. The treaties signed with the Sultan were either "protective", as was the case between Sultan Berghash

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and British, "of eternal life" (as between Sultan Bergash or the local chiefs with Germany's Karl Peters), "Commercial" (Sultan Bergash and Britain or Germany), or "political" (the alien Powers, respectively, as was the case between Germany and Britain in 1885 and 1890).

With regard to commercial treaties, Sultan Bergash was forced to sign such treaties with the following alien Powers:

With France: in 1864;

With Portugal: in 1865; ratification of the commercial treaty signed by several Powers — including Britain and Portugal — in 1861;

With Belgium: in 1885: a "provisional convention";

With Italy: on 20th May, 1885: Bergash/Cecchi and Foscarotte

With Britain: on 30th April, 1886: Kirk/Bergash; and

With Austria: in 1887.

The first and most significant "political" treaty of the period was the Anglo-German Partition Treaty (Agreement) of 1886. Events immediately leading to the conclusion of this Treaty were as follows:

Having decided that the Sultan of Zanzibar's possessions in East Africa should be delimited, the British, French and German Governments reached an agreement in mid-1885 to set up a Joint International Delimitation Commission. The agreement to establish the Commission was actually reached between the British and German Governments for a recognition with France of the independence of the Sultan of Zanzibar. The duty of the Commission was hence to delimit and define the Sultan's exact dominions in East Africa. The composition of the Delimitation Commission was as follows:

France: was represented by M. Patrizio, whom the French Government appointed at the end of September, 1885;
Germany was represented by Dr. Schmidt, the German Consul-General at Cairo, whom the German Government appointed in October, 1885.

Britain was represented by Colonel H.H. Kitchner, who was appointed only a few days after the appointment of Dr. Schmidt; and

Zanzibar was (supposed to be) represented by Mr. Mathews, Barghash's Agent. However, Mathews was not allowed to participate on an equal footing with the other representatives of the European Powers. This was totally unacceptable to Sultan Barghash, who resented such discriminatory treatment. Colonel Kitchener backed the Sultan, and Mathews was thus forced to quit the Commission's meetings.

It should also be remembered that Portugal later showed an ardent desire to participate in the Commission's work, but Portugal's wish was flatly declined, especially by Britain and France. The deliberations of the Commission lasted for four days.

On 14th December, 1885, the Commission delimited and recognized, as the Sultan's dominions, the Islands of Zanzibar and Peche, and any islets within 12 miles of them. Such delimitation could not be acceptable to the Sultan, and even the Commission itself failed to reach agreement on its own work. That failure, together with Barghash's complaints, led to the conclusion of the Anglo-German Partition Treaty of 1886.

Closely connected with the Anglo-German Partition Treaty of 1886 was the Process-Verbal of 9th June, 1886. On that day, Britain, France and Germany, in the persons of Colonel Kitchener, Lemaire and Dr. Schmidt respectively, unanimously recognized at Zanzibar the sovereign rights of His Highness the Sultan of Zanzibar over the following maritime, littoral and continental possessions:
(a) Zanzibar and Pemba Islands;
(b) The coast and neighbouring territories of East Africa, extending from south to north;
(i) Minangani and Tungi (Tunghi), a depth of 5 miles from Minangani River to Rufuma River;
(ii) The Bay of Mikindani to Kilwa - Kizingi, a radius of 10 miles, and 10 miles depth;
(c) The Island of Mafia, Sansanga, Kikounga, Kinijou and Ber-ele-calaan;
(d) Bagamoyo, Sanseni, Tengani and Wanga, a depth of 5 miles, and a radius of 10 miles;
(e) Mombasa (Homa bay) and Takaungo, a depth of 5 miles from the coast, with a radius of 10 miles;
(f) Melindi, Kipini, Mambru, Kau and Lamou (Lamu), a depth of 5 miles; and
(g) Kisamay, Brava (Bewe) Mawra (Mera), Mogadisho (the Sultan's possessions were limited within the walls of these four towns to a radius of 10 miles around each).

The Partition Treaty of 1886 was concluded in four stages:

On 16th October, 1886: the Partition Draft Agreement was worked out by Anderson (for Britain) and Krauel - a Senior Official in the German Foreign Office and successor to Dr. Schmidt;

On 26th October: The British Foreign Secretary - Iddesleigh - approved the "points of agreement";

On 29th October: Count Hatzfeld - the German Foreign Secretary - informed Iddesleigh of Germany's approval of the same "points of agreement"; and

On 1st November, 1886: Iddesleigh informed Count Hatzfeld of Britain's approval of the same "points of agreement", thereby completing the Anglo-German treaty - making/signing process.
It should be emphasised here that the Agreement between Germany and Britain respected the Sultanate of Zanzibar and the opposite East African mainland, as well as the spheres of influence of the two European Colonial States. It should further be stressed that the real force of the Partition Agreement originated at the time when both the German and British Governments approved the "points of agreement" of the Treaty. Hence the Treaty has been referred to as the Anglo-German (Partition) Treaty/Agreement of 29th October - 1st November, 1896. It should also be noted at this juncture that the Sultan of Zanzibar was represented at the Anglo-German meetings by Mohamed - bin - Alim Mauli. The Sultan adhered to the Treaty on 4th December, 1896, and on 7th December of the same year, he (Barghash) agreed to virtually all the terms of the Anglo-German partition.

The Partition Treaty of 1896 actually confirmed the seven main provisions contained in the 'Procès-Verbal' of 9th June, 1896. (c.v. supra). Thus the Treaty's major stipulations respecting the Zanzibari Sultan's possessions in East Africa as laid down and agreed upon were as follows:

(a) Anglo-German recognition of the Sultan's sovereignty over the Islands of Zanzibar, Pemba, Lamu, Mafia and the smaller islands in the neighbourhood within a radius of 12 sea-miles;

(b) Anglo-German recognition of the Sultan's sovereignty over certain territories on the East African mainland, (which, as will be explained shortly, were later defined by the Holmeland Treaty) a line of coast stretching without interruption from the Minengeni River to Mipini: a 10-sea-mile-of-depth coastal strip, measured from the coast direct into the interior from high-water mark;
(c) Anglo-German recognition of the Sultan's sovereignty over the stations of Brava (Brava), Kimayu, Meurka, and Mogadisho, with radii landwards of 10 sea-miles, and of Warsheik with a radius of 5 sea-miles; and

(d) Both Germany and Britain undertook to advance mutual respect of each other's sphere of influence, but to permit inter-sphere commercial business to be carried on in the normal way.

Witu area, which had been allocated to Germany, was declared a German protectorate on 22nd November, 1886. In March, 1887, an Agreement was also signed between Germany and Britain respecting the establishment of Trading Stations within the British and German respective spheres of influence in East Africa.

The 1886 Anglo-German Treaty did not complete the partition process. It only started it. It left, for instance, the western limits of the two spheres of influence unfixed. The completion of the partition process was still lacking, even though the Germans possessed Witu (Vitu), and most parts of their and the British spheres of influence had already been delimited. For example, the Tana River was the limit of the British sphere in the north, and a line drawn from Wanga (Vanga) on the coast—near the River Yaba—straight to the north-east shore of Lake Victoria, was the Anglo-German border.

The Germans then came to terms with Portugal and agreed that their territorial possessions in East Africa should march together as far as the east coast of Lake Nyassa. The Germans also concluded partition treaties along the Somali coast. In short, then, the significance of the Anglo-German Partition Treaty signed on 1st November, 1886, lay both in the restriction
of the Sultan's power to a 10-mile coastal belt, and the
delimitation of a German "sphere of influence" from the Ruvuma
to the Uluva Rivers - the present border with Kenya - and inland
thence to Lake Jipe and thence again to Lake Victoria. Sick,
and indeed shortly to die, Sultan Barghash of Zanzibar could do
nothing but to concur.

The scramble for East Africa by Germany and Britain was
completed in 1890, with the signing in Berlin on 1st July of
the so-called Heligoland Treaty. Heligoland is a useful naval
base off the coast of Germany. The Heligoland Treaty, like the
1886 Partition Treaty, was dictated by the politics of Europe.

Whereas the 1886 Treaty had favoured Germany, which had wanted
British friendship, the 1890 Treaty certainly favoured Britain,
which wanted German friendship. Germany thought it necessary to
"concede" to British "demands" in order to maintain Britain's
friendship against any possible French or Russian war or threat
to war against Germany. Inter alia, therefore by the 1890 Treaty:
1) Germany agreed to withdraw in favour of Britain her protection
ever over Pemba and all her claims to the coast up to Kisimuyu, or inland to all the other territories to the north of the Tana River,
including Pate and Manda Islands (Article II);

2) Germany accepted the extension of the border dividing the
two spheres of influence westwards to Lake Victoria and across
it to the frontier of the Congo Free (Independent) State;

3) Germany recognized a British protectorate over the dominions
of the Sultan, including Zanzibar, Pemba and Pitu (Article XI); and

4) Britain agreed to cede to Germany the portion of the main-
land already leased to the German East Africa Company in return
for an "equitable indemnity" (Article XI).

To sum up, by the conclusion of the Heligoland Agreement,
British and German "spheres of influence" were delimited by lines
on maps as follows (Article I):

**German Possessions:**

(i) To the north, from the River Umsa (or River Mangi) to Victoria Nyanza via Lake Jipe, the River Lume, between Taveta (Taveta) and Chagga, the north base of Kilimanjaro range to Lake Victoria. Thence, the line followed the parallel to the boundary of the Congo Free State, where it terminated;

(ii) To the south, from the Ruvum River to Lakes Nyasa and Tanganyika (Stevenson’s Road). Also by a line starting from Mozambique, followed the course of the River Ruvuma to the point of confluence of the Mainje. Then the line ran westward along the parallel of that point till it reached Lake Nyasa. Thence eastern-northernwards, the line followed the western shores of Lake Nyasa to the northern bank of the south of the River Songwe. It turned and struck direct to the point of confluence of the northern and southern branches of the River Kilembo, and thence followed that river till it entered Lake Tanganyika. That meant that all German possessions to the north of the British border at the River Umsa were given up.

**British Possessions:**

(i) To the south, from the River Umsa to the Congo Free State and Mt. Mfuphir;

(ii) To the north, from the River Juba to the confines of Egypt; and

(iii) To the west, by the Congo Free State, and by the western watershed of the basin of the Upper Nile. That meant that on the south, Britain was admitted to the south end of Tanganyika and secured all the west coast of Lake Nyasa, and on the west, the German boundaries were carried to the border of the Congo Free State.
At this juncture, it should be remembered that, whereas the East African area over which Germany would extend her "sphere of influence" would be known as the **British East Africa**, the area under the British "sphere of influence" would be known as the **German East Africa**.

Britain agreed to recognise the sovereignty of the Sultan of Witu over the territory extending from Kipini to the point opposite Kwyboo Island, fixed as the boundary in 1887. Of particular significance in the Heligoland Convention were the treaty provisions (Article XI) regulating the future relationships between the Sultan of Zanzibar and the two alien Powers. Great Britain engaged to use all her influence to facilitate a friendly arrangement, by which the Sultan of Zanzibar would cede absolutely to Germany his possessions on the mainland comprised in existing concessions to the German East Africa Company. In other words, Britain agreed to persuade Sultan Barghash to do three things: to obtain for the German East Africa Company a lease of customs dues at Dar-es-Salaam and Tengani; secure a friendly settlement of rival claims in Kilimanjaro; and to adhere to the Berlin Act. Germany in turn agreed to adhere to the Anglo-French Declaration of 10th March 1890, i.e., to recognise and maintain the integrity of the Sultan's dominions. France was also persuaded to adhere to the above arrangements in return for Anglo-German recognition of a French protectorate over the Comoro Islands, where the Sultan of Zanzibar may have possessed some rights.

The Sultan, however, had to be compensated for his loss of revenue resulting from such cession. Compensation was subsequently effected as follows:
On 27th and 28th October, 1890, an exchange of Notes took place between British and German Government representatives at Berlin, fixing the indemnity ("equitable indemnity") to be paid to the Sultan, as compensation for the permanent cession to Germany of the coast-line between the Rivers Ums and Ruvuma, and of the Island of Mafia. The German Imperial Government agreed to pay in London before the end of 1890, 4,000,000 marks in gold. Until this amount was paid, however, the Sultan would continue receiving monthly accounts and payments from the East Africa Company.

A Note from the British Government to the German Government was written on 27th October, 1890 in Berlin by Sir Edward Malet, the British Ambassador at Berlin, to the German Minister for Foreign Affairs, Baron Marshall von Bieberstein. A Note from the German Government to His Britannic Majesty's Government was written on 29th October, 1890 (Berlin) by the German Foreign Minister to the British Ambassador at Berlin.

It is of interest to note that the Heligoland Treaty was signed by the same persons that had previously been involved in the exercise of representing their respective countries at international conferences. Thus, on behalf of Germany, Dr. Krauel, the Privy Councillor in the German Foreign Office, and General Von Caprivi, the Chancellor of the German Empire, signed the Treaty. For Britain, Sir Henry Percy Anderson, Chief of the African Department of Her Majesty's Foreign Office, and Sir Edward Baldwin Malet, Her Britannic Majesty's Ambassador Extraordinary and Plenipotentiary to Germany, signed the Heligoland Treaty which, we must remember, generally regulated German and British territorial claims over Heligoland and Africa, i.e., East, West, and South-West Africa.
On the mainland, Britain and Germany had, as at the coast, to recognize the Sultan's sovereignty over certain territories: a 10-mile coastal strip running from Minengani River to Kipini. As for Britain, she agreed to cede the tiny Island of Heligoland to Germany. Further, both Britain and Germany agreed to recognize the Sultan's sovereignty over Zanzibar, Lamu, Mombasa, and the other adjacent Islands. Britain's protection over Zanzibar, endorsed by Sultan Barghash - bin-Abd, had the purpose of preventing the Sultan's Kingdom from being divided among other nations.

While treaties were being concluded on East Africa, in Germany the German Colonial Society and the German Colonization Society subsequently united under the latter title, and the German East Africa Association was incorporated by Imperial Charter.

In East Africa, European presence was by no means limited to Britain and Germany. In fact, by the close of the 19th century, five European Powers had established themselves in Eastern Africa. Britain - in Uganda, British East Africa Protectorate and the Anglo-Egyptian Sudan (1898). Germany - in German East Africa; France in Madagascar; Italy - in Italian Somaliland (1890); and Portugal - in Mozambique.

Since, however, we have mainly been concerned with that portion of land which was delimited by the 1890 Heligoland Treaty, we have limited our analysis to the Anglo-German colonial presence in East Africa. The third and last sub-period of the colonial treaty period of East Africa began after the conclusion of the Heligoland Treaty and ended with the Boundary Delimitation Agreement of 1906.
The mapping of Anglo-German East Africa was completed by the conclusion between the two alien Powers of three Protocols and two Agreements. These Agreements actually fixed the final borders of the colonial territories acquired by Britain and Germany in East Africa.

The first of the agreements was a Protocol signed at Taveta on 27th October, 1892, by Dr. Karl Peters, the Imperial German Commissioner for the Delimitation of the Anglo-German Border in East Equitorial Africa, and Mr. Charles Stewart Smith, Her Britannic Majesty's Consul at Zanzibar, and the British High Commissioner for the Delimitation of the Anglo-German Border in East Equitorial Africa. The Anglo-German border was marked at Lake Jipe and Kilimanjaro.

The second was also a Protocol signed at Zanzibar on 24th December 1892, by the same representatives mentioned above. The Anglo-German border-line should, according to the Zanzibar Protocol, meet Lake Jipe at a point where the parallel of $3^\circ 40' 40.3''$ south, or $3^\circ 35.6''$ south, cuts its east bank, according to the Protocol of 27th October, 1892.

The third was an Agreement respecting boundaries in East Africa from the mouth of the Usbe River to Lake Jipe and Kilimanjaro. The Agreement was signed at Berlin on 25th July, 1893 by Sir Edward Baldwin Melet and Mr. Charles Stewart Smith (for Britain), and Dr. Peters and Baron Marschall von Bisterstein, Privy Councillor, Foreign Office (for Germany).

The fourth was a Protocol containing the Decisions of the Commissioners appointed to delimit the Nyas–Tanganyika border. The Protocol was signed at Kawa on 11th November, 1893, by C.F. Close, and Captain R.E., the British Commissioner (for Britain), and Herr Hermann, the German Commissioner.
The fifth was an Agreement signed at Berlin on 18th July, 1906, by the Delegates of Great Britain and Germany. The Berlin Agreement of 1906, which was signed in accordance with the Berlin Heligoland Treaty of 1st July, 1890, determined the frontier between the German and British respective territories in East Africa, East and West of Lake Victoria.

Thus, judging from the events following the Heligoland Treaty of 1890, one can safely deduce that a lasting Anglo-German settlement had been reached, and hence the danger of confrontation and eventual break of war between the two European colonial countries over their desires to impose colonial rule on East Africa had almost certainly been removed by the Heligoland Convention of 1890. For, the two Powers undertook not to interfere in each other's sphere of influence, nor to annex each other's territory, but to promote: freedom of trade; freedom of settlement of each other's subjects within the Free Trade Zone; and freedom of worship and religion. All these undertakings were of course done in implementation of Section 2 of Article V of the Berlin General Act of 26th February, 1885 (no. 158). In that Section, it had been provided that persons and the property of foreigners had to be assured of security. Those provisions had to be applicable to British subjects in German Protectorates, and no differential treatment of British subjects would take place, with regard to trade and public order. British subjects were hence to have access to markets just like German subjects.

Now that the division of East Africa was complete, each of the two European Powers calmly embarked upon the colonization of their respective territories in East Africa.
However, with regard to the actual colonization of the newly acquired territories, it should be remembered that at first, the Colonial Powers were not generally interested in the direct administration and development of their newly acquired colonial possessions. The latter had in fact been made largely as part of European political rivalries. Once the claims had been made and agreed, the actual responsibility of direct management and development of the colonial territories was left first to private companies that became known as Chartered Companies. These Companies were hence the first "colonial agents" of the other countries, for the Companies had the mandate to do the colonial job on behalf of the Colonizing Governments.

The contribution of the Chartered Companies to the imposition and enforcement of colonial rule in the colonized world, including East Africa, was too immense to be ignored in an analysis of this sort. Therefore, the nature and purpose of these Companies, their legal status as well as the legal significance of the treaties the Companies concluded with the native, local rulers, deserve our examination now. In the early stages of colonial expansion, there was hardly, it should be noted, any clear-cut distinction between commercial and political objectives of colonization. As the Permanent Court of International Justice put it, "that period was an era of adventure and exploitation". From the end of the 16thC. until the 19thC., companies comprising individuals and engaged in economic business ("Chartered Companies") were invested by states to whom they were subject with public powers for the acquisition and administration of colonies. The Chartered Companies thus formed establishments and exercised sovereign jurisdiction in what were considered to

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be "uncivilised countries". The Companies, however, were not subjects of international law, but organs of the states by which their (the Companies') charters had been granted. Examples of the Chartered Companies were: The British (English) East India Company chartered on 31st December, 1600; the Royal Niger Company, chartered in 1846 under the leadership of Sir George Taubman Goldie (for the West African region); the British South Africa Company, chartered in 1889 under the leadership of Cecil Rhodes; the Dutch East India Company chartered on 20th May, 1602; and the two chartered companies that operated in East Africa - the Imperial German East Africa Company, and the Imperial British East Africa Company - under the leadership of Earl Peters and Sir William Mackinnon respectively.

The above colonial companies, as they were also known, governed colonial territories under concessions or treaties obtained from local rulers. In many instances, the existence of the tribal chiefs was completely ignored in law, and their territories (countries) were treated simply as territorial nullius ("no man's territories"). Thus, treaties concluded between the companies and native, tribal chiefs were not regarded as international conventions, but rather as contracts of private or public municipal law. The treaties were not agreements between equals, but rather a form of internal organization of a colonial territory, on the basis of autonomy for the natives. The form of legal relations established was that of suzerain and vassal, or of the so-called colonial protectorates. In short, therefore, the Chartered Companies were basically or primarily trading organizations of a private nature. Their founders were usually wealthy businessmen. The Companies became "Chartered Companies" when they obtained royal or imperial charters from Kings or
Queens, or Emperors. The charters granted the companies what were known as "charter rights". These included:

(i) Assurances of royal/imperial protection;

(ii) Trading privileges; and

(iii) Wide administrative powers.

The royal charters, therefore, granted the Companies broad administrative powers to govern the colonial territories on behalf of the Colonizing Governments. In this way, the Chartered Companies became purely administrative organisations. Later, the Colonial Governments took over the direct management of their respective colonies. That followed - as in the case of East Africa - states of financial embarrassment and bankruptcy in which the Companies found themselves.

The Imperial British East Africa Company (IBEA) had four main interests in East Africa:

(a) Abolition of slavery and the slave trade;

(b) Colonization of the Africans. The Company had the duty to train the Africans in laws and morals, and to encourage interpersonal contact. It had also the duty of acquainting the Africans with improved living standards, culture and all forms of development.

(c) Addition of new lands to the British Empire; and

(d) Acquisition of individual wealth under cover of "legitimate commerce", i.e., fighting the slave trade by developing other competitive forms of trade, and opening up Africa to European commerce. Mackenzie's successors were more competent administrators and supporters of "empire Britain": Sir George Mackenzie;

Sir Gerald Portal; Sir Frederick Jackson; and above all Lord Frederick Lugard.

Up to 1894, British overrule in Uganda was limited to Buganda. On 1st April, 1894, a British protectorate over Buganda was officially proclaimed. British responsibility for the administration of Buganda territory was soon announced. The period 1894–1919 saw the creation and development of the British protectorate over Uganda. The first official British colonial government in Uganda started with a small British staff of less than 20 persons. In 1895, the staff rose to 21 people. Thereafter, British administrators began to arrive in large numbers in Buganda. Soon, Ankole, Toro, Bunyoro, Busoga and Kivuondo also began to feel British influence and protection, though unofficial. It is of interest to note that in June, 1896, the Ankole, Bunyoro, Busoga and Toro Kingdoms were officially added to the Buganda Protectorate. The British (Special) Commissioner, later Governor, was given overall authority over the entire unified region of Uganda. The British administrative personnel grew in numbers, and by 1919, there were about 50 British staff in Uganda. By 1919 also, the political reconstitution of Uganda into one territory had been completed, and the unified Uganda territory was divided into provinces, districts, counties (or sesses), sub-counties, and village units (or keele). We should remember that the British protectorate over Uganda actually originated in the Anglo-German Beligoland Convention of 1890. Sir Hesketh Bell became the first British Governor of Uganda from 1905 to 1910. We should also remember that basically, Britain had two interests in Uganda: to main (in Buganda) the authority the British had imposed upon Uganda's warring tribes, and to secure of foothold in the Upper Nile, from
which the British could watch French of Congo advances from the west. The idea was of course to procure a communicational guarantee in the region. The above main British interests compelled Britain to extend her overlordship over the other Uganda Kingdoms, within five years of the Protectorate's existence. Subsequently, the Uganda Protectorate was extended, under Johnston, to embrace Uganda's modern borders. In 1900, Sir H.H. Johnston divided the whole territory into provinces and districts.

Johnston arrived in Buganda at the end of 1899. He took over the governorship of Uganda in the following year. His mission was to deal with the issues of landownership, taxation, and government. Johnston was actually Her Majesty's Special Commissioner for the Uganda Protectorate. His achievements as Commissioner of Uganda included these:

1. Introduction of the hut-tax system, by which the Uganda protectorate would pay its own way.

2. Introduction of a land settlement project, by which all unoccupied land was to be brought under Government control.

3. The signing in 1900 of an Agreement with the Regents and leading Chiefs of Buganda, which brought Buganda under Uganda Protectorate. The 1900 Buganda Agreement was to be valid for 55 years, and its central purpose was to regulate British/Buganda relations.

4. Conclusion of similar Agreements with the following other Kingdoms of Uganda:

(a) Toro: Toro Agreement of June 26th, 1900. The Toro Agreement instituted gun and hut-taxes. It also procured for the British Crown all the uncultivated land in Toro.
(b) **Ankole**: The Ankole Agreement concluded in August, 1901 and

(c) **Bunyoro**: The Bunyoro Agreement of 1903.

The Anglo-Buganda Agreement of 1900 requires a closer examination, for it was the most important Agreement that the British Government ever concluded with the various Uganda Kingdoms during the colonial times. The salient provisions of the Agreement can be presented as follows:

1. The number of the traditional counties (caza) was increased to 20;
2. The Buganda Kabaka renounced all claims to sovereignty over, and tribute from Bunyoro, Busoga, Toro and Ankole;
3. The Buganda Protectorate was divided into four provinces, so long as they did not conflict with the 1900 Agreement;
4. The Kabaka of Buganda would be recognised as the native Ruler of Buganda, provided he, his chiefs, and the Ganda people - his subjects - would agree to observe the Protectorate laws and co-operate loyally in the administration of Buganda;
5. The Kabaka would have a guaranteed annual salary. His courts could pass death sentences on his subjects only after obtaining permission from the Chief British Officer. The Kabaka was to appoint a treasurer-a Katikiro- and a Chief Justice. There would be no further practice of having two Katikiros. All the three ministers were to be salaried officers of state;
6. The Lukiiko (Baraga or Parliament of Buganda) would comprise 32 members as follows:
   - The three ministers - the Kabaka, Treasurer and Chief Justice - 20 caza chiefs, 3 Notables selected by the Kabaka from each caza, and another 6 Notables selected at large.
The Lukiko would have three main functions: to appoint the Kabaka’s successor from the descendants of Kabaka Muteesa I; to discuss all matters pertaining to the native administration of Buganda; and to serve as a court of Appeal from the courts of the roya chiefs.

(vii) The 1900 Anglo-Buganda Agreement also introduced a new regulation of the question of land. A new system of land tenure was provided for. It is noteworthy that before the conclusion of the above Agreement, the chiefs had not, by tradition, owned lands, but had instead exercised jurisdiction, at the Kabaka’s pleasure, over those people who had chosen to live in their territory. With the conclusion of the Agreement, land grants were given for private holding of about 3% of the land to the chiefs and sub-chiefs. The other 7% - consisting of swamps, forests and uncultivated land - became Crown land in the domain of the King of England.

(viii) The Buganda Agreement finally imposed hut and gun taxes, and made Buganda revenue part of the Uganda Protectorate revenue. From the time the decision was taken to govern the colonial territories from the Colonial Offices (in London and Berlin), it was evident that direct rule had replaced indirect rule. In the colonial territories themselves, administrative organisations were reviewed and updated. District Officers, District Commissioners and Provincial Commissioners were the main organs of administration. They were closer to the natives and

better informed about the letter's affairs. They were senior officials and subordinates of the Governors. Unfortunately, the administrators, including most of the Governors, supported the settler demands more than the native ones. The result was that it was extremely difficult to bring the natives to full administrative control. For example, it took the British twenty years to establish control over the main tribes of the interior of the East Africa Protectorate (1895-1915).

To sum up, the British colonization of the East Africa Protectorate occurred most effectively between 1895 and 1905. The idea of colonial welfare and development prompted the British Government (F.O.) to propose and encourage European, Indian and Jewish immigration into the Protectorate. However, discriminatory tendencies started to crop up among the colonial administrators and European settlers (colonists). These two groups of people wanted the best lands of East Africa - the highlands - to be preserved for European settlement only. At first, the British Government (Foreign Office) backed mixed settlement. Later, the Foreign Office gave in to the demands of the colonial administrators and the European settlers like Hugh Cholmondeley - the third Baron Delamere - later, Lord Delamere (1876-13th November, 1931).

The European Colonial Powers subjected to their political control many of the African countries and territories. A discussion of the aims indicated by the systems in force in the various colonial dependencies in Africa would, if it were to be complete, involve a comprehensive examination of the colonial policies of the Powers concerned. Many factors determined the trend of these policies. For example, the factors were to be found partly in the inherent character and the domestic history of the metropolitan peoples, and partly in the events which shaped...
the general course of international affairs. The influence of the French Revolution of 1872, for instance, or of the movement for the abolition of slavery and the slave trade, was written into the colonial policies and practices of the European powers no less effectively than the consequences of the economic turbulences that succeeded World War I. Similarly, the manifestation of international interest in the future of the dependent peoples and their territories found expression in the League at Geneva and later in the United Nations Organization.

In the writer's judgement, the German, Belgian, Portuguese, Spanish and Dutch colonizers applied perfidious and brutal methods of rule to the colonised peoples. The British and French colonizers were, comparatively speaking, more "polite" colonizers. They built schools, cities, roads, hospitals, and the like. They genuinely wanted to "civilize" their colonial peoples and their territories. Thus, the British and French prepared their colonies in a better way than did the other European Colonial Powers. The Portuguese, Belgians and Germans aimed mainly at the exploitation of their colonial peoples and territories and at the amassment of wealth for their mother countries, and for themselves. It was not surprising, therefore, that African reactions to these colonial policies and practices were extremely negative. African response to colonial rule in East Africa will be our topic of analysis in Chapter Five. In the next Chapter, we shall discuss the racial problem in colonial East Africa.
CHAPTER FOUR

THE RACIAL PROBLEM IN PRE-INDEPENDENCE EAST AFRICA

The imposition of colonial rule in East Africa resulted in, inter alia, very strained race relations in the region.

It must be stated at once that, in the East African context, and for the purposes of this research, the expression "race" will be used to refer to the categories of people - ethnic, racial groups as defined in Chapter One above. Similarly, the term "intra-racial relations" in East Africa will be used to mean the social, educational, economic, political, moral, religious, cultural, and legal contacts among the various ethnic, racial groups in the region. The term will mean human relationships between individuals and groups of various types, with different civilisations and cultures. Also, unless specified, the expression "position" will be used in this Chapter to mean the general position and interests of the various ethnic, racial groups in colonized East Africa. The expression will, therefore, refer to the various aspects of the status of the different racial communities that inhabited East Africa during the period of alien rule in that region. However, greater emphasis will be placed upon the legal, political and economic aspects of the problem than on any other aspects.

In colonial East Africa, Europeans and Asians struggled for dominance in the region. It should be remembered that the core of the struggle was racial discrimination between the two alien, minority ethnic groups in East Africa. The Europeans practised racial discrimination against the Asians. British racism

against the Asians resulted from the latter's settlements in large numbers in East Africa. Whereas the main demand of the Asians was equal treatment of all the Asian peoples with the Europeans, the main demand of the Europeans was to classify Asians as "dangerous aliens". This was particularly the case, as we shall see, in German East Africa, where it was believed that all Asians in East Africa were British subjects. In German law, however, Asians were classified as "natives" in East Africa. The immediate result of this classification was Euro-Asian conflict in the German East African Colony.

The British, on their part, aimed at turning East Africa into a British colony. Their main fear was that East Africa might become an Indian colony. The Europeans could not tolerate that to happen, and hence the prevention of that possibility from becoming true was a matter of death and life for the Europeans.

The Euro-Asian racial struggle in colonized East Africa will become clearer in the course of this Chapter. For the moment, two points must be noted in passing and stressed. The first is that, although the problem was basically one of racial struggle between the Europeans and Asians, it assumed other aspects, notably legal, political and economic aspects. The second point to be remembered is that from what we have seen in Chapter Two above, the Asians, like the Europeans in colonized East Africa, fell under the same category of "aliens" in East Africa. Most of them (i.e., Asians and Europeans) came to East Africa under similar conditions: they were settlers, immigrants or "visitors" in East Africa. They (the two alien groups) both colonized East Africa. Thus, examined from the legal viewpoint, both the Asians and the British in British East Africa were all British subjects. Therefore, the Asians of East Africa were also
entitled to British citizenship which was, undoubtedly, their legal right. Similarly, it was legally right for the East Africans Asians to claim other legal rights which resulted from the very legal status of the Asians as British subjects.

The Asians, therefore, rightly demanded, in the writer's view, equal treatment with the other (British) subjects of the United Kingdom. It was hence totally wrong and most unjustified to discriminate against the Asians and call them "natives" in East Africa.

The acceptance by Britain of a "sphere of influence" on the mainland of East Africa brought many new responsibilities, problems, but opportunities as well. As a signatory to the Berlin Act of 1884, Britain had the duty to stamp out the slave trade, uplift the Africans, and open the region of East Africa for economic and commercial development and missionary work.

The new opportunities which the British colonization of East Africa offered to Britain included: relaxation of the administrative burden borne by Britain in India, by providing an overseas outlet for India's growing population, and settlement of British peoples in East Africa. The result of the Euro-Asian settlements in East Africa was a racial confrontation, whose basis was established between 1890 and 1914.

One important observation must be made here. It concerns India's interest in, and concern over the Euro-Asian rivalry in East Africa. India could not afford to remain indifferent to the events taking place in East Africa, which after all, affected her nationals. There were six major reasons for India's concern:

1) The rapidly growing nationalism and anti-colonialism in India;
(2) The lively trade that existed between India and East Africa at the time;

(3) The course of events that were taking place in the African territories in those days. India was, for instance, disgusted by the racialism and unpalatable colonial methods of the Europeans in East Africa. She also received with mixed feelings the African reactions, which will be analyzed in the next chapter to alien rule in East Africa;

(4) The conflicts between the Indian and European Communities in other parts of the British Empire, especially in South Africa;

(5) The rise of a new humanitarianism in India and Britain, which could not bear racial intolerance and segregation; and

(6) The hope that German East Africa, for whose liberation Indians had fought in World War I as British soldiers, would become an Indian colony, after the War, under the Government of India. Sir Theodore Morison and the Aga Khan were the staunchest advocates of this idea. The Aga Khan went further and asserted that not only German East Africa, but British East Africa as a whole should be transferred to India. It is noteworthy, however, that the idea was rejected not only by the Europeans in East Africa, but also by Indian humanitarianists in India itself. Thus, India's interest in German East Africa had to decline and fade away.

Of particular interest was the British project for "closer union" in East Africa. Lack of room, however, does not allow us to go into the details of that project here. It will suffice, therefore, to remember that, it was in that
scheme that the doctrine of racial differentiation on an East African context was enshrined.

In "The Times" of 12th June, 1926 for instance, an article appeared in which a suggestion for a "New Dominion" in East Africa was expressed. The 'Dominion' should include Zanzibar, Tanganyika, Uganda, Kenya and Nyasaland. The proposal did not, however, receive much official support, owing mainly to the statue of Tanganyika as a League of Nations (L.O.N.) mandate administered by the United Kingdom. The idea of "closer union" was nevertheless maintained, and in 1926, the first conference of British Governors in Eastern Africa was held in Nairobi. After 1930, regular, periodic and extraordinary conferences of the Governors of Kenya, Uganda, Tanganyika, Nyasaland, Northern Rhodesia, and the British Resident in Zanzibar were held. In 1947, the British Government enacted an "East Africa High Commission) Order in Council. That Order created the East Africa High Commission. The Commission held its first meeting in Nairobi in February, 1948. The project for 'closer union' also provided for "partnership". The expression "partnership" was used to describe the relations between the Europeans and the other communities, which the British Government wanted as a matter of colonial policy, to establish in East Africa. The notion of "partnership" replaced that of "trusteeship", which had thither to indicated the nature of British responsibilities towards her dependencies.

Ironically, the essence of the British colonial policy of racial differentiation through "partnership" was twofold: each racial community in East Africa should have a voice in the political process; and "partnership" seemed to depend partly

upon the measure of African besides Asian representation in Legislatures, and partly on Britain being willing to surrender a substantial measure of political influence to the European unofficial residents.

The problem of the racial struggle between the Asians and Europeans in colonized East Africa can best be analyzed by examining it in the territorial context, i.e., as it appeared in each of the four territories of East Africa.

Zanzibar and German East Africa offered less economic opportunity to Asians than did the East Africa Protectorate, for instance. Zanzibar could not compete with the East African mainland areas, mainly because of Zanzibar's limited resources and small area. As for German East Africa, it was not attractive to British Asians, for the very reason that it was German, and not British. Also, the German Administration was not favourable to Asian business. The harsh German colonial administration, for example, and the long military campaigns by the Germans, besides the concentration of a plantation economy and the neglect by the German administrators of constructing railway and other communicational facilities and works, all had a negative effect on the Asian population in what is now Tanzania.

As from 1890, the Asians found themselves in changed circumstances in which their thitherto economic prosperity and influential position in East Africa were to depend entirely upon the goodwill of Germany and Britain. In Zanzibar, political and economic changes significant to Asians occurred after the British creation of a protectorate over Zanzibar in 1890. The Asians multiplied and prospered on the Island. The Indian code of criminal and civil procedure was introduced on the Island. Asian dissatisfaction with the European administration in
Zanzibar can be traced to shortly before World War I, when the Asians began to feel that their position had been harmed by the development of British control. The Asians realized that they could not hold their traditional high administrative posts related to trade and finance. Indian commercial laws introduced in Zanzibar were repealed in favour of other laws designed specifically for the Island's new situation. The Asians also saw an increase, in 1908, in customs duties, and the new decrees enacted and signed by the Sultan on the advice of the British Consul-General, which removed some of the long-established privileges of the Asians in Zanzibar. For example, trial by jury for Asians was abolished, and no religious processions without permits were allowed. The Asians also had no right of appeal to India. The new colonial practices prompted Asian protests to the new colonial masters. In 1909, the Asians staged the first organized protest against the British Administration in Zanzibar. Soon, they formed a political organisation called the "Committee of India", whose first president was Yusafali Alibhai Karinje.

As years passed by, the Asian role in the economic sphere of the Island grew in significance. Their prosperous presence, especially in the 1920's, was felt mainly in the copra and clove industries, which provided 98 per cent of the Island's exports. The Asians had a major share in the marketing of those crops. That Asian prominent position in the economic life of Zanzibar was envied by the Arabs who protested against the

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Asians. The Asians, in turn, envied the privileged position of the Arabs in the political and administrative fields of the Island. Subsequently, the Asians launched protests, via their Indian National Council Association, against what they regarded as the inadequate recruitment of Asians for the administrative services, the immigration restriction imposed upon the Asians, and the land legislation that controlled the alienation of land rights by Africans and Arabs. These three main Asian grievances were, in reality, prompted by the growing Arab consciousness and endeavours to stress the position of Zanzibar as an Arab State. Despite the above Arab-Asian differences, however, no serious racial conflict existed between the two ethnic groups in Zanzibar.

As for the position of Asians in Tanganyika, we should remember that the Report of the British Government to the League of Nations on the administration of Tanganyika was probably the most impartial and authoritative opinion on the contribution of Indians to the economic development of the Mandated Territory of Tanganyika. In that Report, the valuable services of the Asians to the Tanganyika society as a whole were outlined.


The services gave every encouragement to the natives to utilize the "products of civilisation" brought to their doors by the Asians, and to engage in trade. Thus, the international community recognised the useful and essential functions which the Asians performed in the economic life of the Territory. The Report also pointed out that it would be difficult to replace Asian traders, and that native and non-native trade were "complementary, not antagonistic."

Before the assumption by Britain of direct management of Tanganyika, the Germans had applied restrictions on the immigration of Asians to the German East Africa Protectorate (G.E.A.P.). It was not surprising, therefore, that the Asians in that Protectorate had been dissatisfied with their position, throughout the period of German colonial rule over that Protectorate.

The main complaint of the Asians in German East Africa was, as has already been established, their classification in German law as "natives". The Asians strongly resented that treatment, and their resentment over their legal status seems to have been the main reason for the formation in 1914, early, of what became known as the Tanga Indian Association. It is noteworthy that the Association was the first non-sectarian Indian organisation, of which there is record in German East Africa. It is also noteworthy that, despite the immigration restrictions touched on above, Asians were the largest alien community during German rule over the G.E.A.P. In fact, when the first census in the G.E.A.P. was taken in 1912, the British Asians throughout that German Colony numbered 8,784. At the same time, there were 5,336 Europeans living in the G.E.A.P. There were also 4,101 Arabs and non-British Asians such as Goans and Baluchia, and almost 8 million Africans. Of the...
latter, more than 3 million lived in Ruanda-Urundi - the future Belgian mandate.7

What must, therefore, be remembered is that, before the imposition of the said immigration restrictions on the Asians, the declared policy of the Germans in their East African colony had been to admit Asians freely into that colony. It was only in the later period of German rule in German East Africa that the Asians were deprived of a privileged status - similar to the one enjoyed by the Europeans - and subjected to high and oppressive taxes, particularly on houses and businesses, besides import/export duties. Further, the Asians were menaced with discrimination in practice and legislation patterned on that of Natal in South Africa. The German colonists also accused the Asians of helping the so-called "Maji-Maji" Rebellion of 1905, which we shall turn to shortly. All the above forces, plus the German language which was too complicated for the Asians to master, greatly checked the growth of the Asian community in the German East African Protectorate.

The position of Asians in Tanganyika Trust Territory, however, presented the fewest problems in the Territory. The reasons for this state of affairs included the value of Asians as traders, and the terms of the Trusteeship Agreement. This theme will become clearer in the course of this Chapter. In summary, the majority of the Asians in Tanganyika worked in commercial and manufacturing industries, while a few were craftsmen. The Asians controlled 50 per cent of the Territory's import, and 60 per cent of its export trade.

If Asians in Tanganyika found any reason for complaint, it was mainly launched against legislation of a general

application rather than against any specific legislation directed against the Asians. Thus they complained, for instance, against the control over the marketing of African produce, the Land (Restriction of Transfer) Ordinance of 1943, and the restriction imposed in 1941 upon private road transport services working on routes served by the Railway Department vehicles.8

Thus, right from the start of British administration of Tanganyika, the British colonial administrators were faced with immense problems of aliens. The problems not only included the repatriation of all Germans, and the placing of all German properties in the hands of what was called the "Custodian of Enemy Property", but also of assisting the British settlers who had no money to buy the estates the expelled Germans had left behind. The estates and plantations were consequently bought by Indian, Scandinavian and Greek settlers at about 5 per cent of their real value.

Zanzibar had the least number of Europeans. The position of the Europeans on that Island and in Tanganyika was far less significant than that of the Europeans in the neighbouring E.A.P. It must, however, be remembered that Europeans in Zanzibar and Tanganyika suffered, like those in the E.A.P, from superiority complex. As in Zanzibar, racial conflicts between the Asian and European communities in Tanganyika became more serious during and after World War I when the Germans fought against the British in Tanganyika.

In Mandated Tanganyika, aliens, particularly the European settlers, found themselves in a worse position than before World War I. They were even less prosperous than, and not as numerous as, those in Kenya. The reasons for the alien predominance in

Kenya than in Tanganyika and elsewhere in East Africa we have seen before. They included, for instance, the mandated status of Tanganyika; the wealth in natural resources of Kenya; the permissive climatic conditions favourable to Europeans; the remarkably high tribal divisions very bitterly opposed to one another in Kenya; the notably high "civilization" of Buganda, and the daring, warlike and organized African resistances in Tanganyika and Uganda in the very early days of colonial rule in East Africa.

Unlike in Kenya, where the European settlers were predominantly British having many investment and other facilities, in Tanganyika, its mandated status neither allowed foreign investment, nor activated "settler politics." After 1929, however, Governor Cameron adopted a new policy that brought more foreigners in the Legco, and excluded Africans, who would thenceforth be represented directly by the Governor, the Chief-Secretary, and the Secretary for Native Affairs. The reason Cameron gave was that none of the Africans could speak English. After World War II, the tendency was to transfer power from the colonizer to the colonized African. Tanganyika was made a Trust Territory under a United Nations Trusteeship, by the Tanganyika Trusteeship Agreement. Great Britain—the Administering Authority—had the duty to promote the development of free and suitable political institutions in Tanganyika. Under the new arrangement, the Tanganyika inhabitants—the majority of whom were Africans—were to be assured of a rapidly increasing share in the administration and other services of their country.

As in German East Africa and Zanzibar, the Euro-Asian rivalry in Uganda was not as acute as it was in the East Africa Protectorate. Uganda was remote from the thriving coastal settlements, and it was inhabited by Africans whose comparatively
well developed social, economic and political systems (perhaps) served as impediments to Asian settlements. Thus, Asian settlement in Uganda was, as in German East Africa, retarded for many years owing to internal strife. Uganda also offered a natural impediment not only to Asian, but to white settlement as well. Uganda's climate was unsuitable for alien settlement. As Sedler put it, "the climate is not conducive to European colonization." Sedler and other British administrators hence discouraged European settlement in Uganda. Moreover, it was provided that no "non-native" could buy land from Africans without the Governor's consent. As a result of this policy, the European population in Uganda did not grow rapidly. In 1911, for instance, the first population census was taken which revealed that there were only 642 Europeans against 3 million Africans. By 1914, the number of Europeans was only 1,017.

As for the Asian population in Uganda, it should be remembered that there were more Asians than Europeans in that territory. In fact, there was a time when the British Government in London and the British Government in London and the British administrators in Uganda encouraged Asian settlement in that country. The main reason for that encouragement was to secure Asian manpower on the Uganda Railway, and for the economic development of Uganda. There was, therefore, the need for inducing Asian immigration and settlement in Uganda just as in its neighbouring territories. Between 1921 and 1940,

9See "General Report on the Uganda Protectorate for the year ending March 31, 1904" - London (1904), Cmd. Paper No. 2250, p. 28

10See in Colonial Office Pamphlets on East Africa: "Purchase of Native Land by Non-Natives" (Kampala, Land Office Leaflet No. 2 of 19th March, 1913, pp. 1-2).
the Asian population grew rapidly in Uganda. During that period, immigration regulations were, in fact, modified by the colonial Government. The outcome of the modifications in the immigration regulations was a rise in the entry of wives and husbands of permanent Asian residents in Uganda. A motion was consequently moved in the Uganda Legco. to restrict the "free" entry of Asians into Uganda. All the African and European members of the Legco supported the motion. As in Zanzibar and the other two East African territories, the Asians of Uganda were mainly engaged in business. In 1928, for instance, it was reported that 90 per cent of Uganda's total trade was in Asian hands. However, a few Asians cultivated land. They mainly owned cotton and sugar plantations. The economic power of the Asians improved at the expense of the Africans. We shall see that the latter consequently, especially those in Buganda, adopted negative and envious attitudes towards the Asians who, the Africans thought, monopolized their country's commerce and trade.

The position of the Asians in Uganda was, however, tempered both by the new policies in Tanganyika and Kenya. Administrative problems in Uganda were very similar to those in Tanganyika. The reason for that situation in Uganda was the absence of a well-developed European community in that territory. The policy of native paramountcy, first applied to Kenya only, was extended to Uganda, Tanganyika and Zanzibar. The position of the Uganda Asians was ultimately bettered by both the decrease in emphasis on European development, and the combination of the 1923 Devonshire Declaration (infra) and League Covenant Provisions.

II See, for further information on the topic, "Africa Digest" Vol.II, No. 8 of March - April, 1955, p.20.
As in Tanganyika, the Uganda Asians in the inter-war period directed their protests at the Government, rather than at the Europeans. In Uganda, as in Tanganyika and Zanzibar, the Euro-Asian friction was very minimal, as we have pointed out. As a result of the situation, the European and Asian communities prospered at the expense of the Africans. The minority communities could live side by side in harmony and peace, and neither segregation nor reservation was necessary to prevent racial friction in Uganda and Tanganyika. Consequently, there was no significant racial discrimination in landholding or residential conditions.

The racial problem in Kenya was as follows. In the preamble to the Royal Charter signed on 3rd September, 1898, and granted by Queen Victoria of England to the Imperial British East Africa Company, a provision was inscribed which read: "... the possession of the coastline... would be advantageous to the commercial and other interests of our subjects in the Indian Ocean who may otherwise become compelled to reside and trade under the government or protection of alien powers". In Article 17 of the same Charter, it was stipulated that "there shall be no differential treatment of the subjects of any power as to trade or settlement, or to access to markets".

If we examine the above provisions in the context of Asian immigration into East Africa, we find that the IBEA Charter provisions certainly favoured Asian settlement in that region. In fact, the IBEA continued to stress the desirability of Indian colonization of the region.

After 1915, the Asians of the E.A.P. were, unfortunately, socially subject to a colour bar that denied them access to first-class restaurants, hotels, clubs and resorts. Asians were required to use separate and inferior hospital, prison, education, and transportation facilities. The colour bar extended to the civil services, and to the military and police institutions in that Asians were never appointed to higher posts. Professional degrees from Indian universities, particularly in medicine and law, were not recognized. In 1910, there was a concerted European endeavour to exclude the Indians even from the Nairobi market place.

On their part, the Asians worked, as we have pointed out, for a change in the social and political equality. The Asians were, in fact, far superior in numbers, and it was hence understood by both the Europeans and Asians that if the Asians ever received full civic equality, the E.A.P. would be, in all but name, an Indian colony.

However, the Asian hopes for equality in the E.A.P. were seriously reversed during and after World War I. Martial law and arrests of some of the key Indian leaders curtailed Asian efforts for revolution. Asians could not own land in the highlands, and no highlands property could be leased to them. In 1915, a policy of commercial and residential (municipal) segregation was adopted in the Protectorate. On 24th February, 1919, Major-General Sir Edward Northey, the new Governor of the E.A.P., openly rejected the demands of Asian leaders for equal representation in the central and municipal governments. His announcement read: "British European preponderance in the Government is essential". Demands for the exclusion of Asians

*Quoted in "Northey to C.C. 5 June, 1919", in 'Colonial Office 533/210".*
From the E.A.P. continued to be aired, for Asians, according to him, had an incurable repugnance to sanitation and hygiene, antagonistic philosophy as well as moral depravity damaging to the African. Asian dissatisfaction grew as a result of the above European land and municipal segregation based on race. Asian protests were carried to the King of England whom the Asians requested to appoint another Governor that would be sympathetic and strong enough to hold the balance even between the various ethnic groups in the Protectorate.

Discrimination against the Asians in the E.A.P. became ever sharper when Milner assumed the post of Secretary of State for the Colonies in England in January, 1919. Immediately after the Armistice of 1919, racial discrimination against the Asians in the Protectorate was intensified by the British colonial Administration. The outcome of the intensification was the launching by the Europeans and Asians of strong campaigns between December, 1918 and January, 1919. The Europeans called their demands the "Irreducible Minimum". To it, they were to adhere for many years to come. The "Minimum" comprised the following five points:

(a) Residential and commercial segregation;
(b) Expulsion of Asians from the highlands;
(c) A maximum of 2 nominated Asians on the Legislative Council;
(d) Restrictions on Indian immigration; and
(e) Full recognition of the existing Asiatic rights in property and security of tenure.14

The above demands were categorically rejected by the Indians in the East Africa Protectorate and in India, where Gandhi was a staunch supporter of the Indian cause in East Africa.

14 For detailed information on this question, see, "Indians Abroad: Kenya" - in Bulletin No.6, July 1923 (Bombay).
As for race relations in the later years of colonized Kenya, we should remember and stress that the causes of the racial tensions in that territory continued to be the same as they had been before. They included:

1) The European objection to the Asian demand of a franchise based upon a common political roll. The Asians thus voiced constitutional claims.

2) The general disagreement between the Asians and Europeans on economic matters. The Asians resented the social differentiation or discrimination to which they were subjected.

3) The notorious European doctrine of reservation of the White Highlands for European occupation. That doctrine produced, as we have noted, numerous political, economic, social and land problems.

4) The African grudges against the Asian economic superiority in the territory. African political and other demands began to grow. The Europeans accused the Asians of inciting the Africans against the Europeans and the colonial government.

5) The Asian demands for a bona fide implementation of the policy of intra-racial partnership. This move was totally unacceptable to the Europeans. For, according to British official colonial policy, Kenya was to be developed as a "White man's country", and Uganda as "Black man's country." To the European colonists, that policy implied that the brown man had no place in any of these places.

However, in a correspondence from the E.A.F.'s High Commissioner Frederick Jackson to Lyttelton, Jackson wrote, in italics:

"The conditions are such that the black man is essentially everywhere, and over the great portion of the land must always predominate. To endeavour by legislation or otherwise to make any portion of this country exclusively a white man's country is ... doomed to failure. There is a great future before East Africa, but it is as a mixed race country .... It is the duty of
His Majesty's Government to legislate for these special conditions and not to unduly favour one race before another. 

From the above correspondence, two deductions can be made. One, Kenya should be developed not as a "white man's country", a "black man's country", or a "brown man's country", but as a multiracial country. Two, the development of the territory as a mixed or multiracial country offered a good opportunity of finding a lasting solution to the racial clashes in the country.

The endeavour to create a white man's country in the Kenya Highlands involved the exclusion of "coloureds" from gaining a title to land in the area. The Africans already in the area - like the Masai, Nandi and Kikuyu - were therefore, to be removed and "resettled" in the African "reserves". The job would by no means be easy, and no wonder reasonable men like Commissioner Jackson ridiculed the whole concept of a "white man's country".

Nothing, however, was done to change the concept. The European settlers even intensified their determination to exclude all the "coloured" peoples from the areas reserved for the whites. In reality, that was a policy of racial discrimination or segregation that had, after all, been advocated for the E.A.P. as early as 1904 by Sir H.H. Johnston, as part of a larger plan, to divide the entire African continent among Europeans, Asians, and Africans. Johnston's plan was to

15 C.O. 533/5, Jackson to Lyttelton, 11 November, 1905.

16 For a fuller discussion on this topic, see "The White Man's place in Africa" - in '19th Century and After', 328 (June, 1904), particularly pp. 937-46.
award to Europeans, the plateau territory of South, Central and Eastern Africa, which was not already occupied by Africans, and to Africans and Asians the tropical lowlands. According to the plan, to the Asians were to be allotted the unhealthiest lowlands. Johnston's further plan was to secure self-government for the Europeans in their own area. According to him, the African reserves should be treated as the "black man's legitimate domain", with self-government for the Africans in their own areas as a "safety valve for racial aspirations".

In this way, Johnston had anticipated in the E.A.P. separate but parallel development on the South African lines—which was the most favourable and essential doctrine of the 1920's and 1930's to be applied in the colonies.

Thus the Johnston doctrine in East Africa was but a continuation of the racial policies enforced by British administrative officials, such as the racist High Commissioner Charles Eliot in the EAP. (1901-1904). The most unfortunate thing was that both the Foreign and Colonial Offices in London strongly supported the idea and practice of racial segregation in East Africa.

From the immediately foregoing observations, it is clear that the Europeans in the E.A.P. were bitterly opposed to the idea of Asian settlement in that Colony. In 1906, European resentment against the Asian presence in the Protectorate commenced to be vigorously pronounced. The resentment began to be voiced in the first organization formed by the Europeans, called the Colonists Association. Many inflammatory articles and speeches against the Asians started to appear in increasing numbers, particularly by Lords Delamere, Hindlip, and Cardross, and Mr. Grogen, and a prominent South African immigrant, Mr. A.S. Flemmer. Even the British Government was divided: whereas some
British Ministers and Commissioners in the E.A.P. were pro-
Asian, others were anti-Asian colonization not only of the
E.A.P., but also of the Uganda Protectorate.

In the latter period of colonial rule in East Africa, Britain
which had become the sole Colonial Power in that region, maintained
her support for racial differentiation, while in East Africa itself,
the balance in race relations remained unaltered. In other words,
racial conflicts continued to be great in Kenya, but only minimal
in Zanzibar, Tanganyika and Uganda. The fact is that nowhere
else in East Africa did the position of Asians cause so much
serious conflict as in Kenya. Here, the Asian population grew
very rapidly as years passed by.

A short comparison of the racial policies adopted in
South Africa and East Africa towards the Asian societies in these
territories reveals that, whereas in South Africa the discrimination
policy tended to alienate the country's relations with the Asian
colony, in East Africa, there was a growing recognition, at
least in the latter epoch of colonial rule, by most Europeans of
the need for assigning to Asians an appropriate place in a multiracial
structure of society. It is important to note that the European
recognition coincided with the African realization that the Asian
community was a possible threat to their (African) economy.

An important question that can be raised at this juncture
is: How were the political and other racial interests represented
in the various East African Legislatures? The answer to this
question is simple. The British political colonial policy on the
issue was to split representation into "equal" and "balanced"
representation. According to the "equal" type of representation,
the same numerical representation was granted to each racial commu-
nity. According to the "balanced" type, however, the community
having predominant claims was granted a measure of representation
equal to that granted to all the other communities taken together. It is interesting to note that the "balanced representation" doctrine was included in the project for 'closer union' in Eastern Africa. That method was applied in Uganda, where African unofficial representation equalled that granted to the Europeans and Asians. The same doctrine was also applied in Kenya though in a different direction, and in Tanganyika.

In Zanzibar, developments were as follows. In 1926, the Sultan created a Legco and an Exco. The latter's President was the Sultan, and its Vice-President was the British Resident. The Exco also comprised the Heir to the Throne, four ex officio members, and three nominated officials. All these representatives were British members of the Administrative or Departmental Services.

As for the composition of the Legco in Zanzibar, the British Resident was its President. The other members of the Legco were the four ex officio members of the Exco, five nominated officials and eight unofficials. The latter were nominated by the Sultan, with the advice of the British Resident, and included three Arabs, two Africans and one European.

The representatives of the Arab Association called for the institution of self-government under the Sultan’s sovereignty, but based upon a Legislature elected on a common roll. The realization of this idea was remote, for the Arab and African communities were not unanimous on the issue, while the Asian community mainly aimed at the retention of its prominent role it played in the economic and business field on the Island. So the struggle of obtaining 'balanced' or 'equal' representation continued to be the main problem on the Island. The problem became worse as the influx of

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European officials into Zanzibar grew higher and higher, as the position of the Sultan became weaker and weaker. Zanzibar was inhabited by four racial, ethnic groups: Arabs, Asians, Europeans and Africans. The latter were of two types: The Shirazi and Africans pure. The "Shirazi" Africans were the descendants of Persians and the coastal Africans. The Africans Shirazis were actually Swahilis, and their language—Swahili—is mainly a product of Arabic and Persian, although there is a lot of Bantu words.

In the communal set up of the above four racial communities, politics in Zanzibar started along racial lines. It was a game mainly among Arab, Indian and African Associations. Among the Africans, however, there were Shirazi Associations and African Associations "pure." By 1957, the Arabs had been well organized politically, and their nationalism, based upon racialism, was very strong and radical. However, the Shirazi and African Associations combined to form the Afro-Shirazi Party against the Zanzibar National Party, which was predominantly Arab. Asien numbers were minimal. British colonial policy stressed, inter alia, both the maintenance of the principle of Zanzibar citizenship, and the promotion of development on non-racial lines. The racial situation was, however, acute in Zanzibar, particularly during and after the 1961 June elections. The racial conflict was mainly between the African and Arab communities on the Island. Of the 68 people killed, 64 were Arabs. 18

Six years after the establishment of the Executive Council (Execo), the first Legislative Council (Legco) was set up in 1926

--- for further information on this subject, see "Africa South of the Sahara"—Europa Publications Ltd., London, 1971, p. 819 et seq. ---
in Tanganyika. The Legco comprised 15 officials and 10 unofficiels. Two unofficiels represented the Asian community in the Legco. One European was appointed to represent African interests.

In Mandated Tanganyika, the German population was disqualified from membership in the Legco by the British practice that Legco members must take the oath of allegiance to the British Crown. That discriminatory practice was no doubt against the mandate principle of non-discrimination.

In 1945, an amendment was made to the Constitution of the Tanganyika Trust Territory. It brought about an increase in the number of Legco members to 15 officials and 14 nominated unofficiels. Of the latter members, seven were Europeans, including the one who represented African interests; three were Asians and four were Africans. Only two of the African members, we should note, were appointed at once. The other two took their seats only in 1947 and 1948. This was indeed a "balanced" type of representation, to which reference has been made above.

In 1951, the Government accepted the argument that equal distribution of the unofficial seats between the three ethnic groups in Tanganyika would be the only fair representation of racial interests in the Territory’s Legislature. In April, 1955, the number of Legco members was raised to 61, of whom 51 were official members, i.e., 19 officials and 12 nominated unofficiels. The latter were divided equally between Africans, Asians and Europeans. The 30 representative members of the unofficial side of Legco were also divided equally between the three ethnic groups in Tanganyika.

With regard to Uganda, an Order in Council was enacted on 17th May, 1920, which brought the Exco and Legco into existence.

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The Exco members were purely official. The Legco had 6 members of whom four were officials (i.e., the Exco members) and the remaining two were nominated unofficials. All the six were Europeans. The Asians of Uganda boycotted Legco until 1926, on the grounds that their demand for parity of representation was not fulfilled. In 1926, the number of unofficials was raised to four - the two Europeans, and two newly nominated members.

As for the Africans, they had little or no interest to participate in the central councils, particularly in Buganda, where the Kabaka and his people concerned themselves more with the maintenance of their own traditional institutions and preservation of the 1900 Agreement, than with central representation. London could, they believed, come to their assistance if the central government gave them unpopular and unprogressive advice. It is of interest to note that the same fear was expressed by the alien settlers in Uganda who would not like to be dominated by the more powerful European settler population in neighbouring Kenya. The Beganda, therefore, desired to retain their separation and isolation from the other Africans and aliens. What the alien communities in Uganda were ready to accept were co-ordinated or amalgamated services only.

After the first alteration in the Legislature in 1934, there was a slight improvement in the question of racial representation. Seats for unofficial representation in the Legislative Council were distributed as follows:

Africans : 3;
Asians : 3;
Europeans : 3. Also, the African member from Buganda was to be one of the Kabaka's three Ministers. The Western Province would be represented in rotation by the Katikiro (Senior Minister) of each of the three Agreement States of Ankole,
Bunyoro and Toro. Similarly, the Eastern Province would be represented in rotation by the Secretary-General of the four Native Administrations. The aim of these developments was to reach balance in representation. In 1948, official membership rose to ten, and the unofficials also numbered ten. Of the latter, four, three, and three were Africans, Asians, and Europeans respectively.

In 1952, the Legco was expanded to include 16 officials and 16 unofficials, of whom 8, 4 and 4 were Africans, Asians and Europeans respectively. From 1952 onwards also, Asians and Europeans to the Legco were to be appointed by the Governor. Africans were to be nominated by the Governor from a list of names submitted to him by the Northern, Eastern and Western Councils and their equivalent in Buganda—the Lukiko. From the list the Governor would select: two Africans each from the Northern and Eastern Provinces, and one each from the Western Province and Buganda. The remaining two were to be nominated as follows:—One by the Kabaka, and one by the rulers of the other three Kingdoms.

In 1955, the Buganda Kabaka was banished in December, owing to his renewed separatist attitude. In August of the same year, the Uganda Legco comprised 28 members, of whom 14 were Africans—11 elected by District Councils subject to the Governor's approval, and 3 by the Buganda Lukiko. There were also 7 Asians and 7 Europeans in the Legislature. The division in the number of officials and unofficials was as follows:—

17 officials and 11 nominated unofficials. The latter were free to vote on all issues barring confidential ones. In 1955, the Legco membership rose to 60, of whom 30 were Africans. It was then that a ministerial system was introduced into Uganda's
Executive Council. Whereas the Exco had before 1955 comprised
the Governor and four officials—who were the same officials
on the official side—as from 1955, the Exco would consist of
13 Ministers, 8 official members of Legco, and 5 unofficial members
of the same Legco, 3 of whom would be Africans. In the same
year also, the Kabakasip became a monarchy, and thenceforward,
the future Kabakas would be constitutional monarchs within
Uganda.

In Kenya, attempts by the European community to secure
a Constitution of Responsible Government were made as early as
1913. The Asians and Africans made desperate attempts, in the
European-dominated Society, to secure an adjustment of claims
to a share in the political organs of the Colony. The fact of
European domination remained unaltered. The electoral franchise
was confined to British subjects of European extraction. The
idea of a franchise based on a common roll was totally rejected
by the Europeans. The Euro-Asian struggle that resulted from
that state of affairs has already been analysed above. It
suffices here, therefore, to state that the final outcome of the
whole business was the adoption, by the British Government, of
the policy of separate communal rolls for the European and Asian
electorates. A new constitution of the Legco in 1927 provided
for a small official majority, and one of the nominated members
would represent Arab interests.

What should also be borne in mind is that Kenya was the
first East African territory to include an African unofficial
member in its Legco. That was in 1944, and in 1946, a second
such African representative was appointed on a temporary basis.
In 1947, his seat became permanent. In the following year,
African representation was raised to four, these being nominated
by the Governor from a list of names presented to him by African
Local Government Organs. The Arab official member was replaced by a nominated unofficial. Like the Legco, the Execo was established by a Kenya Order in Council of 22nd October, 1906. The Execo was, originally, entirely official. The unofficial element was introduced into it in 1919.

Serious and significant constitutional developments began to occur in the early years of the 1950's. In 1952, for example, the unofficial side of the Legco rose to 28: 14 European and 6 elected members; one Arab elected member, and 6 African representative members. The official side comprised 26 members: 8 ex officio members and 18 nominated members. In March, 1954, Lyttelton, the Colonial Secretary of State announced, while on a visit to Kenya, important changes designed to create a multiracial system of Government in Kenya. These changes have been commonly known as the Lyttelton Settlement. The settlement was a racial arrangement by which the Europeans - the smallest of the major communities - were accorded a representation, both in the Legco, and since 1954 in the Council of Ministers, which equalled that accorded to the Africans, Arabs and Asians taken together. The connections of Indians with East Africa require a brief treatment here. Indian coinage, laws, railways and business practices served as models for those in East Africa. Indian military personnel aided Britain in the initial conquest and pacification of the East African territories, and in the subsequent war with Germany both in Europe and East Africa. Indian Civil Service Officials—whether retired or loaned—became administrators and advisers in the new colonial Administrations in East Africa. Indian labourers helped construct

For details on this subject, see "Kenya: Proposals for a Reconstruction of the Government"—Cmd. 9103, 1954.
the Uganda Railway, projects of the Public Works Department, and so on. Indian lawyers, doctors, and other professionals served in the new societies. Indian politicians and intellectuals also firmly supported their countrymen abroad in their struggle for equal treatment. At the same time, they advised and often directed their fellow Asians in East Africa in their political aims and activities.

Credits from Indian banks and other financial commercial institutions promoted the rapid economic development of East Africa. Kenya and Uganda, for example, relied heavily upon India's imports, and in the course of time, India became an important market for Kenyan and Uganda exports. The above observations clearly indicate that India's role in the development of East Africa was useful.

In summary, all the four territories of East Africa had large volumes of trade with India. And apart from economic development, Asians in East Africa also contributed greatly to the development of law and order in the East African society. The Indian military forces mentioned above were actually recruited in India and sent to East Africa, usually on three-year contracts. The main purpose of the Asian military presence in East Africa was to defend the British Colonial Administration and to protect British interests in that part of Africa.

Alien contribution to the development of East Africa took many forms. Schools, for instance, and hospitals, roads and other communication facilities were built. And alien civilization was brought to East Africa. New and better methods of agricultural production were introduced in the region, and so on, and so forth.

If we examine the position of the Asians in colonized Kenya against the background of that of the Europeans, we find
that the Asians envied the position of the Europeans because of three reasons, precisely:

1. The European grant of representation to the Asians in the Legislative Council, which the Asians regarded to be unfair;

2. The (European) proposal to segregate Asians in the urban areas; and

3. The ever-retained reservation to Europeans of the best and richest lands in the "White Highlands." The same can be said of the position of Asians in the other East African colonial territories. This discriminatory British attitude (policy) towards the Asians in East Africa was actually the liberal Lord Elgin's (Secretary of State for Colonies') continuation of Sir Charles Eliot's highlands policy. After Eliot's forced resignation from the post of High Commissioner for the R.A.T., the tendency was to avoid segregation against the Asians. But when the Conservative Government was ousted in December, 1905, the R.A.T.'s new High Commissioner and successor to Eliot from 1st August, 1904 - Captain Sir Donald Stewart (1866-1905) - died of pneumonia, the British colonial policy of favouring Indian settlement in the Protectorate's highlands was reversed. Lord Elgin upheld Eliot's highlands policy, and directed the new Governor of the Protectorate, Sir James Hayes Medler, to adhere to his predecessor's doctrine of granting land between Kiu and Port Ternan to Europeans only.

In 1915, however, a Crown Lands Ordinance was enacted, which did not prevent "Asiatics" from acquiring land anywhere in Kenya. It was, nevertheless, always the practice of every Colonial Administration, when disposing of lands in the Highlands, to stipulate that the purchaser must be of European extraction, and transfers between persons of different races required the sanction of the Government. In 1912, a legislation was passed to prohibit all non-Europeans from occupying certain urban areas.

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See: (a) Ord 3475 (1908), pp. 19, 169; and
British attitudes towards non-Europeans worsened over the years. In the period 1925-1946, for example, it became a rule that entry into Kenya was permissible only to British subjects who were not considered as "undesirable", and who could support themselves in the Colony. In 1949, Tanganyika, Uganda and Kenya had identical immigration Ordinances regulating the entry of new immigrants. The Ordinances required any intending immigrant to possess capital of amounts varying according to the occupation in which he proposed to engage.

On the Euro-Asian struggle for supremacy, which was basically a racial problem in colonized East Africa, it is necessary to analyze the stands of the successive British Governments on the issue: how far did the British Government stands and policies help solve or intensify the problem? The general response to this question is that the British Governments and politicians in London, as well as the colonial Administrations and individual personalities in East Africa, helped solve and intensify the problem in East Africa. Much depended on the type of Government and/or personalities that were in power in Britain and East Africa. An example in support of this argument is necessary. Because the problem was greatest in the East Africa Protectorate (Kenya), the writer has chosen as an example the events that took place in that Protectorate.

Commissioner Charles Eliot's extremes in his "white colony" policy have already been analysed above. Eliot was undoubtedly a racist, whose racial policies were revealed

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For a fuller account on the immigration problem, see generally:

2. "Tanganyika Laws", Chapter 251 (1949);
in many of his actions as Commissioner of the Protectorate.
His Crown Lands Ordinance of 1902 that alienated lands from
Africans, excluded Asians from buying land in the highlands
and gave white settlers free grants of land, could certainly
not help solve the racial conflicts in the Protectorate.

All that Eliot's policy could help establish was to turn
Kenya into another South Africa.
The British Secretary for Foreign Affairs Lansdowne had a
different policy - a policy that could have helped solve the
problem in the Protectorate. Lansdowne's Foreign Office and
the Colonial Office, together with Eliot's Deputy Jackson,
opposed Eliot who preferred to resign rather than change his
policy in 1904. Thus Kenya was saved from becoming another South
Africa. In July, 1904, Lansdowne informed Eliot's successor -
Sir Donald Stewart as follows:--

"The primary duty of Great Britain in East Africa is the
welfare of the native races.24 At the same time, Lansdowne
sought the opinion of Sir Alfred Lyttelton, Secretary of State
for the Colonies, on the reservation of the highlands for white
settlement. Lyttelton's response was that any legislation
reserving the highlands for European settlement would not be
"in accordance with the general policy of His Majesty's
Government," and that East Africa was "the natural outlet
for Indian emigration." 25

In February, 1921, Winston Churchill succeeded Milner
as Secretary of State for the Colonies. Optimism grew that
the East African (Kenyan) problem of Asians would be solved
more reasonably and justly. That optimism materialised, Out-
standing British politicians became sympathetic towards the

24 F.O. 2/833 - 'Lansdowne to Stewart,' 8 July, 1904.
25 See C.O. to F.O. of August 15th, 1904, in "Colonial Office"
519/1.
Kenya Asians, and demanded equal treatment of all His Majesty's subjects. Furthermore, the rights of British Indians to British citizenship had to be recognised. In August, 1921, Churchill had the following remarks to make to the Imperial Conference:

"The British Empire could have only one ideal of race, colour, or creed preventing any man by merit from reaching any station if he were fitted therefore. I am unable to adopt any lesser statement of principle in regard to the Crown Colonies."\(^2\)

Thus during his first year as Secretary of State for the Colonies, Churchill pursued a policy on Indians that was on the whole pro-Indian, and conformed to his ideas expounded in 1908. He rejected his predecessor's (Milner's) policy that had been anti-Indian. Churchill also rejected the discriminatory Kenya Public Health Ordinance enacted by the Kenya colonial Legco in January, 1921. Thanks to Churchill's initiative, further, an agreement was reached between the British India and Colonial Offices on the Asian question as follows:

1. Equal citizenship of Indians was guaranteed;
2. No segregation was to be practised outside the Kenya highlands;
3. The highlands were to be reserved for Europeans; and
4. An endeavour to meet the European claims was to be made.

The element of discrimination was, however, clearly provided for in points 3 and 4. The four points together were called "concessions." They were soon followed by the so-called "Montagu-Churchill proposals". Montagu was the Secretary of State for India. The Churchill-Montagu deal contained eight proposals:

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(i) To offer the Asians an enfranchisement of about 10 per cent of the Asian population;
(ii) To offer a common electoral roll to the Asians and Europeans;
(iii) To guarantee three or four seats in the Kenya Legco to the Asians;
(iv) No restrictions on Indian immigration to the East Africa Protectorate;
(v) No segregation in the townships;
(vi) To allot a definite area for Asian settlement between Nairobi and the coast;
(vii) An exclusive use of the highlands by the Europeans; and
(viii) To promote the policy of "equal rights for civilised men".

All these proposals were to be incorporated in a new constitution to appear at the end of 1922 or the beginning of 1923.

Again, the Montagu-Churchill proposals, like the agreement before them between the Colonial and Foreign Offices, retained the policy of European supremacy and privileged position in Kenya, especially in the highlands. Thus, the very fact that Churchill retained the old doctrine of reserving the highlands for Europeans only, and full civic and political rights only to those Asians and Africans who were believed to have reached and conformed "to well-marked European standards" was clearly indicative of the British Government's policy to remain pro-European in East Africa. European opposition to Churchill's impending settlement was great, and forced him to abandon his proposals with Montagu. Thus Churchill's very controversial statement on 27th January, 1922, at an East Africa Dinner in London was a terrible departure from his earlier proposals. The statement read: "We do not contemplate any settlement or system which will prevent British East Africa or Kenya becoming a characteristically
Churchill's change of mind was caused by increased European pressure. It was a complete departure from even what "racists" like Milner had adhered to in the past. For Churchill's predecessors had only implicated that the reservation, for instance, of the highlands was based upon administrative convenience only.

Churchill's statement at the East Africa Dinner was interpreted to mean a complete eradication of the idea of an Indian colony in East Africa, and a complete subordination of African and Asian interests to those of the Europeans. It was not, therefore, surprising that Churchill's statement had negative repercussions. The Kenya Indians, for example, and their supporters in India and elsewhere, were irritated by that speech. The E.A.R. Asians planned to retaliate. Montagu and other pro-India prominent British political personalities were amazed and terribly disappointed. Montagu even resigned over the issue. Churchill was hence forced to initiate, again under pressure, another Colonial Office-India Office move, which reinstated the Montagu - Churchill proposals, and recommended an Asian municipal franchise. It also assured Asians of four members in the Legco, but imposed restrictions on Asian immigration and upheld the old highland doctrine.

The unfortunate thing was that no solution was reached on the Kenya Asian problem. But nevertheless the years from 1914 to 1922 were most important in the India/East Africa relations. For it was within this period that:

a) The East Africa Protectorate was transformed into Kenya Colony;

b) The unchanged highlands policy was fixed in legislation;

See "Indian Annual Register", (1922) II, pp. 282-3.
c) Municipal segregation was implemented;

d) The spotlight on Asians overseas shifted from South Africa to German East Africa (after World War I), and to Kenya (after 1920);

e) Both Europeans and Asians received elective representation; and

f) For the first time India, after the belief that one or part of one of the East African territories would become an Indian Colony, became a significant determinant of imperial policy in British equatorial Africa.

After all in 1858, Queen Victoria of England had declared:—

"There shall not be, in the eye of the Law, any distinction or disqualification whatever, founded upon mere distinction of colour, origin, language or creed. But protection of the law, in letter and in substance, shall be extended impartially to all alike." 22

Queen Victoria's progressive ideas were reflected 65 years later in the so-called Devonshire White Paper of 1923. Because of its historical significance, this Paper deserves a sui generis outline here, which is given below. A good number of events led to the adoption of that Great Paper, which was supposed to provide for a lasting solution to the racial problem in Kenya.

European animosity towards the Asians continued to grow over the years. Despite that animosity, Asians continued to immigrate to the U.A.P. and even to multiply. Their concern over their position in the Protectorate had began to be shown as far back as 1900, when the Asians had formed an Indian Association at Mombasa. Savla, together with his supporters, were always conscious of their great economic contribution to East Africa's development. Three of Savla's supporters were the wealthiest and most influential Indians in East Africa; Allidina Vioram, a Khoja who had immigrated to East Africa from Cutch at the age

of twelve in 1863; Alibhooy Mulla Jeevanjee, and his brother Tayabali Mulla Jeevanjee, who were Bohra Muslims from a humble background in Karachi. They had arrived in East Africa in 1890. The greatest thing that irritated these Asians was the lack of appreciation by the Europeans of the Asian's great contribution to the development of East Africa. As years passed by, therefore, the Asian leaders involved themselves in anti-European activities, and encouraged the formation of more and more anti-European organizations.

In 1910, A.M. Jeevanjee wrote to the British press and boastfully said:

"I have been in this country (i.e., Kenya) for twenty years. I may say almost I have made the country. All the best property in Nairobi belongs to me. I built all the Government buildings and leased them to the Administration. I built all the hospitals and post-offices between Mombasa and Port Florence (i.e., Msuminga). I was the sole contractor on the Uganda Railway while it was building, and provided rations for the 25,000 coolies engaged in making the line."29

In 1901, A.M. Jeevanjee founded the "African Standard". In 1903, he sold it to a certain Maas Anderson. The latter renamed and published the Paper in the same year in Nairobi as the "East African Standard". Jeevanjee also built the Nairobi Public Market and owned most of the land in what became known as the Indian bazaar. He also had the distinction and honour in 1909 of being named the first Indian nominated to the Legco. Jeevanjee and the other influential Indians like Visram, continued to lead the Asian population in Kenya against the discriminatory attitudes—established—above—of the European population. Asian grievances were presented to the local, Imperial and even Indian Governments.

Jeevanjee emerged as the toughest and most prominent Asian in Kenya. He continued to publicise Asian grievances in the local, British and Indian newspapers. He reiterated that quoted in the "Daily Chronicle" (London) 1st Sept, 1910. See also A.M. Jeevanjee, "An Appeal on Behalf of the Indians in E. Africa" (Bombay), 1912, p.12.
all that the Asians of the E.A. asked for was equal
opportunities and fair treatment. The Asians bitterly complained
that, although they were by far the most numerous community and
the most influential in business, commerce and finance, the Asians
had been reduced to a secondary social and political position;
and denied access to the best agricultural land. Since the
Europeans were dominant politically, the Asians could have
little hope for a change in their favour.

The above argument of the Asians was, in the present
writer's view, very sound. The Asians were brought to East
Africa by the British. It was these very British colonialisesta
that denied the Asians access to agricultural land. Thus the
Asians had no alternative but to go into business. The British
accusations against the Asians in the later period of colonial
rule in Kenya - and elsewhere in East Africa - of monopolizing
the economy of the region were hence very unjustified. The
Asian problem was, therefore, a question of British responsibility.
This is an important fact which was not admitted by the British,
and not realized by the Africans, unfortunately.

In October, late, 1922, Churchill lost his seat in
Parliament, and thus also his post of Colonial Secretary.
Churchill was succeeded by Victor G.W. Cavendish, the 9th Duke
of Devonshire. Cavendish was a staunch Conservative. A former
Governor-General of Canada for five years, Cavendish was
considered to be an honest man, which was, according to many
people, hardly a virtue that one would attribute to Churchill.
Devonshire at first attempted to carry on Churchill's policy
by pressing for agreement to the Wood-Winterton proposals that
reaffirmed the Montagu-Churchill proposals. Wood and Winterton
were Principal Assistants in the Colonial and India Offices
respectively. Lord Winterton was Under-Secretary of State for India. Between mid-April and mid-July, 1923 therefore, negotiations took place in London at Devonshire's invitation. At the London talks, whose central purpose was to resolve the racial problem in Kenya, the following "interest groups" were represented: the colonial Government in Kenya, which was represented, inter alia, by the racist Governor Coryndon (as leader of the delegation) and his private secretary, Major E.A.T. Dutton; European settlers led by Delamere, who took along with him two Masai tribesmen; the Indian Government and public, and the Indian population in Kenya. The Kenya Asians were represented by A.M. Jeevanjee, their leader, and V.O. Passri, Desai, Varma (a lawyer), Abdul Wahid, and E.B. Virjee. Among the pro-Indian Europeans who also travelled to London from Kenya, India and other parts of Britain to attend the talks, or voiced their support of the Indian cause, were included: Rolak, Andrews, Norman Leys, Josiah Wedgwood, Charles Rhoden Buxton, John H. Harris, McGregor Ross, E.D. Morel and Harry Snell.

The British Colonial Office was represented by: Cavendish, the Colonial Secretary; his permanent Under-Secretary Masterton-Smith and the following subordinates: Herbert Read, A.C.C. Parkinson and William Cecil Bottomley. These three were the Colonial Office's specialists on East African affairs.

Unfortunately, no African representation participated in the talks. Both the Europeans and Asians agreed, however, that "native interests" should be the paramount consideration of the British Government. After listening to, and interviewing the various deputations of the European and Asian communities in Kenya, Devonshire took conclusive decisions. The outcome of
those "Devonshire talks" were Devonshire's decisions that have been known as the Devonshire White Paper of 1923.30

The core of the Devonshire White Paper was the policy of native paramountcy. This policy was expressed in the following words:

"Primarily, Kenya is an African territory, and His Majesty's Government think it necessary definitely to record their considered opinion that the interests of the African natives must be paramount, and that if, and when, those interests and the interests of the immigrant races should conflict, the former should prevail....

In the administration of Kenya His Majesty's Government regard themselves as exercising a trust on behalf of the African population, and they are unable to delegate or share this trust, the object of which may be defined as the protection and advancement of the native races."31

This doctrine was not totally acceptable to the Indians, for reasons which will become clear in the course of this argument. Sastri's immediate negative reaction, for instance, to the Devonshire arrangement was revealed on 22nd August, 1923, when he spoke at a reception given in his honour by Sir Ali Imam.

Sastri declared:

"The interests of the African native are paramount, and must take precedence.... But we Indians reject the White Paper because it left the power of the European community unchanged.... The Indian has been cruelly betrayed." And Sir Ali's response was:

"All these years so spent, I was sustained by the ideal which the consciousness of the free citizenship of the Empire inspires. The Kenya decision has given a rude shock to that ideal.

His Majesty's Government has failed in the hour of India's need and thrown the Moderate Party of India overboard."32

The policy laid down in the paper was essentially the same as that outlined or summarized in Peel's telegram (under Devonshire's authority) from the India Office in London to the Viceroy of India. The "clear-the-line" telegram was despatched to India on 12th July, 1923. The Devonshire decisions consisted of thirteen points:

1) A doctrine of native paramountcy;
2) The interests of the other communities were to be safeguarded in conformity with the Imperial Conference Resolution of 1921;
3) An offer to Asians of a lowland reserve;
4) A guarantee to Europeans of an exclusive utilization of the highlands with an area of 16,696 sq. miles plus 3,950 sq. miles of forest reserve;
5) Abolition of segregation in the townships;
6) Establishment of a communal system of election rather than a common roll;
7) Both the Asian and European communities were to have an elective representation in central and municipal governments;
8) Eleven seats were to be reserved for Europeans in the Legco (unofficial representation);
9) A slight increase in Indian representation in the Legco, probably to 5 seats (unofficial representation);
10) 1 elective, and 1 nominated member were granted to the Arab community;
11) 1 nominated missionary would represent Africans;
12) No change would occur in the Executive Council. Thus Asians and Europeans would retain an appointed representative. But the African Community would receive one representative, preferably a missionary; and
13) No responsible government or an unofficial majority would take place, "in the foreseeable future."

Hence the country (Kenya) was to be held in trust for Africans. For the same reason, some further immigration control was required, but no restriction would be imposed on immigration from one part of the British Empire to another. Hence the Governors of Kenya and Uganda were to propose the amount of restriction required.

Devonshire achieved exactly what he wanted to evade — intensification of the racial problem in Kenya. This problem became worse between November, 1924 and June, 1929. In this period, the Conservative Party was again in power. The new Colonial Secretary and Governor of Kenya were some of the greatest imperialists since Joseph Chamberlain. Both the Colonial Secretary — Leopold Starrett Amery — and Governor of Kenya — Sir Edward Grigg — were interested in establishing a firm foundation of European settlement on Kenya. Kenya was to be developed towards a responsible government and dominion status. Amery and Grigg also hoped to unite all the East African territories in a federation dominated by Kenya. The core of the Amery—Grigg doctrine was to by-pass the Duke of Devonshire's arrangement and perpetuate a policy of European paramountcy.

The truth of this argument was reflected in the following statement issued by A.K. Keith in 1927:

"It appears — the policy is to be inaugurated of subordinating the interests of the native population and the Indian immigrants alike to the welfare of the European settlers, regardless of the obligations of trusteeship affirmed so recently as 1923. The decision marks a distinct deterioration of British conceptions of fair play to native populations, and is an interesting illustration of the operation of Dominion modes of thought on Imperial statement."

Whe, subjected to strong criticism in the House of Commons, that he had intended to reverse the Devonshire doctrine, Amery denied
that. He asserted that his **Command Paper** of July, 1927 fully supported the Devonshire policy:

"His Majesty's Government wish to make it clear, that they adhere to the underlying principles of the White Paper of 1925 — both in regard to the political status and other rights of British Indians resident in East Africa, and also as regards the Imperial duty of safeguarding the interests and progress of the native populations."

From the above utterance, it is clear that Amery's aim was to ignore the Indian cause and the doctrine of African native paramountcy. He wanted to apply the Tanganyika trusteeship also to Kenya and Uganda. The responsibilities of trusteeship should, according to Amery, be shared between Britain and the European community in Kenya, which was "the most advanced of all such communities in Britain's overseas possessions". Thus Amery and the so-called Ormsby-Gore Commission were strongly in favour of European domination in East Africa. The Ormsby-Gore Commission comprised Frederick G. Linfield, a Liberal Member of Parliament (M.P.), Major Archibald G. Church, a Labour M.P., and W.G.A. Ormsby-Gore — a Conservative M.P. This mixed Commission was, it must be remembered, an organ which promoted Amery's ideas. The Amery White Paper of 1927 was, like the Devonshire Paper, rejected by the Kenya Asians and their sympathisers, because it neglected Asian interests. It even substituted Grigg's dual policy.

By Grigg's dual policy, native paramountcy was to be substituted by a new concept which would promote closer union. Grigg was also High Commissioner of Transport for Kenya, Uganda and Tanganyika. Thus by the dual policy, Grigg simply meant a combination of non-native and native production and communities of the above three territories, plus Nyasaland and Northern Rhodesia.
The purposes of Grigg's dual policy were to promote the well-being and development of the African peoples, to bring about a political evolution of the territories, and to prevent improper exploitation of Africans. Grigg's policy seems to have been essentially a policy of 'equal rights for all civilized men,' initiated earlier by Cecil Rhodes and pursued by Churchill. However, the sting of the policy was in the tail, for the policy was designed to bring about a European superiority and paramountcy in Eastern Africa.

In 1929, the Conservative Party lost to the Labour Party. The Labour Government enacted two White Papers that were particularly significant regarding race relations in East Africa at that time. In his first Command Paper, entitled "Statement of the Conclusions of His Majesty's Government in the U.K. as regards Closer Union in East Africa" (London, 1930, Lord Passfield, the Colonial Secretary, paid greater attention to the question of 'closer union' than to anything else. However, he proposed that African interests in the East African Legislatures should be represented by two African members. That proposal thus required the addition of one African nominated member.

Passfield also provided for a common roll to all races in future, equally on the basis of attainment in education and advancement in 'civilization'.

Passfield's second Command Paper (No. 3573, London 1930) was entitled: "Memorandum on Native Policy in East Africa."

In this Paper, Passfield reaffirmed the Devonshire Settlement of 1923, and Grigg's dual policy, whose aim had been to promote the economic development of the country and general prosperity of all its inhabitants. According to Passfield, 'dual policy' and 'native paramountcy' were complementary, not antagonistic. However, priority had to be given to native paramountcy, which must be the central theme of British policy in Kenya.
Reactions among the Asian and European communities in East Africa to the above British Government stands can be summarized as follows:

The Duke of Devonshire's White Paper greatly disappointed the Indians. The Paper was hence totally rejected by the Indians because the Paper was, as a whole, unfavourable to the Asians. The Declaration was, however, a turning point in Kenya's history, because by it, Devonshire rejected, through his doctrine of "African paramountcy", Churchill's argument in the East Africa Dinner speech that Kenya should be regarded as "a characteristically and distinctly British colony". In effect, Devonshire subordinated European and Asian interests to those of Africans. The results of the Devonshire new style were a departure of the Europeans from the 'threat' of Asians, and consideration of the newly stressed African interests as the main impediments to European ambitions. The 'native problem' thus replaced the 'Asian problem' as the greatest concern of the British Government in Kenya. In no way would Kenya become an Indian colony, as had very strongly been rumoured. Thenceforth, the Asians of Kenya were more united than ever before in a struggle for a social, economic and political position equivalent to that of the Europeans.

Supporters of the Indian cause were also very disappointed by the Devonshire arrangement. Polak, for example, said of it: "...I fear the old evils will remain... The stage is being set for a world wide racial struggle between white and coloured peoples."

The British Labour Party denounced the Devonshire White Paper and promised to repeal it once it came to power. The Asians in the other East African territories and the Indian Government and people all repudiated the Devonshire Settlement of 1923.

See "Indian Review" (October, 1923), p. 685.
Despite all these protests, the Duke of Devonshire was determined as ever to implement his Paper. He therefore, sent instructions to Governor Coryndon of Kenya asking him to act promptly, especially as regards the regulation of immigration. Coryndon quickly started to work on the instructions. He summoned the Kenya Legco into action and soon an immigration bill, called the "Immigration Regulation and Employment Ordinance, 1923" was enacted. The Bill succeeded the former Immigration Restriction Ordinance of 1906. The latter Ordinance had allowed any person who might be classified by the Immigration Officer as a pauper without visible means of support—hence an "undesirable"—to enter the territory on deposit of two hundred shillings. That Ordinance had been too lenient to bar Asian immigration into the Kenya Colony. The new Ordinance of 1923, on the contrary, was very strict. It required every entering person other than a professional person or business partner to present a certificate from a prospective employer, who previously had convinced the Immigration Officer that it was impossible to find a suitable person locally. If the person had a certificate and could not convince the Officer that the person's services were necessary for the economic development of the Colony, and that he was assured of employment, he could, at the discretion of the Officer, be either denied entry or allowed to enter on giving security to the cost of his repatriation. An appeal could be made to the Governor—in—Council, but the Bill in effect provided for the exclusion of immigrants "in the economic interests" of the natives.

The Asians voiced their complete rejection of the 1923 Bill. The usual mass protests were held in the big towns—Nairobi, Mombasa, and others. Similarly, the Bill was repudiated by the supporters of the Kenya Asians elsewhere—in-
eluding the Indian Government. The usual crisis emerged.

The Indians disclosed their grievances at a meeting of the East Africa Indian National Congress held on 19th January, 1924.

Discrimination was their main regret:

Indians were still denied trial by jury; they had no government hospitals of their own; they were still excluded from the highlands; they could not possess firearms; Government expenditure in each year was about £24 for a European child, and only £1 for an Indian child; segregation was still prevalent; representation in the central legislature was disproportionate; and there was no common roll. The Immigration Bill of 1925 posed a great menace to the Asian community. Finally, Indians could ride on the railway only with Africans in cars marked "For Non-Europeans Only."

Mrs. Savijini Naidu, one of the delegates invited from India, was made President of that 5th Annual Session of the East Africa Indian National Congress. Mrs. Naidu had the following to say:

East Africa is, therefore, the legitimate Colony of the surplus of that great Indian nation. Stand, therefore, today before you as an Indian Speaker on Indian soil, - soil that your forefathers have built in a land which your ancestors gave to the citizens of your country - citizens by the right of heredity, citizens by the right of tradition, citizens by the right of patriotic love which has been nurtured, fostered, and developed by the sweat of the brow and the blood of the heart, of the pioneers exiled from India, so that Indian interests may grow greater.

As for Asian reactions to the Passfield White Papers of 20th June, 1930 the Papers were generally "palatable" to the Asian community. The Asians found, for the first time, a British policy in the two Command Papers that was highly

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35 See "Indian Quarterly Register" (1924), pp.312, 315-16, 329.

favourable to them. All the arguments raised in the Papers conformed to Asian demands. However, the absence of points opening the highlands to Indian settlement, and raising Indian representation in the territorial legislatures to that of Europeans, were the two exceptions which the Asians regretted. As a whole, however, the Asians found the Passfield White Papers far more conductive to Asian interests than Devonshire's or Amery's. Passfield, unfortunately, gave in to criticism, like his pro-native predecessors, and announced, in November, 1930 that the Command Papers would be submitted to a Joint Labour Liberal Conservative Committee for approval. That meant that the doctrine of native paramountcy, trusteeship, and the dual policy would be subject once more to review and alteration — and that was 5 months after the issuance of the White Papers!

The Asian response to the European colonial practices and policies in East Africa can hence be summed up as follows. In principle, the Asians resented every discriminatory treatment meted out to them by the Europeans. The Asians were bitterly opposed to the racial segregation doctrine. Their complaints were directed to the restrictions of the colonial Administration on the acquisition of urban and sub-urban land, and to the reservation of the most desirable commercial and residential areas for Europeans. Remembering the treatment of their fellow kinsmen in South Africa, the Asians of East Africa looked to India for support and inspiration. They demanded equal treatment and the rights of British subjects. Unfortunately, their demands were largely ignored by the European colonizers. In East Africa, as indeed in South Africa, the British Government only paid lip service to the ideal of equal rights for all British subjects, irrespective of colour or creed, while continuing to accept the practice of discrimination. A fuller

The European reactions in East Africa to the above British Government stands on the conflict in Kenya were mixed. When Europeans started to settle in the E.A.F., they bitterly opposed the thitherto British Government policy of combining European and Asian settlement. That was precisely why 22 of the European settlers met, as has been pointed out above, in Nairobi to found an association called the "Society to Promote European Immigration". The main object of that Association was to discourage every Asian immigration and foster European settlement in the Protectorate. Commissioner Elliot supported the settlers, as we have seen, and their "settler politics".

The European community in Kenya was very shocked and alarmed at Churchill's statement at the Imperial Conference of June - August, 1921. The Kenya Europeans, therefore, in any fear formed a Reform Party to oppose / possible ascendency of the Asians in the E.A.F. The Kenya Europeans also bitterly opposed the Passfield Command Papers of 1930. The Passfield policy made the Kenya Europeans turn against the idea of closer union that they had so enthusiastically welcomed. From then on, the idea of 'closer union' could be acceptable to them only if they were allowed an unofficial majority in the Legco. Rejections and protests to the new British Government (Passfield) stand, especially on native policy and paramountcy, were echoed everywhere in Eastern Africa by the European settlers - in Kenya Uganda, Tanganyika, Southern and Northern Rhodesia and even South Africa. All these White communities rejected the idea of 'closer union'. The Conservatives in England, the staunch
supporters of the Whites in East Africa, sharply repudiated the Labour Government's new policy. Sir Edward Grigg was the staunchest of all the critics of the Labour Government's new policy. Grigg's annoyance was increased by Passfield's distribution of his "Memorandum on Native Policy" to District Officers with instructions to explain it to Africans in tribal meetings.

As for the Devonshire White Paper of 1923, the Kenya Europeans received it with mixed feelings. Some of its provisions favoured them, others did not. Those that included the points on responsible self-government, segregation, and administration of the trusteeship. Those that pleased them included the provisions concerning the highlands, immigration, and the communal franchise.

The reasons for the European dominance in East Africa were many and varied, as we have established above. Of these reasons, nine were particularly striking:

(1) The disturbances of the world economic depressions in the inter-war period;
(2) The European conflicts in various parts of Africa at that time;
(3) The growing struggle for independence in India, in which Jawaharlal Nehru played a prominent role;
(4) A general awareness everywhere that the troublesome conflict between the immigrant communities was less significant in the long run than the problem of reconciling these communities with those of the Africans;
(5) The Europeans in East Africa started to realise the futility of trying to raise immigration barriers and impose other restrictions to drive Asians "home", and they were no longer so fearful of what they formerly called the "Asian menace";
The Asians in Kenya and elsewhere in East Africa were also becoming reconciled to the fact that British administration meant, in practice, European supremacy, and they increasingly realized the folly of striving for proportional political representation, a common roll, and free access to the highlands;

The widespread acceptance in India of the concept that Africa belonged to the Africans, and a new generation of political leaders was convinced that India had to become independent before the position of her peoples overseas could be measurably improved;

The retirement of British humanitarians who had backed the Kenya East African Asians;

Finally, the menace in the 1930's of an income tax, and the delimitation of the highlands and African reserves by Orders in Council.

By 1939, the European position in Kenya was at the top, the Asian position in the middle, and the Arab and African positions at the bottom. At the same time (1931 - 1939) in Zanzibar, Tanganyika and Uganda, measures detrimental to Asian economic interests were taken, as an outcome of the world economic crisis. Despite those measures, however, harmonious relations generally prevailed among the racial ethnic groups of Asians and Europeans in the three territories. Those harmonious relations, together with the European dominance in Kenya, and the strengthened privileged position of the Asians and Europeans in East Africa in the inter-war period, led to the later African, anti- alien struggles whose outcome was independence.
CONCLUSION

The results of intra-racial contacts have been clashes of peoples and races — whether native or alien — in East Africa, besides radically contrasted forms of life: regional or tribal group versus national or parental group; national law versus local custom; written law versus oral law; liberty versus authority; and invention or change versus tradition.

On the eve of independence, European civilization with its "dictates of modern life" was still unpalatable in African mouths. Tribal traditions and languages are still major dividing forces in the multilateral societies of East Africa. In Kenya, for example, Kikuyus are still envied by the other tribes as the dominating single group in the country. The Luos, however, also occupy an ascendant position. They constitute the second largest single group in the country. The point to stress here is that tribalism in East Africa is the outcome of ethnic group inequalities and divisions in the region. It seems that the right solution to the tribal problem in East Africa are democracy and national unity. The tribal situation in East Africa was made worse by the contact, during the colonial era, of four sharply contrasting cultures — African, Arab, Asian and European cultures.

As for the Asians, they sided, emotionally, with the Africans against the Europeans. Economically, however, the Asians leaned to the Europeans, their central aim being to safeguard their (Asian) economic and financial position as the "middle class" of excellence. Like that of the Europeans, the main fear of the Asians on the eve of independence in East Africa was that their economic prosperity might be menaced by Africanization. Asians in East Africa still claim — and rightly so, in the writer's view — that they played a vital role in
the economic and political development of East Africa. They still stress that they, *inter alia*, assisted in the "civilization", i.e., in the economic and political development of East Africa, and in the introduction of many amenities previously unknown to East Africa.

The European accusations against East African Asians for having contributed little to the national development of East Africa were not, in the writer's further view, justified. The fact that Asians were willing to do, and did perform duties in East Africa which the Europeans refused to do, and the Africans were unable to do. The Europeans claimed to have been given exclusive superiority by history. They could not afford to share their privileged position, wealth or standards of life with Africans and Asians. This European attitude was rightly rejected by the Asians and Africans.

The Afro-European blames, on the contrary, levelled against East African Asians for taking out capital from East Africa were, and are quite justified. No economy can survive in any area from where large amounts of capital are constantly removed. What is noteworthy, however, is that the misunderstandings and separations between the Africans and Europeans were greater than those between the Africans and Europeans were greater than those between the Asians and Africans. What was needed to solve the tense racial situation was, *inter alia*, adjustment of the Europeans' way of thinking, believing and behaving in the new and changed circumstances. It was essential that the conscience or feeling of racial superiority be replaced by personal contact. The Europeans were not willing to do so because of certain political and other fears. They feared, for example, that African nationalism, when translated into existing standards, could be
quite dangerous to the European community. Further, it was feared that the attainment of independence and power by Africans would end European domination and influence. The Europeans also feared that democracy in East Africa might establish autocratic government. This, in the view of the Europeans, would lead to tyranny, corruption and bribery, which would, in turn, stultify the development of the region. Apart from these political fears, the Europeans had also the cultural fear that their whole life might be swamped by people of a completely different culture, and the economic fear that land expropriation through nationalization might deprive Europeans of their historically established land rights.

The issues of land, commerce, the vote, ethnic group rights, tribalism and education still stand out to-day as the main causes of racial and communal tensions in East Africa. As regards education, the fact is that already in the pre-independence era of East Africa, a discriminatory system of education was established from which East Africans have suffered unto to-day. Consequently, better educational standards were given to the two racial minority groups, while Africans were not fully aware of the need for education in the modern world. The language problem — teaching in the African schools was for a long time in vernacular — plus the differences in class, wealth and culture, were terrible obstacles to educational integration.

A particularly interesting class of people in East Africa were the so-called "non-racists". They were a group of people found in small numbers, but in every racial group.

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The non-racialists believed in the good of the whole nation, rather than of any one section of it. They thus wanted to advance towards nationhood, which undoubtedly would involve a sharing of certain advantages with the majority of the people. Movements like the Capricorn Africa Society, and establishments such as the United Kenya Club, gave the non-racialists an outlet for their ideas, and the opportunity to associate. It is also of interest to note that the non-racialist outlook in Eastern Africa commenced to develop not long before independence was attained by that African region. In fact, it was in 1956 that the Capricorn Africa Society held, in Nyasaland - now Malawi - its convention of delegates from five multiracial territories of East and Central Africa. For the first time, controversial political issues were tackled by all races together, instead of from a sectional view. The outcome of the meeting was the signing of a "multiracial" Contract.

Some of the advocates of racial equality believed in a federation of Kenya, Uganda, Tanganyika, Nyasaland, Northern and Southern Rhodesia. They also believed that the duty of the Europeans was to develop the Eastern and other African regions jointly, and so make possible a true partnership between the races.

The author of the above progressive ideas was Colonel Stirling of Britain. He founded the so-called Capricorn Society around 1949. The Society was an anti-racial movement, and the first multiracial organization in the territories mentioned above. The name of the movement strongly supported by the non-racialists, was carefully chosen to demonstrate Stirling's ideas which he ardently wanted to be applied in all British Colonial territories and future multiracial independent
The Stirling ideas essentially called for a combination of the increased Western immigration to Eastern African and technological skill with the concealed capacity of the African and other races. No European was to possess land in the African areas. No African was to own land in areas to be developed, barring houses, in urban centres. European presence was necessary in territorial besides federal government. Franchise must be granted to Africans who had acquired the necessary social and educational standard. The policy of race relations had to be flexible enough to meet the special requirements of each territory.

Reactions to the above Stirling "Capricorn Declarations" were mixed. Most Europeans in East Africa execrated them. The British public backed them. A few Europeans in East Africa also supported them. The British Government dropped the old democratic principle of equal racial representation - in any multiracial society - and favoured the doctrine of European superiority, with Asians in the middle, and Africans at the "bottom of the ladder". The Europeans could not support any proposals for racial equality in East Africa. It was clear, then, that so long as the above racial doctrines (i.e., European superiority, racial equality and African superiority) were maintained, race relations in East Africa would be strained indefinitely.

The main cause, then, of racial hatred in East Africa was - and still is - racial discrimination whose aim was/is to protect the vested interests of one race, and to exploit the other. The solution to the racial problem seems to depend

entirely upon the acceptance by all the various racial communities in East Africa of the crucial principle of social, economic, legal and, above all, political equality.

What must be done is to build up harmonious societies in East Africa, in which racial integration, trust and goodwill will be promoted. The truth is that the old slogan of "Africa for Africans" is no longer relevant. The other races are minorities. But they must be respected.

If we examine the question of race relations in the East African territorial context, we find that racial patterns in each of the East African Territories are really still as they were in pre-independence East Africa. The striking difference is that African superiority is now unquestionable throughout East Africa.

Non-racialists still exist in East Africa to-day. They are a small group, but they are found in every racial community in the new East Africa. The group's outlook is still above race. Its people have a common purpose, and an understanding of the inter-dependence of the inhabitants of each of the new East African States.

A brief assessment of the missionary position in East Africa is worthwhile here. Although the missionaries were—and are still—concerned mainly with preaching the gospel to the Africans besides teaching and healing them, the missionaries backed, in many of their actions, racial discrimination. This is the writer's view. The missionaries were supposed to protect African rights against discrimination of the minority races. That was not done. For example, the

missionaries did not endeavour to defend the rights of Africans over land against European demands. The missionaries were also silent on the issue of European discrimination against Asians. It will be remembered that in 1909, a draft of the Crown Lands Bill stated that land applications for 99 years leases were not to be refused if the applicant was "an European or American". The missionaries, who occupied lands alongside settlers in the highlands under the same land regulations and adopted the same methods of land cultivation, never voiced any opposition against the 1909 openly, discriminatory Crown Lands Bill. Africans started to be sceptical about the missionaries and to doubt the latter's converting and "civilizing" mission. East Africans expected the missionaries to play a unifying, if not neutral role. It was not, therefore, surprising that missionaries were classified in the same boat as settlers (farmers) and officials (colonial administrators). The fact is that these three classes of Europeans thought and acted alike. African reactions to the colonial policies and practices will therefore, be our subject of discussion in the next Chapter.
The definition of "nationalism" as quoted in Goodspeed's book is interesting: nationalism is "a sentiment or determination to create a separate political entity, free from alien control, for the preservation and cultivation of common ideals, loyalties, and traditions. It is a strong force for incurring tensions, inflaming hatreds, and augmenting the sovereign ideal of a strong, independent, national state.... It represents a feeling of belonging, a spirit or sentiment of loyalty, a group-consciousness of the nationality which is held and defended by the nation from attacks launched by the foreigner."

From the above definition, it can be deduced that nationalism has the following characteristics: it is a set of ideas, whether tolerant, relevant, or not; it is a collection of ideological assertions and claims of national solidarity; a sense of "belongingness"; it serves social needs, for example, how to live together, to realize aspirations, or to overthrow a rejected system or order. The satisfaction of these social needs leads to the relief and satisfaction of the individual.

The present writer is of the view that the notion of 'nationalism' suggests the following three meanings:

1) A movement or movements seeking to build, or consolidate, state systems on the basis of pre-existing cultural ties (e.g., of language, race, religion, and the like) by encouraging greater consciousness of these ties. Emphasis is


here placed upon the development of common culture and on the 
consolidation of political and socio-economic institutions - 
existing within delimited boundaries. 19th century nationalism 
in Europe was a good example of this concept of nationalism.

b) An "all" movement or movements within established state 
borders, with wide cultural affiliations. Thus, "Pan-Arabism" 
has cultural and linguistic affiliations; "Pan-Islamism" has 
religious affiliations; "Pan-Africanism" has continental 
affiliations; "Negritude" and "Carveyism" had physical 
affiliations; and so on.

c) A movement, or movements establishing, or seeking to 
establish, independent states on the basis of common citizen-
ship of entirely new political and cultural ties. Although the 
movement or movements may not necessarily have the same 
traditional cultures and values, one thing unites them - the 
same and common colonial fate. Thus, such movements and the 
people they represent share the following (common) features: 
regions formerly colonised by aliens; a common colonial past; 
common interests resulting from their confrontation of the 
"common other" - the coloniser; and a common dependence on the 
Colonisers. East African nationalism belonged to this last 
category of nationalism.

In the writer's classification, African nationalist 
response, i.e., African reactions to alien colonial rule in 
East Africa appeared in two phases. In Phase I, African re-
actions were unorganised. They were directed against the 
Portuguese in East Africa. The question of Portuguese rule in 
East Africa does not, really, fall under our present analysis, 
which is mainly concerned with the British and German rule in
the region. This is why, incidentally, the expression "African nationalism" will, in this Chapter, be used in relation to British and German rule in East Africa. However, it should be noted here that the African opposition to the Portuguese in the pre-19th Century period conditioned the African opposition to the British and Germans in the 19th century.

In Phase II, African reactions to alien, colonial policies and practices became more orderly. In fact, it was in the later, properly organised African nationalism that originated the African struggles that culminated in independence for East Africa.

The origins of organised African nationalism in East Africa can be traced back to 1919. It began with the Economic Commission's Report in Kenya. The Commission comprised colonial officials and white settlers. The latter dominated the Commission. The Report's aim was to play off Africans against Asians. The Report stated, inter alia: "It is a distinguishing peculiarity of this country that here the Indian plays the part of clerk, artisan, carpenter, mechanic etc., functions which the African is capable, with training, of performing and does elsewhere perform satisfactorily. The presence of the Indians organised as they are to keep the African out of every position which an Indian could fill, deprives the African of all incentives to ambition and opportunities of advancement. Physically, the Indian is not a wholesome influence because of his incurable impugnance to sanitation and hygiene. In this respect the African is more civilised than the Indian, being naturally cleanly in his ways; but he is prone to follow the example of those around him.... The moral depravity of the Indian is equally damaging to the African, who in his natural state is at
least innocent of the worst vices of the East. The Indian is
the inciter to crime as well as vice..."

This was an accusation of the Indians as the natives' worst enemy. The Indian reaction to this grave offence to their personal feelings was prompt. The Indians hit back hard by holding up to public ridicule the pretensions of the white settlers to be trustees for "the native", and by cultivating allies among the small group of literate Africans (elite nationalists) in places such as Nairobi. Africans promptly and positively responded to the Asian appeal for unity against the whites. The reason for the prompt African alliance with the Asians against the whites included the following old, African sound grievances against the Europeans in East Africa, which were repeatedly voiced over the years:

(1) The imposition of fresh taxes on the Africans which should have been paid by the Europeans;

(2) The introduction of identity cards for Africans only;

(3) The intensification of the cheap but forced African labour on European farms;

(4) The alienation of African lands to Europeans without compensation;

(5) The refusal to pay bonuses and compensation to African ex-servicemen after W.W.I.; and

(6) The improvement of the privileged social position of the Europeans at the expense of the Africans.

The Government of India, as we have seen, supported African and Indian claims in East Africa, though that Government was by constitution, "a projection of the British Government to guarantee complete social economic and political equality of Indians with the European immigrants in East Africa (Edwin

2Quoted in '27 Transition' (1966), p. 16.
Montagu, Secretary of State for India, passionately backed the above claims).

Mahatma Gandhi emerged as India's national leader in the Indian National Congress. Gandhi supported his fellow countrymen in East Africa. He also organised a non-violent non-co-operation nationalist movement against the British. Gandhi backed the militant Mohammedianism, which the British were opposing in Turkey.

Thus already in the early days of the 20th century, when imperialism was being replaced by modern colonial nationalism, East Africa had elite nationalist groups, which staged strong resistances to alien rule. They fostered enhanced awareness of African traditional values, and organised anti-colonial and anti-imperialist movements. Nationalism was against colonialism and imperialism. The latter is the advanced stage of colonialism.

It was severely checked by the new spirit of nationalism and social revolution, which emerged in the 20th century. Anti-colonialism, and for that matter anti-imperialism in East Africa, was actually anti-Europeanism, for it was a new challenge to European imperialism. Alien rule was opposed by a merger of the old African pride and the new revolution. European colonial rule was shortened by African resistance and nationalism. The colonial period was short because of the social disturbance it introduced. However, nationalist movements were, as has already been established, weakened and even let down by some of the indigenous populations in the East African and other colonised areas, who made concessions with alien rulers. As years passed by, however, indigenous groups of educated men in East Africa grew in strength. They nurtured new ideas and became a very strong operative factor throughout East Africa. The new elite were called the "emergents frontier". Their ambitions were to
serve their own peoples and lands. They continued to launch vigorous campaigns against alien rule and to demand freedom and self-government. These new elites emerged with full per cent beliefs that the colonised peoples had the brains to do what the white men did. The elites hence started to reject the long-established beliefs that the white man was a born ruler, and that he had a "supernatural backing"; that he had a "rational spirit" because of his "mental superiority" to invent and make things; and that he had the irresistible right to rule.

We should now stress the point that, although most of the pre-nationalist movements in East Africa were unsuccessful in achieving their aims, some were significant in preparing the road for later national independence. In the long run, the only movements opposed to European rule were those led by men with enough (Western) education to take over and operate the administrative organizations created by the Colonial Powers. However, this stage in the growth and maturity of nationalist movements was not reached until after World War II. Another noteworthy point is that, whereas Britain and France made definite plans for a new departure in their colonial administrations whereby Africans would play a great role in the colonial governments, Belgium and Portugal retained their non-representative colonial administration; and in the later 1940's and 1950's, the South African Government assumed even tougher and stricter control of the country's African majority.

In East Africa, independence movements were vigorously staged by "emergent" nationalists such as Kenyatta and Odinga of Kenya, Obote and Kivumbwe of Uganda, Nyerere of Tanganyika and Karume of Zanzibar. These nationalists constantly repudiated the idea of 'closer union' in East Africa. They opposed discrimination on the grounds of sex, religion, race, language or colour.
They favoured the development and realization of the idea of "trusteeship". They fought for equal treatment of all the races, and the right to form multi-racial organizations and political parties. They demanded proper education for the Africans, self-rule, and ultimate independence.

Admittedly, the process of education, economic and political advancement and national building were by no means uniform in East Africa, or elsewhere in Africa. But nevertheless, the colonizers had a general duty to prepare the Africans in such a way that the latter would ultimately stand on their own feet when the former left. The African nationalists demanded that. They also demanded a quick transfer of power to the Africans. Any colonial attempt to evade this African goal to independence had, as a response, African revolts of the "Mau-Mau" type. As elsewhere in the colonized world, African nationalism in East Africa grew and matured, as we have explained above, only after the Second World War. "Liberal" nationalism was buried for good, and was succeeded by "organized" mass nationalism.

Mass nationalism in East Africa had violent elements. It strengthened the already established elite nationalism, and the resulting militant African nationalism, together with the existing "international interest" in East Africa, shortened the road to independence for the East African colonial Territories. The period of organized mass nationalism in East Africa began in the late 1940's and matured in the 1950's. Organized mass movements and terrorism especially in Kenya - in support of African customs, traditions, cultural values, indigenous politics, and so on - developed mainly from the African grievances over the colonial practices and policies. The organizers of the anti-colonial movement - mainly the Western-educated middle-class
individuals - greatly influenced and convinced the *hui naloii*
(the peasants and city-dwellers, the common people). This mass
nationalism in East Africa continued until the final withdrawal
of the British from the region. Violence and anti-imperialist
resistance continued to be organised through legal and underground
methods. Killings, imprisonments, detentions, deportations,
brute force, and so on became the order of the day. African
resistance became skilful and started to bear successful results.
Thus, although the nationalist movements of each of the East
African territories had their own specific characteristics, the
direction was the same. Demands for immediate transfer of power
to the Africans were strengthened through the intensification of
rebellions against the alien rulers. Nationalism, therefore, became
the foremost danger to the colonisers, who were forced to concede
to African demands. This concession was contrary not only to
the plans of the colonialists to stay in East Africa indefinitely,
but also to their strong conviction that the Africans were not
yet ready to stand alone. African party politics were activated
throughout East Africa. New parties were formed, and they, to-
gether with the old African political associations, formulated,
aired and defended African interests in the territories before
the colonisers. The use of the Press and other mass media,
political rallies, conferences, delegations to the metropolitan
country (Britain) and so on, became very normal.

The hostility of the African local tribes, besides their
refusal to co-operate or compromise, led the Europeans to impose
indirect rule upon the indigenous Africans. It is noteworthy
that, as a method of imposing control on the colonised peoples,
indirect rule in some cases unified, and in others divided, the
subjected peoples. It is also important to note that, to any
political unit, anyone not belonging to that unit is an alien. What, therefore, must be borne in mind is that the negative African reactions to alien rule in East Africa must not just be seen as having been directed against Europeans. Alien rule in East Africa must hence be taken to mean any rule in that region that was imposed, or attempted to be imposed, by an alien group. Arabs at the East African Coast were an alien group, for instance, who imposed their rule — that was alien — on the coastal East Africans. In this connection, it can be argued that one of the reasons why the coastal Arabs launched strong resistance movements against European rule in East Africa was to uphold their (Arab) rule at the coast of East Africa. Similarly, the Mendi raids on the Kavirondo Luos and Luhyas, the Massai "invasions" into Kambeland, the Buganda raids on Bunyoro in Uganda, or the Wahehe or powerful Wanyika raids in Tanganika on the other comparatively weak tribes, and the counter-raids of the "invaded" tribes, were all attempts to impose alien rule by some tribes on other tribes, and to resist alien rule.

In Kenya, where the burden of European rule was heaviest, tribal politics were encouraged by the following reasons, which we have touched on at an earlier stage:

1. The colonial Administration's hostility to African nationalism;
2. The demarcation of tribal land units;
3. The limitation of political organisation to district level;
4. The famous principle of divide-and-rule from which sprang the indirect rule system. We should note here that resistance to alien rule in East Africa was staged either by single tribes, or by several tribes jointly.

To sum up on the origins of the African nationalist response to alien rule in East Africa, whereas alien rule was
imposed on the East Africans gradually and with little or no clear
warning, the Africans responded to that rule promptly and with
full and open violence. The Africans claimed the right to use
violence to secure their private interests. That right was
denied them by the colonizers. Also, the colonizers abolished
or rejected, against the strong and declared wishes of the
African natives, the long established indigenous traditional
institutions and values. The colonial Administrations also
made successful endeavours to create power over the colonized
peoples - against the latter's wishes - and to consolidate the
materials and morals of the alien rulers. These practices
really vexed the native peoples. The indigenous discontent
and frustrations resulting therefrom were very great, and they
were some of the reasons that prompted the desperate Africans
to resort to rebellion in so far as it seemed reasonable and
available.

As for the African response to the Euro-Asian struggle
for dominance in East Africa, the point to stress is that the
overall tendency was, however, to be neutral and keep aloof,
because the Africans knew very well that "where two elephants
fight", as the famous Swahili proverb says, "it is the grass
that suffers". The Africans in East Africa were
the "grass". They, therefore, preferred to press for the
realization of their demands rather than side with either of
the rivalling racial minority groups in that region. It must
be pointed out also that the element of "mixed African reactions"
was discernible only at the beginning of alien rule in East
Africa.

The neutralist attitudes were, for example, adopted by
those tribes that were not directly or immediately affected by
the Euro-Asian struggle. In the British sphere of what later became Kenya, the Masai did not, initially, stage much resistance against the British colonizers. When the British colonized Kenya, the greater part of the land belonged to the Masai, Nandi and Kipsigis. The reason for the lack of an initially very strong Masai antagonism against the Europeans in East Africa was that the Masai, especially the Matapetu and Kaputiei Masai, had been declining in power over the years. Thus, the immediate reaction of the Masai to the new ironically and hypocritically described as the "Pax Britannica" society was to ignore it altogether. Soon, nevertheless, the Masai, faced with great pressure and attacks from their traditional enemies - the Kambe, Kikuyu, Nandi and Luo - sought alliance with, and actively helped the British against any other ethnic groups that rose against, the British. The Masai subsequently easily signed agreements with the alien rulers. Later, however, the Masai changed their policy and refused to sign further agreements with the alien colonial Administrations. Similarly, the evangelical and educational efforts of the white missionaries were totally rejected by the Masai.

As regards the Nandi and Kikuyu, they were very antagonistic right from the start, and launched very much resistance to the alien rule imposed upon them by the Europeans. They hit back very hard. They were later joined by the Masai, who had been rising in power all the time on the East African mainland. The Masrui family at the east coast of Africa also led a rebellion that took nine months to suppress. British colonial "punitive expeditions" had to be sent out continuously against one tribe or another down to the outbreak of World War I. But

when the East Africans saw two groups of Europeans fighting each other for four years, the Africans no longer considered Europeans as "supermen". Rather, the Africans started to regard Europeans as equals, and increasingly to demand equality. After the War, African nationalism cropped up.

It must be stressed now that when the Europeans partitioned East Africa, most Africans did not understand the real implications of the territorial annexations by the alien rulers.

Some of the Africans thought that Europeans were allies, while others regarded the alien rulers as enemies, in the struggle for power or dominance over other tribes. In this connection, three facts must be remembered. The first is that the attitudes of the Africans towards the establishment of European rule in East Africa were, to a large extent, influenced by the nature of the past history of their experiences of the Arab, missionary, and other alien influences. The second is that the tribes which depended on trade had much to gain from the European presence, whereas those dependent upon raids and extensive grazing lands had a lot to lose from that alien presence. Finally, the African indigenous peoples, who were already used to dealings with Arab and Swahili caravans, found it easier to adjust themselves — initially at least — to the advent of the Europeans than the proud and traditionally hostile Africans to the caravan traffic. Thus, it was not surprising that African Moslems joined with Arabs in bitterly opposing the European missionaries and colonial administrators. In short, then, trouble and even war among the natives broke up when some of them supported, while others opposed, the alien rulers. Some of the Africans, for instance, endeavoured to manipulate the new, colonial masters to their own advantages. Those native Africans
with some knowledge and understanding - frequently provided by missionaries - of Europeans and their ways, could create a more satisfactory relationship with the Europeans than the native groups who remained hostile and bewildered.

With regard to the Afro-Asian relationships in East Africa, the point to be remembered is that the Africans were not, initially, worried about the Asians, because the Africans believed that the Asians were not an immediate menace to African interests. In fact, Asians assisted Africans materially by, for example, marketing African produce as we have seen above. The Africans also believed that the Asians did not belong to the ruling class. From the above argument, one can safely deduce that the relations between the Africans and Asians were not at all very strained. In German East Africa, for example, no great conflict seemingly existed between the Africans and Asians. Most of the Asians were engaged, as in the neighbouring E.A.P., mainly in independent commercial enterprise. We should, however, also mention here that a sufficiently great friction existed between these two racial groups in the later part of the colonial period. Two reasons can be given in this regard: the economic position and power of the Asians became "dangerous" and too strong for the Africans to bear; and the spirit of African nationalism gained greater momentum.

The above discussion has, broadly speaking, touched on nationalism on an East African basis. The discussion must now be followed by an analysis of the African nationalist response to alien rule in each of the East African region's territories. It must be stated at once that, taken in broad terms, there were four main causes of the African response - that was very negative - to colonial rule in East Africa:
1. The European colonial policies and practices as outlined in Chapter Three above. They included the following practices which the European colonizers inflicted upon the Africans:
restrictions on the movements of the Africans, the loss of their stock, and the closing of forests to them; European fines for the slightest trespass; excessive and inhuman physical abuse of the Africans; summary dismissals of the Africans, after the latter's clearing of the dirty job; and the European promotion of disobedience among the African youth, through disrespect to the traditional and customary ways of African life.
2. The Euro-Asian struggle for dominance at the expense of the indigenous Africans, and in complete disregard - as far as the Africans were concerned - of African interests and aspirations in East Africa.
3. The over-all and ever-improving position of aliens in East Africa; and
4) The deteriorating position of Africans vis-à-vis the position of aliens in East Africa.
These causes will become clear in the course of this Chapter. For now, it will suffice to remember that it was in the resulting African resentment that originated the spirit of Africanism, or African nationalism.

In the territorial context, African reactions to alien rule in East Africa can be outlined as follows:
In Zanzibar, the Arabs revolted against the British in 1895. The reason for that revolt was the assumption by the British of direct rule over the Coastal Zone and along the E.A.P. The battle was however, won by the British, who suppressed the revolt and took over the direct administration of the Coastal Zone. After 1895, the British consolidated their control over
the Zanzibari Sultade dominions. The British did that by the constitutional method. One little remark is noteworthy here. We should bear in mind the truth that throughout East Africa, the colonizers always won the battles against the revolting Africans, and suppressed them. In some cases, the task of suppressing the African resistance movements was an easy job to do. In others, it was a tough job that cost the alien rulers many human and other resources. The types of native resistance thus varied from one tribal group to another, and the alien suppressing forces had hence constantly to be adjusted to meet the requirements. Time was also an important factor. In some cases, the natives were suppressed after a short time. In others, they were suppressed after a long time. In what became Tanganyika, the Nyika tribe treated the Europeans with a natural friendliness. The Wanyika, through their leaders, protected the Missionaries and even listened to their preaching. The Missionaries hence moved freely and anywhere along the coast. The case was not the same in the interior, as we have explained. There, the Africans, together with the Arabs and Swahilis, were most unfriendly to the Missionaries. For, they feared that the Europeans would become the new masters and subsequently check on the slave trade, slavery and other such lucrative trades. It can, therefore, be re-emphasized here that the first European contacts with the natives received positive and negative reactions. They were, therefore, mixed. The coastal African natives were unwarlike and friendly. They were consequently easily subjected by the Arabs. That, however, happened many centuries before the European arrivals in East Africa. The lack of strong African resistance to the Arabs at the coast resulted in Arab mastery over the coastal Africans for a long time.
The story of party politics in Zanzibar is interesting. As has been touched on earlier, both the Arabs and Africans claimed to be nationalists. The funny thing about their "nationalism" was that the two ethnic groups were opposed to each other, and not to the British colonists. The Arab Zanzibar nationalist movement was represented by the Nationalist Party and the Committee of Arab Association. These two claimed to be non-racial, spontaneous, democratic and not to be Arab-dominated. The African Zanzibar nationalist movement, on the contrary, opposed the views of the Arabs and asserted that the Arab Party was racialist and anti-African. The Africans and Shirazie joined forces against the Arabs. The resulting merger was called the Afro-Shirazi Union or Party. This Party rejected the idea of self-government for Zanzibar, because of the fear that the Arabs might dominate Zanzibar and restore the historical Arab superiority on the Island. By "Zanzibar", we should remember, will be meant in this research all the islands of the east coast of Africa that formed, as from 1890, the (British) Protectorate of Zanzibar. Zanzibar thus comprises the two large islands of Zanzibar (with 640 sq. miles in area) and Pemba (with 380 sq. miles in area), plus smaller islands (inlets) within the territorial waters of Zanzibar and Pemba, and the small uninhabited Latham Island. The Afro-Shirazi Party opposed the demands of the Arab Association for universal suffrage. The reason for that opposition was that it was undemocratic to guarantee equal ("democratic") rights to a minority. The Africans in the Zanzibar Legco vehemently attacked the Arab demands for elections for all. Sheikh Ameri Tajo of the Afro-Shirazi Party and Sheikh Shaaban Sudi, to mention only two of them, were strong advocates of the African demands. It is noteworthy that party politics in Zanzibar were dominated by racial aspirations and differences.
between the Africans and Arabs. There were, however, Independents, who were also quite influential. We should also remember that some Africans belonged to the Arab-dominated Nationalist Party and opposed the Afro-Shirazi Party. Africans were also found among the Independents. Similarly, Asians were divided into the three political groups. And so were a few Arabs. The result of the groupings was a serious weakness in Party politics and a great promotion of intra-racial conflicts, which prevented Africans from forming a strong united front against the imperialists. In this way, African nationalism was immensely handicapped, and when the British decided to grant independence to Zanzibar on 10th December, 1963, it was the Arab Party that formed the first government. The Afro-Shirazi Party came to power only after an armed uprising in Zanzibar on Sunday, 12th, January 1964. It must be stressed that the armed revolution on that Island was the result of the failure of the British colonial policy to bring about a bloodless independence to the Island. Sheikh Abeid Karume, leader of the Zanzibari Afro-Shirazi Party, signed an Act of Union with Tanganyika in April, 1964. Karume became the first Vice-President of the newly formed United Republic of Tanzania. Unfortunately, Sheikh Karume was assassinated in April, 1972. He was succeeded by Aboud Jumbe, who is now the leader of Zanzibar and First Vice-President of Tanzania. He is, therefore, the No. 2 man after President Nyerere of Tanzania.

The question of European colonial policies and practices was analysed in Chapter Three above. It is nevertheless worth re-emphasizing now that the alien policies and practices were most brutal in German East Africa. Here, brutality was provided for in the colony's structural and administrative organization itself.
Thus at the centralised level, each of the members of the central government was ruthless. The Governor himself, the Head of the Central Government, was severe. His advisory organ—the Council first set up in 1904 that met twice only in the year—also applied harsh methods of rule. The Council consisted of the Governor as Chairman as we have seen, and settlers besides officials. The number of official and settler representatives was equal.

The so-called "referents" were the Heads of the Departments into which the Central Government was divided.

At the decentralised level, the German colonial Territory was administered by the Provincial Commissioners, District Commissioners, liwalis and skidans.

This set up was explained in the previous Chapter. The I.C. who headed the District was, we must remember, the lowest European official. The liwalis were actually governors in charge of the coastal towns. Under the liwalis were subordinate officials called skidans. The latter were concerned with the direct administration of the Africans of the interior. We have also seen that both the liwalis and skidans were subordinate officials usually of Swahili or Arab origin. They were empowered to exercise limited judicial duties, administer corporal punishment, and collect taxes.

The repetition here of the German administrative and governmental organisation is purposeful. The point the writer is trying to make here is that German harsh, colonial administration in East Africa sparked off some of the earliest repulsive and extremely negative reactions of the Africans. The German administration was an authoritarian bureaucracy that was severe and disciplined, and in which the laymen and public opinion were excluded.
The Germans became known to the Africans as "the people of the 25" because the common sentence for the most insignificant offence was 25 lashes from the Kiboko - the whip of hippopotamus hide. In 1893, Karl Peters had to be removed as Commissioner of Kilimajaro District by dint of his notorious bloodshed practices ("the man with the blood-stained hands"). The German colonial administration in German East Africa forced the Africans to plant cotton, and until 1907, followed a policy of forced African labour for European plantations besides public works.

In the inter-war period, African claims over land multiplied, and subsequently, African resentment burst into flames. The loss of land, therefore, to the immigrants was a very serious and open injustice that brewed much bitterness and hatred, as well as grievances among the indigenous peoples of East Africa. It enkindled the fire of African rebellion that did not take long to burst into furious flames. The big mistake, we must remember, that the aliens did in East Africa was that they refused to pay attention to the fact that many Africans thought they were treated, particularly by the Europeans, as inferior beings, deprived of their lands that were sacrosanct to them, and made to work like slaves on other men's farms.

In German East Africa, the German colonizers were faced with even greater African resistance than that experienced in Zanzibar or the neighbouring British East Africa Protectorate. The Africans, Arabs and Asians in the German colony united and acted against the German colonizers. The fighting between these groups was so acute that British warships had to assist in maintaining order in the mainland. The toughest resistance, however, came from the Arabs at the coast. The Imperial German
East Africa Company (I.G.E.A.) was forced to ask for military aid from Germany. The German military forces were subsequently sent to East Africa and utilized to suppress the native uprisings. Anti-European feelings grew, and sometimes landing passes were refused some of the arriving German "intruders"; even the Missionaries suffered from those restrictions. The fact, nevertheless, was that the Germans had superior weapons, and that German weapon superiority, plus cruelty over the native rulers and their followers, were prevalent.

Anti-German feelings were at their climax after 1870. In 1888, for instance, Abushiri-bin Salia, joined by Mr. (Bwana) Heri of the Zigue, led a revolt on the coast. And in Tabora, Arab fears of German interference with the trading economy caused a lot of trouble. The Arab-led resistance against the Germans continued until May, 1891, when the Germans successfully put what is now Tanganyika safely in their hands. It is of interest to note that, in the face of the German intruders, the African natives backed their most detested, historical enemies - the Arabs.

From 1892 onwards, the Chagga people (the Wechagga) around Mt. Kilimanjaro kept the German colonizers in a continual state of alarm with wars, or rumours of them. Apart from these cases of individual tribal resistance versus the German invasion, there were organized efforts by several tribes together to resist the Germans. Another very dangerous revolt against the Germans was launched by the Hehe tribal leader and ruler, Mkwawa. He, like his father, Bwana Munguigashere, was a great fighter and liberator of his tribe, which consisted of about 100 clans. Mkwawa was a great military organizer that won over to his side other tribes either peacefully, or by way of war and force. Under their strong, merciless and brutal leader Mkwawa, the Hehehe continued
to harass the Germans and even other tribes and their leaders who refused to join forces with Mkwawa to raid the German colonialists. In 1894, the Germans equipped a large expeditionary "punitive" force. The Mkwawa raiders and supporters started to lose the battle, but they remained loyal to their most courageous leader all the time. Mkwawa shot himself near his beloved capital-Kselenge—and fell in a fire specially prepared by his page whom he had shot previously, so that the German intruders could not reach and capture him even in death. Thus Mkwawa, the great Hehe guerilla captain, preferred to commit suicide rather than accept defeat in 1898.

The greatest African resistance to the German colonial rule in East Africa was the so-called "Maji-Maji" uprising of 1905. The "Maji-Maji" uprising was, as translated by the witch doctors living in German East Africa at that time, sacred water which a Snake God called Koleo, living in the Pangani Rapids of the Rufiji River, had brought. From that, the belief strongly developed that a water strong enough to break magic must also be powerful enough to break European rule. Bullets (which were European inventions) would hence be turned into water. The central aim of the "Maji-Maji" rebellion was to expell all foreigners starting with the Germans, and restore the tribal chiefs to their old splendour.

The "Maji-Maji" uprising was caused by many German colonial policies and practices. However, there were five immediate causes of the uprising:

1) The German suppression of the African rulers and ruling tribes, and making them work with their slaves and serfs.

2) The introduction in the German East Africa Protectorate in 1897 by the German colonial Administration of a hut tax of 2 or
3 rupees per year in cash, not in kind. That taxation angered the Africans who believed that hard cash was higher price. The cotton they grew fetched them a very low price.

3) The German colonial administration's endeavour to force the growing of cotton with a view to export revenues.

4) The loss of trust in Germans, by Evana Chaburuma, the powerful Ngoni Ruler (Sultan), because the German District Commissioner, Herr Hauptmann von Richter, refused to condemn Chaburuma's wife whom Chaburuma believed to have been unfaithful. The German District Commission rejected Chaburuma's allegation because the Chief could not produce any evidence. That rejection enraged Chaburuma, who thenceforward execrated Germans.

5) The introduction by the German administration of a poll tax in 1905. It should be remembered that the policy of subjecting the East Africans to taxation of one type or another was introduced throughout East Africa by the German and British colonial administrations. Thus in 1900 and 1901, Kenya and Uganda were also subjected to hut taxes.

Although it resembled the earlier revolts staged by the Wahegge against the Germans, the "Maji-Maji" rebellion was extreme in cruelty. All Europeans were murdered to a man in the area between North Nyasa and the Kilwa Coast. Captured Europeans, Arabs and Swahilis were beaten to death or hanged. The other methods of killing were shooting, spearing and killing by poisoned arrows. Every foreigner, whether innocent or guilty, was engulfed by the "Maji-Maji" uprising. Even the Missionaries

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were killed. It was with great toil that the Germans subdued the rebellion in 1907. The German killings, it must be remembered, were also quite many. In fact, the Germans killed 120,000 Africans. The Germans were assisted in their massacres by famine and disease.

It is interesting to note that the turning point in the African negative attitudes towards alien rule in German East Africa coincided with the "Maji Maji" revolt. In 1905, the very year of the commencement of the revolt, the German colonial Administration enacted a law in which it was stipulated that every newly born African child in the German colony was a free citizen, regardless of its parents' status. At the same time, German intervention prevented Maasai threats to the Africans of the German East Africa Protectorate. These two German "friendly acts" were most welcome to the Africans in that colony. The latter started to like and respect Germans. In World War I, the G.E.A.P.'s Africans supported the Germans. And when later asked about the German colonial rule in Tanganyika, Africans responded: "Wakali, lakini wanye baki" - Swahili for "they were strict, but they were just." Thus between 1906 and 1914, the Africans of what became Tanganyika learned that Europeans had something good to offer, apart from oppression and servitude. This new element in the experience of the Africans erased much of the bitterness created by the anti-German wars. African reactions towards the Asians became, on the contrary, negative. The Africans accused the Asians of being greedy and usurious. It must also be stressed here that the present lack of open tribalism and tribal clashes in Tanzania owes its beginnings in the German colonial era in Tanganyika.

The mandates system of the League of Nations, and the Trusteeship system of the United Nations, greatly assisted in the shortening of the East African road to independence. It is not necessary to elaborate here the theme of 'international interest' in colonized East Africa. However, the League mandates system is worth touching on here, in so far as it was an important step in the process of transferring power from the Colonizer to the Africans in Tanganyika. The League Covenant of 1920 graded the League’s mandates into three groups: "A", "B" and "C". Tanganyika was placed under Group "B". This group comprised territories whose independence, though possible, could not be anticipated in the near future. The Mandatory Power – Britain – was required to maintain an administration separate from its other colonial possessions. This class of territories was an intermediate group of territories which would eventually become independent, after a long time and preparation. It is noteworthy that the duties of each Mandatory Power were: to ensure and be responsible for peace, good government and order within the mandatory territory; to avoid establishing military bases in the territory, and not to use the territory's inhabitants for military service except in defence of the territory; to promote the material and moral welfare of the indigenous inhabitants; to prohibit slavery and/or forced labour; to endeavour as much as possible to guarantee equal economic rights for all the nationals of the League's Member States; and finally to control the traffic in ammunition, arms and liquor.

When the U.N. Trusteeship system was introduced after World War II, the U.N. took over the old mandates system and integrated it with the new system.

For a detailed discussion on the League’s mandated system, see:
International interest in Tanganyika can, therefore, be summed up as follows:

In 1919, the League of Nations bestowed upon Britain the mandate over former German East Africa, which was renamed Tanganyika. The idea of mandate over Tanganyika was suggested by Britain's General Smuts. Smuts' suggestion was agreed to, and Horace later Sir Byatt was Tanganyika's first Governor and Commander-in-Chief as from July 22nd, 1920. Britain started to implement fully the mandate provisions over Tanganyika only as from 1922. When Tanganyika was placed under UN trusteeship, Britain retained her administrative status over the territory, which she started to administer as a Trust Territory in 1947. The Constitution of the Tanganyika Trust Territory differed from that of a Protectorate only in so far that, in international law, Tanganyika's administration was subject to the degree of international supervision formerly exercised by the League of Nations via the agency of the Permanent Mandates Commission, and later by the U.N. General Assembly via the agency of the Trusteeship Council. In domestic law, however, the administration of the Territory was, as in the case of the Protectorates, based upon what were known as "Crown Instruments" issued under the terms of the U.K. Foreign Jurisdiction Act of 1890.

Contacts between Tanganyika and the United Nations were established through U.N. Visiting Missions. In 1946, a U.N. Mission reached African opinion via African Chiefs. That Mission's Report issued after the Mission's visit criticised African absence from the Executive Council, and their inadequate representation in the Legco. The Report also criticized the virtual exclusion of Africans from the middle and upper ranks of the civil service. The U.N. strongly backed the doctrine of racial equality, and the
educational, social, political and economic advancement of the Trust Territory and its inhabitants until they would speedily attain self-determination and eventual independence.

The U.N. continued to send Visiting Missions to Tanganyika and to support the Africans. In this way, the dominant position of aliens was terribly jeopardized in that Territory. Also, Tanganyika's special position was one of the strong forces that prevented the growth in East Africa of a settler-dominated political association on the lines of the Rhodesia-Nyasaland Federation.

It also prevented the introduction in East Africa of the policy of "separate development" on the pattern of South Africa.

In 1954, the 3rd U.N. Visiting Mission arrived in Tanganyika. The Africans voiced the following demands:

(a) Britain must accelerate the decolonization process;
(b) Britain must alter her method of creating a multiracial society in Tanganyika;
(c) There must be no colour bar in education, hospitals, employment, hotels, and the like;
(d) Britain must shorten Tanganyika's road to independence and transfer power to the Africans at once.
(e) There must be equal representation in the Legco on the territorial basis: the nine Provinces and Dar-es-Salaam must each possess one member of each race. On 7th March, 1955, Julius Nyerere, accompanied by other officials of an African political association in Tanganyika, presented petitions to the U.N. Trusteeship Council in New York. As the chief petitioner, Nyerere outlined African demands thus:

1. Nomination must give way for election to the Legco;
2. Democratic representation in Tanganyika must be introduced at once. There must be African majority in all public representative institutions;
3. Racial segregation, alien immigration and dominance, besides expropriation of land in Tanganyika, must stop at once;
4. The African majority community must not be subjected to the exploitation of the European and Asian minority groups;
5. Tanganyika should attain self-determination at once. Eventual independence must be guaranteed. The attainment of independence must hence stop being remote and a mere academic dream; and
6. The future government of Tanganyika must be primarily African.

Special mention must be made here of certain politicians in Tanganyika, who formed a group of "Black Racists". Their aim was to turn independent Tanganyika into a purely "black man's country". The black racialists were the following Members of Parliament: Said Mtakii; Aron Mainali; John Mwakasange; Christopher Tumbo; and Richard Wambura. The black racist doctrine expounded by the above Tanganyika Members of Parliament consisted of three central points:

a) All Europeans and Asians were foreigners, whether born in Tanganyika or not, whether their parents and grandparents had been born there or not;
b) All these foreigners (aliens) should not occupy any key positions in the country. Those in such positions should unconditionally resign;
c) All aliens wishing to become Tanganyika citizens should be put on a 7-year probation first, or examined by a committee.

The multiracialist group in Tanganyika comprising Africans, Arabs, Asians and Europeans could not accept the above black racist doctrine based on colour. This view was expressed particularly by the Tanganyika National Society (T.N.S.) and the United

Tanganyika Party (U.T.P.) which had been formed in November and December, 1955 respectively. These were the first multi-racial organisations in Tanganyika, whose main purpose was to advance the ideas and ideals of the Capricorn Africa Society.

In its programme, the U.T.P. emphasized racial equality regardless of race, colour, language, creed or sex; racial independence, which would promote racial integration, trust and good-will in the new Tanganyika; and a detestation of "colour bar" in the country.

When the U.T.P. accused Nyerere's Tanganyika African National Union (T.A.N.U.) of racism, Nyerere and his TABU followers rejected Stirling's multi-racialism, because they, as has been indicated, believed strongly that the Stirling doctrine would perpetually uphold the white minority dominion in Tanganyika and elsewhere in East and Central Africa. The main problem with the Stirling doctrine and its future effect in Eastern Africa lay in the fact that the doctrine was conceived at a time when African nationalism was extremely strong, and Europeans were beginning to realize that their privileged position in that region could not last long. African nationalists were, on the other hand, also beginning to realize that they would need European and Asian assistance even after independence. This situation meant European and Asian participation not only in the economic, but also in the political development of the region. It is, however, clear that multi-racialism does not necessarily mean that there should always be a division of power and responsibility on a one-one-one basis. It means that no one should be ineligible for any position either in the Government or out of it merely because of the colour of his skin.
The British colonial doctrine of "balanced" representation in East Africa was categorically rejected by the Africans, who rightly wanted to be the majority against the aliens, who were the minority group. The Asians refused to accept the African and European views. It hence became clear that the only just solution to the problem was to treat the three races in the Legco equally. In Tanganyika, for instance, this possibility was realized in 1954, when racial parity was reached in the Executive Council (Exco). Thus, of the 6 unofficials in the Exco, the European, Asian and African races received 2 seats each. Later in the same year, the number of unofficials was increased to 7, and the distribution of seats in the Tanganyika Exco was done as follows:—

Africans : 3;
Asians : 2; and
Europeans : 2.

From that time onwards, however, the Africans of Tanganyika — and the other East African countries — made it quite clear to the Colonizers that the Africans would not accept the idea of parity. It was thus made clear that no doctrinaire enforcement of multi-racialism would exist. In Parliament and in Government, African majority would predominate. The rule of law and order was emphasized, and racial discrimination and any other form of intimidation would have no place in the new East Africa. This is still the official policy of the East African Governments.

President Nyerere's repeated stresses on racial harmony in East Africa are noteworthy. In a letter to "The Observer" of March 12, 1961, for instance, Nyerere stressed intra-racial harmony in Tanganyika which, to him, did not mean a multi-racial state:—
"What we want," he wrote, "is a society where the individual matters, and not the colour of his skin, or the shape of his nose. The apartheid policies now being practised in the Union of South Africa are a daily affront to this belief in individual dignity. They are also a constantly reiterated insult to our own dignity as Africans.

The Tanganyika Government cannot afford to have any relations with the South African Government, and it must within the bounds of international law lend support to those who struggle against the system of apartheid.

We fear that the evils of racialism and its consequences on the minds of minorities and minorities alike. We believe that the dignity of man is the idea which can defeat racialism.

This means that we cannot join any "association of friends" which includes a state deliberately and ruthlessly pursuing a racialist policy. Nyerere's Article received support of the world public opinion everywhere. South Africa was forced to withdraw from the Commonwealth in 1961. The argument that the colour of a man's skin in no sin anywhere in the world was well-taken. Honesty, justice, equality, respect and harmony are the non-qua conditions of survival of any multiracial society. One more remark about racialism in Tanganyika. The small group of "black racists" referred to above were also found outside Parliament. The "black apartheid views" were aired most emphatically on 18th October, 1961, when the Tanganyika Parliament (Legco), renamed National Assembly after Tanganyika's attainment of internal self-government, was discussing the Tanganyika citizenship White Paper. Fortunately, Nyerere, himself a staunch advocate of non-racialism, and his supporters succeeded against the "black racialists". The Citizenship Paper recommended that Europeans and Asians be given the same citizenship rights in Tanganyika as
Africans – to all Tanganyikans irrespective of race, religion, colour, sex or language.

In the meantime, U.N. Missions continued to pour into Tanganyika and to submit their reports in the ensuing years, including 1957. The assessments of the Missions were usually Pro-African. The representatives of the non-Administering States were more than those of Administering Authorities. The favoured national anti-colonial movements and organizations were gratified by the U.N. work in their Territory. The outcome was constant pressure from the U.N. Trusteeship Council versus the alien rulers in Tanganyika, and the whole policy of multiracialism was given a different interpretation in that Territory from that of neighbouring Kenya. The U.N. Trusteeship Council, the U.N. Committee of 24, besides the Fourth Committee of the U.N. and ECOSOC, were responsible for the more rapid and hastened democratic constitutional advance not only in Tanganyika, but in East Africa as a whole than in Central Africa, for instance. The African nationalists in Kenya, Uganda and even Zanzibar were immensely encouraged to press for treatment similar to that meted out to Tanganyika. Thanks to U.N. presence in East Africa, African majority was accepted in Tanganyika; Uganda followed suit, and finally Kenya.

Party politics were reactivated everywhere in East Africa. In Tanganyika, three parties became very active: the United Tanganyika Party, the African National Council (A.N.C.), and the Tanganyika African National Union. The U.T.P., established in 1956, comprised all the unofficial members Africans, Asians and Europeans, of the Legco. It was thus a multiracial party that advocated racial difference, and a slow and gradual transfer of power to the Africans. According to the Party's policy, no one racial group should dominate the others.
The Tanganyika African National Union (TANU), formed in 1957, consisted of nationalists that opposed, and were in turn opposed by, the UTP. Almost all of TANU's members were Africans. As for the African National Council (A.N.C.), it was a racist political group. When a general election was held in 1958, the UTP and the ANC very heavily lost to TANU. The UTP and the ANC hence had no alternative but to disintegrate. By 1950, the UTP had disappeared, but the ANC still survived as a Party. When Sir Richard Turnbull became Governor of Tanganyika, the Africans were assured of predominance in Tanganyika politics. Julius Nyerere became their leader and Turnbull their friend.

The last UN Visiting Mission to Tanganyika Trust Territory occurred in 1960, early. In the same year also, general elections were held in the Territory in which TANU won. On 1st September, 1960, Sir Richard Turnbull summoned Nyerere to form a government. On 1st May, 1961, Tanganyika achieved full internal self-government. That meant that the Governor of Tanganyika would, from that day onwards, no longer preside in the Cabinet. Julius Nyerere, the Prime Minister, would do that. Tanganyika at last attained full independence on 9th December, 1961.

In Uganda, the problem of anti-alienism was not as great as it was in Kenya, for instance. As we saw in the previous Chapter, the aliens themselves, especially the European settlers, found Uganda less attractive - climatically and otherwise - than, say, neighbouring Kenya. Furthermore, the most influential British in Uganda were loath to sell land to Europeans for settlement. The main opponents to European settlement in Uganda were, it will be recalled, Sir James Hayes Sadler, successor to Sir H.M. Hamilton as Commissioner of the Uganda Protectorate in 1902, Sir Hesketh Bell, Commissioner and later Governor of Uganda from 1905 to 1910, and Mr. S. Simpson, Director of Agriculture in
Uganda from 1912 to 1928. Commissioner Sadler openly admitted that, without the Eastern Province that had formerly been transferred to the East Africa Protectorate, Uganda could not be considered as a "white man's country". Also, the pressure groups formed by the aliens (Europeans and Asians) in Uganda were of an economic, and not political, nature. And, although African political organizations (factions) existed in Uganda, no endeavour was made at the National Assembly level, and there was no racial orientation as was the case in the neighbouring E.A.P.

The lack, however, of a serious anti-alien problem in colonised Uganda should not, under any circumstance, undermine the strong and determined force of the negative African response to alien rule in Uganda. This is an important point which must not be forgotten. Anti-British revolts were launched by the Kingdom (tribal) Rulers, like King (Kabaka) Mwanga of Buganda, King (Mukama) Kabarega of Bunyoro, King (Mukama) Kyebambe I of Toro, and King (Mugabe) Mntare of Ankole. As for Busoga, it was probably ruled by strong chiefs like Chief Lubwa, since Busoga was not a Kingdom. In fact, Busoga was, for a considerable period, a tributary of Buganda Kingdom. Busoga actually became a district under the Protectorate of Buganda. All the affairs of Busoga were managed through a district council.9

In the provincial context, African reactions to colonial rule in Uganda can be outlined as follows:-

Believing strongly in separatism, the Ganda people, led by their successive Kabakas (Rulers), were determined to fight relentlessly against every alien attempt to impose control on Buganda.10


10 See, for instance: 'Foreign Office Confidential Print (F.O.C.P.)' 6557, Minute by Kimberley, 18 May, 1894.
Consequently, revolts were raised, at various times, against the British colonial administrators. A particularly remarkable opposition to British rule in Buganda was the one organised by Kabaka Mwanga in 1897. Mwanga, however, failed in his attempt to mobilise the whole of Buganda against the British. He was consequently forced to flee his kingdom and seek refuge in German East Africa. But nevertheless it was not until mid-1899 that British control was effectively extended to Buganda's south-westernmost corner. That event was clearly indicative of the determination of the Africans to defend their interests in Buganda. That determination was intensified in the ensuing years. When, for example, the idea of 'closer union' was introduced in East Africa, the African response in Buganda to the concept was extremely negative. The Baganda believed that such a union would bring countless numbers of European settlers to Buganda Kingdom. European settlement in that kingdom was unacceptable to the peasants and clans (Batsaka) because they feared that expropriation of their land might occur as a result of such settlement. The Baganda chiefs also feared that they might lose their privileged position in Buganda, and their country itself might be deprived of its leading role in the entire Protectorate of Uganda. The other genuine fears of the Africans in that kingdom and indeed elsewhere in the Protectorate included the following:

a) The fear of political dominance by the settler population, whose aspirations were (believed to be) a direct menace to the interests of the Africans. This was, needless to say, particularly

11 See in particular,
(a) F.O. 3/133: 'Ternan to Salisbury' - 9th July, 1897;
(b) Entebbe Secretariat Archives (E.S.A.) A5/7: 'Ternan to Wilson' - 10th September, 1899.
the case in Kenya; and

b) The fear that the (European) economic arguments for 'closer union', if implemented, would not alter the economic status quo. That state of affairs would mean an indefinite monopoly of Uganda's economy by the Europeans and Asians. To the Africans, then, the determination of the Europeans in political and economic terms was a great threat. The Africans, therefore, led by their Kings, rejected the idea of federation or 'closer union' on an East African basis.

The Kingdom of Bunyoro, it should be noted, alias Kitara Empire, or Bunyoro - Kitara as it was also called, was the largest of the Uganda Kingdoms of the lake area. It should also be noted that, of all the anti-British rebels in Uganda, King Kabarega of Bunyoro was the greatest. He revolted against the British in 1894-6. British troops were, however, too strong for Kabarega to conquer. He was subsequently forced to surrender. Kabarega's Kingdom, which had for a long time resisted alien rule - not only from the British, but from Bunyoro's greatest enemy, Buganda - was brought under British control. Kabarega was forced to flee northwards across the Nile. Kabarega, however, continued while in exile to embarrass the British. The result of the embarrassment was that the British presence in Bunyoro was limited to a military occupation.

There is much detailed information on African response to alien rule in Buganda, in:

a) David Antes: "The Political Kingdom in Uganda" - Princeton University Press (1961), especially page 171 et seq., and


See, for example, F.O. 2/72: "Thruston to Jackson", 26th Dec. 1896

See, for example, E.S.A. /4/8: "Thruston to Terrace", 30th June, 1897. See also London Gazette, 3rd July, 1896.
African resistance to British rule was also staged in Ankole. However, the British imposed their control on Ankole without many problems, and by 1898, the British had firmly established themselves in Ankole Kingdom. In Busoga, the British were opposed both by the Basoga themselves and the Baganda. The latter claimed to exercise dominion (hegemony) over Busoga.

In Toro, the opposition to the British was also not as great as that of Buganda and Bunyoro. The main reason for the 'favourable' reception of the British colonizers in Toro was that the British restored the independence of Toro from Bunyoro, and set up a Toro confederacy under a restored Toro Mukama/Mukama (King).

From the foregoing arguments, it is clear that, apart from the dominance of the Europeans and Asians in the political and economic fields, the main impediments in the struggle for independence in Uganda included: the clash between modern nationalism and the privileged protagonists, i.e., the champions and advocates of traditional value; hereditary Kings; long-established tribal forms of government; and religious rivalries. It will be remembered that the various tribal Kingdoms fought inter se for many years for supremacy over the largest part of Uganda. Taking advantage of the Kingdom rivalries, the British sought to extend their rule everywhere in Uganda. They were thus determined to establish control in the Uganda Kingdoms, against the wishes of the Kingdom Rulers and their subjects. That British determination cost the British Government heavy losses both in human and material.

See, for instance:-
(a) E.S.A. A27/17: "Tighe to Wilson" - 16th Sept., 1898;
(b) E.S.A. A9/15: "Macallister to Berkeley" - 1st Jan., 1899.
resources. Thus, wherever they went, the British colonizers in Uganda were bitterly opposed by the Africans. In the years 1897-1901, the rebellious activities of the Uganda Kingdom Rulers were intensified. Unfortunately, the revolts were suppressed by the British once and for all in 1901.

The point that must now be made is that it was difficult to unite all the various tribal political systems into one government structure, and under one administration, simply because alien and indigenous political entities and conceptions were quite different. But nevertheless the ultimate result of the struggles between the colonizers and the colonized in Uganda was political victory for the Africans. It is of interest to note that, even after that victory, the Africans continued to air their old view that European political ideas were inappropriate and against the inherited African traditions and customs. The Africans continued to recall with disgust the colonial doctrine of indirect rule.

The events that led to political victory for the Africans in Uganda can be summarized as follows:—

When the system of Legco was introduced in Uganda in 1921, no African member stepped in the Legislative Council. And yet no political row was raised over that fact. The idea of Legco and Exco in Uganda originated in an Order-in-Council enacted in 1920. That Order provided that Legco should comprise 4 officials - on the government or official side - and 3 officials: two Europeans and one Asian. To the Africans, the idea of Legislative Council was very strange. The Council was, therefore, a remote and alien organ. That was precisely why the Uganda Africans boycotted the Legco. The Buganda Kingdom wanted to isolate itself indefinitely. The British rejected that wish.

and it was not until 1945 that the Uganda Africans were represented for the first time by their own African members in the Legco. It is noteworthy that that historic event occurred just a few months after the first two Africans had joined Legco in Tanganyika in the same year. In the previous year (1944), the first African, in the person of Eliud Mathu, had joined the Legco in neighbouring Kenya.

In the later years, party politics were vivified by Uganda African leaders like Ignatio Musazi of the Uganda National Congress (Party). Non-racialism was strongly supported. Emphasis was laid on the need for non-Africans to take on Uganda citizenship. Musazi's movement was opposed by the Baganda, who always aimed at the preservation of their isolationist status. In 1955, an agreement called the Némiramba Agreement was concluded between Buganda and Britain. That Agreement "democratized" Buganda, which thenceforth would be regarded as an integral part of Uganda and would send representatives as before to the Uganda Legco. The Agreement also reduced the Kabaka's personal powers of rule. The Baganda disagreed with the Agreement and demanded an immediate end of British protection over Uganda. They also demanded independence for Buganda by December 31st, 1960. Britain rejected the Baganda demands and affirmed that there should be only one Uganda State with a strong central government, in which Buganda would be granted a federal status, of the superiority and special position of Buganda in Uganda. One salient feature in Uganda politics was the active participation of religious groups in political discussions. For example, in 1956, the Catholic Bishops of Uganda approached the Anglicans to join in sponsoring a Christian Democratic Party. The Catholics went ahead,
Despite the Anglican decline, on their own and managed to get the new (Catholic) Democratic Party (D.P.) work closely with the Uganda National Council (UNC) for Catholic action. In 1958, Benedicto Kivawu, a Kampala Catholic lawyer, assumed the leadership of the DP, and became its second President-General, after Matayo Muyonyo.

Country-wide elections in Uganda were held in 1961 and 1962. Difficulties over the semi-independent Kingdom of Buganda were resolved at the London Constitutional Conference of September, 1961, when Buganda was given a semi-federal relationship with the rest of the country. On 1st March, 1962, Uganda attained internal self-government with Kivawu as Prime Minister. In the general election that followed, however, Kivawu's Democratic Party Government was defeated by the Uganda People's Congress (UPC), in alliance with the Kabaka Yekka Movement of Buganda. Milton Obote, President of the Uganda People's Congress, took office as Prime Minister on 1st May, 1962.

A further series of constitutional talks were held in London in June, 1962, to pave the way for complete independence later in the same year. Under the new constitution, known as "the Constitution of Uganda (First Amendment) Act, 1962," Uganda at last became independent on 9th October, 1962 with Obote as Prime Minister.

The Kenyan case was the most sensitive of them all. African resistance to British rule in Kenya was, as in the other East African territories, staged right from the beginning of alien rule. In December, 1894, for instance, the Bukusu, or the Kogelo as they were called at that time by the British, attacked a mail party in Kavirondo area. The Bukusu strongly resisted British pressure until their resistance was foiled in 1895, when British military and auxiliary forces ("punitive expeditions") overcame
most of the Dhyae people and some of the Luo clans in the 
Kavirondo area.

In 1895 also, the Mandi peoples between Lake Victoria and the 
Rift Valley were attacked by the alien troops.

African resistance to alien rule in Kenya as elsewhere 
in East Africa was intensified after 1900. The Maseai opposition, 
besides the Mendi and Kikuyu resistances were the greatest 
obstacles to British colonial authority in the British sphere 
of what became Kenya. In Kenya Colony, the main cause of African 
envy and hostility towards Europeans was the alienation, or 
fears of alienation, of African land to the aliens. The land 
question was the most sensitive issue. It will become clear that 
the issue sparked off a series of tensions and clashes between 
the natives and the aliens. From the practice of expropriating 
native lands to aliens resulted all the racial and other conflicts 
that the Colony experienced: African unhappiness, regret and 
hatred of the Europeans. The settler pressure to extend the 
area of the highlands was detested. The introduction of an 
identification document called kipande (Swahili) for the 
Africans was unbearable. The increased taxation of the Africans 
and a co-ordinated reduction of African wages by the settlers 
and some of the Government Departments really annoyed the 
Africans. The sharp colonial practices among the colonial 
employers at the time of the currency change-over from the Indian 
rupee to the shilling (1921-2) were most unwelcome to, and 
unbearable by the Africans.

For a broader account on the land question, see the 
"Carter (Kenya) Land Commission Report" of 1934, -
Cmd 4556, 1934. See further the "Report of the East Africa 
Royal Commission, 1953-5", in Cmd 9475 (1955), p.346 
et al. See also "Reddile to Rollins" 22nd May, 1909 -
Land Office 170 (1903).
The divide-et-impera colonial doctrine was effectively and widely applied in colonized Kenya. The European colonizers divided Africans and African tribes and set them at war with one another. Africans regretted that nothing lasting and concrete was done—either by the colonial administrators in the Colony itself, or by the British Government in London—to remove the European antagonistic attitudes towards the Africans. The African natives thus decided, in the absence of colonial protection, to resort to rebellious activities. The unfortunate thing, however, was that the Africans lacked a force strong enough to unite them all against the colonialists. Many reasons existed for the lack of over-all tribal resistance against the British colonists. Distance, for instance, the fear of domination by one tribe over another, the different traditions, customs and diverse tribal "tastes" that existed among the tribal groups in the Colony, were great impediments to a united and omni-tribal resistance to alien rule in Kenya. In addition to that, most Africans admitted the superiority of the white men in weapons and the like. They thus realized that continued resistance meant further losses of stock and life. So, some of the Africans (and tribes) changed sides to fight along with the Europeans against their fellow African neighbours. The Masai did that, for instance, and fought against their neighbours— the Mandi, Kikuyu and Kamba.

The general anti-Kikuyu attitude of the Europeans marked the commencement of Kikuyu grievances and execration. Trouble brewed up in 1904, when a native 'reserves' policy was formally adopted and implemented. The Kikuyu people started to feel that they had no security at all in their territory, and that their land could be dispossessed to Europeans any time and any day. The Kikuyu, like the Kamba, the Luo and the other tribes, began to form anti-European movements. These tribes, particularly the Luo.
and the Kamba, also rejected Christianity - the religion of the Europeans whom they hated.

Thus, throughout Kenya, prophetic beliefs (millenarian cults) were revitalised. The prophetic cults were, at that time, common in East Africa as a whole. In Tanganyika, for example, the "Maji-Maji" uprising was, as we have explained, stirred by the belief that a certain god adored by the natives would assist them to expel the aliens. In Buganda, it was also believed that the only most powerful weapon to get rid of the alien intruders was to besiege the gods to expel the intruders.

Millenarian or prophetic cults that the native Africans began to nurture and apply were thus responses to the European maltreatment and dispossession of lands from the Africans.

To the Africans, the new land policies introduced by the colonizers were unacceptable simply because the policies introduced alterations in the indigenous systems of "free" landholding. The Africans accused the European settlers of stealing African lands, and of aiming at the eradication of African customs and traditions, which the Europeans described as "primitive". As for European church organizations, they played leading roles in the advancement of social justice, progress, stability and equality among the East African inhabitants.

The Kamba and Luo tribes were very good at the prophetic cults. Near Mechakos in Kambaland, for example, a movement (cult) was started in 1911 by a widow called Siotune, who claimed to be possessed by a ghost ("moretu"). Siotune became very famous. Later, Siotune had a young follower called Kiamba. This young man predicted that the European administrator (balosti) in Kisumu would very soon be lifted up to heaven, and all the other Europeans would flee the country. Later, however, the East African
Protectorate Government banned the Siotune powerful movement, after arresting all its organizers who just banished.

Among the Luo, an atavist movement called Mumbo also arose against the Europeans and their Christian religion, which the cult described as "rotten". The Mumbo movement was also an endeavour to reject all Europeans and their activities. The cult was founded by a certain Onyango Dundu in 1913. Bwana Dundu affirmed that he had been instructed by a sea-serpent from Lake Victoria to reject Christianity and Europeans, and to maintain the African traditions and customs of the Luo people.

At the coast of East Africa, the Giriama people also strongly revolted against the Europeans. The Giriama proved to be very tough, very stubborn and extremely disobedient to the alien Europeans and Government in the E.A.P. The aliens were very frustrated and decided to leave the Giriamas alone, who refused to pay the usual hut tax and to work for the Government. The Giriama revolt occurred in August, 1914. The rising was hence not only anti-government, but also anti-European and anti-alien in form and spirit. The declared motto of the Giriama people was "Giriama for the Wagiriama". Their revolt was strengthened by the outbreak of World War I.18

The Africans were used as pawns in the Euro-Asian battles in East Africa. In early 1922, African elite nationalism gained momentum in East Africa. In Kenya and Uganda, nationalist organizations were formed to promote nationalist interests: the East Africa Association in Kenya, and the Young Baganda Association in Uganda. Harry Thuku was the leader of the East African Association in Kenya. Thuku was a shrewd Kikuyu leader who

organised regular meetings of his Association to discuss African grievances. Thus, Thuku became famous and acceptable among the Africans throughout East Africa.

It will be remembered that nationalist forces in East Africa coincided with those in India. Also Indians and Africans became, for the first time, genuinely united against the Europeans in East Africa.

Further, there were similarities between African and Asian nationalism. Asians and Africans established close contacts. Harry Thuku, for instance, was for Kenya while Gandhi was for India. It was after Thuku had come in contact with the Indians that he broke away from the Kikuyu Association led by Kikuyu Chiefs to form his Young Kikuyu Association that became, on July 1st, 1921, the East Africa Association. The idea was to allow for non-Kikuyu membership. Asians were admitted to the Association, and on 16th July, the Association passed a series of resolutions, one of which declared:

"This mass meeting of natives of Kenya puts on record that in its opinion the presence of Indians in the Colony and Protectorate of Kenya is not prejudicial to the advancement of natives as has often been alleged by the Convention of Associations and some of the writers in the press and is of the further opinion that next to missionaries Indians are their best friends."19

Thus, when Jeevanjee went to London to air Asian grievances, the East Africa Association requested him to represent the African case to Churchill and to Prime Minister Lloyd George, the India Office, and the two pro-African British Members of Parliament, Lord Islington and Colonel Wedgwood.

Some of the East African nationalists, however, disliked Harry Thuku's nationalistic approach. The Baganda, for instance, particularly opposed Thuku's contacts with the Indians, which they described as extreme.

The branch of the Young Baganda Association in Nairobi had a vernacular monthly newspaper "Sekanyolya" which aired their views. The Baganda called on East Africans (especially in Kenya and Uganda) to ignore the Asians and lay more stress on the education of native Africans. Views continued to differ in Kenya and Uganda on the Young Baganda Association's call.

The Kenya Europeans were naturally bitterly opposed to "Thukulism". Their leader, Delamare, described Thuku's resolutions at the joint meeting of the Convention of Associations and the Nairobi Political Association of 22nd August, 1927, as "evidently inspired by the Indians". He went on:

"Gandhi and the political agitators in India are said to be receiving some money from the Bolshevists.... If we fail to prevent this injustice (of racially mixed government), then it means the Government of Kenya by Indians because no one else could take part in the ineffectual unjust and corrupt government which must result from dual control... It is quite certain that (if India rules after the British are gone) she will be unable to control the native populations unless she has European officers to help. And are those gentlemen to be asked to lead their men against natives to repress revolt raised against misgovernment by a corrupt race?"

Delamare's condemnation of the Indians seemed to be supported by many Africans. At Nakuru, a thousand members of the Kavirondo, Kikuyu, Baganda, Lumbwa, Massai, Kisii, Kasensi and Swahili tribes met in August, 1922. They also passed a series of resolutions. The core of these resolutions was that the African tribes further wished "to place on record that the Indians have in no way assisted the African native in this Colony but have continually preyed on him and fleeced him to fill his own pockets with our hard earned wages."

20 "27 Transfer", ibid., p.20
However, we must remember that the above resolutions had been worked out by a White settler, Wetskins, who had stirred his employees to reject the Thuku resolutions. This means that the Nakuru resolutions were not 'native,' but 'colonial.'

Harry Thuku was subsequently arrested following a riot (where the University of Nairobi now stands) in 1922, in which 15 Africans were killed.

In 1926, the East African Association was reorganized as the Kikuyu Central Association (K.C.A.). A new spokesman emerged: Jomo (then known as Johnston) Kenyatta, General Secretary and editor of the Kikuyu vernacular newspaper "Muigwithania," became K.C.A.'s new Secretary. A certain Joseph Kang'ethe became KCA's President. Prominent members of the K.C.A. included Senior Chief Mbiu Koinange.

The British colonizers were determined to smash the nationalist movements that were a menace to alien rule in the British Protectorate of Kenya. The British colonialists consequently subdued the various native tribes as follows:

- The Kikuyu - by 1902;
- The Luo and Luhya - by 1903;
- The Nandi - by the end of 1905; and
- The Babu and Meru - between 1904 and 1908. However, no native tribe had been brought to full, administrative alien control by 1914. After this date as we have remarked, the Wagiriams continued to raid the Europeans. African resistance became generally stronger, with the Nandi and Kikuyu opposition being the strongest of them all.

One more important remark about the Kikuyu tribe should be made and remembered here. The Kikuyu, unlike the Luo and Kamba, did not develop any millenarian cult. The Kikuyu people only strongly believed that some day, Europeans would disappear from
Kikuyuland, as for instance, when World War I broke out in 1914. The Kikuyu thus voiced views, which were mainly expressions of their land complaints and general alien maltreatment of the Kikuyu and other native peoples in Kenya. The Kikuyu political opposition to alien rule in Kenya was voiced by the Kenya African Union (K.A.U).

It is fascinating to note that K.A.U. was the greatest promoter of what became known as the "Mau-Mau". "Mau-Mau" was actually a strong nationalist force - an active, nationalist movement - whose aim was to liberate the Kenya Colony from colonial rule and to transfer power to the Africans. The "Mau-Mau" anti-European movement in 1950's was the outcome of African nationalism first recognised in 1947. That nationalism was prompted by the grievances of the African Kikuyu tribe, which felt it had been subjected to the greatest injustices that humanity could ever be made to suffer from.

Because the "Mau-Mau" was an excellent example of the African nationalist response to the colonial policies and practices, the story of the movement is worth remembering. The "Mau-Mau", secret terrorist organization originated among the Kikuyu. They were bound by oath to force the expulsion of the white man from Kenya. In 1952, the movement began bloody reprisals against the European settlers, particularly in the "White Highlands". The latter had, for a long time, been claimed by the Kikuyu as tribal lands. This we have explained above. When the settlers retaliated, the Kikuyu hit back hard, and casualties grew. The Kikuyu who refused to join the "Mau-Mau" were murdered by the terrorists.

By 1956, however, British forces had driven the "Mau-Mau" into the mountain forests, where they were killed or eventually captured. Later, the entire Kikuyu tribe was resettled within a guarded area, and Jomo Kenyatta, suspected to be the leader of the movement, was imprisoned by the British. The state of emergency declared in 1952 was uplifted in 1960. Kenyatta was released in 1961. The British had spent more than £50 million sterling on the war by the time the whole business was over.

A short comparison of the "Maji-Maji" and "Mau-Mau" rebellions reveals that the two revolts had more dissimilarities than similarities. Thus both had a common end - the expulsion of aliens and abolition of alien rule, and the restoration of traditional values and institutions. The methods, however, of attaining that ideal were quite different. The "Maji-Maji" rebellion was suppressed after a shorter period than the Mau-Mau revolt. There were several reasons for this. The African resistance in the "Maji-Maji" uprising was not accompanied with as much African cruelty towards the Germans as was the case in the "Mau-Mau" rebellion. And yet the German treatment of the Africans in the "Maji-Maji" uprising of 1905 had been far more brutal than the British treatment of the Kikuyus in the "Mau-Mau" revolt in the 1950's. Furthermore, only a handful of European civilians were murdered by the "Maji-Maji" African rebels. The "Mau-Mau" rebellion, on the contrary, saw far greater brutality and ruthlessness. The rebels mercilessly murdered more than 2,058 civilians in Kenya, most of whom were innocent children, women and men. Of these, about 2000 were African Kikuyus that had been loyal to the colonial Administration, 26 were Asians, and 32 Europeans. The "Mau-Mau\" also murdered 591 security troops in Kenya, of whom 525 were Africans, 3 were Asians, and 63 were Europeans. All in all, the Kenya colonial Government
lost 2,461 people in the struggle against the "Mau-Mau" revolt: 2,357 Africans, 9 Asians, and 95 Europeans.

The above extremely negative reactions of the Africans that resulted in the heavy losses both in human as well as natural resources, and the Euro-Asian racial conflicts in East Africa, all called for immediate solutions, if further and more explosive situations were to be prevented from occurring. The Colonial Government knew that. They realized that it was their responsibility to look for solutions to those serious problems of alien rule that were growing very rapidly throughout East Africa.

The search for solutions to the problems was done in many ways. It was done, for example, through the creation of multiracial governments, through treaty arrangements with the natives - as was the case with the Uganda Kingdom Rulers as we have seen above, or with the Masai as we shall shortly see - through the White Paper ("Commands") system, through statements by politicians in the U.K., India and East Africa, and so on. These methods of the search for solutions to the problems arising from the imposition of alien rule in East Africa will be our topic of analysis below.

By the multiracial government method, the Colonial Governments sought to establish the principle of fair representation in the Legislatures and Executive Councils in the East African territories. In Kenya, for instance, the British Colonel Secretary - Oliver Lyttelton announced the establishment, in March, 1954, of a multiracial Council of Ministers with 14 members of whom 6 were officials, 6 unofficals and 2 were nominated members.

An attempt at fair racial representation in Kenya had, in fact, been made much earlier than 1954. For, by 1933, the
distribution of seats in the Kenya Legislative Council for foreigners had reached the following stage: 11 elected European members; 5 elected Asian members; and 1 elected Arab member. It should be noted that this electoral ration in Kenya continued until after the Second World War.

As for Africans, their interests were supposed to be represented by one, and later two, ex officio members of Legco. That was not the case, unfortunately. That unfortunate situation led the sympathetic Indians to voice African grievances. There was, therefore, a general dissatisfaction among the Africans. The point, however, which must be emphasized here is that the idea of multiracial government in colonized East Africa was a sound step in the right direction.

As for the treaty arrangements, the so-called Masai Treaties provided an excellent example. Both the colonial Government in Kenya and the Colonial Office in London questioned Masai rights in the Rift Valley, which was the strategic key to the Kenya highlands. By August 1904, therefore, it had become clear that it was absolutely essential to remove the Masai people from the Rift Valley to provide room for white settlement. Masai reactions to that colonial land policy was extremely negative. The Masai hence continued to claim land rights in the highlands. The European settlers did the same. A serious conflict emerged. The only solution to the problem was to enter into agreements to calm the Masai and other natives, who also maintained land claims in the highlands area. The European colonists insisted that a Masai 'reserve' should be established at the Laikipia plateau. Of the treaties signed with the Masai, the following are noteworthy: the Treaties of 1904, 1910 and 1911.
The Treaty of 1904 was the first treaty ever signed with the Masai, in August. The purpose of the Treaty was to move the Masai from the Rift Valley to the Laikipia plateau. In the Treaty, it was provided that the Masai decided of their own free will, and that it was for their best interests to remove their own people, flocks and herds into definite reservations, away from the railway line, and away from any land that might be thrown open to European settlement.... The Treaty was to be enduring as long as the Masai as a race should exist. Out of this deliberately planned 'reserves' (colonial) policy, two reserves emerged: one on the Laikipia plateau, about 4,770 sq. miles, and the other to the south of the Uganda Railway and Sgong — about 4,350 sq. miles. A road connecting the two reserves was promised to the Masai in the same Treaty. Unfortunately, the promise was never realized. The Treaty also promised to set aside, for circumcision ceremonies, 5 sq. miles of land on the Kinangop plateau.

The Treaty of 1910 was signed in May by Lenana, the Masai expert and Paramount (Chief), the two main leaders of the northern Masai: Legalishu and Masikondi, and eleven others. The main aim of the 1910 Treaty was to "bunch up" the Masai tribe into one reserve, and to ask them to accept the Government-favoured Lenana as their Paramount Chief. It was suggested that the Masai be moved from the Laikipia plateau to the Loita plains. This move had, in fact, been initialed by Governor Girourd who, favouring European settlers, had wanted to preserve more land in the highlands for the settlers. Girourd's aim was to do this by deceiving the Masai against the instructions of the Colonial Office, to move the Masai to the Southern Reserve. The 1910 Treaty was unacceptable to the Masai. Legalishu of Laikipia was its greatest opponent. Fortunately, the Government representative
did not sign it.

Governor Girourd nevertheless continued with his tactics, and was successful after Lenana's death on 7th March, 1911. Girourd immediately telegraphed the Colonial Office in London to deceive it of Lenana's "dying injunction": 'Masai to obey Government and move to South Reserve'. Girourd also deceived Legalishu and the other Masai leaders, who together signed another Treaty at Government House with Government representatives. This is what Legalishu had to say after signing the 1911 Treaty with the British:

"I signed the treaty because Maji Moto (i.e. Mr. C.R.W. Lane) sent for me to come to Ngong — and said, 'If you do not move from Leikipia, you will be sent to Europe and imprisoned there, and your cattle will be taken from you. When you go to the Bolozi (Governor) in Nairobi, tell him that you agree to move. Do not say any more.'"22 After Harcourt—the Colonial Secretary—had approved the 1911 Treaty with the Masai on 29th May, 1911, Governor Girourd in the E.A.P. began to move the Masai from Leikipia to the Loita plains.

A question arises as to the validity and legal force of the Agreements entered into between the natives and the colonial Administrations. How could, for example, the treaties concluded between the Masai and the Kenya colonial Government of Governor Girourd's days be valid, when the African natives concluded the treaties under threats and deceptions? The answer to this question is as follows. When cases regarding the agreements were brought to the East Africa Court of Appeal, the Court held that such agreements were not contracts, but treaties concluded with foreign subjects, which were not cognizable in municipal courts.


Lane was nicknamed "Maji Moto" (Hot Water) because of his hot temper."
Such an opinion of the Court of Appeal could only be favourable to the colonial Government, in the case of the Treaties with the Masai because the Treaties had a binding force, even though the Masai were cheated and threatened by the local administrators. The writer is also of the view that the African natives did not really understand the legal implications of such Treaties. The latter were excellent instruments for promoting colonial interests. The idea was obviously to cool the Africans and thereby reduce, or eliminate the tempo of African opposition to the colonial practices and policies.

Party politics in Kenya were already active, as we have seen, before the British Conservative "wind of change" policy started around 1959 by the then British Premier Harold Macmillan. Of the older political groupings, the Kenya African Union (K.A.U.) proved to be the most active and demanding. The Union demanded, for example, a legal prohibition of racial discriminating, freedom of movement and assembly of Africans, and African election instead of nomination, to the Legco.

The later African political parties formed in colonized Kenya included the Kenya African National Union (K.A.N.U.), dominated by the Kikuyu and Luo tribes, the Kenya African Democratic Union (K.A.D.U.), dominated by the Luhya and coastal tribes, and the African People's Party (K.P.P.), formed on the eve of independence by the Kamba leader Paul Ngei. Of these African parties, K.A.N.U. and K.A.D.U. emerged as the greatest. Both of them were formed in 1960. It is important to note that the main differences in policy of these two Parties were: whereas KADU was for regionalism, i.e., regional representatives in authoritative regions and in the Central Government, KANU was for national unity and a unitary government. Further, KADU supported a two-party system of
government. KANU, on the contrary, was "extreme" and "non-committal". It advocated a one-party government system. Unfortunately, these newly formed African parties in Kenya imported the bitter rivalries of tribe, with all its ancient antagonisms, into the sphere of politics. Party politics continued to be activated in Kenya. The usual constitutional conferences were held in London between the years 1960 and 1963. In May, 1963, an election was held in Kenya that produced a KANU Government, which would lead Kenya into independence. On 17th December, 1963, Kenya attained full independence with Kenyatta as Prime Minister.
The Colonization of East Africa resulted in moral as well as legal and material responsibilities on the side of the colonizers towards the colonized. The former had the duty to educate, feed and develop (civilize) culturally, economically and politically the indigenous peoples. The resistance and waging of wars of freedom by the East African indigenous peoples against alien superiority and the imposition of alien rule on them were not only natural, they were also justifiable acts. For indeed, there can be no greater impertinence than to say to another person: "My ways are better than yours, and hence you must live as I think fit!" And yet this was no doubt, the implication in the imposition of alien rule in East Africa - and indeed elsewhere in the colonized world. Not only morally, but legally as well, it is absolutely wrong for one people to impose their rule on another. Colonization is, therefore, a direct violation of human rights and fundamental freedoms, for it raises discrimination on linguistic, sex, racial and colour grounds. Colonial rule is further a great violation of the universally accepted principles of human equality and self-determination, as stipulated in the 1948 Universal Declaration of Human Rights. Colonization, which is a tool for the advancement of superiority exercised by a minority who, being different from the local majority in culture, history, beliefs, and often race, impose the social, economic, political and other considerable measures for the majority populations, is against the law of nature. This law (ius naturale), which conforms to the supreme triumph of human reason, stands for the existence of purpose in law. This purpose in law requires, in matters of government and the governed, that the former not only be responsible to the latter generally, but also that...
governments take decisions and make laws specifically for the realization of "certain ends", and for the benefit and not exploitation, of the governed. Thus natural law, like divine law, has an authority superior to that of any merely positive law of human ordinance as the one imposed by colonizers upon the colonized. In this way, colonial rule is against the rational nature of man.

The law of nature, however, is one thing, and the law of determinism another. And where the two collide, the latter must prevail. This was the case with colonization. It had to take place in East Africa and indeed elsewhere in Africa, and all this in accordance with the law of determinism. Determinism, that is, if it had always been true that European Powers had colonized other parts of the world - and it was true that they had done so for 400 years - then it was not surprising that East Africa was later to be colonized by the same alien powers.

The introduction in East Africa of the alien, colonial notion of "my ways are better than yours, so..." sparked off a series of native hatreds of aliens in that territory. Before the advent of alien rulers to East Africa, the natives there had developed their own ideas and ways of life. They had employed different methods of rule. Political and tribal organizations had ranged from tyranny in some areas to extreme democracy in others. Much had depended on the ability to individual leadership or tribal traditions. Thus the stronger the individual leader or tribe, the better had been the chance of subjecting the others.

The alien invasion wanted to change that existing political set up in East Africa, under cover of the aliens' desire and duty to end the backwardness of the Africans and to civilize them. It was not, then, surprising that the new colonial
policy was categorically rejected by the East African native inhabitants, who regarded it as an unfriendly, alien act. The indigenous East Africans peoples would perhaps have been 'more friendly' towards the aliens if the latter had endeavoured to convince the African natives that they would not be at peace or happy with their new neighbours, if the Africans refused to adjust themselves to the changed circumstances they then found themselves in. The alien colonizers did not, however, need native friendship on such terms, for they were people, (“white men”) suffering from a very serious superiority complex, which they claimed to have been given to their race by history. They were better organized, ruthless and determined; they had superior equipment, cannons, metal weapons, and so on. They even believed to have "divine support". For them, happiness simply meant possessions. The ruled had only one alternative: to adopt European methods and ideas. This the ruled rejected. The results were: exercise of alien rule by force and military prowess, and African rebellious activities. In East Africa, alien counter-resistance stations were established throughout the region. The alien military expeditions - "punitive expeditions" - were sent to the areas to facilitate native submissions to alien authority. Guns were especially used, by the British officials, whenever there were signs of local opposition. To the British officials, their "punitive expeditions" were justified both by the depredations of "offending" Africans, and by the necessity to inflict a "severe lesson" to secure the final pacification of a recalcitrant area. Cruelty and ruthlessness were sometimes inflicted on Africans without any justification at all. After pacifying the "recalcitrant" Africans, as the latter were described, the British began to develop the areas. They built roads, bridges, railways, towns and
other public works. They also started to develop African agriculture, schools, hospitals, and so on. That was what was meant by "Pax Britannica". By it, Britain claimed to have brought a real revolution in East Africa.

To the East Africans, the British claims did not matter at all. For, the Africans resented the predominant position of the Europeans who continually used the former as a labouring proletariat. East Africans hence resorted to increased resistance to alien rule as the years passed by. They rejected the idea of 'closer union' in East Africa. They formed political parties which strongly advocated the creation of independent welfare states, in which all citizens, irrespective of colour, creed, class, language or tribe, should possess equal opportunity, and be assured of the basic needs of life in a modern society. The African political parties also strived to establish and maintain the social and economic foundations of welfare states, through the processes of planned economy.

In all the East African Colonies, the British Government retained, after the attainment by the Colonies of self-govern­ment, control over their external affairs, defence and internal affairs. The control was exercised by the British Governors, until the Colonies were granted full independence. After Uganda's independence, the Buganda Kingdom achieved a federal status, whereas all the other former "Agreement Kingdoms" achieved a semi-federal status. The traditional Kingdom Rulers or Kings became Constitutional Monarchs:

- Ankole: Omugabe (Omukabe);
- Buganda: Kabaka;
- Bunyoro: Omukama;
- Busoga: Kyabazinga; and
- Toro: Mukame.
In East Africa, colonial administration was either by direct rule, or by indirect rule. Indirect rule was effected through traditional rulers and even untraditional rulers, i.e., "invented" or appointed authorities. Indirect rule promoted the divide-and-rule doctrine, by which the colonial territory was divided into what one might call "native states". The division of the colonial territories into such smaller portions could only enhance disobedience to the central government. It set the tribes at loggerheads with one another. It was a system of government that had been non-existent, and hence unknown to Africans. The latter's reactions were naturally very negative and repulsive. The indirect rule method had, therefore, the following disadvantages:

1. The indigenous peoples were convinced that indirect rule advanced imperialism, which destroyed indigenous cultures by introducing foreign ways. This belief was rejected by the foreign rulers.

2. Indirect rule changed the already established social order, and thereby encouraged conservatism (i.e., it introduced gradual change) and impeded radicalism (rapid change). The outcome of that situation was revolutionary change and violence by the colonized peoples, especially during and after World War II.

3. The indirect rule method further introduced a system of closed society where government was not by politicians but by the elite who were demagogues; civil servants, intellectuals, lawyers, the bourgeoisie, artists, militiamen, and so on.

4. Indirect rule also encouraged excessive exploitation and subsequent impoverishment of the native peoples. Thus the central purpose of imperialism was extraction of maximum profit from the cheap labour of the indigenous peoples by the colonizers.
The ultimate outcome of the colonial policies and practices was a total and direct confrontation between the alien colonizers and the colonized.\(^{23}\)

The indirect rule system, however, also had its own advantages whether they were pro- or anti-native. In most cases, the advantages were pro-alien. They included these:

a) It promoted and developed the divide-and-rule principle which favoured the colonizers;

b) It was an impediment to nationalist unification by establishing and upholding numerous petty centres of power;

c) It weakened the indigenous peoples by, for example, making them enemies of one another;

d) It provided a very easy maintenance of the status quo;

e) It also enabled the colonial administrators to manage their colonies cheaply. The system was thus an excellent tool for colonial ruling.

In both colonization and decolonization processes, the use of force was a common instrument. The colonized always bitterly rejected colonial suppression either by violent or non-violent methods. Thus, independence was attained either by violent means, i.e., by revolution as was the case in Algeria or East Africa, or by peaceful means, as was the case in India. The revolts and revolutions staged by the colonized peoples were great sources of change. They, plus the unnecessarily expensive business of maintaining colonies, accelerated the process of transferring power to the native peoples. The colonial relationship between the colonized East Africans and the European colonizers was very poor. The Colonizers execrated the colonized Africans and

\(^{23}\) For an interesting account of the indirect rule system in East Africa, see generally J. Listowel, Op. Cit.
suppressed them. The Europeans also believed that African mentality was “primitive” and incomprehensible. The Europeans further believed that Africans were murderers and cannibals by nature. They were, therefore, “sub-men”, who were inferior and ‘backward’. The Europeans consequently nurtured the thought that imperialism was the best tool to “civilize” Africans.

The Africans, on the contrary, suffered from inferiority complex, poverty, ignorance, dependence, fear and abjection. To them, the Europeans were terrible people, man-eaters and “heartless gods”. In this way, revenge and guilt were worked out mutually between the colonizers and the colonized, and the outcome of that state of affairs was antagonism and alienation of the one from the other. The continued absence of intimacy between the two groups of people, together with the hatred, unfamiliarity and illusion caused by the European domination, retained and advanced the mutual ignorance between the colonized and colonizers. The relationship between the two groups was hence one of hatred, isolation (i.e. social distance), remoteness and loneliness, unequality and segregation, and so on. African nationalist response to the different colonial policies and practices in East Africa became distinct in the 1950’s. African resistance was so strong that Britain was forced to modify and adjust its policies and practices. Nationalism was a strong force against alien rule. Nationalism meant Africanism. The spirit of Africanism varied in force and objective from one country to another, and from one community to another. Apart from the hatred for racial segregation such as apartheid, there were other reasons for Africanism. All the colonial peoples had, for instance, an ardent desire for self-determination and eventual independence. National self-determination is, therefore, a significant element of nationalism. The latter involves race,
religious and political affiliations, loyalty, tradition, language, culture, and the like. Nationalism has always been accompanied by failures. But nevertheless it has expanded and grown, because it has seemed to answer real needs whether separate or common, of the masses. The needs of the East African nationalism were decolonisation, independence, and development. In Uganda, Kenya and Tanganyika, Africans showed fear lest Asians might be grouped together with the Africans, and thus succeed in winning a share in economic-political control which would badly affect the position of the Africans. Otherwise no other common fear of Asians existed in the African outlook on the future. European colonial rule lasted for a short time, despite the determination by the colonizers to uphold and even strengthen it and by all the exploitative means that were available to them. These means included the traditional authorities which the colonizers used as instruments of colonial rule. The main reason for the short period of colonial rule was the social disturbance which it introduced. The fact, however, is that colonial rule in East Africa transformed the colonized societies, thereby depriving the indigenous peoples of their freedoms, lands, jobs, traditional values, and so on. The colonized peoples, however, relentlessly struggled for freedom in all its aspects, human dignity, and social order and justice.

The Anglo-German colonial rule in East Africa introduced new political doctrines, ideas, agricultural, as well as technological innovations in that region. We must not, however, forget that changes along these lines had been introduced by the earlier invaders of East Africa - the Arabs, Chinese, Persians (Asiatics), French, Portuguese, Americans, and even the various other African ethnic groups that had "invaded" East Africa from Southern Africa. The colonial military power, however, prevented any
further invasions of East Africa from outside. The military power also suppressed internal raiding within East Africa, and thereby stabilized internal population movements within East Africa's borders. Common grievances of the "Maji-Maji" or "Mau-Mau" type were also a unifying factor. Taxation on the African populations was imposed, and the slave trade abolished because the Colonizing Powers now wanted their new possessions to pay the cost of their new administration.

Thus, although in the eyes of some "colonial critics" alien rule innovated too little and too slowly, it must be stressed that the colonial contribution in East Africa was too enormous to be ignored. The British, for example, contributed immensely towards independence for the East African colonies. This is a naked truth. Britain's main contribution lay in her expansions of Parliamentary institutions, and making of modest 5 year plans. In short, British rule in East Africa aimed at achieving colonial uniformity. It aimed at structural integration. This was indeed the idea behind the concept of "closer union". In the writer's opinion, however, aliens in colonized East Africa both contributed to, and hindered the African struggle for independence. The main hindrance came from the Europeans. Some assistance in the struggle came from the Arabs and Asians. African opposition to European rule was backed, though sometimes in a different form, and with different aims, by Arab and Asian resistances. The significant thing was that all these resistances, plus the U.N. and Pan-African efforts, greatly helped to shorten the East African road to independence.

Thus, to the colonizers of East Africa, it had increasingly been becoming clear that the British colonial policy of developing East and Central African territories as "White men's countries",
and of their (colonizers') dominating the politics and economy of, and staying in, East Africa indefinitely, had been badly miscalculated. Britain's first failures in many of her responsibilities were beginning to speak for themselves. The post-World War II period brought countless unbearable pressures to the British Government and its supported settlers in East Africa. The pressures came not only from the Africans, but also from the newly created international community. The colonialists had no alternative but to accept constitutional changes which rapidly increased the representation in the Legislatures of what the imperialists called "the coloured" communities in East Africa - Africans, Arabs, and Asians. The falsehood of the prophecy of indefinite white domination in East Africa obtained greater momentum in the 1950's, when the prediction of African paramountcy began to be realized. The "Mau-Mau" was a nationalist movement, for instance, which would never allow the clock to be put back again. To the white settlers, who had always regarded Africans as servants ("boys") and farm workers, it was impossible to imagine such a change.

The methods of the British Government's transfer of power to the indigenous Africans of East Africa can, therefore, be summed up thus:

The year 1945 marked the beginning of the transitional period of rapid and numerous constitutional changes in the Crown Colonies including those in East Africa. Thus all the East African colonies had written constitutions. This constitutional evolution saw the development especially of the institutions of Legco, Exco, and the Judiciary. As for the latter, more stress was placed on its independence. Changes in the institution of the Executive Council included the limitation or split of the Governor's combined key functions of Sovereign, Prime Minister,
The Speaker, Permanent Head of the Civil Service, and "Chief Liaison Officer" between the mother country and the colony. The Exco system was also evolved into a Cabinet-like system, in which the Governor was "Primus inter Pareae", assisted by an "inner Cabinet" - type of Senior Officers, such as: the Colonial Secretary; the Financial Secretary; the Attorney-General, and one or two more senior Officers. The later Executive Council system also included the leaders and representatives of the unofficial majority, who were normally experienced and "successful" elder statesmen, who would correspond to 'ordinary' Ministers in a cabinet system. This entire body of administrators was known as the "Principal Instrument of Policy" for the government of the colonial country. The Heads of Department were responsible to the Governor through the Colonial Secretary.

When the Ministerial system proper was introduced, the colonial Administration was organized in a series of departments (divisions, sections) under one Minister, Permanent or Principal Secretary, and Departmental Heads. That was the beginning of the Ministerial system in East Africa as we know it to-day.

Similarly, the so-called "member system" was introduced and applied with considerable success in East Africa. Any selected person became a member for a particular aspect of administration, such as agriculture. Though not a head of a department or departments, he spoke for them in the Legco. He was a "specialist" in a particular field. In this way, token representation in the colonies gave way to genuine self-rule, and nationalist movements were transformed into well-organized political parties with mass support throughout East Africa, until independence was granted to them. Constitutional evolution in East Africa reached...
maturity in 1959, when the "famous wind of change" really started to blow in the opposite direction with maximum force and speed. The long process in the melting away and unscrambling of the British Empire reached a climax. The "wind of change" policy was introduced in 1959 by the British Conservative Prime Minister Harold Macmillan. It was a new colonial policy whose central purpose was to prepare the East African and other British Colonial peoples and territories for an early independence. The reasons for the decision to change British colonial policy included the following:

1. The desire to concentrate on, and settle Britain's own pressing problems at home and in Europe first, before getting involved in the problems of others. To do this, Britain had to liberate her colonies at once; and

2. The reactivated strong spirit of nationalism and liberation movements in the colonies.

The question of intra-racial relations just before the granting of independence to East Africa deserves a brief examination. On the eve of independence, African racist attitudes towards the dominating Europeans, and even Asians, were still very pronounced. The East Africans bitterly condemned - and still condemn - the Asian isolationism carried through their isolated Eastern culture, family responsibility and thought, plus their virtual lack of interest in, or responsibility for the African people and their advancement, or the development of East Africa as a whole. These African accusations against the Asians are, we must point out here, partly true and partly untrue. True, in the sense that Asians are, by nature, an isolated community which always wants to remain intact and pure. Untrue, in the sense that the contribution of the Asian
community to the development of East Africa was, as we have argued before, too immense to be disregarded.

Africans in East Africa also reacted negatively to the so-called "Capricorn Declarations" promulgated by Colonel Stirling of Britain. Most Africans were suspicious about the Declarations, because they believed that the Declarations were intended to undermine African nationalist aspirations. Hence to the Africans, multi-racialism could not, under any circumstances, be an alternative to the racial problem in East Africa. Nothing else was acceptable to Africans except African superiority or racial equality. Nyerere of Tanganyika, for instance, expressed horror and dismay at the attitude of the British Government towards the racial problem in East Africa. In the writer's view, Nyerere's argument that the problem of race in East Africa was one of living together in harmony and mutual respect was very sound. The majority of Africans did not question the right of Europeans and Asians to stay in East Africa, but the Africans demanded, and rightly so, the right to be masters of their own fate. This is still the case today. Africans reject the idea that the power to shape the destiny of their countries should be exclusively vested in the hands of alien and minority groups which aspire to uphold their own privileged positions, and to keep the African majority community in a state of inferiority in their own countries.

Of especial significance was the impact which the world Community had on East Africa. Thanks to the mandates, and later trusteeship systems, the Tanganyika road to independence was rapidly shortened. If we compare the application of these two systems

in Tanganyika, we find that they had similarities and differences. The differences were the following:

1. The LON Mandates Commission comprised private individuals ("experts") that were not politicians representing their respective countries. The U.N. Trusteeship Council, on the contrary, comprises representatives of States. They hence deal with political issues.

2. The U.N. Trusteeship system contains a provision that facilitated the submission of petitions from the inhabitants of the Tanganyika Trust Territory, or from any other source. The U.N. system also provides that a petitioner may appear in person to present his case orally before the Trusteeship Council or the General Assembly. Nyerere made use of this Charter provision very widely. The U.N. bodies readily responded to the petitions, and usually criticized the Administering Power. In this way, the natives of the Trust Territory were backed by world public opinion, and the resulting pressure on the Administering Authority hastened the ending of colonization and the transfer of power to the indigenous peoples.

3. The U.N. system also provided for periodic visits by U.N. Missions to the Trust Territory. In practice, a U.N. Mission visited the Trust Territory every three years. Each Visiting Mission normally comprised nine or ten persons as follows:

- 2 from Administering States, provided they were not nationals of the country administering the Territory to be visited;
- 2 from non-Administering States; and 5 or 6 officials of the U.N. Secretariat. The U.N. Visiting Missions normally spent three to six weeks in a Trust Territory. They visited hospitals, schools, and industrial institutions, and met with native groups living in the various parts of the Territory. The Missions were also empowered by the Trusteeship Council to receive
written and oral petitions which were later scrutinised at the U.N. Headquarters in New York. What should be noted at this juncture is that the reports submitted by the members of a U.N. \*Visiting Mission were not binding upon their respective Governments. The Trusteeship Council, however, attached great importance to the reports prepared by the Visiting Missions. These reports, plus the annual Report of the Administering Power, and the information received from the petitioners, served as the basis for Trusteeship Council discussions and recommendations.

As for similarities between the LON and UN systems, their basic similarity lay in the common provision that Britain was to carry out the administration of Tanganyika, whereas the international Community, through the Mandates Commission, and later the Trusteeship Council, would exercise supervisory functions. Britain's main responsibility was hence to prepare the "backward" peoples "to stand alone" in Tanganyika. International supervision was, therefore, intended to help the Administering Power to improve its management and in any case to prevent that Authority from exploiting the Territory to the Power's advantage, or neglecting its responsibility to advance the welfare, i.e., the political, social, economic and educational prosperity of the Territory. Britain's primary job was to encourage respect for fundamental human rights irrespective of colour, sex, language, or religion. The League of Nations met for the last time on 18th April, 1946.

All in all, therefore, the U.N. Trusteeship system came much more closely to grips with actual situations in Tanganyika than was possible under the more limited terms of the LON mandates system.

The years 1960-1962 were what one might call the "vintage years" of British colonial constitutional making. The British
Colonial Secretaries who were keenly and greatly involved in the transfer of power to the native peoples of East Africa were:

1. Ian Macleod (Conservative): 1959 - 1961;
3. R.A. Butler (Central Africa): 1962;

Thus, the achievement in the early 1960's of independence by the East African Territories was the result of the efforts of the above Colonial Ministers. We should also note that the newly independent States of East Africa became Republics on the first anniversary of their independence. Zanzibar was an exception, and that became of the revolution on the Island in 1964, early. In the writer's view, all of the East African Territories, like Nyasaland (Malawi), were not yet well prepared for independence when they got it. Racial and tribal problems were still acute at the time of independence. The lack of fights was, in the writer's opinion, mainly due to the fact that almost every African in East Africa craved for independence. So, when it came, the Africans preferred to have it, despite their lack of preparedness for it, rather than lose the golden opportunity. But even so, the "state of unpreparedness" was not suppressed completely, and thus in Zanzibar, a revolution was staged against the Government of the newly independent Island only within one month of independence! It is the strong conviction of the present writer that, where colonial rule collides with nationalism and unpreparedness for independence, the former should prevail. Nationalism is generally in very many cases irrelevant. In colonized East Africa, African nationalism was, in many cases,
irrelevant. The writer believes that in such cases, it would have been better to uphold alien rule in East Africa until such time that the Territories and their peoples would have been really ready for independence. At any rate, the blame for the state of affairs in East Africa certainly goes to Britain which, in the writer's view, failed to prepare its East African Colonies properly before the granting of independence to them.

The only territory which seemed to be ready for independence—when it got it—in East Africa was Tanganyika. Apart from its international status, which we have touched on above, there were other reasons why Tanganyika achieved independence first in East Africa. These reasons included the following:

1. At Tanganyika's independence, its population was 98 per cent African, with only 500 European-owned estates, no white highlands, no native reserves and much less racial tensions than in neighbouring Kenya, for instance. Throughout Tanganyika, therefore, there was racial co-operation, friendship, and support of the African cause.

2. The lack of tribal dominance in the lines of Kenya or Uganda. Tanganyika has 127 tribes, not one of which dominates the country as do the Kikuyu in Kenya. Nyerere had thus to fight on one front only—against the British, whereas the Zanzibaris, Kenyan and Ugandan nationalist leaders had to fight on two fronts—against the British on the one hand, and versus competitive tribes on the other.

3. There were no language problems in Tanganyika. Tanganyikan tribes can understand one another, because Swahili—thanks to the early history of Tanganyika and the educational system devised by Stanley Rivers, Smith, and Travers Lacey in the early 1920's—is Tanganyika's lingua franca. This enables most of the Tanganyikan Africans to understand whatever is said in Swahili.
4. In Tanganyika, a peaceful and headlong road to independence via constitutional advances was quickly established, in the early days of alien rule, already.

5. Nyerere's integrity, intellect, organizing talents and ability to translate his idealism into popular and practical terms.


7. Nyerere's small-tribe extraction. Nyerere is a Zanaki. The Zanaki are one of the smallest tribes in Tanganyika. Hence Nyerere's rise to great prominence did not arouse tribal jealousies as was the case in Zanzibar, Kenya and Uganda.

The total areas in square miles of the East African States are as follows:

1. Zanzibar: 1,044 sq. miles;
2. Tanganyika: 361,800 sq. miles. The total area of Tanzania is hence 362,844 sq. miles;
3. Kenya: 224,960 sq. miles and

To sum up, we can conclude this Chapter with the following remarks: - Not only were Britain, Belgium, German, France and Holland the major Colonial Powers, they were also the most advanced and dynamic societies in the world. They certainly had a revolutionary impact on their colonies. And although the degree of this impact differed from one colony to another, it can generally be said that all these European Powers ruled their colonies aggressively and ruthlessly. Unlike the Portuguese, whose dependencies were not colonies but overseas "provinces" of Portugal, the British accepted that colonial territories which were held in trust, must be led towards independence. Colonial dependence must be only a temporary phase. Although the strategy of decolonization was sound and generally acceptable, the tactics tended to go crookedly.
errors that were made could, to a very large extent, be attributed
to the lack of preparation and the lack of thought, both in turn
owing to the lack of time as the pace of change hastened, and the
steady evolution which became a very mad and headlong rush. The
Colonial Secretaries and Officials had far too many things on their
hot plate at once. The result of this surfeit of immediate problems
to be dealt with by the same small group of people was the neglect
of matters which did not cry out so urgently for attention. Now,
therefore, that the British Empire has melted away, it is necessary
to build new relationships between Britain and her former East African
and other colonies. The problems that now remain are those of race
and geography. To solve them, it is essential to regain quickly a
sense of mission and purpose.

The reasons for the refusal to grant a speedy independence to
the East African Colonial Territories and their peoples included
these:
1. The "backward" economy;
2. The lack of skills and industrial experience;
3. The problem of managing the affairs of the fairly large region
   inhabited by diverse and warlike native communities;
4. Strategic importance. Places of strategic importance like the
   east coast of Africa (a "fortress colony") could not become indepen-
   dent as quickly as they might have wanted to (e.g. the "white
   settlers" colony of Kenya.) Kenya and the other East African
   Territories were "homogeneous societies", i.e. mixed societies with
   racial and communal tensions and antagonisms.
5. The lack (need for) educated administrators. The aim of education
   is to cause people to think for themselves.
6. Special interests should not be sacrificed for a common
   interest. Thus special colonial interests had to be satisfied first.
7. Injured pride: deeming the opponents of colonialism to be hypocritical, ignorant and worse than the colonizers; and

8. The desire not to leave people whom one has taught to care for freedom to their own devices before they are ready for it. This is undoubtedly the most honourable and reasonable of all the reasons, and yet the most resented. Freedom is not easy to establish. It depends on institutions and habits that do not emerge of themselves as soon as a colony gets independence. Thus subjects striving for independence may get it, but fail to get freedom, just because of getting independence too quickly. Thus the capacity for freedom is an important condition for independence. Also, the would-be independent peoples should be able to afford security of person and good government, and to produce native rulers strong enough and sufficiently responsible to respect international law.

The division of East Africa into "white" and "coloured" is merely an outcome of European conquests and the spread of European civilization. It can be argued that if the Bantu were overwhelmingly the wealthiest and most powerful "race", East Africa, and for that matter the world, might be divided into the "black" and the "pale" peoples, the Chinese and Asians being reckoned with the Europeans among the "pale" peoples. The difference in colour is an outward symbol of other differences: "whites" peoples have ruled "coloured" peoples, but not the other way about. The "whites" are generally richer than the "coloureds" and have usually moved a good deal further in those directions of "advancement".

Kenya, Tanganyika and Uganda belonged to those unfortunate colonies whose boundary delimitations were mere "geographical expressions". Each tribe, particularly in Kenya and Uganda, regarded itself to be a "separate or little nation", because
of the diverse traditions, customs, cultures, languages, etc., that existed in the tribal regions. The grave mistake, therefore, that the colonizers did was to amass, divide or separate all these Territories into one nation, whether by treaty or on paper. The results of this colonial blunder were tribal conflicts, and even wars, and problems arising from the new different laws, traditions, tribal rulers and obligations, which were quite unfamiliar to the former ones, under which the native peoples had been brought up. The evil and negative repercussions which were quite unfamiliar to the former ones, under which the native peoples had been brought up. The evils and negative repercussions of that colonial error have been felt unto to-day. The fact nevertheless is that the colonizers were determined to create sovereign nations within the very "geographical expressions" they had demarcated in East Africa seventy years earlier. That colonial determination was eventually realised with complete success. What perhaps can be said to have been the greatest outcome of the imposition of alien rule in the East African region was the transformation of that region not into a white men's country nor an Indian Colony, but into a multiracial society in which the various ethnic, racial groups, whether citizens or aliens, "black" or "pale", could live together and play their various roles. The place and role of aliens in independent East Africa will be the topic of analysis in the next Chapter.
Any real and exhaustive study and thorough understanding of the role and position—whether legal, political, economic or otherwise—of aliens in the new East Africa must be based upon extensive, original academic research into the deep and primary sources of information available on the topic currently under analysis. The lack of written material, however, especially of a legal character, on the subject has proved to be a major handicap to the present writer.

It is not necessary in a research of this sort to give a detailed account of the complex international legal implications of state succession in East Africa, or the "transfer of power" or change of sovereignty from Britain to the newly independent States of East Africa. However, the consequences of that transfer of power were so great that the issue of state succession cannot be completely omitted here. Therefore, mention must be made at this juncture of three important points on state succession in East Africa. The points are relevant to our present analysis because they affected aliens in that region. The first point concerns the method of state succession in East Africa. It must be stated at once that "emancipation" from the mother country was the way of transferring power from the predecessor state to the successor states in East Africa. The second point concerns the issue of "acquired rights" of aliens, which every successor state has a duty, under international law, to protect. The question of acquired rights in the East African context will become clear in the course of this thesis. The third point relates to the question of treaties which Britain as the predecessor state concluded with other
Powers. Britain had an option - in international law at least - to conclude either what one might call "personal" treaties, i.e., those essentially contractual treaties presupposing reciprocity between Britain and the other states with a view to an agreed end, or "impersonal" treaties, i.e., those which would impose the East African Colonial Territories with some special legal status, and thus curtail the (British) element of sovereignty upon them. Britain chose the "personal" treaties type. From that choice, it became evident that the new states of East Africa would not be bound by the "personal" treaties. What, however, the newly independent states of East Africa have done is to maintain all treaty relationships for a fixed period after independence. They have also declared that, at the expiration of this period, all treaties which the East African States did not affirm will be regarded as having lapsed, except those succeeded to under customary international law.

Needless to say, this practice has the advantage that the East African States can discontinue treaty relationships at their option. However, the disadvantage of the East African practice is that any discontinuance on the part of an East African State would be a unilateral declaration. Also, it is administratively difficult to establish the position of any of the three states vis-à-vis each other party in the fixed time in the declaration.

As for multilateral treaties, the emergence of the ex-colonial East African Territories to full sovereignty presented the Secretary-General of the United Nations with the difficult but formal problem of deciding whether to record the new states as parties to multilateral treaties, whether law-creating or not, or to require them to deposit Instruments of Accession.
The practice adopted was the usual one: to treat the assignment of treaty rights and duties - as agreed with, or arranged by, the mother country - as effective at least when the successor state has communicated its acceptance to the United Nations. Secretary-General and in the absence of objection from the other parties.¹

The practice of the U.N. Secretary-General is to send to each new state a list of multilateral treaties of which it is depository, and to which the parent State was a Party, asking the new state to declare its attitude.

It is noteworthy that each of the East African States decided to join, under Articles 4 and 102 of the U.N. Charter, the United Nations very shortly after independence: Tanzania joined the U.N. on 14th December, 1961; Uganda on 25th October, 1962; and Kenya on 16th December, 1963.² By deciding to join the United Nations, the East African Countries voluntarily become part and parcel of the so-called "civilised" community of states.

To the present writer, it is not clear what is meant by the term "civilised" community or "civilized" nations, or the "civilisation" of States. This expression appears only once in the Charter of the United Nations. In Article 38 of the Statute of the International Court of Justice (I.C.J.) - which is an integral part of the U.N. Charter - Section 1(c) reads:

¹ See, for instance, U.N. Document ST/LEG/7, 1959; "Summary of the Practice of the Secretary-General as Depository of Multilateral Treaties", P.47; See also U.N. Yearbook, 1963, p. 181.

"(The Court shall apply) the general principles of law recognized by civilized nations". The term "civilized nations" can be interpreted in a variety of ways. Before, however, we attempt to interpret it, we should remember that the general principles of law recognized by civilized nations as defined in Article 38 of the I.C.J. Statute for the third part of the law-making processes to which the World Court may resort. One of the conditions which a "general" principle of law must fulfil in order to be applicable is that the principle of law must be recognized by "civilized" nations. Interpretations of this expression include these:

1) The expression "civilized" nations may be interpreted to mean any technologically "advanced" nations.

2) It may further mean "running contrary to the rules governing the interpretation of treaties to ignore it," that is, ignoring civilized and just "general principles of law recognized by the nations". This was the interpretation given, for instance, to Article 58.1(c) of the I.C.J. Statute by Judge Krylov.3

3) The term "civilized" nations may also be interpreted to mean the principle behind Article 9 of the I.C.J. Statute. Article 9 of the Statute reads:

"At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole, the representation of the main forms of civilization and of the principal legal systems of the world should be assured".

On this reasoning, the main forms of civilization and the principal legal systems of the world may be equated.4


4For detailed information on this topic, see "Current Legal Problems (C.L.P.)" 1955, p. 212 et seq.
It is thus obvious that in a primitive area or nation, no settled body of legal principles to regulate relations between modern societies—which are quite "advanced"—can be expected to exist.

4) Finally, "civilized" nations may be contrasted with "savage" or "barbarian" nations. However, while it may be relatively easy to distinguish "civilized" nations from "savage" tribes, it may prove quite difficult to draw a distinction between civilization and barbarism. This difficulty makes the question of civilization of states very complicated and argumentative. It can, for instance, be argued that two kinds of states belong to the international community. The first kind comprises states which are full members of the international society, because they are "civilized." The second kind consists of states which are "semi-civilized," and hence can, and do belong to the international community only in so far as they are bound by treaty to "civilized" states. In the international community, therefore, both "civilized" states and "un-civilized" or semi-civilized" states (that is, those not absorbed, or half-absorbed, into the ways of life of the "civilized" states) with different cultures, international structures, and economic besides social philosophies, voluntarily agree to be united in a legal order and to share a common civilization, and to be bound by certain rules of international law which are common to all states, but which fix conditions within which states exercise their jurisdiction. The purpose of these common rules is to achieve a common standard for "civilized" behaviour. It should be remembered here that the expression "civilized" states originally meant European (Christian) nations only. When these European nations forced their way of life to other nations,
which had their own civilizations and cultures, the term "civilized" nations was extended to include all states which accepted, practised and developed the standard of European civilization.

In East Africa, what can be described as the "period of transition" was the period immediately preceding and following the transfer of power from British to the East African States. The writer will not attempt to determine the duration of the period simply because it varied from one country to another. However, what is static about the transitional period in the world is that it is characterized by numerous errors, challenges, pitfalls, corruption and similar other problems. Every newly independent state goes through the transitional period. It is, therefore, unjustifiable on the side of the so-called "advanced" nations to criticize the emergent states for the errors the latter nations make. We in East Africa, for example, cannot be expected to achieve in thirteen years what took the "old" nations thirteen centuries to achieve! This point should be borne in mind when dealing with the problems of aliens in East Africa.

The emergent states of East Africa, like any other new nations, are faced with many problems and burdens. They include: putting right natural resources which were poor and imperfectly developed; the need to fight against foreign influences; the need to acquire political stability, social and economic progress, particularly in the agricultural field, competence, good education, and so on; the need for true democracy; lack of well-training personnel; and intra-racial conflicts.

Lack of well-trained local staff is a problem of public service whose burden was felt heavily already in the colonial era. The problem became more serious in the process of transition from colonial to independent status, simply because the organisation of the British colonial service failed in its primary duties in that it left out every dream and possibility of preparing the East African colonial territories adequately for independence in the foreseeable future. That was a terrible mistake, for the East African native peoples were determined to grab independence at once. They were prepared to rule themselves even badly, rather than be ruled by aliens. After independence, however, the East African natives were still faced with the same problem of finding competent staffs to carry on the work left behind by the colonial administrators. Who was to blame in the circumstances? In the writer's view, both the Colonial Power and the colonial "emergents" in East Africa were to blame. For instance, a solution to the staff problems in the world-be independent countries of East Africa would perhaps have been found, if only the British Colonial Service had been re-organised in time. The African "emergents" must also bear responsibility for the resulting unfortunate situation, because they pressed for independence and got it prematurely. A little patience on the side of the Africans would perhaps have made things different. It will be remembered that, according to the British Government's estimate following the "wind of change" policy, East Africa was not to become independent until after the 1960's. 6 Tanganyika was going to be capable of self-rule by 1970. Its independence was actually set for 1961. Uganda was going to follow in suit after Tanganyika's independence, 6 For details on this misjudged estimate, see generally Sir Michael Blundell: "So Rough a Wind"—Weidenfeld & Nicholson, London, 1964.
1.e. 1970, and Kenya's independence was calculated for 1975 or thereafter. It would, therefore, certainly have been better for the East Africans to press for a better and accelerated preparation for independence. If this had been done with success, many of the problems - including those of aliens - facing the newly independent nations of East Africa to-day would have been reduced. But with the attainment of independence prematurely, the new East African States were forced to enter into treaty arrangements with Britain - the ex-colonial Power - for the retention of the latter's Overseas Service in East Africa. Whereas, therefore, the new East African Governments were faced with the crucial problem of maintaining former colonial experienced staffs, whose services the Governments still needed, Britain was faced with the major problem of assisting the East African Governments to find staffs from outside until they could recruit their own locally. These treaty arrangements are still carried on by the East African Governments not only with Britain, but also with other foreign Governments, including those of the United States of America, the Scandinavian countries, and some of the East European States. It will take the East African Governments a long time before they can replace the "overseas staff" entirely "with their own local staff." This is the writer's strong conviction. Apart from aliens (by legal definition) who are permanently resident in East Africa, there are other foreigners or aliens in that region who provide, whether on humanitarian grounds or otherwise, East Africa with excellent "overseas" services both in the public and private sectors of the economy. Among this latter group of "visitors" are missionaries, Government advisers, company bosses, doctors, engineers, architects, teachers,
professors, voluntary organisations such as the Red Cross, the U.S. Peace Corps, and the Salvation Army, U.N. and other international officials, and many others. Although foreign students and tourists do not normally form part of the "overseas staff" in East Africa, they are found in large numbers. Tourists, in fact, greatly contribute to the economic development of East Africa.

The question of terms of service of foreigners in East Africa, including the work permit system, will be examined more closely at a later stage. For the moment, we should note that alien groups can work in East Africa either by Government permission, that is, when a work permit is granted by an East African Government to an alien—i.e., of an East African citizen, for instance—for a period specified in the work permit, or by individual or Government contract. Individual contract takes place when an alien signs an agreement individually with his would-be employer in East Africa. Government contract, on the contrary, takes place when an East African Government signs an agreement with a foreign Government, and receives personnel from the latter Government.

From the foregoing remarks, it is quite obvious that the presence of Asians, Europeans, Arabs and other non-Africans in East Africa presents legal, political and socio-economic problems. These are, in reality, problems of racial or national minorities in East Africa. The problems arise because the above-mentioned minority groups show characteristics which differentiate them from the bulk of the members of the East African society—the African majority. Adherence by the racial minorities to their own racial, linguistic and religious differentiations causes racial clashes in East Africa. The other causes of racial conflicts in the East African society
include:-

(1) The failure by the East African States to create an identification of political and national divisions;

(2) The resentment of, or the tendency by the East African majority to resent, the presence of the racial minorities—who are an unassimilated mass—in its body politic; and

(3) The feeling of the African majority that it possesses a national characteristic in which the minority groups do not, and perhaps cannot, share.

Thus, the problem of racial minorities in East Africa arises because the minority groups feel that they constitute part of an East African nation, which is distinct from the national body to which the African majority belongs, while the African majority deny the racial minorities full social participation on the basis of genetically acquired physical traits. The minority problem in East Africa is, therefore, a problem of democracy, political cohesion and adjustment, and constitutionalism. As a matter of "internal adjustment", the problem is an issue of domestic policy. But it also has international legal and political implications, for example, the treatment of aliens, (or nationals) of one state by another. We shall turn to this question at a later stage. Here, we should note that racial minorities in present-day East Africa are divided into citizens and aliens. Arabs in East Africa who, like Asians and Europeans, are distinguished from Africans culturally and physically, are not regarded as aliens. They are classified as "citizens" not so much because they have resided in East Africa longer than any other racial minority group, but mainly by legal definition. This is a point which must be emphasized again and again. An authoritative local newspaper, for instance,
contained once a good and clear Article on the legal position of Arabs in Kenya:

"Locally born Arabs who have lived at the Coast for several generations did not really have citizenship problems, as all of them were automatic citizens under the Kenya Constitution."

In the same Article, it was argued that application for travel documents took far too long and supporting documents submitted had to be verified in some cases for several months and years. Also, difficulties were encountered when admitting Arab and Asian pupils to secondary schools. The Article was a commentary on a recent motion moved in the Kenya Parliament by the MP for Mombasa North, Mr. S.M. Abdallah, urging the Government to appoint a special commission to investigate the cases of locally born Arabs and Asians who were refused Kenya citizenship. The negative reply given by Mr. Martin Shikuku, an Assistant Minister for Home Affairs, was pleasing to the majority of the MPs. The motion was consequently defeated, against the wishes of Mr. Abdallah, the Arab and Asian communities and their supporters in Kenya. The point to make now is that the claim that all locally born Arabs in East Africa are "automatic citizens" is made in all the countries of East Africa.

The Community Relations Committee of the National Christian Council of Kenya (NCC), for example, which maintains close relations with its counterparts in Uganda and Tanzania, followed up a debate in the Kenya Parliament on April, 17th, 1973, which followed the motion by Mr. Abdallah for the creation of a special Commission on eligibility to Kenya citizenship of a number of people, mainly at the Coast, who were born of mixed marriages between Africans on the one hand and Arabs or Asians on the other.

The N.C.C.A. Committee came to the conclusion that the assumption quoted in "The Daily Nation" of Monday, 18th April, 1973.

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that such persons had to apply for and obtain citizenship "was plainly false, as a look at the relevant section of the Constitution clearly shows." The Committee's statement went on:

"The situation was further confused by statements suggesting that automatic citizenship applies only when the father is a citizen, and not when the mother is a citizen.... no one (during the debate) understood that the people being talked about were automatic citizens, that is to say, they became citizens by virtue of law on December 12, 1963, if born before that date. The relevant section of the Constitution is Section 87 (1).... Applications could (also) be made for citizenship under Section 88. The Constitution makes no distinction with regard to the sex of the parents born in Kenya for Section 87 to apply, as suggested by some participants in the debate .... Section 89 provides for automatic citizenship except only in special circumstances, such as for example if the father possesses diplomatic immunity .... (This is) the correct legal position (of such persons which was) not understood by the Members of Parliament. The correctness of this position has been verified with the appropriate legal authorities."

The legal position of Arabs in East Africa was also developed and established in Chapter Two above. However, a difference must be made between the local Arab citizens and non-local Arabs who, though very few, are aliens. For instance, those from Aden who come to East Africa, stay and do business there. Since, however, we are dealing with the position of aliens in East Africa as established in Chapter Two above, our assessment in this Chapter will be concentrated upon the place and role of Asians and Europeans in post-independence East Africa.

It is this writer's view that, in the "transitional period" of East Africa as defined above, both citizen and alien racial minorities of Asian and European extracts held positions and played roles—legal, political and socio-economic roles, mainly— which were quite identical. Clear differentiations between these classes of racial minorities in East Africa have been made only in the more recent years, with the adoption of,
and emphasis upon policies of "Africanisation," nationalisation, and the like. We shall substantiate this argument in the course of this research. For now, we need to examine more deeply the question of inter-racial relations in independent East Africa, which will help us understand the legal, political, and even socio-economic positions and roles of aliens in the new East Africa.

As we remarked in the previous chapters, it is extremely difficult to define such terms as "race" and "race relations." It is, therefore, probably better not to use them at all. The point, however, to remember all the time is that it seems too much to hope that the use of the terms "race relations," "race," and for that matter "racial" - will be limited to those things which are genetically determined. Those who use the term "the Polish race," for instance, will - if challenged - probably be found to be using the term quite vaguely, and be unable to justify it only by thinking of linguistic unity in the first case, and political unity in the second. Anyone who imagines that the inhabitants of Poland represent a single physical type is quite wrong. In Kenya, for instance, we may attain political unity, but linguistic unity if not achieved, may frustrate the creation of a homogeneous society. The fact is that we cannot, even if linguistic unity is achieved in Kenya, claim in all conceivable circumstances to belong to a single race. This is a scientific argument which is very complicated. However, one thing is obvious: pure human races simply do not exist. The idea of "purity of race" is a concept of sheer political propaganda, not based upon any scientific description of human groups today.

The main reason why many politicians "pseudo-scientifically" classify peoples is to maintain a distinction between various groups in society, thereby perpetuating their monopoly of certain "good things" in society.

Race is thus very often used as a political weapon for discriminating against whole groups of people.

While on the question of racial discrimination, it is important to note that basically, there are two kinds of racial discrimination: discrimination practised by a racial majority towards a minority; and discrimination practised by a racial minority towards a majority. In the writer's view and observation, however, four sub-categories of discrimination stem from these two, major separate categories of racial discrimination. The sub-categories are:

1) Discrimination approved by a State (as in South Africa);
2) Discrimination practised by a racial group (or section of a population) in a multiracial society;
3) Discrimination practised by a dominant group belonging to a particular race or religion (as in Northern Ireland or pre-partitioned India); and
4) Discrimination based upon traditional prejudices, ignorance, and lack of mutual understanding.

It is important to note that East Africa has experienced the above types of discrimination in one form or another. Generally speaking, however, post-independence East Africa has experienced more of discrimination by the racial majority (Africans) against the sub-categories racial minority groups than the other way round. The other types of discrimination appeared mainly in pre-independence East Africa.

Another worthwhile observation here is that groups of people discriminated against are often thought to have a peculiar
mentality, to be incapable of contributing to progress in "civilisation", and to have such a close relation between their psychology and their physical features that any mixture of them with other races would be a serious disadvantage to the latter. This is, for instance, the belief regarding the Africans of South Africa, and the Afro-Americans in the United States. It was also the belief regarding the Jews in Hitler's Germany. The colour-bar in these areas was established basically in defence of "vested" interests. This colour-bar is non-existent or "lowered" where:

(1) These "vested interests are not needed;
(2) Previous historical relations have tended to advance (intra-racial) co-operation;
(3) The dark-skinned population is small in comparison with the white population; and
(4) An honest endeavour exists to apply the principles of social equality, and forego the advantages of exploitation.

A good instance of this is Hawaii, which is known as "the melting pot of the Pacific", where there is a real racial mixture of native Hawaiians, Chinese, Japanese, Caucasians, Filipinos, Portuguese and so forth, who have intermarried and their offspring intermarried again and again, producing a very broad variety of physical kinds.  

If we divide the population of East Africa between black-skinned, brown-skinned and white-skinned, we have done largely the same thing as to divide them between native English speakers, speakers of Gujarati, speakers of Bantu and other African vernaculars, and so on. It is virtually impossible now to

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infer any social characteristic in terms of wealth, occupation, religion or education.

One of the disadvantages of the consciousness of one’s racial status is that quite trivial incidents like laziness, deceitfulness, angry words, sharp practices in commerce or justified irritation — assume a disproportionate significance just because they are believed to be symbolic samples of the way one “race” behaves towards another. Petty revenges are thus exacted on one member of a racial group just because he is a member of the same race of the individual that victimized the revenger. This racial attitude was very common in pre-independence East Africa. The situation has not changed, unfortunately, especially in Kenya and Uganda.

Racial attitudes in post-independence East Africa are found in every racial group. Politicians and many other people make statements to the effect that there is no room for racialism in East Africa. But the fact is that racial discrimination does exist in each of the three East African countries, how no matter undiscernible it may be. Government policy — which is, in this case, theoretical — is one thing, and actual practice another. Thus it is not uncommon to hear an African, for instance, saying “this Asian,” when an Asian drives along the road at a very high speed. This is a case in which one whole racial group is condemned just because of a silly (petty) mistake made by an individual that belongs to that racial group. It is an error that results not only from “an unreasonable” generalization, but also from racial attitudes that cause problems of racial tensions in each of the three countries of East Africa. It needs to be

11 Such statements abound in number. They regularly appear, for instance, in newspapers, such as the Nairobi-based “Daily Nation” and “East African Standard”, and in Parliamentary Debates of the National Assemblies of Tanzania, Uganda and Kenya.
noted here that, although race relations in East Africa have always been influenced by many factors - such as politics, religion, race, skin colour and culture - the main influence on these relations has come from two forces: economics and law. This is still the case to-day.

On the economic impact on race relations, it must be remembered that problems of intra-racial relations arise whenever movements of populations occur from one part of the world to another. Most such movements occur in response to an economic "pull" or "push".

In the case of East Africa, it will be recalled that the origins of racial and communal tensions can be traced to the establishment of caravan routes by the Arabs to secure trade in ivory and slaves. British interests, involving Europeans and Asians, followed in the second half of the 19th century. The causes of racial tensions in the new East Africa are centred upon two significant factors: the economic gap between Africans and non-Africans, and social impediments between Africans and non-Africans. Of particular interest are intra-racial relations in East African small towns. A small town in East Africa is, in the personal choice and judgement of the writer, one that has a population of 2,000 inhabitants or less. The town is in a territory inhabited by a single numerically dominant African tribe. In such small towns, Afro-Asian relationships, for example, occur as follows. The racial or ethnic community of Asians is seen as comprising the various social groups based upon internal divisions. A district social structure separates each internal cleavage from the surrounding dominant African community and minority groups within the towns. Until very recently, the small town Asian community had the following characteristics:
(1) Residential segregation;

(2) Occupational segregation, i.e., the members of the community restricted themselves to certain occupations vis-à-vis the rest of the population, and provided a measure of self-sufficiency by having a fuller range of occupations for its own members;

(3) Group isolation, i.e., a member of the Asian community would not become a part of the rest of the population, and vice versa.

(4) The roles of the members of the community were defined in such a way as to have two interpretations, one of which constituted an "in-group" behaviour, and the other an "out-group" behaviour.

"Out-group" and "in-group" categories of people still exist in East Africa. By 'out-group' is simply meant all those social groups in East Africa whose culture, or way of life, sets them apart from the main stream of thought and action. Thus not only are "racial" minorities like Europeans and Asians embraced, but also those tribal groups like the Karimojong of Uganda, which are socially and geographically isolated. Thus "out-groups" in East Africa comprise both aliens and citizens. Of the "in-groups", the most basic is the family.

What we should stress now is that, although Afro-Asian relationships in East Africa have, generally speaking, changed in the post-independence era, the popular conception, especially among the African population, is that Asians still stick to many of their isolationist and other old characteristics of the "caste system". These characteristics, it is argued, continue to cause racial and even communal tensions in the region. However, evidence to this assertion has still to be established, since neither accurate reasons nor statistics have so far been given
in support of the (African) argument.

The question of the economic role of Asians in pre-independence East Africa has already been discussed. In post-independence East Africa, the main contribution of Asians has still been in the economic field. They have been responsible for the extension of the monetary economy into the subsistence areas of East Africa— a prerequisite of any economic development. They have introduced imported consumer goods to the large sections of the rural population of East Africa. They have also acted as the main outlets for produce from the indigenous rural economies. Asians still perform this significant function both in the rural areas, in towns and small urban centres. In remote areas, Asians hardly have any substantial amenities and wealth. In towns, Asians nowadays supply capital and high-level middle-level manpower (technical know-how).

This strong economic role of Asians in present-day East Africa leads the writer to suppose that a total withdrawal of Asian skilled labour force from any East African country could deal a crippling blow to the country's economy, and act as a most serious impediment to the development potential of East Africa.

Asians have also made—and still make—remarkable contributions in the form of savings and capital for the expansion of the economy in East Africa. This capital has been invested in most sectors of the economy, particularly in the construction and manufacturing industries. Thus, despite outcries of "Africanization" or "transfer of the economy to Africans"—which we shall turn to below—Asians in independent East Africa continue to play vital roles in the economic field of the region. Their economic

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success has been largely due to their possession of certain qualities essential for economic development, for example, their ability to toil for long hours, their commercial sense and inclination, their low propensity to consume, and passion for accumulation of capital.

The strong economic position of Asians is one of the major causes of racial tension in present-day East Africa. The problem is so huge that it culminated in the expulsion of Asians by the East African States.

One more Asian role needs to be mentioned here. It occurs in the political field. We have seen that the racial stereotype of Asians being dishonest, crafty and out to exploit the poor Africans was, like any other racial stereotypes, essentially a function of a given power structure. The acquisition of power by East Africans has clearly changed attitudes of Africans. Asians in East Africa never carried out any imperialist expansion, whether political or cultural, for the simple reason that they never had the backing of the political power to carry out such expansion. What Asians in East Africa did — and continue to do — was to preserve their indigenous cultures. Concepts such as a group’s "outward lookingness" or "exclusivism" are directly related to political processes, i.e., such features depend on whether a group of people is in the process of expansion with means of exercising power at hand, or whether such a group is necessed with the power of others. The reason for the persistence, therefore, of the Asian racial stereotype lies in the fact that Asians have no political power in post-independence East Africa. In the new power structure in the independent East African countries, the Asian serves simply as a convenient scapegoat. Whatever the rights and wrongs of the matter, the truth is that no East African nation will tolerate, and for that matter no
other nation in the world, tolerates a culturally alien, relatively affluent, and physically distinct minority in its midst. This is a fact which Asians and other similar racial minorities in East Africa must realize and face.

However, Asian effective integration at the political level would certainly facilitate a sympathetic and successful ending of many of their economic and social problems in East Africa. Also, the trend in the same region towards one-party systems is a good asset for Asian survival, because it provides security from the fear of being subjected to criticism of a party the Asians would not back.

It would, however, be quite wrong to say that Asian political involvement in East Africa is totally lacking. On the contrary, Asian participation in East African politics is quite lively. It is more important and pronounced in Tanzania than anywhere else in the region. For instance, in the last general election in Zanzibar in 1965, Asians were considerably involved. Three Asians were, in fact, elected to Parliament, all of them in overwhelmingly African constituencies. Asians in Tanzania continue to participate actively in TANU committees, and in activities in small towns and villages. If Asians will continue to be ready and willing to show absolute loyalty to Tanzania, and to genuinely support, participate in, and maintain uniformity in the political life of the country, then there is no reason why Asians — and indeed Aliens in general — should not play political roles in Tanzania and in East Africa as a whole.

To sum up, political activities among the Asians of East Africa are pursued through associations such as municipal councils, town and district education boards, celebration and fund-raising committees, local branches of major political parties, and in some
towns via employers' associations. In these associations, Asian leaders play a dual role. They represent the entire Asian community on the one hand, and the wider Afro-Asian community on the other. It must be stressed here that this image-building potentiality of the Asian leadership roles is nowadays fully recognized. Thus, although no Asian politicians now exist to represent Asian interests in the East African Parliaments (except one in Tangania) political activities in the three countries are still interpreted to Asians by their own fellow Asian leaders. The same can be said of religious and other denominational activities and interests of Asians in East Africa. 13

Of particular interest are Asian claims regarding their political contribution in East Africa. Asian leaders in East Africa have claimed, and still claim, that their political ideology and zest, inspired by the nationalist movement in India, informed the East African leaders in turn. Further, Asians have constantly claimed to have contributed immensely to the nationalist movement that led to independence in East Africa, thus completely identifying themselves in various forms with the African cause. After independence, Asians claimed to have been ignored by the African freedom fighters whom the former had helped against the colonizers. The above Asian claims are, in the writer's opinion, quite justified, as we have seen above, the contributions of Asians to the economic and political development of East Africa were great. And yet they were not recognized by Africans. Asians have bitterly complained about this African ingratitude. The results of the Asian complaints have been their resentments of the African attitudes towards Asians. Representative Asians, i.e., men in the professions, Government Civil Service and the like, now regret the treatment they receive from Africans. African reactions to the above

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13 Check generally with B.P. and Y.P. Chai: "Portrait of a Minority"
Asian claims have been mixed. Some Africans have refuted (and refute) these claims. Others admit and recognize Asian general support to Africans. Ambu Patel, for instance, was an Asian businessman who not only supported Kenyatta morally, but also gave Kenyatta's daughter Margaret, financial and material assistance when Kenyatta was in jail. Other Asians also heavily financed African politicians. Most Africans, however, resented Asian treatment of them as "boys" and servants. Asians were regarded as "squeezers" of African money. These African resentments against Asians prompted the adoption of Africanization policies in East Africa, which we shall examine shortly.

Africanization programmes made Africans very happy.

From the foregoing remarks, it is clear that the roles of Asians in East Africa have changed considerably since independence. The same is true of the roles of Europeans. The spheres in which the roles of Europeans have changed in independent East Africa are: political, economic, educational, military, religious, technical assistance, women's programmes, and voluntary organizations.

The political sphere was, as we have already explained, the most important field which the Europeans controlled completely before independence. All but the lowest posts were filled by (European) expatriates. After independence, most were "Africanized", although a few were "Kenyenized," "Ugandanized," or "Tanzanianized". In the field of administration, therefore, Europeans have really no role to play in present-day East Africa. Initially, aliens in the region could sit in Parliament and even in the Cabinet. There was one European and one Asian in the post-independence Tanganyika Cabinet, and one European in the post-independence Kenya Cabinet. But the complete replacement of the colonial doctrine of communal role by that of common role, mainly accounted for the absence of "aliens" in the Legislatures and Governments of the three States.
As regards the economic field, it should be remembered that immediately after independence, trade was still largely in the hands of Europeans and Asians. Of late, especially following the intensification of the Africanisation and/or nationalisation programmes, the process of transferring trade and the economy of the countries to the Africans has reached a climax. Expatriates, however, still hold key positions in some of the key branches of the economy. For example, in the medical, engineering and scientific fields. Expatriates are now on contract, which is renewable. They either remained on contract after independence, or new ones were taken in. The presence, therefore, of "aliens" in these key positions of the economy is most likely still to be felt for a long time to come.

In the educational field, the European role was played by missionaries and European expatriates, especially at secondary and university levels. Though Africans are taking over, the situation is such that foreigners—Europeans and Asians—are still maintained on contracts. It should be mentioned here that contracts in the academic institutions of East Africa are not limited just to European and Asian foreigners. A Ghanaian African Professor, for instance, teaching at the University of Nairobi on contract is also a foreigner there. There is no room here to expand on the terms of contract in the three Universities of East Africa—Nairobi, Kampala and Dar-es-Salaam. It suffices to remember that contracts in these Universities are normally for two years, and are renewable. Very high academic qualifications and experience are required. Except in a few cases, the minimum requirement for acceptance as a teacher in the Universities is now a Ph. D. degree.
With regard to the military role of Europeans in East Africa, we should note that before independence, European occupation of military ranks was very high. After independence, Europeans have been replaced by Africans. However, European citizens are still in military employment. Also, foreigners still train Africans in military jobs. The idea is all the time to prepare the African to take over. East Africans are also trained abroad (including China). In Tanzania, for example, Chinese military advisers and technocrats are still in existence in large numbers.

The role of Europeans in the religious field is still played by European missionaries. A good example of the views to Africanise religion in Africa was expressed by the Liberian Minister for Education, Dr. Payne M. Mitchell, while on a visit to Kenya on 1st January, 1963.\(^\text{1}\) Dr. Mitchell stated that the Church as it had been known in Africa must go, and that the job of importing Christianity to Africans should be done by Africans themselves. However, cries calling for Africanisation of the Church had appeared long before Dr. Mitchell's call. The Church has been considerably Africanised in East Africa, particularly during the last decade. Africanisation of the Church in the region is still growing at a rapid speed. The question of European Missionary involvement in East Africa has been explained above. Their great contribution to the development of East Africa - whether morally, economically, educationally or religiously (spiritually or temporally) has been recognised, and is still most likely to be felt in the region for a long time to come.

In the sphere of technical assistance, it should at the outset be emphasised that many European expatriates are still

found in the Technical Departments of Government in East Africa. Terms of contract are usually laid down in Agreements, as we have explained.

United Nations technical and other assistance programmes launched in the East African states also involve personnel, but their case is different, because they work in East Africa as international officials whose legal position, privileges and immunities in East Africa are regulated by special U.N. Conventions which we need not elaborate here. What we must emphasize, however, is that it is in the field of technical assistance that the contribution of expatriates in East Africa is greatest. The Ministries most affected are those of: Economic Development and Planning; Works; Agriculture; Power and Communications; Education; Health; Justice; and Natural Resources. Training and research institutions are also still full of expatriates. Africans cannot acquire the required qualifications and expertise overnight. The number of African professionals in the above fields is growing; but it would be quite unrealistic to believe that the point of saturation in all the fields will be reached soon. African professionals are growing rapidly in some fields such as that of Arts. But even here, the writer does not share the views of some East Africans, notably ordinary politicians and even Ministers, that the field of Arts is already saturated with qualified Africans. The real situation is certainly overstated. What is true is that comparatively, the field of Arts is far better off than others—namely those of medicine, architecture, engineering and science—where the number of African professionals is much lower, and grows much more slowly, than that of Arts. Education, then, still needs to be stepped up in all the fields of life in East Africa.
Women's programmes, in which many Europeans used to dominate, have mostly been Africanised. A few women advisers from various U.N. bodies, however, still exist. Many women organizations comprising mainly local African women, have been formed.

As for voluntary organizations, it should be remembered that, during the colonial times, such organizations as the Red Cross were filled with Europeans. Nowadays, Africans have taken over the top executive jobs in the local branches of such voluntary organizations. But it must also be re-stressed here that aliens still hold key roles not only in voluntary organizations, but also in other sectors of the economy. The economy of the East African region is, really still directly under the control of foreigners or non-citizens. Even in their policies of Africanization, the East African Governments can "localize" their industries only to a certain point. Beyond that point, it is impossible to "localize" the industries. This is true of any industry anywhere in the world. In other words, no country in the world can claim to be completely independent of other countries. Ours is a world of inter-dependence, and the East African countries must hence depend on foreign expertise and foreign people to stimulate the East African economies.

A particularly remarkable change in the position of Europeans - and Asians - in East Africa occurred in the field of law. The legal impact on race relations in pre-independence East Africa has already been described in the preceding chapters. But nevertheless a quick glance at the legislation that directly pertained to intra-racial relations then is worth-while here.

The Revised Laws of Tanganyika (1947), Kenya (1948), and Uganda (1951) clearly show that the laws enacted specifically
to regulate race relations in East African Authority Ordinance in Uganda; the Crown Lands Ordinance of 1915 in Kenya; the Compulsory Labour Regulation Ordinance in Kenya; the Interpretation and General Clauses Ordinance in each of the three Territories; the Trespass Ordinance in Kenya; and the Penal Code and Prisons Ordinances of the East African Territories. There were also laws that enabled separate courts to be set up, for instance, the Native Courts (in Tanganyika and Uganda), and the African Courts (in Kenya under the 1951 Ordinance). All these courts dealt with criminal cases in which the accused was an African, and civil cases in which the defendant was an African (and in Uganda, in which all parties were Africans). Non-Africans went before a magistrate or the High Court of the Territory concerned. As we have seen above, Europeans enjoyed, particularly in Kenya, the significant privilege of trial by a jury, which comprised Europeans only. The High Courts heard such cases with a jury. In Kenya and Uganda, the Prisons Ordinances distinctly called for the separation, wherever possible, of African, Asian and European prisoners, while different diets were provided for each by what was described as "administrative justice". In Tanganyika, the Prisons Ordinance made no mention of race, and did not specifically call for racial segregation. The prison regulations in that Territory, however, laid down three different diets thus:

Scale I included English potatoes and butter. This diet suited the Europeans;

Scale II included curry powder, ghee and rice, and suited the Asians; and

Scale III included beans, maize, and sweet potatoes - the usual food of Africans.
Particularly interesting was the legal definitions of "African" and "non-African" in these Prisons Ordinances. In the Kenya Ordinance, for example, a European was defined as "a person of European origin or descent who, in the opinion of an Officer in charge, has been accustomed to European standards of living". An 'African' or 'native' was defined in the Interpretation and General Clauses Ordinance in all the three Territories as "any person who is a member of, or one of whose parents is or was a member of, an indigenous African tribe or community". This definition explicitly included in Kenya, "the people known as the Swahili". The Ordinance made no mention of Arabs and Baluchis born in Africa. Similarly, Ethiopians, Somalis, Malagasy, Comoro Islanders, and in Uganda Egyptians and Seychellois were excluded from the category of "Africans". Hence they were all non-Africans. But a provision was made in the same Ordinance that made the definition of an "African" and "non-African" even more difficult. For, a "non-African" was a person who had the difficult task of proving to the courts that there was "nothing African" about him, just as an "African" had to prove that there was "everything African" about him. Thus a "non-African" was such if he could prove to the magistrate that:

(a) He was partly of non-African descent;

(b) He was not occupying land in accordance with the native custom (in Uganda, Bailo Land); and

(c) He was not living among an African tribe or community according to their customary mode of life. It was also indicated in the preceding Chapters that distinctions between peoples of different race in East Africa were also made in other laws such as taxation laws. Poll tax and income tax were thus paid by adult males of all races in different proportions. Other legal and administrative discriminations occurred in other fields,
e.g., in the prices paid for African and non-African growers for
cash crops. The poorer Africans paid a higher proportion of
their incomes in tax than richer people (non-Africans). That
explicit racial discrimination was one of the greatest causes
of resentment and accusations of "colour discrimination". The
extremely discriminatory land laws - the Crown Lands Ordinances,
and the Land Tenure Ordinances, like the Crown Land Declaration
Ordinance of 192215 - all negatively influenced race relations
in East Africa. We have discussed in detail the issues of
political representation and of lands outside the towns. In
all these cases, "race" mattered greatly.

To sum up, therefore, under the laws in East Africa, a
person's racial status - that is, the racial class into which
he was officially assigned - affected much crucial matters as
civic rights and obligations. With independence just around
the corner, the above laws were repealed (in 1960 and 1961)
and replaced by those currently in force. For example,
Section 159 of the Kenya Penal Code which had made illicit
sexual commerce between a white woman and an African man an
offence, was repealed in 1961.

However, it is equally true—and this must be remembered —
that the East African Territories entered independence with a
good number of laws still in force, which distinguish between
people on the basis of race.

Race distinctions in East Africa are now made—legally
at least - not on the basis of colour (the laws of the independent
East African States are now actually "colour-blind") but on the
basis of citizenship and alienage. Citizenship is now a matter

15 Consult the "East Africa Royal Commission Report of 1953-55"
"Cmd. 2425, particularly pages 364 to 566."
of residence and allegiance, and not of skin colour. Similarly, changes have been made in the legal definition of "African" and "non-African". It will be remembered that the so-called (Tanganyika) Native Courts Ordinance, 1950-54 (Cap.73 of Tanganyika Revised Laws, Vol.II) defined the expression "African" in the same way as the so-called (Tanganyika) Native Authority Ordinance (No.21), 1947-49 had defined the term "native" (Cap.72 of 'Tanganyika Revised Laws,' Vol.II). In 1951, a Local Courts Ordinance was enacted, and amended after Tanganyika's independence by the Local Courts (Amendment) Ordinance No.59 of 1961. It is noteworthy that this new and post-independence Ordinance still defined an "African" (i.e., in terms similar to those of the Native Authorities Ordinance) as "a person whose tribe is a tribe of the Territory or of the Colony and Protectorate of Kenya, Uganda Protectorate, Zanzibar, Northern Rhodesia, Nyasaland, the Sudan, the Belgian Congo, Swaziland, the South, and Portuguese East Africa, and includes a Swahili". The Ordinance also specified "over causes and matters civil and criminal, in which the accused or parties are Africans". The Local Courts Ordinance, 1951 (as amended in 1961) was finally repealed, with savings, and replaced by the Magistrates' Courts Ordinance (Cap.537, Supp. 63) of 1969.

In other places, however, an 'African' is defined as a person who "does not include:— (a) a member of a tribe indigenous to Tanganyika; (b) a person born in Tanganyika."

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16 The Native Courts Ordinance, 1950-54 and the Native Authority Ordinance, 1947-49 were repealed, with savings, and replaced respectively by the Local Courts Ordinance (June, 1951, 'Cap. 299 of 'Tanganyika Revised Laws,' Vol.VI) and the Native Authority Ordinance (Repeal) Act (No.14), 1963, came into force on 8th March, 1963.

17 See, for instance, Cap.534, Supp.64 regarding (Tanganyika) Immigration Regulations, 1964 — in "Tanganyika Revised Laws", Vol. XII.
This definition directly contradicts the one given in the above-mentioned Ordinances. How can this contradiction be explained? One has to be careful here. However, it seems that an African as legally defined in the said Immigration Regulations can only mean an African who is a prohibited immigrant in Tanganyika. Finally, reference to an "African" is made in the (Tanganyika) 'Interpretation of Laws and General Clauses Ordinance' of 1972. Here, a "native" is defined as "any member of an African race."

As for the meaning of "African" in Uganda Laws, it should be noted that Cap.17 of "Uganda Laws", 1964 (Vol.I) - the Interpretation (Special Provisions) Act - states that in any act of Parliament or Ordinance enacted before 19th July, 1963, unless it is expressly provided otherwise or the context otherwise requires, references to a native or to an African shall be construed as references to a person who is a member of an indigenous African tribe or community or to a body corporate or unincorporate entirely composed of such persons, and references to a non-native or to a non-African shall be construed accordingly.18

The corresponding Kenya Act (VOL.I: "Revised Laws of Kenya" 1970) makes no mention of "African". But it defines "alien" in terms identical to those of the Tanganyika and Uganda Laws: he is "a person who is not a citizen of Kenya, a Commonwealth citizen, a protected person or a citizen of the Republic of Ireland". It should be borne in mind that, whereas in pre-independence East Africa, enjoyment of rights and privileges was determined by racial categories, in post-independence East Africa, such enjoyment is determined by citizenship categories.

18 See also Section 23 of the Uganda Constitution, 1967.
THE LEGAL POSITION OF ALIENS IN INDEPENDENT EAST AFRICA:

From the foregoing observations, it is clear that the legal position of the European—and the Asian—considerably changed following independence in East Africa. The two systems of courts that had existed under the colonial regime simply vanished: (a) the native courts in which minor offences were tried by "native law and custom", and in which it was impossible to arraign a non-African; and (b) the central courts in which it was impossible to try persons of any race for offences against territorial code, or an appeal from the native courts. This arrangement though discriminatory on racial grounds, was actually intended to protect African interests. However, discrimination cannot, and should not be accepted in an independent state, and thus as from January, 1964, for example, a new system in Tanganyika was created of local courts in which persons of any race could be tried.

Having discussed the influence of law on race relations in East Africa, we need now to examine more closely the legal position of aliens in post-independence East Africa. The writer thinks that the best way to tackle the problem is by examining briefly:

1) The rules of international law regarding the position of aliens, generally;
2) The provisions—if any—in East African Laws concerning aliens in East Africa; and
3) The actual practice of the East African States in regard to aliens in their territories, i.e., how far the East African States conform to, or deviate from, the requirements and general principles of international law regulating the position of aliens, or foreign nationals.
The rules of international law concerning the position of aliens are principally general principles of customary international law, because they are mainly derived from states practice. This practice obviously varies from one state to another.

“Written” international law, however, which is treaty law, also often contains general principles that regulate the status of aliens abroad. Thus bipartite or multipartite treaties of cooperation, mutual assistance, commerce, friendship, and so forth often contain detailed provisions for the admission, exclusion, or deportation, for instance, of aliens. Apart from the spheres of admission, exclusion and deportation of aliens, international law regulates the rights and duties of states and aliens in five other basic areas: the rights of aliens; the duties of aliens; expropriation of alien property; asylum; and the status of the refugee and stateless person. Foremost among the rights of a state in its dealings with aliens is the right to legislate over aliens. Modern authorities on Public International Law are unanimous on this view. 19

19 For very useful accounts on the position of aliens in International Law, see, for instance, the relevant sections in the works of the following authors:

WESTERN AUTHORS:
4) C. A. Norregaard: “The Position of the Individual in International Law” - Tunkangaard, Copenhagen (1962);
EASTERN AUTHORS:


The exercise of territorial or domestic jurisdiction over aliens represents one of the logical repercussions of the possession of sovereignty or independence by states. The general and universal rule is that the character of an act or omission as lawful or unlawful must be determined wholly by the laws of the state where the act is done or omitted. The determination of the principles to be applied is thus purely a matter of domestic concern and jurisdiction.

In the sphere of admission, no state is under a duty to admit aliens into its territory. Every state has the power and right to forbid the entry of aliens into its territory, or to admit them in such cases and on such conditions as it may deem proper to prescribe. The immigration laws of many states clearly indicate this. A few states, however, unconditionally admit aliens. In most cases, the classes of aliens that are freely...
admitted, are those of students and tourists. Foreigners who come as immigrants are usually subject to relatively severe regulation. The criteria that states take into account when admitting aliens into their territories include safety, health, public order, and morals. Thus aliens who are morally, physically or socially unfit, are generally excluded from admission. Sometimes, nationals of specific states are discriminated against. This may be regarded as an "unfriendly act", but will be dealt with not as a legal matter, but as a political issue.

Aliens who are excluded from entry or residence are normally sent back to the country of last residence. If, however, that country refuses to accept them, then aliens are sent to the country of their nationality. Needless to say, an alien who seeks admission to the territory of a foreign state must carry a valid passport issued by the competent authorities of the state of origin, which identified him for the purpose of exercise of the right of protection. He must also obtain in advance permission to enter from the competent authority of the foreign state. It should be noted that this permission is sometimes reciprocally waived by agreement between friendly states.

The legal position of aliens once admitted within the territorial jurisdiction of States thus depends, in the first place, on the judgement of the host Government. It is the latter which decides what rights, other than protection of life and property, shall be conceded to aliens. Most states have been willing, in the more recent decades, to grant to aliens civil rights substantially the same as those enjoyed by the nationals of those states, while at the same time denying to aliens the political rights and privileges enjoyed by those nationals. Thus aliens normally have the right to hold, inherit, and transfer real
The right to make contracts, to practice professions and licensed occupations (subject to certain restrictions in various States); the right to religious worship (violated, on occasion, though, in a good number of states); and most of the normal civil rights existing in a given country. However, the important thing is that states are at liberty to decide the types of rights and privileges that aliens should enjoy. As regards ownership of property, aliens are, in certain countries, prohibited to own or operate specific types of business subject to grants of licenses by the national Government, grants which by law are available only to citizens of the state in question.

One of the more controversial aspects of domestic jurisdiction over aliens involves their induction into the armed forces or labour services of the host state. For very obvious security reasons, only "friendly aliens", i.e., neutral citizens or "enemy citizens" opposed ideologically or in some other manner to a hostile Government are conscripted in time of war. Most countries reward military service by citizenship, often through a greatly accelerated procedure of naturalisation. Refusal to serve may cost the alien the opportunity to be naturalised at a later date, and frequently leads to deportation at the earliest possible occasion.

The host state has every right to try and punish an alien within its territory. Aliens legally admitted to the territorial jurisdiction of a state may, therefore, be punished for any offences committed by them within the dominions of the receiving state or on ships or aircraft registered in that state. They may also be tried and punished for having counterfeited its postage stamps, currency, official documents, or crimes of piracy, wherever these offences may have been committed. Finally, a state may try and punish aliens within its territory for crimes
against its independence or security. This right is regarded as part of a State's right of self-defence.

Thus on the rights of aliens in general, international law requires that aliens once lawfully admitted to a state's territory should be granted certain minimum rights essential for the enjoyment of ordinary private life. International law prohibits states to deprive aliens of rights of contract, of acquisition of personal property or marriage and family rights.

The political rights denied to aliens under the "approval" of international law include the right to vote, to hold public office, or to engage in political activities. Those rights allowed to aliens are frequently prescribed in treaties of commerce and establishment, as we have seen above. Of particular interest in contemporary international law is the trend towards the assimilation of the rights of aliens to those of citizens by virtue of the national treatment clause inscribed in many treaties, such as of commerce, by which the citizens of each contracting state enjoy the same prescribed substantive rights in the territory of the other as its citizens. Further, the so-called most-favoured-nation clause - by which one Party grants to the other automatically any right or benefit which it extends to a third state - tends to give equal rights to aliens of different nationalities in a given state.

Some States impose specific controls and restrictions on the acquisition by aliens of interests in, or management of public utilities or enterprises engaged in such things as shipbuilding, water or air transport, and the exploitation of land and other natural resources. The developing nations, which are not, obviously, equipped with enough capital or advanced technology, quite often entrust these enterprises to alien corporations. Under concessionary agreements concluded with
Governments of developing nations, aliens or foreign corporations, in return for offering capital and technology, secure a monopoly and share the profits and returns with the Governments concerned, of course in proportion to be agreed upon.

On the protection of life and property of aliens, it must be stressed here that the State authority must pay due respect for the liberty, life and property of resident aliens. The state is responsible for any failure to exercise due diligence in affording protection to aliens against any eventual act wrongfully committed by any person. The state authority must detect and identify any persons committing an act wrongfully against aliens in order to give the latter full opportunities to recover damages from the former. The State may also be responsible for failing to take reasonable measures to apprehend and punish the offender in order that offences of a similar nature against aliens should not occur in the future. The question of state responsibility for aliens will be examined in greater detail at a later stage. One of the great responsibilities of a state towards aliens is to secure a fair hearing and impartial judgement of aliens in its national courts. Aliens must be granted the right of access to the courts and judicial protection for their person and property on equal lines with citizens. Finally, aliens have the right to leave the state of their residence, which is unqualified unless their local duties, such as payment of taxes, private debts, fines and so forth, have not been cleared. Departing aliens must be allowed to take their possessions with them on the same conditions as citizens.

State jurisdiction over alien corporations should also be touched on here. As we saw at an earlier stage, corporations are legal persons, which states treat as nationals in the exercise of jurisdiction and for purposes of diplomatic protection. A state may allow alien corporations to carry on business within its territorial jurisdiction, but such discretionary permission entails adherence by the enterprises concerned to all regulations issued for them by the State in question.

Although a corporation may be incorporated under the laws of the state in which it operates (the nationality of corporations as legal persons is determined either by the place of incorporation, registration, administration, management, or the nationality of the individuals who effectively control the corporation, i.e., the individual owners, shareholders or directors), it may be classified and treated as an alien corporation if the test of control is applied by the State granting the charter - whether directly, or through one of its political subdivisions.

The fact of alien ownership does not serve to protect an enterprise against nationalization (s.v. infra), nor does such ownership, whether complete or partial, public or private, guarantee prompt and equitable compensation. In every respect, alien possessions are on a basis of complete equality of treatment with the citizens of the expropriating State.

Thus respect for private property and the acquired rights (s.v. infra) of aliens is one of the recognized principles of international law. The international responsibility of a state has often been predicated upon a State's failure in this respect. However, the expropriation of alien property for public purposes has not been considered to be contrary to international law. It is generally agreed that this right is implicit in the sovereignty
of the State. In regard to the expropriation of land carried
out in Cuba in 1959, for instance, the United States expressed
its view in a Note to the Foreign Minister of Cuba thus:

"The United States recognises that under international
law a state has the right to take property within its jurisdic-
tion for purposes in the absence of treaty provisions or
other agreements to the contrary." However, international
law imposes certain conditions under which private property
of aliens or foreign corporations may be expropriated or
nationalised:

1) Expropriation is permissible solely for public purposes;
2) There must be no discrimination against the property
   expropriated or its owners;
3) The acts of a Government in depriving an alien must be
   followed by a grant of adequate and just compensation.

There are, however, two contrasting views as to payment
of compensation. According to one, the expropriation of alien
property must be covered by effective and sufficient compensation
to be paid without undue delay. Thus even where property of
nationals is expropriated at the same time without compensation,
expropriated aliens must be paid compensation. This is a crucial
rule which must be stressed and remembered, here.

A considerable number of States, particularly the developing
ones, often tend to ignore this rule. The United States is a
staunch advocate of this view.

According to the second view, however, supported by the
majority of the developing countries and all the socialist states,
it would be unreasonable and unrealistic to require prompt payment
of effective and adequate compensation in cases where expropriation
(or nationalisation) is part of a general programme of large-

scale social or economic reform by means of the nationalisation
of certain industries or means of production, distribution or

exchanges. Thus a state may, according to this view, nationalize property without compensation or with partial or full compensation. Actual state practice, however, reveals that compensation to alien owners is not refused altogether, but is paid in the form of a lump sum which may not necessarily be enough to satisfy all individual claims put forward by a foreign Government on behalf of its nationals, and which is generally not paid promptly, but only over a period of years. State practices thus reflect an intermediate position. Each case must, therefore, be handled in the light of its particular circumstances, the value of the property taken, the financial resources of the expropriating Government (which are required to further general programmes of social and economic reform), and perhaps other political considerations.

The conclusions that one can draw from the above analysis on expropriation are the following: expropriation can be of two types - small-scale expropriation, and general expropriation. General expropriation is normally referred to as nationalization (or socialization). Further, expropriation is illegal, under international law only if: (a) there is no provision for the payment of adequate, prompt, just and effective compensation; (b) nationalization, that is, expropriation of a major industry or resource, occurs without a provision for an appropriate compensation on a basis compatible with the economic objects of the nationalization, and the viability of the economy as a whole. Expropriation is legal, even if compensation is not payable, for certain public purposes. For example, in time of war, when defence measures are taken, and police powers exercised, through which expropriation is effected. Finally, certain categories of expropriation are illegal per se, that is, unlawful apart from a failure to provide for compensation, in which cases lack of compensation is an additional factor, and not a condition, of the unlawfulness of expropriation. Instances
of expropriation illegal per se include:

1) Interferences with properties of international institutions;

2) Seizures which are a part of crimes against humanity or genocide; involve breaches of international agreements; are measures of illegal retaliation or reprisal against another State; are discriminatory; are being aimed at persons of particular racial groups of citizens (subjects) of particular states; or concern property owned by a foreign state and dedicated to official state purposes.

If expropriation occurs without any provision for compensation, it is called expropriation illegal sub modo. This kind of expropriation differs from expropriation per se in two major ways: the former confers a title which is recognized both in foreign courts and international tribunals. It also involves a duty to pay compensation for direct losses only, that is, the value of the property. Expropriation per se, on the contrary, does not confer any valid title. It also involves liability for consequential loss (Lucas cassone). 22

Question-begging though the above arguments may be, the important fact is that the right of a state to compensation, on whatever grounds, is recognized in principle. On the duties of aliens in a given, host state, it is significant to remember that under international law, an alien received within the territorial jurisdiction of the state, whether permanently or temporarily, is subject, like citizens, to the domestic law of that state, and cannot claim any exemption from the exercise of territorial jurisdiction. An alien is hence often required to register his name with public authorities for the security of the state, and compelled, under

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1) J. Foreman: "ICl Hague Encumbr (1960, III), pp.172-9;
2) A.A. Tatsuro: "Government Guarantees to Foreign Investors"-New York: Columbia University Press, (1962), pp.309-9; and
the same conditions as nationals, to perform civic duties for 
the protection of the community in which he lives against 
natural catastrophes, epidemics, fires, and the like, not 
resulting from war. The freedom and property of aliens may 
be temporarily restricted for the purpose of maintaining public 
order, social welfare and security of local communities or of 
the state. In all these cases, a distinction is recognized 
under international law between transient visitors and resident 
aliens who have established themselves with the intention of 
remaining indefinitely in the host state. An alien is not 
required to interfere in the politics of the state of his 
residence. Resident aliens, barring those entitled to diplo-
matic immunity, may not claim exemption from ordinary customs 
charges or taxes.

The state has the right to tax real estate within its 
jurisdiction, owned by non-resident aliens, besides bonds and 
other securities held by resident aliens. The latter owe a 
temporary allegiance to the state of residence. On the other 
hand, it is generally accepted that aliens cannot be forced to 
serve in the armed forces of the country in which they reside. 
However, it should be noted that this general practice has under-
gone considerable changes since World War II. Some states, 
notably France, Germany and the United States, have enacted laws 
providing that any nationals of a foreign state might be called 
upon to serve in their armed forces. In fact, the United States 
passed the so-called Universal Military Training and Service Act 
in 1951, which empowered the country to require aliens, admitted 
for permanent residence, to serve in the United States Armed 
Forces. Any alien in the U.S. who claims exemption from 
military service becomes permanently ineligible for U.S.

23See U.S. Public Law 51 of 1951, Sect.I, 65 Stat. at L. 75
France and Germany enacted laws in 1955 and 1956 respectively, which stipulated that citizens of a foreign state might be required to serve in their armed forces on a reciprocal basis — if that state obliged French and German citizens to serve in that state's armed forces.

An important area in which a state exercises an exclusive right resulting from state sovereignty is the field of expulsion of aliens. The right to expel aliens is not limited even by treaties guaranteeing the right of residence to the citizens of other Contracting States. Every State is free to determine, by its own criteria, the grounds for expulsion of an alien. However, this does not mean that a state is at liberty to abuse the right of expulsion. The State of nationality of an expelled alien may assert the right to enquire into the reasons for his expulsion, and the sufficiency of proof of the charges on which the expulsion is based.

In time of war, a belligerent state is entitled to expel all enemy aliens within its territory. In time of peace, on the contrary, aliens may be expelled only in the interests of public order, or welfare, or for reasons of State security, whether internal or external. Deportation of an alien is not, we must remember, a punishment, but an executive act consisting of an order directing the alien to leave the State. The judiciary may sometimes have power to interfere in the case of an abuse of discretion by the executive, but an alien is not always given the right to challenge the decision of the executive before the judiciary. Deportation should not be carried out with violence, or hardship, or unnecessary harm to the

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expelled alien. There should be no compulsory detention of an alien under an expulsion order, unless in cases which warrant that. Further, an alien should be given enough time to settle his personal affairs before leaving the country. He should be allowed to choose the country to which he may apply for admission.

From the preceding discussion, it is clear that every sovereign and independent state has an exclusive, inherent, and inalienable right to admit, prohibit, exclude, prevent, deport or expell aliens who have neither been naturalized, nor taken any measures towards becoming citizens of the state. This right is essentially to the State's independence, safety, and welfare. The right is inscribed in the constitution of every country.

With regard to asylum, it is important to remember that no state is, by international law, obligated to surrender an alien to a foreign state, or to expel him from its own territory, unless some particular restriction or obligation has been accepted in this regard. Also, the state of which an alien is a national is not entitled to exercise physical control over him during his residence in the territory of another state, despite its competence to exercise jurisdiction over him through its domestic courts for offences committed by him abroad, when he returns to his national territory. Hence a state can be an asylum for an alien who has been deported from, or has fled the state of his origin or his residence. The grant of asylum by a state is part of the competence arising from the territorial sovereignty of the state. Asylum is usually granted to political offenders - and not common offenders - or to political refugees who are aliens or stateless persons. The state has hence the right to permit political offenders or political refugees to enter and remain in its territory under its protection. A political refugee may be defined as an alien who has left, or has been forced to leave,
his country because of persecution for religious, ethnic or political reasons.

The granting of asylum to political refugees and offenders is a humanitarian and peaceful act. Therefore, no international responsibility arises for the state granting such asylum. Because international law does not guarantee the right of asylum to anybody, and thus the same right is solely within the discretion of the state, it has been generally argued - with a considerable amount of agreement - that the so-called right of asylum is not a right at all. Hence, the alien may not demand it from the foreign state in whose territory he seeks to reside.

Closely connected with asylum is extradition. The latter was defined in the Harvard Research Draft Convention on Extradition as "the formal surrender of a person by a state to another state for prosecution or punishment." We should remember that extradition treaties and international comity often condition the right of the state to grant asylum. In cases of extradition, the need arises to punish offenders who have escaped (fugitive offenders) from one state to another. The question of extradition falls wholly within the domestic jurisdiction of the state to which the fugitive offender has escaped. The state thus decides whether the offender can be tried and punished for the offenses he committed prior to his entry, or freed from trial and punishment for such offenses committed, after all, outside its territory.

The lack of uniformity in the existing bipartite and multiparty treaties of extradition makes it difficult to speak of an international law of extradition. However, a rule is believed to exist that a state requesting extradition must not, without the consent of the requested state, try or punish the offender except for the offence in respect to which the extradition was granted.

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25 See generally "29 A.J. Int'l., Supp. 15, 21 (1935)"
As for refugees and stateless persons, it should be noted that their legal position has been outlined in a number of international conventions. A particularly noteworthy convention on the subject was the Convention Relating to the Status of Refugees, unanimously adopted at a Conference convened by the United Nations in 1951. In 1954, the U.N. Economic and Social Council (ECOSOC) also convened a Conference which eventually adopted the so-called Convention Relating to the Status of Stateless Persons. These two Conventions contain excellent provisions on the rights and duties of refugees and stateless persons - escapees to foreign countries from religious and political persecutions in their own states, and persons without any nationality or citizenship. Refugees and stateless persons have duties to the country in which they find themselves. They are required to conform to the country's laws and regulations as well as to measures taken for the maintenance of public order. On the other hand, the contracting state must accord to them at least the same treatment as is accorded to its nationals, with respect to freedom of religion and the religious education of his children, and at least the same treatment as is accorded to aliens generally concerning the acquisition of movable and immovable property; the right to engage in agriculture, industry and the like, and to establish commercial or industrial companies; the practice of liberal professions; housing; (higher) education; and so on. For the ordinary purposes of municipal law, therefore, refugees and stateless persons fall under the category of aliens.

Of interest is the principle that these two categories of people legally in the territory of a contracting state are not to be expelled save to preserve national security or public order, and their expulsion must follow a due process of law. In addition

27 See "360 UNTS", 117
to that, a refugee is not to be expelled or returned in any manner whatsoever to the frontiers of territories where his freedom or life would be endangered on account of his religion, race, nationality, political opinion, or membership of a particular social group. In all other ways, refugees and stateless persons are to be treated just like aliens.

The above analysis of the international law of aliens must now be followed by a discussion on the municipal law of aliens as found in East Africa. At the outset, it should be noted that in general, the East African States of Tanzania, Uganda and Kenya have a common area of laws of aliens, although some are more detailed in one country than others in another. It should also be remembered that the East African laws relating to aliens appear in the forms of Acts, Decrees, and at different times after independence, or before independence, but amended in the post-independence era. Finally, we should remember that all the laws of the East African States are published by their respective Government Printers situated in their respective capitals.

Uganda is an exception here: its Government Printer is in Entebbe.

The legal position of aliens in East Africa is regulated by certain constitutional provisions - as we saw in Chapter Two above - and other laws which, although they appear under different titles, are common in the three countries. These laws (Acts, Decrees...)

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28 The laws of the East African States relating to aliens are contained in the following publications:

A. UGANDA: 1) "Uganda Constitution" (8-9-1967); 2) "Laws of Uganda":
   (a) 1964, Vols. II and IV;
   (b) 1969, Statutes;
   (c) 1970;
   (d) 1971, Decrees;
   (e) 1972;
   (f) 1973.


C. TANZANIA: 1) "Interim Constitution", 1965; 2) "Revised Laws of Tanzania":
   (a) Vols. I, II, III, V, VI, IX, XI & XII;
regulate the status of aliens in the fields of:—
citizenship; immigration (including work permits); business
(licensing and transfers); nationalisation; public order and
security (police functions); civil, criminal and penal cases;
extradition, and marriage.

The scope of application of the immigration laws of the
East African States is confined to aliens. However, the Uganda and
Tanzania Immigration Acts of 1969 and 1972 respectively state
that the laws may be applied to citizens of the two countries if
their immigration authorities deem it necessary to do so in
order to determine the status of such persons. Also, a citizen
of Tanzania or Uganda is liable to be proceeded against, convicted
and punished, for any offence he may commit against the laws, for
instance, in the exercise of his powers, in relation to a person
to whom these laws apply generally, which the Minister responsible
for immigration matters may make requiring that person (if an
employer) to furnish information and make returns with respect
to the persons employed by him, including in particular information
as to citizenship, the nature of employment, qualifications and
experience for such persons, and as to schemes for the training
of citizens for such employment.

Of special significance are the legal provisions pertaining
to the work permit system. "Work permit" is actually the commercial
expression for "entry permit" (as it is called in Uganda and Kenya,
or "residence permit" as it is known in Tanzania), which is the
legal term of the system. Any alien who intends to enter an East
African country must possess:

a) A valid entry certificate of residence normally issued to a
   permanently resident alien;

b) A valid entry permit - issued normally to an alien who desires
take up some sort of employment;
c) A valid pass - issued normally to an alien who desires to enter or re-enter and remain in an East African country temporarily, i.e., during the validity of the pass; or
d) Any other legal authority, e.g. an "exemption" or "exclusion" certificate. Needless to say, aliens must, before they are issued with the above entry documents, fulfill any conditions which may be laid down by the Minister responsible for immigration matters, or under the immigration laws.

With regard to the validity of work permits, it is of interest to note that in Tanzania, a work permit issued to an alien is valid within such time as the Principal Immigration Officer (P.I.O.) may specify. In Uganda, a work permit is valid within one year (12 months) after the date of issue thereof. But the Immigration Control Board - whose functions are similar to those of the Principal Immigration Officers of Tanzania and Kenya - may in its absolute discretion extend the said time limit of one year for such period but not exceeding two years, as it may consider expedient. We should note here that the Uganda Immigration Control Board, comprising a Chairman and 6 to 8 other members all appointed by the Minister in charge of Immigration, has power to delegate, in writing, any or all of its functions relating to dependents' passes, visitors' passes and special passes, to the Principal Immigration Officer. The latter is the Secretary to the Board, and the Board's members serve on it for two years, after which period they can be reappointed.

In Kenya, a work permit is valid within six months only of the date of issue thereof. However, an immigration officer has power to extend, at his discretion, the validity of a work permit for a further period of six months. Kenya also makes 12 classes of work permits available to aliens.
CLASS A: a work permit granted to an alien who is offered specific employment by a specific employer, who is qualified to undertake that employment, and whose engagement in that employment will be of benefit to Kenya.

CLASS B: a work permit granted to an alien who is offered specific employment by the Kenya Government, the East African Community or any other person or authority under the control of the Government or Community, and whose engagement in that employment will be of benefit to Kenya.

CLASS C: work permit is granted to an alien who is offered specific employment under an approved technical aid scheme under the United Nations Organization, or some other approved Agency (not being an exempted person, i.e., as specified by the Minister, or a diplomat or consul and their wives and children), and whose engagement in that employment will be of benefit to Kenya.

CLASS D: work permit is granted to an alien being the holder of a dependent's pass who is offered specific employment by a specific employer, whose engagement in that employment will be of benefit to Kenya.

CLASS E: work permit is granted to an alien who is a member of a missionary society approved by the Kenya Government, and whose presence in Kenya will be of benefit to Kenya.

CLASS F: work permit is offered to an alien who intends to engage, whether alone or in partnership, in the business of agriculture or animal husbandry in Kenya, and who has acquired, or has received all permissions necessary to acquire an interest in land of sufficient size and suitability for the purpose; and
(b) has in his own right and at his full and free disposition sufficient capital and other resources for the purpose, and whose engagement in that business will be of benefit to Kenya.

**CLASS C.**

work permit is offered to an alien who intends to engage, whether alone or in partnership, in prospecting for minerals or mining in Kenya, and whose such permitted engagement will be of benefit to Kenya.

**CLASS II.**

work permit is offered to an alien who intends to engage, whether alone or in partnership, in a specific trade, business or profession (other than a prescribed profession) in Kenya, and who:

(a) has obtained, or is assured of obtaining any licence, registration or other authority or permission that may be necessary for the purpose; and

(b) has in his own right and at his full and free disposition sufficient capital and other resources for the purpose, and whose engagement in that trade, business or profession will be to the benefit of Kenya.

**CLASS I.**

work permit is granted to an alien who intends to engage, whether alone or in partnership, in a specific manufacture in Kenya, and -

(a) has obtained, or is assured of obtaining any licence, registration or other authority or permission that may be necessary for the purpose; and

(b) has in his own right and at his full and free disposition sufficient capital and other resources for the purpose, and whose engagement in that manufacture will be of benefit to Kenya.
CLASS J: is a work permit granted to a member (alien) of a prescribed profession who intends to practice that profession, whether alone or in partnership in Kenya and who:

(a) possesses the prescribed qualifications; and
(b) has in his own right and at his full and free disposition sufficient capital and other resources for the purpose, whose practice of that profession will be of benefit to Kenya.

CLASS K: work permit is granted to an alien who -

(a) is above 21 years of age; and
(b) has in his own right and at his full and free disposition an assured annual income of not less than the prescribed amount, being an income that is assured, and that is derived from sources other than any such employment, occupation, trade, business or profession as is referred to in the description of any of the Classes specified in this analysis, and being an income that either -

(i) is derived from sources outside, and will be remitted to Kenya;
(ii) is derived from property situated or a pension or annuity payable from, sources in Kenya or
(iii) will be derived from a sufficient investment capital to produce such assured income that will be brought into and invested in Kenya; and
(c) undertakes not to accept paid employment of any kind should be be granted a work permit of Class K, and whose presence in Kenya will be of benefit to Kenya.
work permit is granted to an alien who is not in employ-
ment whether paid or unpaid, and who under the repeated
Acte was issued with a resident's certificate, or who
would have an application been entitled to the issue of
such certificate, or who has held a work permit or work
permits of any of the foregoing Classes of work permits
A.- for a continuous period of not less than 10 years
immediately before the date of application, and whose
presence in Kenya will be of benefit to Kenya.

In Uganda, the Classes of work permits available to
aliens is exactly the same as those in Kenya, except that Uganda
does not possess corresponding Classes for A, D, E, K and L of Kenya.
As for Tanzania, it possesses all the Classes of work permits
existing in Kenya, but Tanzania boils all the 12 Classes down to
three categories only. They are issued, as in Uganda and Kenya,
only to persons who are not prohibited immigrants. Thus:

CLASS A: work permit is issued to an alien intending to enter or
remain in Tanzania and engage in trade, business,
agriculture, profession, animal husbandry, prospecting
of minerals or manufacture; if -

a) he or somebody else on his behalf furnishes security
by depositing with an immigration officer such sum
as is enough to cover the cost of returning him,
his wife or dependent children - if any - to his
country of origin, or to some other country to which
he may be admitted; and

b) furnishes security by a bond with one or more
sureties.

An alien holder of work permit A is subjected to conditions
relating to the area of his residence in Tanzania, the
kind of business or occupation (if any), restrictions,
prohibitions or limitations subject to which he may engage therein; and the duration of his residence in Tanzania as may be specified in his work permit by the Principal Immigration Officer.

**CLASS B:**

Work permit is granted to an alien who is offered a specified employment in Tanzania, and the Principal Immigration Officer is convinced that the person possesses the necessary qualification or skill for such employment, and that his employment will be of benefit to Tanzania, provided that his employer gives such security for such purposes as the Principal Immigration Officer may direct, before the granting to such an alien a work permit. An alien offered a work permit of Class B is also subject to the conditions of Class A permit, and any others which the Principal Immigration Officer may specify. Finally,

**CLASS C:**

Work permit is granted to an alien who does not hold Class B work permit. He is also subject to the conditions of Classes A and B permits.

The Principal Immigration Officer has power to cancel, vary, or add to the conditions of any work permit, provided the cancellation of a work permit by the P.I.O. is subject to the confirmation of the (Immigration) Minister, whose decision is conclusive.

As for the duration of a work permit, it should be noted that Tanzania issues work permits for a maximum period of three years. It can be renewed, but only up to five years.

In Uganda and Kenya, no duration of work permits has been fixed, in law, but practice in these countries has revealed that work permits are issued for periods of between 30 and 36 months.
Of course, work permits are renewable in all the three countries.

The following table will help to compare the Classes of work permits in Kenya with the corresponding ones in Uganda and Tanzania:

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The East African countries have also a common Passport area.

Thus an Immigration Officer (the Immigration Control Board in Uganda, unless it delegates its power to an Immigration Officer) in any of the three nations is at liberty to cancel at any time any pass issued to a person, and to vary any term or condition thereof. In Kenya, however, no dependent's pass may be cancelled without the prior approval of the responsible Minister. In all the three countries, there are 3 kinds of Passes which are normally not issued to prohibited immigrants:

A Dependent's Pass may be issued to any person materialily
dependent upon the earnings of another, whether by reason of age, disability, incapacity, or for some other reason. Any person legally in, or entitled to enter an East African country may apply for a dependent's pass.

A **Dependent's Pass** may be issued to any person seeking to enter or remain in an East African country for the purposes of receiving education or training in the country.

A **Visitor's Pass** may be issued to any person desiring to enter an East African State for the purpose of a holiday, temporarily conducting business, trade or profession, or any other temporary purpose which may be approved by an immigration authority.

An **in-Transit Pass** may be issued to any person desiring to enter an East African nation for the purpose of travelling to a destination outside that country, possessing valid documents that may be required to allow him to enter the country of destination, and qualified under the law in force in the country of destination to enter that country.

An **Inter-State Pass** may be issued to any person legally present in an East African country, who by reason of his business, employment, profession or other calling, is required to make frequent visits to either of the other East African States.

A **Prohibited Immigrant's Pass** may be issued to a prohibited immigrant, permitting him to enter and remain in an East African country temporarily for such period and subject to such conditions as may be specified in the Pass.

A **Special Pass** may be issued to any person who desires to enter or remain in an East African State for a limited period for:

a) the purpose of education and training;

b) applying for an entry permit or pass;

c) or for any other purpose which an immigration officer considers suitable.
A Re-Entry Pass may be issued by an immigration authority to any person who, being legally, or legally residing, in an East African State, wishes to leave the country temporarily, or who, having left the country temporarily and having been at the time of his departure legally present in the country, failed for reasons for reasons which an immigration authority is satisfied are good and sufficient reasons, to apply for a re-entry pass before his departure.

We should remember that 'legally residing' does not mean 'legally present'. Furthermore, the period of validity of the above Passes are to be specified in the Passes themselves. Similarly, the terms and conditions under which Pass holders may enter, remain or re-enter an East African country are specified in the Passes.

The Tanzanian Laws do not mention, expressis verbis, the Pupil's, Inter-State and Prohibited Immigrant's Passes. But there is no doubt that aliens holding these three kinds of Pass in Tanzania are subject to the conditions and requirements of the Passes as they appear in Kenya and Uganda.

Another area of life in which the position of aliens in East Africa is regulated by law is the field of business. The Immigration Acts of the East African countries currently in force contain provisions which are of direct concern to aliens. The Tanzania Act defines 'business' as "any form of trade, commerce, craftsmanship or specified profession carried on for profit or gain..." Auxiliary business is defined as 'any business not specified in a business licence fee, which may be lawfully carried on under such licence by virtue of the provisions of section 4'.

2. "The Trade Licensing Act (Uganda), 1969" and
states that no person shall carry on auxiliary business:

(a) In banking, shipping, lighterage or stevedoring;

(b) Unless he is authorized to do so by licence issued in relation to such business;

(c) Which can be legally carried on only if a licence, permit or other authority granted by, or under any other written law;

(d) Unless the licence fee in respect of such business requires it to be so assessed on an annual turnover (profit);

(e) Unless a licence fee of a specified amount - if so required - is paid; and

(f) Unless the licence so held by the holder is in relation to a business in respect of which the same local authority is the licencing authority.

Similarly, no person can carry on any business without a valid business licence authorising him to do so in the place specified therein.

An Auxiliary business also means a business:

(i) Which is not specified in the licence granted; and

(ii) If a separate licence had been applied for such business, the licence fee payable for such licence would not have exceeded the licence fee payable for the licence granted.

Although the above legal definitions of certain key expressions do not appear in the Kenya and Uganda Acts expressis verbis, it is clear from the Acts, that the definitions also apply in the latter two countries. Similarly, the meanings of trading centre and general business area, although they appear respectively in the Uganda and Kenya business laws only, are equally applicable in Tanzania. Thus a trading centre is legally defined as any area in Uganda so declared by the Minister responsible for local administrations, by statutory
order. In Kenya, a general business area is any area, or part of an area, city, municipality or township so declared by the Minister responsible for Commerce & Industry, by an order.

And specified goods are any goods so declared by an order of the Minister. Finally, by a "specified profession" is meant the profession of a medical practitioner, dentist, veterinary surgeon, optician, chemist, pharmacist, lawyer, auditor, registered or chartered accountant, tax consultant, management consultant, estate agent, quantity surveyor, or engineer, and includes:

1) Any profession which no person can legally carry on unless he is registered by or under any written law;

2) Any profession which the Minister may, by notice in the Gasette, declare to be a specified profession.

It is reiterated that the above legal definitions, though obvious and familiar, should be borne in mind, because they affect aliens in the field of business in East Africa. Here, aliens are restricted in, and even prohibited in many cases from, performing business activities in certain areas. In Uganda, for instance, the Minister may, by statutory order, declare from time to time: any business area or trading centre to be an area in which a person who is not a citizen of Uganda may not trade. The Minister may also declare any particular good or goods of any particular class to be specified and which an alien is prohibited from trading. Thus an alien is not allowed by law:

(a) To trade outside any city, municipality or town;

(b) To trade in any trading centre in respect of which an order is made prohibiting non-citizens from trading in that area;

(c) To trade in any area of any city, municipality or town
which has not been declared a general business area.

Business restrictions are also extended to citizens of Uganda, who are forbidden to trade either directly or indirectly on behalf of any person who is an alien in Uganda, whether under a licence granted to those citizens of Uganda, or in any other way. Also, no alien in Uganda is allowed to engage, or permit a Uganda citizen to trade either directly or indirectly on his behalf, whether under a licence granted to that Uganda citizen, or in any other way - in any area or goods in which such person is prohibited by law from trading.

Exempted from the above restrictions are companies or firms comprising partly Uganda citizens and partly aliens, if such companies or, in the case of firms, their first names, were registered as such in Uganda on or before January, 1969.

The foregoing provisions clearly show that an alien in Uganda may conduct a business or trade in the country only in accordance with the terms of a current business licence which may be held. The case is exactly the same in Kenya. In Tanzania, the case is straightforward: nobody is allowed to carry on trade without a business licence.

In all the three States, anybody who breaks the business rules is liable to a heavy fine of up to 10,000/=, or to an imprisonment of up to 12 months, or both. In Tanzania, any person who breaks the above laws after the revocation, suspension, and disqualification from holding a business licence is liable, on conviction, to a fine of up to 50,000/= or to an imprisonment of up to 5 years, or both. In Tanzania, penalties for offences are comparatively very heavy. General offences against people who carry on trade without lawful permission are punishable by a fine of up to 15,000/=, or an imprisonment of up to 2 years, or both. In Kenya, any person
guilty of an offence to the business law where no penalty is
specifically provided is liable to a fine of up to 5,000/-, or
an imprisonment of up to three months, or both. In Uganda, where
no penalty is specifically provided, any person guilty of an offence
to the business law, is liable to a fine of up to 1,000/-. Where
institutions are concerned, an offence by them calls for the joint
conviction of directors or officers of the institutions unless
these persons prove that the offences were committed without their
knowledge.

Noteworthy is the provision in the Tanzania law that general
offence to the law carries a maximum penalty of 2,000/- (instead
of 15,000/-) if the offender satisfies the court that the date on
which it is alleged he committed the offence was 21 days from
the date on which the business licence previously held by him
expired or, as the case may be, the date on which he first
commenced his business.30

Apart from the immigration and business laws which impose
specific restrictions and control on aliens in East Africa, there
are other laws which impose general restrictions and control on
aliens in the region. The Kenya law, known as the Aliens Restric-
tion Act, 1973, is entirely based on the Uganda legislation enacted
in 1949, and revised in 1964 — as the Aliens (Registration) and
Control Act.31

This Kenya Act empowers the Minister responsible for internal
security to impose, whenever necessary (e.g., during a state of war
between Kenya and a foreign Power, or when imminent danger or great
emergency arises), restrictions on aliens by order. In particular,
the Minister may make provision by any such order for:

30 Tanzania Immigration Act, Section 17 (2)
31 See (1) Chapter 63 of the “Law of Uganda, 1964; and
a) requiring aliens to reside and remain within certain places or districts;
b) prohibiting aliens from residing or remaining in any areas specified in the order;
c) the appointment of officers to implement the order and conferring on such officers such powers as may be necessary or expedient for the purposes of the order;
d) imposing penalties on persons who assist or abet any contravention of the order, and for imposing such obligations and restrictions on masters of ships or any other persons specified in the order as appear necessary or expedient for giving full effect to the order;
e) conferring upon such persons as may be specified in the order such powers with respect to arrest, detention, search of premises or persons, and otherwise, as may be specified in the order, and for any other auxiliary matters for which it seems expedient to provide in order to give full effect to the order; and (in Kenya alone),
f) any other matters which seem necessary or expedient for the safety of the country....The Minister is also empowered by order to require any aliens residing in Kenya or Uganda to comply with such provisions as to registration, notification of change of abode, travelling, and so forth.

The burden of proving whether or not a person is an alien in either of the two countries lies entirely upon that person. In Kenya (alone), however, the Minister may, also from time to time, make an order to prohibit aliens from landing in, or otherwise entering Kenya either generally, or at certain places; and to impose restrictions or conditions on aliens landing or arriving at any port in Kenya. The Minister may also by order prohibit aliens
from embarking in, or otherwise leaving Kenya either generally, or in certain places. He may finally impose restrictions and conditions on aliens embarking, or about to embark in Kenya.

The Kenya Minister responsible for domestic security can, at any time, revoke, change, or add to any aliens order. Any of the above powers conferred on the Minister, or any others which he may exercise, are only in addition to, and not in derogation of, any powers regarding the expulsion of aliens, or their prohibition from entering Kenya or any other powers conferred on the Minister or any other authority by any other written law.

This legal provision is important and should be remembered, for it explains the wide-ranging powers of the Minister which affect the situation of aliens in Kenya.

The power to deport aliens is mentioned in the Uganda legislation alone. But it is obvious that the importation of aliens is a right which every sovereign State is free to exercise. Punishment for the contravention of any of the above rules is also regulated in the laws. In Uganda, for instance, an alien who incites sedition or disaffection in the Uganda Armed Forces or the civilian population is liable, on conviction, to an imprisonment of up to 10 years. Similarly, any alien who encourages or endeavour to encourage, industrial unrest in which he has not bona fide been engaged for at least two years immediately preceding in Uganda, is liable on conviction to imprisonment of up to three months. Exceptions to the above provisions are people legally entitled to diplomatic privileges. In the case of Africans, however, the Aliens Restriction Act (Uganda) does not apply to them (Africans) but the Minister may, by order, apply the Act to Africans as well.

Whereas in Kenya any person contravening any provision or
requirement of an alien order is liable, on conviction, to a fine of up to 3,000/- or to an imprisonment of up to six months or both, in Uganda, such fine amounts to a maximum of 2,000/- or an imprisonment of up to six months, or both.

Similar restrictions and control are imposed on alien refugees by the Uganda and Tansania Acts enacted in 1964 and 1965 respectively. The contents of these two laws on refugees are essentially the same. Refugees, we should remember, are by legal definition aliens declared by the Minister responsible for internal security and by statutory instrument - to be refugees. They are simply people who, having fled to a foreign country to escape danger and persecution for offences of a political nature, are accorded domicile in that country.

When examined against the background of the international law of aliens, the above East African laws of aliens conform, in general, to the international rules. However, loopholes in the East African laws of aliens exist, which are deviations from the international rules relating to aliens. We shall point out these deviations and make recommendations for a practical improvement in the East African laws at a later stage. For the moment, we need to discuss the practice of the East African States towards aliens in the region: how far the practice conforms to, or deviates from, both the international and East African laws of aliens. At the offset, it must be pointed out that the practice towards aliens in East Africa greatly deviates from the requirements of international law, and even from the law of East Africa itself! A clear example is necessary here. The question of citizenship was one of the problems requiring solution by the Governments of the newly independent East Africa. The question was legally resolved, as was explained in Chapter Two, by granting automatic citizenship to some inhabitants - the native inhabitants -
and citizenship by naturalisation - to those immigrant communities (i.e., Europeans and Asians) if the latter applied for citizenship within two years of independence. The implications of citizenship included these:

1) Any of the immigrant communities (whether Kenya Colony "British citizens", or Uganda Protectorate and Tanganyika Trust Territory "British protected persons") who did not become citizens of the country in East Africa would have to leave, when asked to do so, East Africa. They would, therefore, have the right to leave, but not the right to stay. It must be stressed and borne in mind here that the Kenya Constitution at independence guaranteed resident aliens in the country against expulsion.

11) Any of the immigrant communities who did not become citizens of an East African State but remained British citizens would have the right to enter Britain. Incidentally, the British Commonwealth Immigration Act of 1962 did apply, as we shall see later, to British passport-holders. The immigrant communities in East Africa were hence not affected by the British legislation.

111) Any of the immigrant communities who did not become citizens of an East African State would have the right to stay and work in that country. Aware of the rights to stay, leave and enter, most Asians and Europeans opted to remain aliens.

The practice in East Africa, however, clearly indicates that the above legal provisions have been evaded. A good number of the immigrant communities applied for citizenship, but were not granted it. Some of the policies adopted by the newly independent East African States are openly discriminatory. For example, the policies of "Africanisation", "Kenyanisation" and for that matter "Ugandanisation" and "Tanzanianisation" - have terribly been confused. There seems to be no distinction between "Africanisation"
and "Ugandanisation", for instance, which are two distinct
doctrines. We shall expand this theme in the next Chapter. The
expulsions of Asians by the East African States have also been
some of the deviations from the understandings at the independence
of the countries. Again, the question of the expulsions of
Asians from Tanzania, Kenya and Uganda will also be elaborated
at a later stage. For now, we should note that by expelling some
of the Asians who were citizens of East Africa (as in Uganda, as
we shall see), the practice was directly against not only the
East African law of aliens, but also against the general principles
of international law, regulating the status of aliens. In 1960,
it is believed, Uganda expelled 40,000 black Kenyans who had been
gainfully employed and living in Uganda for many years. The same
practice of expelling black Kenyans from Uganda was repeated,
according to many commentators, in the late 1960's and early 1970's.
When General Amin became President of Uganda, he revoked the
citizenship of many Asian citizens of Uganda. Zanzibar imposed
a number of restrictions on the rights of Arabs and Asians.
Whereas Arabs were forced to intermarry with Africans, Asians in
Zanzibar were restricted on their right to leave the Island. In
some cases, the right to leave is completely prohibited. In others,
the right to leave is conditional on the payment of large fees.
This restriction, it should be noted, also applies to Africans.
In fact, all citizens of Zanzibar intending, for instance, to
visit the Mainland Tanzania, must get permission to do so.
Otherwise, their departure would be illegal. Many Asians who
were citizens of Zanzibar but were away from the Island during
certain periods of time were declared no longer citizens of
Zanzibar, and are thus now no longer citizens of Tanzania.
The above state practice has resulted in categories of people,
mainly Asians, becoming stateless persons. Kenya is believed
to have expelled many of its citizens generally by first revoking
their citizenship. This statement will become clear in the
course of this analysis.

There is no doubt that the East African States violate the
important (international law) doctrine of "acquired", or "vested
rights" which are, strictly speaking, "legal rights". It is an
important principle of international law that acquired rights of
aliens must be respected. No change of sovereignty should work
any effect on such rights. Alien owners should be accorded the
protection given to private rights of citizens. This protection
involves the provision of compensation for any nationalization
or any other kind of taking. The stress is on respect for property
eight legally acquired or vested, which are, for sure, an
aspect of human rights. And yet the East African States have in
practice, regularly and stubbornly refused to accept the doctrine
of vested rights of aliens, for example, to reside and carry on
business or profession in East Africa. Many of the Asians
expelled from East Africa had lived in that region for many years.
Some of them were even born there, and knew no other place except
East Africa. Surely, this historical fact vested in such people
the "acquired right" to stay in East Africa. The East African
countries, however, generally accept and implement the inter-
national rule that no State has a right to expel its citizens.
It is of interest and important to note that even President Amin
of Uganda was forced to withdraw his expulsion decree against the

See generally P. Theroux: "Hating the Asians" - in 'Transition'
No. 33, Oct./Nov., 1967 (pp. 46 - 51)
Uganda - Asian citizens, as we shall see below. Also, every
time Kenya has wanted to deport her citizen, she has first
deprived him of his Kenya citizenship.

The East African nations also recognize the principle of
the right of entry of citizens. But the lack of clear protection
in the region's countries against deprivation of citizenship has
caused a situation and category of stateless persons. The root
of the above problems lies, inter alia, in the "elements of
discrimination" contained in some of the laws of the three countries.

A few examples will help to support this argument. Although
the citizenship laws of the East African States prohibit deprivation
of citizenship acquired through birth, they allow for deprivation
of citizenship by registration or naturalization. This is a weak
and discriminatory legal provision which enables the East
African Governments to deprive East African citizens of their
East African nationality by registration or naturalization,
without giving any reasons for such action. There also seems to
be no machinery of appeal or review. The Governments have
extensively exploited this legal loophole. The practice is
certainly contrary to international Conventions, on the
elimination of Statelessness, for instance.

Aliens in East Africa are also sometimes deprived of rights
of contract, of acquisition of personal property, and even of
marriage as has often happened in Zanzibar. In practice,
nationalisation has taken place in East Africa without prompt,
effective and enough compensation. In many cases, discrimination
has been displayed in the compensation rule.

No law has been enacted so far to regulate the crucial
questions of asylum and statelessness in East Africa. Tanzania
and Uganda have laws dealing with refugees. Kenya has
none, although she has the Aliens Restriction Act (1973).
There is no such Act in Tansania, although the Tansania
Immigration Act, 1972 generally deals with the question of
aliens. The Uganda aliens restriction law contains sections
on aliens and Africans, which are extremely vague and
interesting:

"This Act shall not apply to Africans; provided that the
Minister may by statutory instrument, apply any or all of the
provisions of this Act to any or all classes of Africans."33

Elsewhere in the same law, it is provided that an "alien" (in
Uganda) is "a person who is not a citizen of Uganda or a
Commonwealth citizen within the meaning of Section 13 of the
Uganda Citizenship Act, or a citizen of the Republic of Ireland."34

The business laws of Tansania does not contain any
"element of discrimination", for it is provided therein that
nobody is allowed to carry on business if:

(a) He has no valid business licence;
(b) He is under 18;
(c) He is disqualified by an order from holding business; and
(d) He is illegally present in Tansania and unauthorized
to trade in the country.

The trade laws of Uganda and Kenya are "discrimination-
oriented". We have seen that there are certain areas and goods
in which trade is prohibited or restricted. Ironically, this
type of discrimination is recognised in international law. The
fact, however, is that international law contains a considerable
number of rules which are terribly confusing on the legal status
of aliens. Perhaps the reason for this confusion lies in the
fact that there is a great variety of issues some of which are
partly governed by international law, and partly by municipal

33See Section 6 of "The (Uganda) Aliens (Registration) and
Control Act, 1964".
Race relations in East Africa have many aspects: cultural, social, economic, religious, political, legal and other aspects. In colonized East Africa, inter-racial integration was disallowed by the colonial policy of racial isolation and segregation. Afro-Asian or Afro-European social relations were confined to the master-servant or shopkeeper - customer level. In independent East Africa, this social set up has been discouraged, and social mingling up has been encouraged instead. Residential segregation, like segregation in bars, clubs, restaurants et cetera has, by law at least, been abolished. In practice, however, racial discrimination still exists in East Africa. It is evident especially in schools, employment, and business. The duty to eradicate discrimination rests with each and every individual in society, but with the East African Governments rests the ultimate task to correct any social injustice that may exist in an East African society. A serious "in-group" segregation in East Africa, particularly in Uganda, Kenya and Zanzibar, still exists among the various tribes of East Africa. The tribal problem is least in Tanganyika. "Tribal" bars, for instance, exist in the major towns of Kenya and Uganda. Lack of space here does not permit us to elaborate the problem of tribalism in East Africa, but it must be stressed that tribalism not only impedes complete racial harmony, it is also a very great obstacle...
to the development of East Africa. The Governments of East Africa, therefore, need to devise some methods of complete social integration. They should, for instance, check every practice of distributing loans unequally in the various parts of their countries. Development projects should be launched and distributed equally throughout the regions of the country.

It is nevertheless most encouraging that segregation or "group consciousness" is rapidly dying out, with the establishment of co-educational and multiracial institutions such as kindergartens, schools, hospitals, clubs and universities, throughout the East African countries. All these and other "humanitarian" organisations such as the Red Cross and National Services, are great "melting pots" whose numbers should be increased, as they are fundamental instruments of racial harmony.

As we saw in the preceding Chapters, racial consciousness among the African people is no doubt a colonial heritage, and hence a by-product of colonialism. The acceptance by the African that he is different from other people is a phenomenon that has occurred only after the attainment of his independence. Endeavours by African leaders to institutionalise this African feeling has led to the charge of 'racialism' by the non-Africans. The non-African in East Africa is, in reality, of the view that racial awareness and distinctions should be perpetuated even though East Africa is a non-racial society. The white man ('mzungu') viewed the African as an inferior being. It is not hence surprising that the African now wants to show the white man that the former is now the superior man - the master, and that the African can now suffer from the same superiority complex that the white man used to suffer from. Race relations in East Africa also have legal aspects. In Tanganyika, for instance,
a law was enacted after independence, which contained, *inter alia*, the following provisions:

(a) No citizen (barring an African from a few neighbouring countries) could enter or remain in Tanganyika without an entry permit.

(b) Of the three classes of entry permit introduced in the country, Class A permit may be granted without the requirement of security. Class B permit can only be granted on the furnishing of security sufficient to cover the cost of returning the holder of the permit to his country of origin or, in the discretion of the Principal Immigration Officer, to some other country into which he may be admitted, together with a further sum not exceeding 25 per cent of such first-named sum.

People who receive Class B permits can apply for Class A permits, and indeed must obtain one after the lapse of the period specified in their Class B permit. People who hold certificates of permanent residence are given Class A permits on application within six months. And these permits are valid for two years. The permits, except in the case of the former holders of certificates of permanent residence, are issued subject to the area within which the holder may reside, the occupation or business (if any) in which he may engage, and the restrictions, prohibitions or limitations subject to which he may engage therein. The permits also specify the duration of his residence in Tanganyika. The permits are further liable to cancellation at the discretion of the immigration authorities after confirmation by the Minister responsible for immigration matters. The central purpose of the above mechanism is to enable the Government to exercise effective control over the number.

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The corresponding legislations of Uganda and Kenya contain similar provisions. But particularly noteworthy violations of the laws have occurred in Kenya and Uganda. The Kenya Government was constitutionally prohibited from expelling anyone, citizen or not, who was ordinarily and legally resident in Kenya at the date of independence. And yet Asians were expelled from Kenya in 1968. Similarly, Uganda expelled in 1972 Asians ordinarily and lawfully resident in the country for many years. The legal, political and other aspects of the expulsions will be examined in Chapter Eight. For the moment, it must be stressed that the East African States need to re-examine their practice towards aliens. The States also need to respect their duties towards aliens not only under international law, but also under the very laws that they, themselves, make relating to aliens. Government assurances and utterances given to aliens are valueless without a fair and just implementation of them. The Government policies of "Africanization" - which we shall be examining in detail in the next Chapter - have prevented every possible promotion of the fundamental international legal principle of equality of treatment. Whether, therefore, "Africanization" means "equalization", "localisation" or "blackenisation" is a matter to be clearly determined not only in policy but in law as well. The point we must make and remember at this juncture is that if a "Africanization" means "equalisation", then equality of treatment should be ensured at all levels and to all citizens. As currently implemented, "Africanisation" in East Africa means, in the writer's view, "blackenisation". This being the case, either a new expression should be formulated and substituted for the term "Africanisation", or the latter should be given its right meaning.
Although the East African Law of Aliens conforms, in general, to the international rules governing the position of aliens, it must be remembered that the East African law considerably deviates from the international rules. We have expressed this view before. Deviations are found in the existing laws. And the non-existence of some of the essential laws, whether throughout East Africa or in some of the East African States, is a deviation per se from the international rules. Thus there is no separate or clear law, anywhere in East Africa, on asylum and statelessness. Kenya has no separate law to control refugees. Tanzania has no law on vagrancy. Uganda has no clear law on nationalisation, although she has laws on the transfer of Asian businesses and on participation in companies. Apart from legislation on the nationalisation of the Kenya Broadcasting Service, Kenya has no law on nationalisation. Uganda has no general law on the transfer of business, which is an important aspect in the Africanisation policy. Whereas in Kenya nationalisation is done by the Minister "for the time being responsible," in Tanzania and Uganda, the power to nationalise is vested in the President. This is what the laws say. On the question of work permits, the duration of these permits is not specified anywhere in the laws. The understanding is that any offer of a job to an alien - whether on contract or not - is intended to make that alien prepare a citizen or citizens to take over. Even here, the law is violated in practice, which reveals that African citizens only take over. Non-African citizens are discriminated against. And yet the laws state that working aliens in the Africanisation programmes have a duty to prepare citizens to take over.
The laws of Kenya relating to aliens tend to be more detailed than those of the other two countries. For instance, Kenya has two laws on extradition:

(a) The Extradition (Contiguous and Foreign Countries) Act, 1966 (29/3/66), revised in 1967, and inserted by Act 65 of 1968, which became:

(b) The Extradition (Commonwealth Countries) Act (revised in) 1970. Of these two Acts, the latter is the more detailed. However, the crimes enumerated in it are basically the same as those appearing in the Kenya Extradition Act of 1967 — and of course in the Extradition Acts of Uganda (1964), and Tanzania (1965). Another little observation worth making here is that the laws of Kenya are specific, whereas those of Uganda and Tanzania are usually general. In Uganda, the Immigration Control Board (comprising a minimum of 6, but a maximum of 8, people and a Chairman) does what the Principal Immigration Officer does in Kenya and Tanzania. However, the Uganda Control Board has power to delegate some of its functions to the Uganda Principal Immigration Officer or to some other authorised immigration officer.

With the practice and law concerning aliens in East Africa in mind, and taking into consideration the present legal position of aliens in the region, the writer recommends as follows:

(i) The East African States should respect the laws they make, and the principles of international law governing the status of aliens. The States should carry out bona fide their obligations arising from international law and their membership in the Society of "Civilised States."

(ii) The East African States must not only accept the fact that they are multicultural societies, but they must live up to the "civilised" requirements (international
and national standards) of such societies. Racialism and racial
discrimination must hence be vehemently rejected, and completely
eradicated whenever they exist or crop up. It is most unfortunate
that international law recognises discrimination in certain fields.
It is, for instance, under the "approval" of international law to
prohibit aliens from owning or operating certain kinds of business.
East African countries are among the States of the world which
practise this type of discrimination. But it must be remembered
that international law itself is not perfect. Some of its rules
on aliens are still vague, confusing, incomplete and even un-
codified. This means that individual states - including the East
African States - have a duty to work for the perfection of
international law. What the states of the world need is to
develop the international law of aliens through international
conferences and the international organs available to them, such
as those of the United Nations. What is needed is to modify
international rules that will regulate, in clear terms, the
position of the individual in international, and even national law
with full consensus. Removal of the weaknesses of international
law is hence the first condition for the improvement of the legal
position of aliens wherever they may be. Multiracial and multi-
cultural societies like those of East Africa perhaps need the
position of aliens to be put right more than any other states.
(iii) It is essential that Uganda and Kenya should specify,
expressly verba, their laws relating to aliens. For example,
the duration of work permits should be specified. This would help
remove some of the ambiguities existing in the laws.
(iv) The East African States must enact the "missing" laws of
aliens. For example, there is an imperative need for a law on
stateless persons. The purpose of enacting "missing" laws is to
make the East African laws of aliens more uniform than they are.
to-day. The fact is that East Africa has a common area of laws of aliens. For example, the countries have a common passport area. Permission to enter East Africa is granted in the form of visas, passes, permits, certificates, traveller's documents and the like. All these documents are issued under very similar conditions. For example, any alien working in a specific place and on a specific job may not change his employer and use the same work permit in another place without the permission of the immigration authorities.

Also workers within the East African Community, or travellers within East Africa who are East African citizens - whether travelling by air, sea or road - do not need visas to enter another East African State, although it is advisable to carry some identity document with them. The laws of Uganda and Kenya on control or restriction of aliens are identical. And although there is no such separate law in Tanzania, the latter's legislation on immigration incorporates provisions relating to the control of aliens. Many more examples could be given to show that East Africa has a common area of laws relating to aliens. All, therefore, that the East African countries need to do is to consolidate their aliens laws and make them more identical.

We shall end this chapter by observing that the legal position of aliens in East Africa will be improved if the East African countries remove:

(a) The elements of hypocrisy in their practices and attitudes towards aliens in the region;

(b) The elements of discrimination in the existing laws;

(c) The deviations in the existing laws from the requirements and rules of international law;

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(d) The deviations in the countries' practices from both the requirements of international law and the existing East African municipal laws of aliens;

(e) The lack (that is, if the states enact) of certain essential laws relating to aliens.

The improvement of the place and role of aliens in East Africa will also depend upon:

The attitudes of aliens themselves towards the Governments and citizens of the three countries, the attitudes of East African citizens towards aliens in the region, and the policies which the East African Governments will adopt, plus the manner in which the Governments will fulfil their duties, under international law, towards aliens.
CHAPTER SEVEN

THE QUESTION OF STATE RESPONSIBILITY FOR ALIENS IN EAST AFRICA IN THE LIGHT OF INTERNATIONAL LAW AND DIPLOMACY

Two questions can rightly be asked in the introductory remarks of this Chapter: What is state responsibility in the light of international law and diplomacy? What is the rationale behind it? To respond to the latter question, it will become clear in the course of this Chapter that there are many reasons why it is essential to hold states responsible for their acts or omissions, whether unlawful or lawful, which they may do to other legal persons. These reasons include the need to maintain a unified social and economic order for the conduct of international commerce and intercourse among different states; and to protect not only travellers and alien nationals and investments, but also property interests and rights in the international field. All these interests and rights, besides aliens - i.e., both physical and legal persons - and alien investments, certainly require the diplomatic and judicial protection of international law. In short, therefore, it is necessary to have state responsibility because we live in a world of interdependence.

As for individual rights and interests, it is a firm doctrine of international law that every state has a duty to respect the rights of man.

As regards the first question "what is state responsibility?", it is instructive to note that there is no definition of state responsibility as such. What is given is the "nature" or the "constituents" of state responsibility. Responsibility is the essential corollary of a right. Therefore, all rights (which are legal rights) of an international nature involve international or inter-state responsibility. State responsibility in relation
to international duties (which, in customary international law, are lawful) is thus a legal responsibility.\(^1\) This means that any violation, whether by act or omission, of any duty created by a principle of international law, automatically establishes a new legal relationship between the subject to which the act is imputable, who is under a duty to respond by making adequate reparation, and the subject who has a claim to reparation because of the violation of duty.

It also means that every violation of an international legal duty (that raises international responsibility) constitutes what is known as international delinquency. This is any injury to another legal person (normally a state) committed by the Head or Government of a State in violation of any international legal duty, or acts of the judiciary, officials or other individuals commanded or authorized by the Government or Head of State. The expression "international delinquency" applies both to wrongs comprising treaties, and to wrongs independent of treaties. An international delinquency is also known as international delict or international tort, and they all mean an illegal act or a breach of duty which results in loss to another state or legal person. In municipal civil law, it will be remembered, a tort is a wrongful act for which a civil action lies, barring one that involves a breach of contract.

State responsibility essentially comprises three "constituent" elements:

1) An act or omission that violates a duty created by a principle of international law in force between the state responsible for the act or omission and the state injured thereby.

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ii) The illegal omission or act must be imputable to the state as a legal person; and

iii) Loss or damage must have resulted from the illegal act or omission. In other words, international duties or obligations arise when the following elements come into existence:

a) The element of "ad invitus": by which the violation of any international duty is ruled out by prior consent, and healed by retrospective consent or acquiescence. The violation must hence be ad invitus, i.e., against the will of the complainant ("volenti non fit injuria", that is, no injury is done to the willing).

b) The element of lack of justification: to constitute a violation of an international duty, an act or omission must be unjustified.

c) The element of attributable and voluntary character of the violation: by this element, a violation is confined to acts or omissions which, in the light of ius sequum (c.v., infra), are both attributable to a subject of international law and voluntary. This element mainly occurs in relation to violations of treaties.

By ius sequum is simply meant the spirit of reasonableness and good faith, that is, equitable, without malice, and distinct from ius stritum. The ius sequum rule determines, in the I.C.J.'s terminology, whether an act or omission is attributable to a subject of international law. The rule does not allow any attribution of an involuntary act or omission to such a subject.

In the case of treaties, the ius sequum rule requires a party to a treaty to do everything in its power to prevent or remedy any transgression or contravention of the treaty. Thus a neglect of a treaty may be defined as an unjustified non-compliance, against the will of another party, with a treaty in circumstances
in which, in the light of the *ius sequum* rule, such an act or omission is attributable to a contracting party, and voluntary.

It is worth remembering that there are two types of state responsibility: "original" responsibility which is borne by a state for its own i.e., its Government's actions or omissions, and such other actions or omissions of the "lower agents" or private individuals as are performed at the Government's command, or with its authorisation. Apart from this type of responsibility of a state for a neglect of its own duty, there is also "vicarious" state responsibility, which states bear for acts or omissions other than their own, i.e., for certain unauthorized injurious acts of omissions of their agents, officials, subjects, and even of such aliens as are for the time living within their territory. This is, in reality, the responsibility which a state bears for the neglect of the duties of its organs.

Lack of room here does not permit us to elaborate the duties of state organs for which states may be responsible. It will be enough, therefore, to remember that by state organs - which are legislative, administrative, executive, and judicial organs - that may violate international law and thereby raise state responsibility must be understood to mean any organs, whether authorized or not, who have occasion to exercise domestic and/or foreign functions.

It should also be remembered that international delinquency does not arise in cases where individuals - whether state organs such as Heads of State, Government ministers, officials or corporations - act outside their official capacity, i.e., act for themselves and not for their state. Thus the latter incurs international responsibility if damage is sustained as a result of unauthorized acts (or omissions) of its officials performed
under cover of their official character, if the acts contravene the international obligations of the State. 2 States thus definitely bear vicarious responsibility for all acts or omissions precisely for lack of prevention or repression — for lack, for instance, of discipline, investigation, arrest and punishment. But, and it is a big but, acts or omissions resulting in vicarious responsibility do not in any way amount to international delinquency. And this because no direct state responsibility exists where there is "no colour of official proceedings".

A question that arises now is whether injurious acts or omissions can, in any way, be justified. The response to this question must be given in the affirmative, since there can be, and certainly do exist, cases in which an act or omission causing damage or loss may be justified. For instance, consent given because of force, deception or error is justifiable even if it is injurious to legal rights and interests. Similarly, self-defence, sanctions or reprisals can be legal, and hence justifiable. As such, they do not give rise to state responsibility for any resulting loss or damage. The same goes with necessity which may compel a state to save itself from a huge and imminent danger uninduced and unescapable by the state.

A question of great significance is that of reparation. The above arguments provide enough evidence that it is a fundamental principle of international law that any violation of an international duty constitutes an international tort. The commission of this tort obviously involves the duty to make reparation, for the injury caused, in an adequate form. The key expression is "compensation", and its purpose is to restore the status quo ante, i.e., to eradicate all the consequences of the international tort and to re-establish the situation existing prior to the commission of the wrong.

Reparation or compensation may be made in three different ways: either in kind or restitution (restitutio in integrum), in money or indemnity, or in satisfaction. Compensation in kind has the aim of re-establishing the situation which would have existed if the wrongful act or omission had not occurred, by performance of the obligation which the state failed to discharge, revocation of the illegal act or obetention from further wrongful conduct. Compensation in money is given especially for other than material damage. It is the most normal form of reparation. Satisfaction is the form of reparation for non-material damage or moral injury to the personality of a state. Satisfaction is hence any form of non-pecuniary—and hence it is not compensation—reparation which is not restitutio in integrum.

Satisfaction cannot, therefore, lead to actual restoration of the status quo ante. Its primary purpose is to repair breaches of international duties in cases in which such breaches do not entail any actual damage, or pecuniary compensation is either inappropriate or inadequate.

It must be re-emphasised now that any refusal by a state or any other legal person to comply with the requirements— as outlined above—to pay appropriate compensation and other forms of reparation of the wrong done establishes an international delinquency. We must further remember that forms of reparation include apology, ceremonial honours to an insulted flag, punishment of wrongdoers (a state's nationals), and so forth. It is also noteworthy that "vicarious" responsibility turns in se facto into "original" responsibility for a State that refuses to comply with the above requirements.

In summary, it is clear that acts and omissions can be classified as unlawful by reference to the rules creating rights
and duties. Although state responsibility involves the occurrence and repercussions of unlawful acts, and especially the payment of compensation for loss or damage caused, we must remember that state responsibility may arise and involve the payment of compensation for the consequences of lawful or "pardonable" acts and omissions. For example, nationalization with delayed, ineffective, inadequate and discriminatory compensation. International obligation relates both to violations of treaty and to other violations of a legal duty. Responsibility of a state can either be "internal", i.e., towards its own subjects, or "external", i.e., towards other states as legal persons.

The question of legal personality in relation to individuals is tricky. It is widely accepted that states, which are the normal legal persons, are responsible only to other legal persons, and not to individuals, who are normally objects of international law. What, however, is still disputed is the question — many authorities on international law hold contrasting views on this question — as to whether individuals are, or can be, legal persons in the eyes of international law and diplomacy. As far as the present writer is concerned, he staunchly supports any arguments along the following lines:

As far as international responsibility is concerned, it must be remembered that individuals, though only objects of international law, have capacity to make claims, and the right of access to international tribunals. They thus have the capacity to bear responsibility on the international plane for violations of international law. Most writers argue — and rightly so — that individuals are not subjects of international law, and as such, they do not bear any responsibility for violations of international duties imposed by customary international law, simply because these
duties can only rest upon legal persons — most notably states and governments. Similarly, it is widely argued that individuals cannot bring international claims. But, and this is a major but, international law as such does not express in verba expound any thesis that individuals cannot possess some measure of legal personality. In fact, individuals do have legal personality, for certain ends. For example, United Nations officials have brought disputes for settlement before U.N. administrative tribunals, and there is no doubt that they have done so not as "legal objects," but indeed as "legal subjects" in the eyes of international law. Thus, international agreements may, and do offer procedural capacity upon individuals before individual tribunals.

Thus, although the assumption of the classical law is still dominant that only states have procedural capacity before international jurisdictions, individuals also do have it, and many of the disputes brought before international courts for settlement quite often concern losses suffered by individuals. There is no doubt, as Oppenheim argued in his book, that individuals are subjects of international delinquencies. Thus individuals are not the normal subjects of international law, but they are subjects of international delinquencies "to the extent to which they are made subject to international duties, and consequently of international "law". Also, sufficient evidence exists to warrant the conclusion that individuals bear (international) responsibility for any acts or omissions which constitute a crime. They can bring claims against states, and this right to bring claims by individuals against independent, sovereign states has been inscribed in several multilateral treaties, including the famous Hague Convention XII.

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3 This question was exhaustively discussed in the Introduction to Joxi. van den Berg, "(unpublished) The Legal Position of the United Nations, and of Other International Organizations, " (unpublished, 1969).
of 1907, which created the International Prize Court. From the above considerations, it is not difficult to see that the available historical materials on the subjectivity and legal personality in international law provide sufficient evidence that individuals can be held responsible for acts or omissions which they may incur. International responsibility has been imputed directly to individuals for offences of piracy, for war crimes, for crimes against peace and humanity or genocide. Individual responsibilities in international relations have had the nature of international criminal responsibility.

For certain purposes, therefore, and in certain cases, individuals are subjects of international law, and as such, they have legal personality, that is, they are legal persons.

Having discussed in general terms the meaning of state responsibility in international law and the position of the individual in it, it is now necessary to examine the responsibilities of the East African States, for aliens in the region, against the background of the theory and practice of international law and diplomacy.

The responsibilities of the East African states for aliens in East Africa are certainly the legal duties of the states which arise, or may arise, as a result of any violation, by these states, of any legal interest of any alien in East Africa. The question of state responsibility for aliens in East Africa, therefore, involves both the legal rights and corresponding legal duties of the countries towards aliens, and of the latter towards the former. The rights of the East African nations actually appear in the form of "Government policies" towards aliens in the region. These policies or rights include:

1) The right to 'localise' the various sectors of the economy;
2) The right to nationalize the various industries and resources or to expropriate the property of aliens;
3) The right to try aliens;
4) The right to punish aliens;
5) The right to detain or imprison aliens;
6) The right to deport aliens;
7) The right to extradite aliens; and
8) The right to self-defence.

Corresponding to the above rights are the duties of the East African states, interf alic, to compensate for any Africanizations or nationalizations of any alien properties; to offer aliens easy access to the courts; to prevent denial of justice to aliens and discrimination of any kind against aliens, whether in law or in practice; to treat aliens in accordance with the requirements of international law and to recognize and respect their right to self-defence and to their private property; to respect international conventions on, for instance, discrimination and statelessness; to protect the human rights of aliens which are, in reality, legal rights; to respect their own laws of aliens and to remove the loopholes in these laws either by improving on the existing laws, or by enacting new ones that are required to regulate the legal position of aliens in East Africa. There is no doubt that the above duties of the East African countries constitute the legal rights of aliens in the region. It must, however, be remembered that aliens also have duties in East Africa. Their primary duty is to comply with the laws of the three states. As we have seen, these laws and the practice in East Africa are, in general - but only in general - in line with the requirements of international law. There is still plenty of room for improvement.

Paramount among the responsibilities of the East African
States towards aliens in the region in their duty to protect aliens. This grave responsibility involves both personal and property rights of aliens in East Africa, and a breach of these rights naturally establishes responsibility for the East African States. Property rights of aliens in East Africa have been affected by the so-called "Africanisation" programmes launched after independence by the East African Governments.

As we have indicated in the previous Chapter, 'Africanisation' is an expression which has been interpreted variously and confusingly. Thus in the understanding of most people in East Africa, and the East African Governments themselves, "Africanisation" means "blackenisation", that is, transferring the country's economy and resources to black citizens. This interpretation of the expression is unacceptable particularly to those non-black citizens of East Africa, like Asians, who affirm that their possession of East African Citizenship entitled them to the enjoyment of rights and privileges, emanating from that citizenship, on an equal footing with any other citizens, of East Africa. In this connection, it is of interest to note, as an example, the remark which one Asian citizen of Kenya has emphatically made to the writer: "My problem is indeed an 'African' one. I was born here, as a Kenya citizen, etc. I was privileged as a child and we (the Asians) have had it good. I have tried to identify myself with Kenya but the Africans are not willing to accept me for what I am - a true Kenyan. Where do we go from here? What is the solution to this problem?".

According to other people, 'Africanisation' means "nepotism" or tribalism. Others still believe that the expression means "localisation" or "equalisation". Here, the elements of "nepotism" and "colour" are completely non-existent. What exists, and must
be borne by the claimant, is the burden of proof that the claimant is a citizen. This latter group of people call for equality of opportunity and treatment of all citizens. In other words, "Africanization" should mean, in the opinion of this group, "Kenyanization/Ugandanization/Tanzanianization". The present writer belongs to this group of definers of the expression. "Kenyanization", then, should not be interpreted as meaning "nepotism" or "blackenization". "Kenyanization" of the economy, for instance, does not mean, in the understanding of this writer, transferring the economy to Africans. Many people and the Kenya Government authorities have very mistakenly interpreted the expression 'Kenyanization' to mean 'blackenization'. 'Kenyanization' the economy simply means transferring the economy to Kenya citizens.

In this sense, "Kenyanization", means "equalization" or "localization", or better still, "citizenization". Unless this point is properly understood and the present practice of "localization" adjusted, the charge of discrimination will continue to be made, against the East African Governments, and currently so, in the writer's opinion. The same can be said of "Ugandanization" and "Tanzanianization". The above observations should help establish, both in policy and in law, generally accepted definitions of "Africanization" and "Tanzanianization/Ugandanization/Kenyanization". Detailed errors of "Africanization" and "citizenization" in East Africa will be examined in a later place. At the moment, we must note that "blackenization", "brotherization" and "tribalism" have been the greatest impediments to the policies of "Africanization" and "citizenization".

We should also remember that initially, 'Africanization' meant administrative reconstruction, whereas political reconstr-
Construction meant, after independence, transferring political power and influence from the former Colonial Powers to the Africans. The results of the administrative reconstruction were, inter alia, employment of Africans mostly, if not solely, into the civil services of East Africa; the replacement of many non-African civil servants by African civil servants; and the "bad quality jobs" performed by the inadequately educated and untrained Africans.

But that was a matter of Government policy, and there was, therefore, nothing that one could do about that major policy of Africanisation. The central purpose of that policy was to integrate Africans into the economies of the three countries. Economic establishments were formed for the realization of that policy. They assisted Africans in projects, loans, industrial and commercial ventures, and so on. Programmes were introduced of training Africans both locally and overseas.

Africans greatly helped in the realization of the local programmes. Thus close economic integration was a good condition of preventing racial isolations in East Africa.

Similarities exceed variations in the doctrine of Africanisation in the three countries of East Africa. In Tanzania, however, emphasis is put on the doctrine of "socialisation". But the central aim of the three Governments is one and common: to improve the living standards of Africans, and to ensure the control of both private and public institutions by the Africans. Their aim is thus to strengthen the system of "black capitalism" that the Governments introduced (to replace the old colonial "non-black capitalism") soon after the political independence of the three countries. No doubt, the new system has greatly influenced race relations in East Africa. This is clearly illustrated below.
We have seen that the colonial masters in East Africa introduced a work system whereby Europeans were put into top decision-making places both in the public—i.e., Government—and private sectors of the economy. Asians occupied the middle-class ranks, and to Africans were given the low, unspecialized jobs. Such a situation of imbalanced opportunities gave rise to African resentment and nationalist demands for equality of opportunity and development. African nationalism thus stressed priorities for Africanisation and "black capitalism" development.

As early as 1943, Jomo Kenyatta explicitly made African feelings known to the Europeans on the topic of equal opportunity. He said:

"Let the Africans have equal educational facilities with the Europeans, and leave them free to make the best use of them. Give them an equal chance of economic enterprise, equal opportunity in business and the professions, and a say in the Government of the country. If they then show themselves unequal to the strain of Western civilization, they will have no right to resent being treated as a backward race."

What the new East African Governments have set out to do in their Africanisation policies has been to "Africanize capitalism", i.e., to blend African opportunity with the continued operation of the private enterprise system. A significant aim of the Africanisation programmes has been to remove the remnants of the colonial, racial imbalances that were carried over the colonial borders into the post-independence era.

One of the fields mostly affected has been that of incomes policies. At the time of independence in East Africa, Africans came to man most of the places in Parliament and Government,

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besides the policy-making positions in the civil services. However, the racial structuring of opportunity remained unaltered in the technical, scientific and professional spheres, and in private industry and commerce generally. The truth, therefore, is that alien control over investment was too full to be shaken by the mere attainment of political independence by the East African countries. That colonial status quo in post-independence East Africa was resisted by Africans.

The idea of racial balance in independent East Africa is contradictory to that of maintaining some form of economic efficiency. A closer examination of these two ideas reveals as follows.

The African demand for Africanization was part and parcel of the wider nationalist drive for racial balance and equality. Africans demanded, for instance, that Asian businesses should be Africanized; that the East African Governments should force Asians to leave East Africa and reallocate the left-over Asian businesses to Africans. These demands were, as we shall observe, realized after 1967. This writer is of the view that the demands were realized in an irrational and racial manner. The aim of the Africans was to subject the Asians, and yet the real blame for the then existing situation went to the European colonizers. In any event, there could be no justification for the violation of individual, human, property and constitutional rights for the sake of racially founded and totally unjustified African group rights. The demands for rapid Africanization were, in the writer's opinion, very much mistaken, since their implementation could only result in extensive harm to the economic development of the region. The contribution of the so-called "out-groups" (Asians and Europeans) to the region's development - economic, political and otherwise - has already been discussed.
Putting right the past racial inequalities could not, and did not mean introducing an Africanization policy based upon racialism. This was, unfortunately, the implication of the demands in Kenya and Uganda. The Africanization policies in these countries have not tallied with assurance of equality and fair policy. The utterances of the African leaders cannot alone guarantee a future of the immigrant communities in East Africa. Nor can they give the communities equal rights and opportunities with Africans, which should be the purpose of Africanization.

No wonder, President Nyerere of Tanzania has revoked Africanization in favour of "localisation". Africanization should not be implemented at the cost of the required standards in East Africa. These standards include the right qualifications, experience, ability to do the job, and efficiency. Africanization should be accompanied with equal treatment under the law for all citizens, property safeguards as well as recruitment policies, stressing individual achievement and merit. Further, the Africanization policy should aim at eliminating the effects of the old racial imbalances in East Africa. The present trend of the policy clearly indicates that the clash between development demands and equity (i.e., the fundamental revision in the priorities of colonial times) is widening, and is increasingly not simply of racial interests, but of class interests, of tribal interests.

So that the situation of employment and of tribal or racial inequalities in the now so-called "Africanized places" is far worse than it used to be before the introduction of the Africanization policies. Thus a properly experienced labour force is still scarce, and the truth is that it will be long before, to use the late Tom Mboya's words, this "gigantic shortage"6

of trained and experienced personnel can be completely removed. It seems that the duration of the "gigantic shortage" will depend on such forces as the sufficiency of the educational system to deal with the future needs, the rate of the economy's growth, the level of wastage, the attitudes and contributions of the population, both citizens and otherwise towards the region's economic development, and so on and so forth.

The foregoing discussion provides enough evidence to warrant the conclusion that the policies of Africanization in East Africa — and indeed elsewhere in Africa — raise many complex problems. The cons are just as many as, if not more than, the pros of Africanization. In this writer's view, the ideals of Africanization are excellent, but the methods of implementing it in East Africa are terribly erroneous.
The Africenization policies are inconsistent in many ways, and indiscriminate. "Africenization" should be defined - and applied accordingly - simply as "the policy of recruiting citizens for existing high-level positions both in the private and public (Government) sectors of the economy, rather than creating new opportunities". Similarly, great care must be taken not to confuse "Africenization" with "Tanzanization/Ugandanization/Kenyenization". The crucial element in the latter term should be that of citizenship and not colour. However, how no matter the East African Governments define the term, and how no matter they decide to implement their Africenization policies, the Governments have a legal responsibility to compensate promptly, effectively and sufficiently where necessary for any take-overs of non-African businesses; to avoid discrimination, both in law and practice, and any other form of unfair or preferential treatment; and to shun corrupt practices in
their Africanization programmes, which should never be used as excuses for Government malpractices, or as tribal or racial inequalities in East Africa. Where equity and development demands collide, the latter should, in the writer's view, prevail.

The same applies to the nationalization policies of the East African States. In Kenya, the ambiguity in the Government's policy on land makes it difficult for one to determine as to whether it is a policy of Africanization or nationalization. It seems, however, that the central purpose of the policy is to transfer land from aliens to black citizens of Kenya. If this is true — and it would appear that it is - then the Government's land policy is one of Africanization of land. This is perhaps the reason why Parliamentary back-benchers in the Kenya National Assembly have on several occasions demanded an immediate amendment of section 75 of the Constitution (which deals with protection from deprivation of property) to facilitate immediate transfers of land to Africans. Some of the backbenchers have demanded that land should be given to Africans free of charge; others have charged that a lot of unfair land distribution, corruption, tribalism, discrimination and the like have characterized "resettlements" of Africans on land. It has also been charged that the Government's land policy has favoured not only the so-called "big shots", but also aliens.7 During the debate on the supplementary vote for the Ministry of Lands and Settlement, held in October, 1972, the backbenchers strongly criticised the above land policy and urgently called for its revision. Mbiu Koinange, however, the Minister of State in the President's Office, and other Government spokesmen rejected, as usual, the above allegations as false. President Kenyatta

7 See, for instance, "The Daily Nation" of Wednesday, October 11th, 1972 (Nairobi) p.4.
himself said his Government "had already given 1,000,000 acres of land, formerly occupied by aliens, to the landless Wamochi (Africans)." The President, however, admitted that it would take some time before land transfers to Africans would be completed. That statement indicated that land in Kenya was being Africanized, and not nationalized. Thus although the land policy in Kenya is terribly vague, the above observations on the land question do not in any way suggest that there have never been full blown demands for nationalizations in the country. But the Kenya Government has, as we observed in an earlier place, shown in its words and deeds that it does not favour the doctrine of nationalization. As we saw in Chapter VI, the only Kenya law that has called for nationalization has been the Kenya Broadcasting Corporation (Nationalization) Act No. 12 of 1964 (Revised Kenya Laws, 1970, Cap. 22).

Government spokesmen have on many occasions expressed the view that nationalization is not necessary in Kenya. Sheikh I. B. Beala, for example, an Assistant Minister for Finance, remarked in 1964 thus:

"Nationalization would be merely to misuse scarce capital resources......" Thus the Kenya Government has not only given repeated assurances in statements and practice but also in law. Its Foreign Investments Protection Act of 1964, for instance, guaranteed that:

"No approved enterprise or any property belonging thereto shall be compulsorily taken possession of, and no interest in or right over such enterprise or property shall be compulsorily

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9 See "National Assembly Debates" (Kenya), Vol.XVI, 6th session, September 4th, 1968, Col. 166.
acquired, except in accordance with the provisions concerning compulsory taking of possession and acquisition and the payment of full and prompt compensation contained in section 19 of the Constitution of Kenya. Hence this law has acknowledged Kenya's responsibility to compensate for any expropriation of private property. From the above law, and as we have remarked before, nationalisation in Kenya is not impossible.

In Uganda, the Government's policy regarding nationalisation has never been ambiguous. Already in the First Republic under President Milton Obote's leadership, it was clear that nationalisation in Uganda was a "great possibility". The country's tendency towards socialization - perhaps under Tanzania's influence - was apparent. In the Second Republic under President Amin's leadership, nationalisation has become a "great practicability". Thus in December, 1972, just a year after his assumption of power after ousting President Obote, Idi Amin Dada and his Government decided to nationalise 15 alien companies, 14 of which had been British-owned, and a major American-owned company known as the International Television Sales Ltd. The nationalized British-major companies were: the British-American Tobacco (B.A.T. Uganda) Ltd; Brooke Bond Oxo (Uganda) Ltd; Killington Tool Company; Consolidated Printers; Securicor (Uganda) Ltd; British Miller's Corporation; the Uganda Transport Company, and the British Metal Box Corporation. The thither was almost exclusively White Kampala Club was also among the companies taken over by the Uganda Government. The Club, now known as the "Government Club", is used by the

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President and his Cabinet for discussing state affairs and entertaining visiting Ministers. The Presidential decree also stated that 26 alien tea estates had been nationalized. Of these, 20 had been wholly or partly British-owned. Some others had been Greek-owned. Only one month after the announcement of big company nationalizations, President Amin informed the Acting British High Commissioner in Uganda, Mr. A.H. Briand, that Uganda would also nationalize another 500 British Companies, representing about 90 per cent of British interests in the country.12

We should also note that the Uganda Government under President Amin's leadership has also nationalized (acquired) businesses of many Asians that were expelled from that country in 1972. This question shall be elaborated in the next Chapter. Again, Uganda is also under a legal responsibility to compensate for its nationalization of the foreign firms. The question of the responsibility of each East African State to compensate for any nationalizations it may effect will be treated below.

As regards Tanzania, nationalization is a clear policy. It is one of the major policies in the Tanzania's "socialization" system. Practical aspects of the doctrine of nationalization in East Africa first appeared in that country. Its Acquisition of Buildings Act of 1972, for instance, expropriated properties from landlords and thereby prompted the nationalization of more than 3,000 buildings. It is of interest to note that, whereas in Kenya Parliament has sharply been divided over the nationalization issues, in Tanzania, there has been no such marked division. Thus the immediately afore-mentioned Act was unanimously enacted by the Tanzania Parliament (National Assembly).

12 "Daily Nation", Friday, January 5, 1973 p.1
The Act empowered President Nyerere to acquire for the State the above properties valued at more than £5,000 and rented by private individuals.

A relevant question which one can ask now is, Are there any legal aspects of the nationalizations in Tanzania, and if so, are they of any significance to our present research?

The response to these questions must be given in the affirmative. It should be noted in passing that, apart from the nationalisation of the Kenya Broadcasting Corporation in 1964, and apart from the steps of nationalisation taken by the Revolutionary Council in Zanzibar since the Keramec-led Revolution of 1964, no nationalisation had been experienced in East Africa until the nationalisations in Tanzania of February, 1967. In that month and year, Tanzania took a conclusive step towards socialism with the adoption of the so-called Arusha Declaration at a meeting of the TANU National Executive Committee, a policy statement later adopted by the Party Conference. The Declaration outlined a national policy of socialism and self-reliance; TANU was described as a party of peasants and workers; economic development of the country would be based upon agriculture rather than on alien-supported industry, and the behaviour of landlords was subjected to the Nationalisation (Motor Car Trade) Decree No.15 of 1966 in Zanzibar. For general information on nationalization of alien property, see, for instance:

(3) I. Feischl: "Nationalisation" - Het Nordisk Forlag Arnold Busck, Copenhagen, 1937;
(4) K.J. Karlstrom: "Concession Agreements and Nationalisation" - 32 A.J.I.L., 260 (1935);
(6) S. Friedman: "Expropriation in International Law" - London: Stevens & Sons Ltd, 1953;
to stricter rules. On public ownership, the Declaration stated:

"The way to build and maintain socialism is to ensure that the major means of production are under the control and ownership of the Peasants and Workers themselves through their Government and their Co-operatives. These major means of production are: the land; forests; mineral resources; water; oil and electricity; communications; transport; banks; insurance; import and export trade; wholesale business; the steel, machine-tool, arm, motorcar, cement and fertiliser factories; the textile industry; and any other big industry upon which a large section of the population depend for their living, or which provides essential components for other industries; large plantations, especially those which produce essential raw materials."

The National Executive Committee's call to the Government to implement this policy was promptly responded to by the Government. Within a week, all the commercial banks were nationalised, besides 12 importing and exporting companies. Also, 8 milling companies with associated food manufacturing interests were nationalised. The National Insurance Corporation was brought completely under public ownership, and was to acquire a monopoly of insurance. The Government was to be empowered to acquire compulsorily up to 60 per cent of the shares in 8 industrial companies.

The above decisions were given legal sanction after a two-day session of the National Assembly. The latter unanimously approved the Bills without detailed scrutiny. Even outside Parliament, the nationalisations were enthusiastically welcomed. The Government then stated that it had no further plans for nationalisation, and that within the non-nationalised fields - such as those of the sisal estates-private investment would still be welcomed.

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The main argument was that it was essential to nationalize most of the alien-owned companies if Tansania was to conduct its own development properly. It should be remembered that the non-nationalisation of the large private sector was indicative of Tansania's sustained interest in receiving foreign capital and private investment.

Kenya and Uganda have not followed Tansania's nationalisation strategy, but we must remember that Kenya's attitudes to nationalisation were consequently outlined in two White Papers. Thus before we turn to a closer examination of the legal aspects of the nationalisations in Tansania, we should remember that the significance of the nationalisations was outlined in the Arusha Declaration. It is most unlikely that the changes to public ownership made in 1967 will be reversed. To this extent, the future pattern of Tansania's industry and economy was set.

As a legal institution, nationalisation can be defined as the compulsory transfer to the state of private property dictated by economic motives, and having as its purpose the continued and essentially unaltered exploitation of the particular property. A nationalisation step is hence one which sets in motion a legal process whereby private rights and interests in property are compulsorily transferred to the State or to some organ established by the state with a view to the future exploitation of those rights and interests by, and for the benefit of the state. In short, then, nationalisation is the transformation, in the public interest of a superior kind, of specific assets or activities which are means of production or exchange, into the assets or activities of the community with a view to their utilisation in the public interest.

The importance of the above legal definition of nationalisation lies in the fact that nationalisation may be distinguished from expropriation or compulsory purchase of particular pieces of property, of which the typical instance would be acquisition of land by a public authority for public purposes.

Also, nationalisation is distinguishable from confiscatory or discriminatory measures aimed at certain individuals or groups of individuals which have a punitive or retaliatory aspect. However, see "Sessional Paper No. 10 re: 'African Socialism', Kenya Government, 1965; and "Work for Progress", Uganda's Second Five-Year Plan - Government Printer, Entebbe, 1967, and "The Common Man's Charter" in Uganda, adopted in December, 1969.
the fact is that conceptions of nationalisation and expropriation are related in several respects.

In the case of Tanzania, the measures of February, 1967 were definitely instances of nationalisation. The (Zanzibar) Public Enterprise Decree No.1 of 1966, and the National Transport Corporation Order of 1966 are good instances of permanent legislation enabling measures extending the scope of nationalisation to be taken from time to time. A total of five nationalisation Acts were enacted in Tanzania in February, 1967: 17


d) Act No. 4 of 1967: Insurance (Vesting of Interests and Regulation) Act; and


Of these five Acts, only Act No.1 expressly extends to Tanganyika and Zanzibar. The rest apply only in Tanganyika. They all specify by name the firms to be nationalised, and where businesses of named firms are acquired, the firms fall into two groups: those companies that are registered under the Companies Ordinance: Cap. 212 of the 1947 edition of Tanganyika Laws - currently in force in the country - and those companies which were incorporated under foreign law. In these cases, all the local assets and liabilities are taken over. Assets here include 17 See "Tanganyika Acts", 1967 - Government Printer, Dar-es-Salaam.
all rights under contracts and agreements, besides rights, interests and claims in or to property. In relation to each of the companies, the responsible Minister was empowered to make, and did make regulations modifying the provisions of the Companies Ordinance and the various Articles of Association.

The directors of the nationalised companies were retired from office, but they might be called upon to help in the nationalisation process. It should thus be remembered that, for certain ends, the legal form of the limited company was retained. But nevertheless there is, in general, recourse to the familiar device of the public corporation for carrying on the businesses acquired. As a result of the nationalisation exercises, two new public corporations were created: the State Trading Corporation (S.T.C.), and the National Bank of Commerce (N.B.C.). The existing public corporations — the National Insurance Corporation (N.I.C.) and the National Agricultural Products Board (N.A.P.B.) — received new statutory responsibilities. These four public corporations were actually assigned functions relevant to their fields of activities. The compulsorily acquired shares of the 3 industrial companies were vested in the National Development Corporation (N.D.C.).

The question of compensation for nationalised private assets in East Africa — as elsewhere — is significant, and deserves a closer examination here. The question is significant firstly because of the immediate financial effects of payment, and secondly owing to the effect on foreign sources of capital as regards future investment in the East African states.

The Arusha Declaration of Tanzanias stresses that although plans for development are not to be based on receiving foreign capital, this does not imply or mean that all foreign investment is unwelcome. On the contrary, by declaring that it had no further plans for nationalisation, the Tanzanian Government was,
in fact, encouraging foreign investment in the sectors unaffected by the nationalizations. In that way, the Government was demonstrating that its intentions were genuine in the question of compensation. On the other hand, that demonstration did not mean that the Tanzanian Government was willing to meet any and every claim for compensation that might be made.

All the nationalization Acts — barring the one that created the insurance monopoly — provided, in agreement with customary international law, for the payment of "full and fair compensation". In the case of companies registered in Tanganyika, where all or part of the share capital was acquired, compensation was to be in respect of the shares acquired. In all other cases, compensation was to be in respect of the net value of the nationalized assets. In every case, the responsibility to pay was imposed upon the United Republic of Tanzania.

Although the nationalization laws did not specify how compensation was to be paid, or to whom it would be paid, the laws made it clear that no former director was to be compensated for loss of office. The Government would fix the amount of compensation; the Finance Minister would issue a certificate setting out this amount, which would then be charged on, and paid from, the Consolidated Fund. Further, the Minister would determine the manner of paying and instalments of, the compensation. No legal requirement for Parliamentary or Presidential approval was provided for. In cases of lack of agreement or of compensation, the Tanzania High Court, and on appeal, the East African Court of Appeal, would settle compensation disputes. It is noteworthy that the Tanzania Government Proceedings Act No. 16 of 1967 repealed the Government Suites Ordinance of 1921 (Can. 5 of the "Revised Laws of Tanzania") under which (Ordinance) the Tanzania
Government might only be sued in the courts after permission was first obtained from the Minister for Justice. The Government Proceedings Act of 1967 was, it is also noteworthy, not drafted in the same terms as the equivalent legislations in Uganda (Cap. 69 of Uganda’s “Revised Law”) and Kenya (Cap. 30 of Kenya’s “Revised Law”). These Uganda and Kenya laws were both modelled on the U.K. Crown Proceedings Act of 1947. In any event, the point to be remembered is that had the (Tanzania) 1967 Proceedings Act been drafted in the same terms as the above two laws of Uganda and Kenya, there would have been no doubt that an action to recover compensation due under statute would be under the Tanzanian Act.

The U.K. Proceedings Act provided that the Government could be sued as of right wherever it had formerly been possible for a petition of right to be brought. This same provision is contained in the Government Proceedings Acts of Kenya (S.3) and Uganda (S. 3(b). The Tanzania Act of 1967 simply provides that “the Government shall be subject to all these liabilities in contract, quasi-contract, detinue, tort and in other respects, to which it would be subject if it were a private person of full age and capacity”. The fact, however, is that the Tanzania Government accepted, in that legislation, its duty to pay compensation for the assets it nationalised in 1967.

What we must now re-stress is that the above nationalisations in Tanzania were carried out in pursuance of a policy of socialisation approved and implemented by the country’s political, administrative, and legislative institutions. Further, the nationalisations did not violate any treaty obligations. They do not seem to be discriminatory against alien private rights and interests. Also, the nationalisation laws of Tanzania provide

\[\text{[Footnote: The (Tanzania) Government Proceedings Act, 1967, S. 3(1).]}\]
for the payment of compensation which does not seem to fall below the internationally accepted minimum standard of compensation. It would appear, therefore, that Tanzania did discharge her international responsibilities regarding the questions of nationalization and compensation.

Even if compensation for the nationalizations in Tanzania was inadequate or delayed, the fact is that the nationalizations were legal. For, as the Harvard Draft Convention on the Responsibility of states for Injuries to Aliens stressed, payment of compensation may be by instalment - i.e., spread over a period of years - if and when nationalization is part of a general programme of social and economic reform - a point wholly applicable to Tanzania. Also, there is no indication that Tanzania has violated the international principle that compensation for nationalized assets must be effective - i.e., must be paid in some form which may be utilized by the former owners. Tanzania has fulfilled its obligation here by including the matter in overall agreements on compensation. Finally, Tanzania’s Foreign Investments (Protection) Act - Cap. 533 of the Tanzania "Revised Laws" - protects certain of the nationalized businesses.

The Act actually confers investment guarantees to investors. This will be discussed shortly. At this juncture, it will suffice to stress that the Act stipulates that any nationalization or expropriation of a private enterprise or property must be followed by payment of compensation equivalent to the "full and fair value of the approved portion of the enterprise or property".

For justification of the above arguments, see for instance:

(1) The decision of the Bremen Court of Appeals discussed in Banks, "Indonesian Nationalization Measures before Foreign Courts" - 54 A.J.I.L., 305 (1960);
In the event of a disagreement or dispute between an asset owner and a Government authority, recourse should be had to arbitration.

As in Uganda and Kenya, a large variety of joint business ventures existed within Tanzania before the 1967 nationalizations. The Tanzanian Government compulsorily acquired majority shareholders in the industrial firms, and private buildings were nationalized, as we have explained above, by a legislation passed in 1971. In August, 1973, the Tanzanian Government announced that it would soon start paying compensation to the former landlords whose buildings were nationalized, and who qualified for compensation. Qualifications for compensation included production of the relevant documents, such as tax clearance certificates (income, rent, personal taxes, land rent and rates, urban house and municipal taxes), water and electricity bills, (i.e., documents from the Dar-es-Salaam City Council or Town Councils, Regional Water Engineers’ Offices, and the Tanganyika Electricity Supply Company (TANESCO). The notices of assessment for compensation were issued by the Treasury to the individuals concerned. The interesting thing was that many of the former landlords whose buildings were nationalized were away from Tanzania. They had left the country for Britain, Canada, India and Pakistan to settle there. In those circumstances, only a few hundred people were available for submission of compensation claims. One of the major conditions for payment of compensation was that it would occur only if the building was acquired, purchased or constructed during the period of 10 years immediately preceding the 1971 date of acquisition. A special committee was created to determine payment of compensation, whose value was estimated to be more than £5,000. The compensation was to be paid not promptly, but in 15 years’ time.
This period looks long, but in the usual practice of the developing countries, the period is perfectly normal.

As regards the take-overs of foreign companies in Uganda, Britain formally called on President Idi Amin on Wednesday, December 20th, 1972\(^\text{20}\) for an assurance that all British properties seized in Uganda would be "properly and fairly compensated". The initial capital cost of 94 British estates, firms and properties taken over by the Uganda Government was estimated at around £10 million sterling. The British Foreign Office instructed Britain's Acting High Commissioner in Kampala, Mr. Harry Bird, to advise the Uganda Government in writing that the British Government reserved all rights of nationals in relation to property owned in Uganda. British Foreign Secretary, Sir Alec Douglas-Home, denounced President Amin's actions as "outrageous by any standards of civilized behaviour, insulting and inhuman". In Kampala, President Amin rejected Sir Alec's criticisms of him and said that they did not represent the views of the British people. The General reiterated that the take-over of the British and other foreign-owned businesses were not directed at their owners, "but it was only intended to transfer the economy of the country from the hands of non-citizens into the hands of Ugandans"\(^\text{21}\).

President Amin stressed that the Uganda Government would pay compensation for the businesses it had taken over, but he added that in doing so, the position of Uganda's economy would have to be considered. This last remark was open to many interpretations. For instance, that compensation would not be prompt, effective and sufficient. In any event, President Amin acknowledged Uganda's legal obligation under international law to compensate


\(^\text{21}\) Ibid.
for any nationalization or expropriation. Whether Uganda will honour her responsibility to compensate for the take-overs remains to be seen.

Another important issue that deserves analysis here is the question of alien investments in East Africa. Before we examine the legal aspects of alien investments in the East African context, it is necessary to look at the question in the Kenyan context. The Kenyan case is particularly striking because of the country's dear "capitalist outlook". There is no room here to go into the historical reasons for the love of capitalism in Kenya. But it must be remembered that the immigrant communities, particularly the Europeans always had private capital at their disposal. The fact is that the concentration of the European population in colonised Kenya on the manufacturing and agricultural sectors of Kenya's economy prompted more British substantial investments in Kenya's large-scale industries than anywhere else in British Africa. That fact led to a tight British hold over Kenya's industrial life that remained in effect even after Kenya's independence. In the years 1963-1964, for example, European-controlled firms in Kenya increased their capital by £11,09,870—the highest figure of private capital investment in the country. Private capital investments, whether in European-, Asian- or African-controlled companies greatly increased over the years. It is of interest to note that a large part of major Kenya firms are subsidiaries of London-based companies which are on the London "Times" list of the largest British firms in existence. The London firms with branches or subsidiaries in Kenya include such famous industrial names as Lonrho, Unilever, Delgaty, Mitchell Cotts, Brooke Bond, J. Lyons, Glaze, British Leyland Motors, International

Computers, Oil Companies such as Shell, Transport and Trading
British Petroleum, Metal Box, and so forth.
There are also other well-known Companies of other countries
operating in Kenya. The Government has given repeated
assurances against expropriation and nationalisation. This we
have touched on above. The assurances are given not only to
alien investors, but to local ones as well. The central aim of
these assurances is to boost the confidence of those who either
personally or on behalf of others have large sums of money to
invest in the country. The incentives given for such invest-
ments have included the country's political and economic stability,
wise leadership, guarantees against nationalisation or
expropriation, and so on. Keny foreign investors have been
convinced by such promises and have consequently invested in
the tourist and other industries in Kenya.

The Kenya Government has also placed minimal controls on
investors and has issued Approved Status Certificates to legit-
iate alien firms seeking permission to repatriate profits. It
is noteworthy that such certificates normally signify that an
investment is contributing to the economic growth of the country.
Thus unlike Tanzania leaders who assume that Africa must create
most of its own capital from its own resources.23

Kenyan leaders pay great attention to the needs and demands
of private investors. The Kenyan leaders also place great store
by alien private investment as a catalyst of economic growth. It
should be noted here that private investment sources have usually
dominated Kenya's development plans. This was, for instance, the
case in Kenya's Development Plan of 1966-70 in which private

23See, for example, President Nyerere's talk with Kenya's George
Arthur Connemara, in expressing the hope that the
participation of the developing countries in the
international conference of foreign relations commissary, to meet, in
May, on Africa, Eastern Africa, the area of development, and
readers of the literature of the developing countries, for any
understood.

The view of the material welfare of the great African people.

In brief, the need of good and essential

control over the means of production.

Connectivity, and the observation of the damage of

and on whether they have been coordinated. By the same

There are numerous differences in the

same with the government, it is long ago.

...for communication, and other newspapers.

And we have more than 200000 acres of

This is the situation in the countries

We have the opportunity to develop the

The opportunity of international cooperation

Formerly considered an essential tool for

For Africa's readers, expressed as an essential tool for

The Zenith of the new millennium and

This is the position of the long and

satisfaction from a total of 180 investigations.
legal, investment guarantees in the region can be a significant factor in the attraction and boosting of the very much-needed foreign capital, and this in turn, could immensely contribute to the economic development of East Africa.

No doubt, the main fear of private, foreign investors in East Africa - and for that matter in the developing world as a whole - has come from the feeling that sound, long-term investment in the new, highly nationalistic, and sensitively sovereign nations is subject to unusual risks of discrimination and nationalization without prompt, effective and sufficient compensation. This fear has led to demands for specific assurances of protection of investment on the part of the would-be private foreign investors. They have mainly been invariably concerned with governmental actions regarding:

(a) Discriminatory rules and laws which either cut the private/foreign investor's return considerably, or eventually force him to surrender his business investment. This is what Kwagughi has described as "creeping expropriation."

(b) Expropriation or nationalization of the private foreign investor's business without compensation.

(c) Export and import quotas that cripple his business; and

(d) Currency restrictions making it difficult or impossible for the investor to send money out of the country of investment.

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**L.I. Kwaghul:** "Legal Problems of Foreign Investment in Developing countries" - London: Manchester University Press (1965), p.73.
In East Africa, the laws governing investment appear in the "Revised Laws" of the three countries. In general, the significance of the legal investment guarantees of the three states lies in the requirement that the Governments have a legal duty to protect every foreign investment in their countries, and to compensate for any loss which may be brought about by changes in the Governments' policies or assurances. It is thus obvious that investment guarantees to foreign investors in East Africa are promised not only in the investment laws of the three nations, but also in verbal or written important policy statements by the leaders. The guarantees are also provided in the development plans of the East African countries.

However, it is important to note that the East African investment laws do not, expressis verbis, possess specified provisions that put private foreign investors at par with domestic investors. This differentiation provides sufficient evidence to warrant the deduction that there is no legal guarantee against discriminatory treatment of alien investors in East Africa.

The notoriety of the East African countries in discriminating against aliens - both in law and in practice - has already been explained above. The lack of legal responsibility on the part of the East African nations to avoid discrimination against foreign investors is deplorable, since it is a remarkable...
deterrent to, (and reduction in) foreign investment in the region. It shows how irrational, hypocritical and short-sighted the three countries are, for they openly talk of freedom and attractive conditions and guarantees of foreign investments, while at the same time they allow discriminatory practices in the field of investment. The negative repercussions of the discriminatory investment laws and practices are wide, far-reaching and well-known to the Governments of East Africa. They, therefore, know what to do to rectify the unfortunate situation. But unless fair treatment for all investors, whether domestic or alien, is rectified, it is difficult to imagine how the badly-needed foreign capital will contribute to the economic development of the region as it ought to do.

With regard to expropriation or nationalization, there is, fortunately, a legal guarantee in each of the three States. Thus illegal expropriation or nationalization is not permissible anywhere in East Africa. As we have seen, however, there are cases when expropriation or nationalization are always legal, even if done without compensation. Expropriation or nationalization done in the public interest is a good case in point, and international law recognizes, it, so we have explained already. Where compensation has arisen, and an East African state has agreed to pay it, the matter has been considered to be within that State's domestic jurisdiction. Therefore, the interchangeably used adjectives of 'appropriate', 'adequate', 'equitable', 'just' and 'fair', besides the period within which compensation has had to be paid, have in practice been determined by the individual States themselves. The fact to be stressed here is that what in regarded as 'fair' or 'adequate' compensation may differ, and does differ, considerably from one East African
state to another. For instance, whereas Section 22 C(i) of the Uganda Constitution talks of *adequate* compensation, Section 19 (c) talks of *full* compensation. This means that, although the Constitutional and other legal guarantees of investment in East Africa are generally similar, variations exist which must not be ignored. Kenya’s *Sessional Paper No. 10 of 1965* indicates that nationalization is a good idea, but it is so expensive that it will only be employed:

"(i) when the assets in private hands threaten the security or undermine the integrity of the nation; or

(ii) when productive resources are being wasted; or

(iii) when the operation of an industry has a serious detrimental effect on public interest; and

(iv) when other less costly means of control are not available or are not effective." 28

In this writer’s understanding, Kenya has acknowledged that legal responsibility to pay compensation for any nationalization or expropriation must be borne by the nationalizing state, but because of the high expenses involved, Kenya would prefer to avoid such responsibility as far as possible.

As for legal provisions guaranteeing against import and export quotas that would cripple the private foreign investor’s business, it is noteworthy that the East African Law of Investment does not, again, give an *expressio verbis* guarantee. The investment laws only imply that such an investment (should) be given a chance to survive. This lack of clear provision to regulate import and export restrictions also needs to be rectified. The same can be said of currency restrictions in East Africa. Thus although customary international law recognizes the right

28 See Section 75 of the Sessional Paper.
of control by a State over its currency - as an attribute of state sovereignty - the East African countries have a legal duty or responsibility under the same law of nations not to abuse this right by manipulation or discrimination directed primarily to injure aliens. The whole truth is that the main interest of any alien investor is to make profit which he can send out of the investment country in hard currency. The problem with East Africa - and any other developing region - is that they suffer from a serious shortage of foreign exchange. This situation forces them to incur currency restrictions - especially on movement of money from the developing countries. The practice of the East African States has been not to place any restrictions on remittance of profits and capital except the procedural requirement for exchange.

**Conclusion: What it comes to for East Africa:**

In this Chapter, we have attempted to outline the rights and duties (responsibilities) of the East African States with regard to aliens in the region. We admit that the questions of treatment of aliens and the protection of human rights in East Africa have only been touched upon in passing. This has been a deliberate treatment of the subject, because the great significance of the issue of human rights in East Africa makes the issue deserve a treatment in a separate chapter. This will, therefore, be done in Chapter Nine. The responsibilities of the East African States in the light of international law and diplomacy are their legal or moral duties towards other States or persons - both aliens and citizens. We are concerned with aliens. The essence of these responsibilities lies in the fact that the East African countries are answerable, legally and morally, for every action or non-action which violates the rights, recognised by inter-
national law, of other States and, in our concern, of aliens. As Article 2 of the Hague Convention of 1907 on the Laws and Customs of War as Land stated, state responsibility concerning international (legal) duties is a legal responsibility, and any breach of it by an East African State constitutes an international delinquency on the part of that State. As members of the international "civilised" community, the East African countries have thus a legal duty not to violate the international law of aliens, or international treaty obligations concerning aliens.

On the issue of admission in East Africa, it is worth remembering that the East African States are under a duty to admit aliens, but only under the condition that they have the right to expel, or exclude aliens, or certain classes of aliens - in cases, for instance, of drug addiction, dangerous or infectious disease, dangerous criminality and other "undesirabilities". However, international law requires that exclusion be backed up by sound reasons, i.e., those recognized by international law. Most States, nonetheless, including the East African nations, insist on, and extensively apply, the right to exclude all aliens at will. The reason given in support of this argument is that such full and unqualified right of states is an essential attribute of state sovereignty.

The East African states should remember that certain international "situations" exist which warrant the necessity to be oblivious about their (the states') highly sensitive consciousness of their "sovereign" right to exclude aliens and not to exercise the right to its fullest extent. Thus the right to exclude aliens at will in East Africa should be sacrificed for the duty to grant asylum to religious and political alien...
refugees. The countries of East Africa must also avoid discriminatory admission or exclusion, for, the entire prohibition of the citizens of any particular State, the Soviet Union, for instance, would diplomatically be regarded as "an unfriendly act" or an affront towards that state. However, the possibility of a complication arising from such situations is usually avoided by agreement. Most frequently, the case of reciprocal treatment of aliens by different nations is regulated by bilateral and even multilateral treaties of culture, commerce, navigation and technical assistance. In East Africa, such treaties exist between, for instance, Kenya and Yugoslavia, Kenya and Brazil, and Tanzania and Sweden. This will be examined in a later place.

As for the responsibilities of the East African nations for the protection of aliens in the region, it must be stressed that the states are under a duty:

(1) To avoid a disproportional punishment of an alien for a violation of a local law. This means that aliens seeking justice in the East African courts should not be denied it. Although this sounds quite obvious, it will become clear that there have been cases, though not many, whereby denial of justice to an alien has existed in East Africa. Denial of justice to an alien exists whenever the host state's authorities fail to give sufficient means of redress to the alien when his substantive rights have been violated or, if the alien has violated the laws of the host state, to observe due process of law in the prosecution and punishment of the alien offender. There is no doubt that, in East Africa, denial of justice has occurred, particularly in the fields of business (involving mainly alien Asians) and tourism (involving mainly alien Europeans).
In these and other fields, inefficiency in the performance of police and judicial processes in East Africa had been noticeable; access to the local courts has occasionally been denied to aliens, for instance, in cases where alien property has been expropriated, "Africanised" or nationalized without effective, prompt or sufficient compensation. Such cases have occasionally resulted in unfair treatment of aliens or unfair judicial decisions. The East African States have a legal duty to rectify such unfortunate situations both in law and in practice. They have a duty to prevent injurious discrimination against aliens and to provide aliens with proper means of redress.

It may not be amiss to mention here that each of the countries of East Africa is under the responsibility to honour the so-called Rule of Local Remedies. It is a fundamental rule of international law that the international responsibility of a State for an injury to an alien may not be invoked - in the form of an international claim - as long as local remedies, available to the injured alien under the laws of the host State and providing sufficient means of redress, have not been exhausted. Thus the injured alien must have resort to the local remedies (i.e., local courts of the host State), first, to determine whether or not the alleged injury had occurred, a denial of justice had taken place, a violation of international law was clear, and a degree of state responsibility had already been established, before lodging an international claim against the host state.\hspace{0.5em}29

The East African countries are also responsible for the acts or omissions of their public or Government officials and collective organs such as their legislatures, the judiciary and administrative bodies. The duties of the countries are to

\hspace{0.5em}29 For an excellent account of this Rule, see Herbert W. Bissen; "The Local Remedies Rule" - in '50 A.J.I.L. (1956)' pp. 921-927.
punish their offending nationals where necessary, and to free
themselves, in appropriate ways of any charges of international
wrongdoing. They must exercise "due diligence" whenever
necessary, in order to prevent injuries to aliens. They must
reformulate their laws, and reshape their policies in such a
way that, where equity collides with other demands in the region,
the former must prevail.

The policies of the East African Governments range from
agriculture, education, public services to commerce and trade.
In all these spheres, the interests of the African citizens are
paramount. Government assistance is given to the Africans in
every way possible. All these and other policies specifically
aim at creating and upholding a strong, central Government and
make strenuous efforts to adhere to a one-party state system.
The Governments demand absolute loyalties. They insist on
uniformities and are suspicious of any kind of dissent. The
leaders are sensitive to every indication of, or proposal to
change in the present power structure. Indeed, the resulting
"mood" is indicative of fear on the side of the African leaders.

To non-African residents of East Africa, notably the Asians,
this seems to be the case. In such policies, the Asian contribu-
tion can only be passive. And yet the Governments of East Africa
demand active Asian roles in the three countries.

On intra-racial relations, the Government policies of East
Africa aim - and rightly so - at the eradication of racial
discrimination and tribalism. The Governments hence want to
see racial integration without defining expressis verbis and
showing expressis actis what racial integration is, or should be.

In the writer's view, the racial problem in East Africa is
still great, though its magnitude varies from one East African
country to another. Thus in Tanzania, the problem is really
one of ideology and socialism as against capitalism, rather than of racial segregation. And although racial discrimination is discernible, for instance in educational establishments — where non-Africans, notably Asians, are discriminated against despite their being citizens — it would be erroneous to conclude that discrimination in that country is an open practice. The results of the discussions which this writer conducted with some Tanzanian Asians indicated that no discriminatory practice exists in the business field, for instance. On the contrary, any Tanzanian citizen who requires a trading licence in the normal and legal way, is free to conduct business anywhere in the country.

This is not the case in Kenya or Uganda, where the business laws openly discriminate against non-Africans, whether citizens or aliens. Discrimination is also practised in the other fields of life in these two countries, including the field of education. Corruption is also a most serious problem in the two countries. In Kenya specifically, there is racial discrimination backed by "black capitalism" with citizenship-orientation. The racial problem is made worse by nepotism, "tribalism" and corruption at all levels and in all corners of life in the country. In Uganda, discrimination against non-Africans in open, and has been described, especially by non-Africans of 'Asian origin' as "fascist". We should remember that Asians, of the immigrant communities in East Africa, have claimed to have had it worst in the region. Whether this Asian resentment is justifiable or not, in a matter that requires a separate analysis, which must not be done here.
CHAPTER EIGHT

BRITAIN'S RESPONSIBILITIES FOR EAST AFRICAN ASIANS

The issue of State responsibilities, that is, the duties and corresponding rights of States and individuals under domestic, besides traditional international law was discussed, in the East African context, in Chapter Seven. It was also established in the same Chapter that state policy, law and practice vary from nation to another. In the case of the United Kingdom subjects in East Africa, and East African non-citizens of Asian origin, it should be stated immediately that they are British citizens. There is sufficient historical and constitutional evidence to support this statement. Thus Asians were moved to East Africa, by the British, from their original and ancestral countries on the Indian sub-continent. This was established in Chapter One of this research. It will become evident that the non-citizen Asians of East Africa bear passports of "the United Kingdom and Colonies". This certainly entitles them to British citizenship and demands of them allegiance to the United Kingdom. Therefore, from the international law viewpoint, the States of East Africa have the right to expel such British Asians from East Africa. They have already exercised this right, as we have seen and shall see later in this analysis. The Asian expellees have the right to enter Britain, which is their country of nationality/citizenship, while Britain has the duty or legal responsibility to accept, or admit the Asian expellees into her territory. The point which must be made and remembered now is that, although Britain has formally accepted her legal obligation for East African Asians who are citizens of the United Kingdom by virtue of their being bearers of the U.K. and Colonies'
passports, she has done so conditionally. This policy has been exercised, especially during the last decade or so, by successive British Governments who have denied entry into Britain to, or imposed controls and restrictions upon, the East African Asians bearing British citizenship.

The implications, then, of the expulsion - in the more recent years - of Asians from East Africa, and the restrictions on the immigration, or entry of the British Asian expellees into the United Kingdom, have had, inter alia, racial, social, economic, educational, cultural, political and legal repercussions. Any clear and practical analysis of the problem must examine all these forces. We shall, however, confine our analysis to the political and legal aspects of the problem. It will become clear that the legal and political implications of the question are closely interwoven. But nevertheless the writer believes that the best way to tackle the issue is to examine in this order the legal-political aspects of Britain's obligations for East African Asians on the one hand, and the purely legal aspects of the question on the other.

Until the passing, by the British Parliament of the so-called Commonwealth Immigrants Act, 1962, no restriction was imposed on any person bearing citizenship of the United Kingdom and the Colonies. In a House of Commons debate, for instance, a Private Member's Bill demanding immigration control introduced by a Tory M.P. Cyril Czahore, the British Conservative (Tory) Government categorically rejected every proposal of introducing an immigration control law. David Renton, a Junior Minister at

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1 For detailed information on this Act, see, for instance:
1. "The Times" of November 17, 1961 (London);
2. "The Daily Express" of January 16, 1962 (London); and
the Home Office, ending the discussion on the Hill, declared that "Her Majesty's Government will not contemplate legislation which might restrict the historic right of every British subject, regardless of race or colour, freely to enter and stay in the United Kingdom." Pressure, however, continued to be exerted upon the Conservative Government for enactment immediately of a control legislation on Commonwealth immigrants into Britain.

In early October, 1961, an annual Conference of the Conservative Party took place in Brighton. It was then that the turning point occurred in the British traditional policy supporting "the right of entry", or "Open-Door Policy", regarding Commonwealth immigration into the United Kingdom. The majority of the delegates at the Brighton Tory Conference demanded restriction on Commonwealth immigration into Britain. The Harold Macmillan Government capitulated to the demands caused by the high increment in the numbers of Commonwealth immigrants into the country. Other reasons for the slamming of the door (ending of the "open-door" policy) behind Commonwealth citizens included:

1) The deteriorating economy of the country;
2) The increased losses of Conservative Parliamentary seats to Labour in by-elections; and
3) The growing problems of a socio-economic nature. For example, heavy unemployment, problems of housing and the lack of educational facilities for the "coloured" immigrants. On 31st October, 1961, therefore, the Macmillan Administration announced, in the Queen's Speech, that they intended to introduce an immigration law whose central purpose would be to control Commonwealth immigrants to the U.K. from other Commonwealth countries. The law would also

empower Her Majesty's Government to expel any immigrants convicted of criminal offences by British tribunals. Entry into Britain would be confined to those Commonwealth citizens who had received labour vouchers from the British Labour Department. Certain "categories" of people would, however, be exempted from these requirements. The exempt would include students, visitors - such as tourists - and dependants. British courts could recommend the deportation of Commonwealth immigrants, and the period of qualification which an immigrant had to spend in the U.K. for registration as a British, rather than a Commonwealth citizen, was raised from one year to five years.

The Second Reading of the Bill occurred on 17th November, 1961. The discriminatory character of the Bill was made manifest by the non-application of it to the Irish, the labour voucher system referred to above, and the complete disregard of consultation with the other Commonwealth nations on the issue of intra-Commonwealth immigration. Critics of the Bill abounded both in and outside the British Parliament. Fears were expressed of the British Tory Government's neglect of Britain's international responsibilities and disturbing the status quo of the world's greatest democracy and "welfare State", via promotions of racism, ill-treatment of Her Majesty's subjects, and so forth. The British Government rejected such accusations. Thus when Barbara Castle, an energetic Labour M.P., stated that the Bill would certainly destroy the Commonwealth, Cyril Osborne (who had by this time been knighted for public and political services, and described in "The Times" of November 17, 1961 as "the spirit, if not the architect of the Bill") replied:
"The Hon. Lady the Member for Blackburn said that the Bill would destroy the Commonwealth. That is irresponsible and untrue. It will not affect Australia, Canada and New Zealand."

Again the discriminatory nature of the Bill is quite clear here, for it would not be applicable to some of the most Commonwealth of all Commonwealth nations - Australia, Canada and New Zealand.

The Third Reading of the Bill was not obstructed and the Bill was finally passed in the House of Commons on 27th February, 1962. Royal Assent was given to the Bill on 1st June, 1962.

It is noteworthy that the rush to Britain to evade that legislation was estimated at 86,700 Commonwealth immigrants, including British passport-holders of Asian origin in East Africa.

The exodus of British Asians from Tansania to the United Kingdom has already been explained. It should nevertheless be re-emphasized here that the Asian problem in post-independence Tansania has never been serious. It is not hence surprising to note that a few Asians only left Tansania for Britain during the 1967 Asian exodus. Exact figures are not available, but from the estimations of reliable Tansanian Government spokesmen, more than 500 expulsion orders were served to non-citizen Asians in Tansania in 1967. How no matter small this figure may be, it is certain that fears of insecurity and the existence of anti-Asianism in Tansania were the main reasons for the decision of the British Tansanian Asians to go to Britain on the eve of the enactment of another immigration control legislation in Britain.

Anti-Asian attitudes were far greater in neighbouring Kenya. It must be stated at once that anti-Asianism in the Kenya of the mid-1960's was not displayed by Africans alone. Europeans in the country also showed anti-Asian attitudes. As we have seen, these attitudes have borne a racial nature and have resulted in psychological stereotypes against the Asian community as a whole.

*Quoted from the "House of Commons Debate" of February 22, 1962.*
African and European hatred of Asians in Kenya was outlined by Paul Theroux. In his Article, Theroux wrote:

"In East Africa, nearly everyone hates the Asian... The British have hated the Asians longest. This legacy they passed to the Africans who now, in Kenya for example, hold the banner of bigotry high... Social insult against the Asians now approaches the proportions of a fashion..."

Theroux went on to explain the major contribution, not only in the economic field, but also in the political development of Kenya. But "in spite of this", he went on,

"the reactions of most Africans and Europeans in Kenya to the Asian presence are flagrantly racist. Yet the racism always contains nationalist sentiments, as if every good Kenyan must be anti-Asian. Occasionally innuendo is used, but the target of the innuendo is always unmistakable. A collection of clippings from the East African papers regarding the Asians is a little chamber of horrors."

Theroux then quoted the following phenomenon.

On Kedaraka Day, 1967, President Kenyatta gave a speech in Swahili which appeared in a Uganda newspaper: "Mr. Kenyatta gave a stern warning to non-Africans who abused Africans and the Government because of their wealth... But I have got information that some Europeans and Asians in Kenya have not realized that this country is independent and go on abusing..." He attacked some Asian shopkeepers who 'because of wealth showed no respect to the ordinary Africans, saying Uhuru was nothing. Some of these people have not even realized that there is now an about-turn. This is a final warning to them and, unless they change their ways, they should not blame the Government for any measure that may be taken to deal with their nonsense..."

"Final warnings" and accusations of "arrogance", "unscrupulousness", "exploitation" and even "racialist behaviour" were the

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6. Ibid.
common material of political speeches in Kenya. Then, however, Theroux dared to regret racial abuse and thinly veiled menaces in the speeches of the late Tom Kibaya, then Minister for Economic Planning and Development, and David Ogina, Secretary of the KANU Mombasa branch, his letter to "The Daily Nation" of January 28th, 1967 provoked accusations from Mr. Kibaya that Theroux's attitude was "negative...naive...cynical", while other Africans denounced Theroux and the Asians in familiar racial tones, thus:

"There is certainly a crisis being created by the arrogant and negative behaviour and attitude of Asians in this country." It is quite stupid of him to try to lecture us on what to do. If I knew from which country Mr. Theroux comes from I would have given him a piece of my mind."

Whatever the future will be, the Asian community has nothing to grumble about; the present trend, whether good or bad, is the harvest of seeds sown by themselves (i.e., Asians)."

In an earlier Article in Transition 32 - entitled "Person is an Expatriate" - Theroux examined the attitudes of white settlers in Kenya, and also provoked abusive letters identical to those from Africans. Envy, then, by Africans and Europeans of the Asian middle position per excellence was responsible for the psychologically anti-Asian attitudes in Kenya. The result was inevitably hatred, as we have observed. In his concluding remarks, Theroux stated: "It should be clear that throughout Kenya, the feeling against Asians is more than mistrust, more than suspicion, more than a glance sideways. It is hatred - blind, bald, crude, irrational and based solely on race. It is unexamined by the

political scientists who picture Kenya a little paradise for race relations; it is ignored by the millionaires who are wooed by the Kenya Government; and it is sometimes exploited and encouraged by expatriates and competing businessmen who see this as a chance to boost sales and, in addition, prove their solidarity with African nationalism in Kenya... Whatever happens, the incidents of racial abuse in East Africa, which have increased in the past year, cannot be erased. We can agree that bigots are everywhere and that letters will be written no matter what happens. But there is no excuse, and there should be no pardon, for any government to be committed to a policy of hate towards less than two per cent of the population. 11

The 1962 census in Kenya showed that there were 176,000 Asians in the country. An investigation passed after the 1966 British Immigration Act - which we shall turn to shortly - indicated that there were 40,000 to 50,000 Asians who were "automatically" Kenya citizens, 20,000 who had adopted for Kenya citizenship, and that the majority of the remainder had decided to retain their U.K. citizenship. For those who chose to retain U.K. citizenship, big problems lay before them. Kenya embarked upon "Africanisation" and "Kenyanisation" programmes, while anti-immigrant factors gained greater momentum in the U.K. The panicking that resulted from these situations for British citizens of Asian origin in Kenya will become clear in the course of this analysis. To be stressed is the fact that British citizens of European origin in Kenya - and for that matter in Uganda and Tanzania - did not experience the same problems as did the Asian British subjects in the region. Thus

11. Thesew, Ibid.
special arrangements were made between Britain and the newly independent states of East Africa that helped the British European citizens conquer their problems following the transfer of power in East Africa. Pressure on the Asians obtained greater force as years passed by until 1967, when it burst into flower. In the summer of that year, the implementation of the Africanisation/Kenyamization programmes was accelerated. And the enactment of the immigration and business licensing legislation in the country made things worse for the British Asians. When such Asians, for example, applied for employment that could be occupied by Africans, work permits to such Asians were issued for three or six months only per annum. That discriminatory treatment to British Asians in Kenya, plus the deadline set by the British Government regarding entry into Britain by her subjects, compelled the Kenya Asians with British citizenship to leave the country.

A large exodus of such Asians occurred in the later summer and early autumn of 1967. The Asians went either to India or to Britain. The rate of Africanisation in Kenya grew, while certain politicians in Britain decided to exploit the situation and use it as a political weapon. The rush and confusion in the Asian exodus did not make the British Government renounce their responsibility for British Kenyan (and other) Asians in East Africa. However, the British Government was compelled to regulate it and thereby reduce the Asian panicking of January—February 1968. The weapon of control was the so-called Commonwealth Immigrants Act, 1968. The politics leading to the adoption of this legislation can be summarized as follows.

The central purpose of the Act, it must be stated at once, was to control, restrict or stop the influx of Asians from Kenya
into Britain in January-February of 1966. It will be remembered that in the first six months of 1967, the monthly rate of the Asian exodus had never passed 1,000. In August, 1967, the monthly rate became 1,493. In September of the same year, the total was 2,661. This rapid growth was, as we have explained, partly due to Kenya's Africization/Kenyanaization projects, and partly to the growth of anti-immigration propaganda in the U.K.

The right of Asians in Kenya with British citizenship to enter Britain was the subject of debate in the Commons in November, 1967. The House was discussing the so-called Expiring Law Continuance Bill. Roy Jenkins, the then Home Secretary, defended the right of the Asians to come to the U.K., while the former Conservative Colonial Secretary Duncan Sandys and others demanded that such Asians should be kept out of Britain. The fact that East African Asians dominated the debate which dealt with the question of immigration, in general, showed the heavy pressure to which the British Government was subjected because of Britain's responsibilities for East African Asians who had British citizenship. To the Kenya Asians who remembered the original (independence) conditions on which the Asian Community in Kenya would retain their U.K. citizenship, it was unbelievable that Duncan Sandys, the very man that had made the arrangements, now turned his back against the Asians.

The Asian fear, hence, that an immigration law was eventually to be enacted to limit or repeal the right of entry into the U.K. by Commonwealth subjects, led to a very rapid exodus to Britain. The Kenya Government accelerated it. The Government did that by, inter alia, deciding to Africanize 20,000 jobs formerly held by non-citizen Asians. In January, 1968, the Kenya Government
devised a new system to affect a rapid application of the laws against the employment of non-citizens. Thus the expiration of three-month periods of work permits was replaced by visitors' permits for a further three months. After this time, the affected people were expected to have wound up their affairs and left Kenya. Bonds were to be paid to the Kenya Government, of £1,150 to pay for deportation costs if and when necessary. The last date by which applications were to be made was 7th March, 1968. The maximum period for which work permits could be issued was to be 24 months, and this only if the employer was ready to sign a certificate stating that the individual was personally necessary to the advancement of his (the employer's) business, and that it was impossible for a local citizen to occupy this position. This condition is still observed to-day under the work permit system. This condition multiplied the exodus of Asians to the U.K. The "racists" in the U.K. also intensified their "racism", and that doubled the fears of British Asians in Kenya. Duncan Sandys became more "racist" than ever before. "They (i.e., Australians and New Zealanders) should not fear", Sandys is reported to have stated at the London Monday Club on February 8th 1968, "... are our kith and kin, they have got white faces". This language is openly racial in tone. On 9th February, 1968, Enoch Powell, another extreme Tory rightist, attacked the regulations governing the entry of dependents of immigrants into Britain. At a Conservative dinner in Walsall, Powell is quoted to have said: "It is hard to describe such a policy, or lack of a policy, as anything but crazy." Accordingly to Powell, the problem could be solved either by preventing the dependents of immigrants from entering into the U.K., or by stopping to grant vouchers, or both. The "News of the World" of February 11, 1968 contained an
Article by Sir Cyril Osborne which warned that unless a check was imposed upon immigrants to Britain, there would be more "blacks than whites here in seventy years time". The battle to endorse racial prejudice continued to be fought in and outside Parliament. James Callaghan, the Finance Secretary, was moved by Premier Harold Wilson from the Treasury to the Home Office, while Roy Jenkins, the Home Secretary, became Chancellor of the Exchequer. The Liberal Leader, Jeremy Thorpe, remarked after the Cabinet reshuffle that Callaghan, having devalued the pound, was moved to the Home Office to devalue the passport. Callaghan toughened the unwillingness of the British Government to accept their responsibility for British citizens of Asian origin in East Africa. In the Lords, however, there seemed to be a general acceptance of that responsibility. Lord Stowhe, for instance, Minister of State at the Foreign Office, boldly replied when asked by Lord Milverton about the Asian influx into the United Kingdom: "...are citizens of the United Kingdom and Colonies.... Numbers of them have been coming here for some years, but the rate of arrivals has recently risen. In 1967, the total was 13,600... It should be clearly understood that there is this statutory obligation". "The Times" also declared in a leading article: "The British Government of the day (i.e., Kenya's Independence, 1963) has changed since then, but the obligation has not."

On the same day (i.e., February 13th) however, Callaghan announced in the Commons that he would be introducing legislation "to close the loophole in the law that allowed illegal immigrants" into the country who had been undetected for a period of over 24 hours. That warning, plus the acceleration of Africanization in Kenya, plunged the affected Asians into a crisis. They feared that they...
might eventually become stateless persons. The chaos in Nairobi thus doubled, from day to day. Asian panicking multiplied. Asian leaders in Kenya desperately assessed the causes of the Asian exodus, and held Britain entirely responsible for the resulting desperate situation. The Asian leaders stated that only about 50,000 Asians could go to the U.K. and not the various totals of from 10,000 to 250,000 as publicised in the U.K. Kenya was also accused of causing problems by accelerating her programme of establishing the rights of (African) citizens to jobs ahead of non-citizens. The British Government consequently sent, on 13th February, 1963, Malcom MacDonald, the British Representative in East and Central Africa, to Nairobi to discuss the possibility of reducing the tempo of Africanisation, so that Britain would not be obliged to take action to limit the influx. The MacDonald mission was fruitless even though he, himself, was very much respected by President Kenyatta and other Kenyan leaders.

The British Labour Cabinet was thus compelled, under mounting pressure, to introduce a law planned not only to amend the previous immigration legislations of 1961 and 1965, but also to prevent the Asian community in Kenya from using their British citizenship as a weapon for permission to enter the United Kingdom. The decision to enact such a legislation was taken on 22nd February, 1963. The announcement of this decision made things worse for U.K. citizens in Kenya. The rush to Britain which had thither been at the rate of about 750 a day, now became about 1,430 a day. It was indeed a "beat-the-ban" rush that caused mounting hysteria both at the Nairobi Embakasi Airport and the British airports. At Embakasi Airport, it was not rare to see those Asians who were seeing their friends and relatives off board the plane to London, without even going home to prepare, and leaving
their cars at the Airport. The main thing was to find an empty seat in the plane. Those who could not get seats on direct flights were prepared to travel by longer routes including the one via Moscow. The assets of the affected Asians were sold at minimal prices. The intended legislation mainly affected the heads of Asian households. The panic and the social human problems that ensued did not bother the British Labour Government. The Commonwealth Immigrants Act, 1968 was passed by the British Parliament on 1st March, 1968, and had immediate effect.

The Labour Party lost to the Conservatives in the British General Election of 1970. One of the major issues in Party policies discussed both in and outside Parliament was the question of Britain's responsibilities for Commonwealth citizens. Although it was generally accepted that Britain is responsible for such citizens - including East African Asians with U.K. citizenship - the view was that it was essential to impose restrictions and controls on the entry of such "Commonwealth persons" into Britain. The realisation of this view was through the adoption of new immigration regulations, including the Immigration Act of 1971. It is not necessary to go into the details of this extensive Act, which was a general legislation intended to impose controls on the entry into the U.K. not only of British subjects - as were the Immigration Acts of 1961 and 1968 - but also of the nationals of other countries, i.e., outside the Commonwealth. However, the Immigration Act of 1971 affected the right of entry of East African Asians holding British passports. As such, it is necessary to outline the essentials of the Act.

The central purpose of the Immigration Act, 1971 was to simplify and better the United Kingdom's immigration laws by

13 This is in the writer's recollection from the debates, on the question of immigration into the United Kingdom, to which the writer had the honour to listen from the Visitors' Gallery of the House of Commons in the years 1969-70.
assimilating the position of aliens and Commonwealth citizens, and replacing desperate and piecemeal legislation by a single and permanent statute. The Act specified that in promulgating Immigration Rules, the Minister responsible for immigration matters might take account of citizenship and nationality.

It was expected that this power would be employed to deal with the special position of the nationals of the European Common Market countries. The Act of 1971 divided prospective entrants into the U.K. into eight classes:

1) Patrlals;
2) Settlers;
3) Common Market nationals;
4) Non-patral Commonwealth citizens with U.K. grandparents or "grandpatrlals";
5) Non-patral citizens of the U.K. and Colonies with U.K. passports;
6) Non-patral citizens of the U.K. and Colonies without U.K. passports;
7) Commonwealth citizens, British-protected persons and citizens of the Republic of Ireland (not being patrlals, settlers, grandpatrlals or citizens of the U.K. and Colonies); and
8) Aliens other than Common Market nationals. It is of interest to note that Robert Carr, the Home Secretary, described as "myth" any allegations that the British Government "were wishing to treat Commonwealth citizens as aliens. "14 To be stressed, however, is the fact that the Immigration Act, 1971, like the other "new immigration regulations" introduced by

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14. See, for example:—
(1) "851 House of Commons Debates", Col.591; 1971;
(2) Premier Harold Wilson's speech at York on Friday, 20th Sept., 1968, quoted in "The Times" of Sept. 21, 1968, and
Mr. Carr and approved by the Commons on 21st February, and by the Lords on 27th February, 1972, all reduced the right of entry into Britain of British citizens of Asian origin in East Africa. They also had the effect of avoiding Britain's international obligations for such Asians. The good thing, however, is that the successive British Governments have always accepted their country's responsibilities for the protection of British subjects. The putting of restrictions on the entry of such persons into the U.K. must not, therefore, be confused with Britain's acceptance of her obligations towards such persons.

A good instance of Britain's recognition and acceptance of her international responsibilities for U.K. subjects within the British Commonwealth was clearly indicated by the British Government following the expulsion by Uganda's General Amin of Asians holding British passports in the country.

In the summer and autumn of 1972, some 27,000 Asians arrived in Britain from Uganda. The latter had exercised its right, announced on 4th August, 1972, to expel the Asians whom Uganda regarded as "aliens". The British Government, through the mouth of the Home Secretary, the Rt. Hon. Robert Carr, announced their duty to admit the Asian expellees. The first aeroplane full of the expellees - regarded as refugees - arrived in Britain on 18th September, 1972. Generally speaking, the British public accepted Britain's responsibility for the Uganda Asians with British citizenship, but the public opinion was that the British Government should have phased the influx.

The Home Secretary, on the other hand, clearly showed in his words and deeds that the Conservative Government was committed to admit British Asians both on compassionate grounds - that was why he exercised his discretionary powers to let in the
stateless husbands or heads of the British, Asian families expelled from Uganda — and as a matter of Britain's legal responsibility under customary international law.

On Friday, February 25th 1973, therefore, the Home Secretary announced to the House of Commons his decision to admit to the U.K. some 300 of the Asian men expelled from Uganda. As we have observed above, those who benefited from the Secretary's "humane act" were not citizens of the U.K. and Colonies, but persons who had considered themselves Ugandan citizens prior to the Uganda Government's project of "verifying" the citizenship claims of the Asian community in Uganda. It should, however, be noted that the 300 men had an important tie with Britain. The link was that their wives were all resident in the U.K., and seemingly all their wives enjoyed citizenship of the U.K. and Colonies. In this regard, the 300 husbands were distinguished from a smaller number of refugees, to whom the Home Secretary granted less specific assurances. The refugee group comprised about 100 men and women who had entered the U.K., but had not yet been admitted for settlement, together with a smaller number in Europe, "whose circumstances present", as the Home Secretary put it, "strong compassionate features". It was to this smaller group that he promised "sympathetic consideration". Charity, then, and sympathy, were the main motivations behind decision to grant the relatives of the U.K. citizens the right to enter the country. The Home Secretary's action was commendable, for by it, family reunions were ensured although Britain had no responsibility to admit such persons to its territory.

Having discussed the politico-legal aspects of the expulsions of Asians from East Africa by the East African Governments, we

15 See "The Times" of 24th February, 1973, for instance.
should now necessarily look into the purely legal implications of the expulsions. Needless to say, it is in these legal implications that Britain's legal responsibilities have their source. The East African laws relating to aliens have, how no matter ambiguously, indicated who is an alien in East Africa and who is not. As far as aliens are concerned, those who do not bear East African citizenship have been categorized under the group of British nationals. They are hence a British responsibility and aliens in East Africa. Under the U.K. laws relating to aliens, every British subject alien Commonwealth citizen had the right, at common law at least, to enter the U.K. This doctrine was endorsed by the British Nationality Act of 1948 — which we examined in Chapter Two of this research. The doctrine was also endorsed, *sensus stricto* by the Commonwealth Immigrants Act of 1962. This was clearly shown in sections 2 (1), 5(1) and schedule 4, paragraph 1(2) of the Act, which indicated, *inter alia*, that if a citizen of a Commonwealth nation landed secretively into the U.K., he committed no offence, for he was a British subject, and *prima facie* had "the same rights to be in this country as has any native Englishman". The Court of Appeal in Britain thus asserted that a Commonwealth citizen, though subject to control under the 1962 Act, might land wherever he chose, and had no obligation to search for an immigration officer and present himself for examination. This legal situation in the U.K. enabled citizens of the East African States, and of the U.K. living in East Africa, to enjoy the right of entry into the U.K. The 1962 Commonwealth Immigrants Act ended the enjoyment by all British subjects of the right to enter the U.K. without submitting to immigration examination. This stipulation was contained in section 3 of the Act. It replaced section 4A of the 1962 Act.
The 1968 Act also minimized the number of Commonwealth citizens who might remain immune from immigration restrictions. This immunity would consequently be enjoyed only by such citizens who bore a U.K. passport and had been born, adopted, naturalized or registered in the U.K. Under the Immigration Act, 1971, the traditional right of entry into the U.K. was superseded by a statutory right of abode, which was so defined that it did not encompass the right of every person free from control to land in the U.K. without submitting to examination. The right of abode would be enjoyed only by those so closely connected with the U.K. to qualify as "patrials."

The obligations of the U.K., under international law, for East African Asians with U.K. citizenship have already been explained. Nonetheless, as the Hague International Conference for the Codification of International Law stated in its "Draft Convention on Nationality," the fundamental principle is that each state has the right to determine, under its own law, who its nationals are. So long as this law is in line with international custom and the principles of law generally recognized as regards nationality, other states have a duty to recognize the law.

Since, however, customary international law seems to recognize a "general principle of law"—under the meaning of Article 38 of the Statute of the International Court of Justice—called estoppel, whereby a state is prevented from denying the validity of its own actions, or from contradicting the reasonable conclusions to be drawn from its own conduct, any argument that Britain has no obligations towards East African Asians—

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16 See League of Nations (L.O.N.) Doc.C.24 H.13 (1931) V.
indeed any other persons bearing U.K. citizenship - must be completely rejected. For, in the case of the Asians, it was Britain that moved their ancestors to East Africa. They and their ancestors were born and brought up in territories then under British colonial rule. It was the British Government that normally sponsored programmes of moving them from one British Empire land to another. It was Britain that recruited them to work on the Uganda Railway. In these and other similar circumstances, any argument supporting denial of British citizenship to such people, or freeing Britain of legal duties towards them would be terribly erroneous. State practice, reflected in bilateral and multilateral treaties, provides unquestionable evidence to warrant the conclusion that East African non-citizens of Asian origin are British nationals, and as such, they are a British responsibility. Of the treaties concluded between the U.K. and other states since 1948, many have defined the expression "national of the United Kingdom" in such a way as to include every citizen of the U.K. and Colonies. Thus the U.K. owes to the East African states the responsibility to admit British Asians from East Africa.

In a letter to "The Times" of 19th August, 1972 regarding the expulsion of Asians from Uganda, Professor Georg Schwarzenberger of London University argued that the expulsion amounted to a breach of international law. This writer rejects this argument. It could only be justified if General Amin had retained his second Decree, announced on 18th August 1972 that all Asians - i.e., including those with Uganda citizenship - would be kicked out of Uganda. If General Amin had effected this Decree - but he

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\[17\] See, for example, J. Cuthbert: "Nationality and Diplomatic Protection: the Commonwealth of Nations" - Sijthoff, 1969. It is of interest to note from Dr. Cuthbert's publication that more than 90 of the treaties he has cited as citizens of the U.K. and Colonies is defined as a "National of the U.K. and Colonies."
did not, for he withdrew his announcement of 18th August on
23rd August - or expelled the affected British Asians to some
states other than Britain, then it would have been right to say
that his expulsions violated international law. But as they
stood, the expulsions affected British Asians only. Moreover,
the Home Secretary as we have seen, and the Lord Chancellor
and the Attorney-General openly admitted Her Majesty's Government's
duty to protect the Asian expellees and admit them as they had
"nowhere else to live."

After accepting Britain's responsibilities for the protection
of their East African nationals of Asian origin expelled by
President Amin's regime, the British Government established in
1972 a Uganda Resettlement Board. The Board comprised eleven
members, with Sir Charles G. Cunningham, C.C.B., K.B.E., C.V.O.,
as Chairman. On the Board was included Mr. Praful Patel, a
leading Asian immigrant into the U.K. from Kenya. Patel is a
spokesman for the East African Asians in London. The twelfth
man was Secretary to the Board, Mr. G. Pratt who was succeeded
by Mr. S. Barreclough on 31st December, 1972. The purpose of the
Board was to assist U.K. passport-holders and their dependants
who were ordinarily resident in Uganda on 4th August, 1972 - the
day General Amin announced his expulsion of British Asians from
Uganda - and the children of any such persons born since then.

In its Final Report, the Board outlined its work of, inter
alia, establishing centres as temporary institutions to provide

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18 Britain's obligation for the expelled Asians was particularly
spelled out by the Lord Chancellor. See his Article in "The
Times" of 15 September, 1972, p.1.

19 Entitled "Uganda Resettlement Board Final Report" - published in
London by Her Majesty's Stationery Office (H.M.S.O.) in
April, 1974.
emergency accommodation. By 31st March, 1973, 28,068 Asian entrants had passed through the Board’s hands. The resettlement of the Uganda Asians was distributed throughout the country. The regions affected were: East Anglia, East Midlands, North West, the Northern Region, South East, South West, Scotland, Wales, West Midlands, Yorkshire, and Greater London. Sixteen resettlement centres were established. They included Kensington, Raleigh Hall and Heathfield.

What should be noted is that those Uganda Asian entrants who desired to re-emigrate to other countries were allowed to do so. A good number re-emigrated to Canada, the U.S.A., New Zealand and Sweden. In short, the work of the Resettlement Board was mainly administrative in character. The Board helped to give the Asians a first start in the U.K. Community: meeting them on arrival, organising resettlement centres, providing advice and assistance. By the time the Board was dissolved on 31st January, 1974, it had handled about 28,606 ex-Uganda Asians. Of this total number, 6,621 decided, when they reached the U.K., to make their own arrangements for settling in the British community. The remainder were accommodated, for varying periods of time, in the resettlement centres set up by the Board. As for the financial implications of the resettlement work, a summary of net expenditure contained in the Board’s Final Report reveals that some £6,126,700 sterling were spent during the resettlement process. The Report was admitted to the Home Secretary sometime after January 31st, 1974. He, in turn, presented it, "by command of Her Majesty", to Parliament for scrutiny and approval.

CONCLUDING CONSIDERATIONS:

If East Africa had obtained independence later than it did,
perhaps the Asian problem in the region might not have been as serious as it has been. It can also be argued that if the Colonial Power had introduced a system of “black capitalism” already in the colonial times and “nationalised” Asians in the region, as they did with the Arabs, the Asian dilemma would not, perhaps, have existed. But East African independence found the roughly 360,000 Asians still unpopular, hated and envied not only by the African majority, but also by the tiny but beloved and most influential European Community. If the British Government had accepted its responsibility for the Asians right from the start of the transfer of power, and concerned itself with the protection and welfare of the Asians as it (the Government) did with the white settlers and civil servants, the Asian problem might, perhaps, have been minimized. That was not the case, for during the time that the European settlers and civil servants were being secured, via projects whereby they could, for instance, either be pensioned off in excellent terms prematurely and obtain special compensations for loss of careers, or retire in the normal way, the Asians were ignored. The Asian campaigns to get treatment similar to that accorded to the Europeans were totally rejected. Further, the British Government openly demonstrated its neglect of its obligations towards its East African Asians by enacting legislation—a practice it has retained unto to-day—which affirmed the Government’s duties only to its “Englishmen”, U.K. “white” citizens. Thus no clear responsibilities were spelled out towards its “Brown Britons” who, by legal definition at least, were a British responsibility just as much as the “white Britons”. Funny enough, Britain accepted her responsibility for such “Brown Britons” in clauses which she inserted into the Independence Constitutions of Uganda, Kenya, Zanzibar and Tanganyika. The new citizenship rules
introduced in Tanzania after the merger of Tanganyika and Zanzibar were interesting. In practice, the new rules affected the Zanzibaris only.

Although all the citizens of Tanganyika and Zanzibar became "Tanzanian citizens", there were some exceptions. Three main classes emerged of those citizens excluded from the Union citizenship:

1) Zanzibar citizens by virtue of birth, or a father's birth in a part of the former Sultan's possessions other than the State of Zanzibar. Many of the citizens under this class had some other citizenship besides, for instance, the Asians in Kenya's Coastal Zone.

2) Zanzibar citizens who had become so only by virtue of their naturalisation or registration in Zanzibar under the British Nationality Act, 1948; and

3) Zanzibar citizens who had been deprived of their Zanzibari citizenship by the Revolutionary Council of the late Sheikh Kerume, or deported, or exiled from Zanzibar.

Most of the Zanzibari citizens in the last two classes became stateless persons. About 7,000 Asians belonged to this group of stateless people. Most of them are believed to be either in Zanzibar or in Dor-Es-Salem.

The Uganda Asians also contained categories of persons, after General Amin's expulsions, whose legal status was more of stateless persons than of British nationals. It must be emphasized here that Britain would be exempted, under traditional international law, from responsibility towards such Asians who would be proved to be stateless. The United Nations Organisation would, via its High Commission for Refugees (U.N.H.C.R.), step in in such circumstances. This will be discussed in the next...
chapter. At this juncture, it must be stated that the possibility of solving problems caused by statelessness in Uganda was near completion between the British Government and ex-President Obote. An agreement was being worked out between the two sides, and was about to be signed when Dr. Obote was ousted by General Amin in January, 1971. It will be remembered that the agreement was one of the subjects of discussion in Singapore, during the 1971 Commonwealth Conference, between the British Government officials and Dr. Obote, when General Amin staged a coup d'état. The British-Uganda talks on the proposed agreement were abandoned, and thus a golden opportunity of solving the problem of stateless Asians in Uganda was lost.

There is sufficient legal and other documentary information to warrant the division of East African Asians into four broad, classes:

1) Those Asians who are East African "nationals" by virtue of their possession of East African citizenship. Although it is not easy to quote exact figures in this category, reliable Governmental sources indicate that in Tanzania, about 20,000 Asians became citizens by registration, whereas about 60,000 others acquired Tanzanian citizenship by the "automatic method" outlined in the country's legislation. In Uganda, about 15,000 Asians became citizens by registration, while 30,000 acquired citizenship automatically. The figures for Kenya are estimated at 20,000 and 50,000 respectively.

2) Those Asians who are "nationals" of the U.K. and Colonies" by virtue of their possession of British passports. This class

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A fuller discussion on this question appears in a Paper prepared by Yash and Sharan Chai, "Asians in East and Central Africa" - Institute for Development Studies, University of Nairobi (1972).
can be subdivided into "citizens" and "protected persons" of the U.K. and Colonies. We have referred to them simply as "British subjects" or "Commonwealth citizens". Again, it is not easy to determine the figures of this class of Asians, owing mainly to the exoduses that have occurred at various times since independence. However, reliable, Governmental sources indicate that, in Kenya, there were, at independence, about 103,000 British subjects of Asian origin, of whom about 100,000 were British "citizens", and the rest were British "protected persons". After the Asian exodus of 1967/8, the figures of British Asians in Kenya were estimated at 50,000, and now, they are probably much less. In Uganda, there were about 40,000 British Asians before the Asian exodus of 1972. Many of them were "British protected persons". No accurate figures are available at the time of writing this thesis, but from the events that have taken place since the first expulsion order was served to the Asians in August, 1972, there is no doubt that the number of Asians in Uganda is now very small indeed.\(^2\)

In Tanzania, there are most probably less than 25,000 British Asians, many of whom should be described as "British protected persons."

3) Those Asians who are citizens of the countries of the Indian sub-continent - Bangladesh, India and Pakistan. It is noteworthy that, apart from those Indian-sub-continent Asians who have come to East Africa - since the latter's independence - as "expatriates on contract", there are roughly 15,000 "alien" Asians, who bear citizenship of the sub-continent's states.

4) Those Asians whose legal status is either unclear or stateless. They are all categorized into the class of stateless

\(^2\) According to the official information obtained from the British High Commissions in Kampala and Nairobi, 27,000 British Asians expelled from Uganda were accepted into the U.K. However, a larger figure appears in the Final Report of British Uganda Resettlement Board, p. 9, "Asians."
persons. No exact or accurate figures are available at the time of writing this thesis.

The foregoing remarks clearly indicate that the balance between hopes and fears for the future of British Asians in East Africa, as an opulent, racially visible and powerless small minority in the midst of black capitalism and nationalism, determined their citizenship. Whereas the hopeful Asians opted for local citizenship, the sceptical retained their British identity. The shrewd Asians got half the members of the family to opt for East African citizenship and not British nationality.

The middle class comprising an alien minority in weak, and has no independent political power, because it lacks the means of perpetuating its economic power. The Africans' eagerness to step into Asians' shoes immediately has been prompted by the former's desire to transfer the economy of the region into African hands. The outcome of the desire has been the policy of expulsion of the "foreign middle class." The latter have been too weak to fight either politically or in the local tribunals. Anti-Africans in Uganda gripped the country's army right from the start of the military regime. In October, 1971, for instance, all Asians in Uganda were made to line up and be counted in special census. They were subsequently subjected to humiliation and harassment, including the calling by General Amin of an Asian Conference in December, 1971 to respond to alleged complaints against them. Many Asians were compelled to quit. But not all of the British Asians could go to Britain because of the voucher system introduced by the immigration rules in Britain between 1962 and 1973.

The foregoing remarks provide sufficient proof that the expulsion of Asians by the East African Governments.
have been the result of an enormous crisis and pressure on these governments. A relevant question that can be asked now is whether the expulsion that has led to numerous instances of Asians from East Africa has been justified in international law. The response to this question must be given in the affirmative, for, under international law, every state has, as we saw in Chapter Seven, the right to expel aliens from its territory. We also explained in the same Chapter that in the case of such an expulsion, the aliens may be reconstituted to their home state alien state of nationality. The home state has, on its part, a duty under international law to admit its expelled nationals. This responsibility is thus the corollary of the foreign alien receiving state's right of expulsion. In the case of the expulsion of British Asians from East Africa, Britain's responsibility to admit the alien expelled is, therefore, the corollary of the a priori factit right of the East African States to expel Asians, from their territories, who are United Kingdom subjects.

The decision to expel Asians from Uganda seems to have been made on 3rd August, 1972. For, in General Amin's speech of August 12th, 1972, he declared, inter alia:

"Even in this case, the decision was given by God. When I had travelled to South Karameja to open the District Show at Iriri, I, on Thursday night, the 3rd August, 1972 had a dream that the Asian problem was becoming extremely explosive and that God was directing me to act immediately to save the situation."

This decision was communicated to the Public in speeches delivered

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See for instance,


(2) Barut: "De l'Expulsion des Etrangers" - 1902.
by the President on August 4th, 7th, 12th, 13th and 29th. It
was explained further in the speech by Uganda's Foreign Minister,
the Rt. Hon. Nabiaa Aledi at the Summit of East and Central
African Governments in Har-er-B실am on 7th-9th September, 1972,
and in the address of General Amin to Ugandan Ambassadors and
High Commissioners in Entebbe on 21st September, 1972. The
Presidential decree enacted to implement the decision to expel
non-citizens Asiames from Uganda have included: the Immigration
(Cancellation of Entry Permits and Certificate of Residence)
Decree No. 17 of 9th August, 1972, and the Declaration of
Assets (Non-citizen Asiames) Decree No. 27, of 1972. The purpose
of the above Presidential Decree No. 17 was to cancel most of
the work permits and residence certificates or passes, which had
been issued to U.K. and Colonies' citizens of Asian origin,
besides nationals of India, Pakistan and Bangladesh under the
country's immigration and business licensing legislations of
1969. Subsequent proclamations showed that Asiames from Kenya
and Tanzania would also be expelled, and all bearers of
cancelled permits, certificates or passes had to leave the
country within 90 days from Wednesday, August 9th, 1972. However,
that Presidential Decree No. 17 made two significant exceptions.
"Alien" Asiames would be exempted from the Decree if they were
in Uganda Government Service, or if they fell within a number
of professional categories, if they were owners of "industrial
and agricultural enterprises", or owners or managers of "banks
and insurance companies", and the like.

The other Decree (No. 27) of 1972 seems to have been enacted
on 4th October, 1972 and published on October 6th.23 It was

23All Decrees and other Uganda Government Publications are
printed and published by the "Government Printer", P.O. Box 33,
Entebbe, Uganda.

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supposed to enter into effect on 9th August, 1972. Under the above Decree No. 27 of 1972, no Asian leaving Uganda after being served with an expulsion order was allowed to transfer any
immovable property, but company, farm including livestock, or
business to any other person. He might not mortgage his property,
issue new shares in his company, change the salaries of his
staff, or in any way vary the remunerative or terms of service
of his company's directors. He had to make a declaration of
his assets, and surrender it to the Commerce and Industry Minister.
Failure to comply with these stipulations would entitle the
"offender" to a fine of 50,000 Uganda shillings, or to an
imprisonment of up to two years or both. This is the essence
of Amin's policy of "economic war", or of "transferring the
economy to Africans."

The 1962 Commonwealth Immigrants Act in Britain was the
country's first legislation to curtail immigration from the
Commonwealth to the U.K. Entry was regulated by a system of job
vouchers. Vouchers were divided into three categories:
1) "A" Vouchers were available for those with specific jobs
   to come to;
2) "B" Vouchers - for those with special skills or qualifications;
   and
3) "C" Vouchers - for unskilled workers without definite jobs
   arranged before arrival into the U.K. Wives and children
   under 16 were free to accompany voucher-bearers, or to join
   husbands and parents already in the U.K.

In 1965, a White Paper was passed. It set a limit of 8,500
vouchers a year, of which 1,000 were reserved for Malta. "C"
Vouchers were abolished by the 1965 White Paper, and "B" Vouchers
were given preference. The most controversial of all the

See, for further information, "The White Paper, 1965" - B.O.,
British legislation enacted to control the immigration into Britain of East African and other Commonwealth citizens was the Commonwealth Immigrants Act of 1968. The letter and spirit of the Act greatly curtailed Britain's responsibilities for her various subjects within the Commonwealth. The main aim of the legislation was to impose further and more tightened controls upon the immigration of U.K. passport-holders from East Africa, who were entering the country in increasing numbers. The increase came mainly from Kenya, where at the time of independence, Asian settlers were offered the choice of remaining British citizens, or of becoming Kenya citizens. Those who chose the former possessed U.K. citizenship and no other. Thus there was no other state in which they had a right, under national and international law, to live. Special arrangements were made under the 1968 Act for the admission of U.K. passport-holders brought within the immigration control. The legislation also had clauses dealing with unlawful entry. From that time onwards, any unlawful immigrant could be deported any time up to 28 days after his arrival.

Of all the legislations adopted to deal with the problem of immigration into the U.K., the Immigration Act, 1971 was the most extensive. The Act made special emphasis on eight major fields: "patriality", "non-patriality", work permits, citizenship, deportation, repatriation, existing residents, and unlawful entry.

In the field of "patriality", the Act stipulates that only "patrials" are free to live in the U.K. They can come and go as they like. The Act defines a "patrial" as:

1. A citizen of the U.K. and Colonies who has that citizenship by birth, adoption, naturalisation or registration in the U.K.;
2) A citizen of the U.K. and Colonies who has a parent or grand-parents who were born or acquired U.K. citizenship by adoption, registration or naturalization in the U.K.;

3) A citizen of the U.K. and Colonies and has been resident in the U.K. for at least 5 years;

4) A Commonwealth citizen whose parent was born in the U.K., and held U.K. citizenship, is also a "patrional", as is a Commonwealth citizen who is, or has been, the wife of a "patrional". Certain "patrionals" need a certificate. These are persons in classes 3 and 4) above, and the wife of a person who is a "patrional". Anybody, however, can apply for such certificate.

If already resident in the U.K., these persons should make applications to the Home Office. If abroad, they should make applications to the nearest British Representative.

All other persons are "non-patrionals". They will require permission to enter the U.K. Permission will normally be granted for a limited period only, and may be given subject to conditions restricting employment or occupation.

As for work permits, control over Commonwealth citizens with such permits is exercised jointly by the Home Office and the Department of Employment. Usually, permission to remain in the U.K. will be for one year only. After that period, permission from the Home Office is required for an extension. If Commonwealth citizens wish to change their jobs, they will have to seek the permission of the Department of Employment. After 4 years in approved employment, they may apply for permanent settlement, and will then be free to take any employment.

In the area of citizenship, the 1971 Act removed the automatic right of Commonwealth citizens to register as U.K. citizens after a five-year residence in the country. However, Commonwealth citizens settled in the U.K. then the Act comes
into effect retain their right as will people who are "petrual" and the wives of the U.K. citizens. There will be no appeal against a refusal to grant citizenship.

On deportation, the 1971 Act gave the Home Secretary wide-ranging powers to deport the family of a "non-petrual" who is being deported. There is, however, a right of appeal against his decision. A deportation order can be made against a person for staying in the U.K. in violation of conditions, on the recommendation of a court, or if the Home Secretary deems it to be conducive to the public good. Here, there is a right of appeal, but not in cases involving national security.

On reintegration, the Act contains provisions for the payment of travel expenses for households whose heads are not "petrual", who wish to leave the country to settle elsewhere. Assistance is nevertheless confined to those who wish to deport of their own free choice, and in whose interest this is. Eligibility is gauged, inter alia, according to the means and employment record of applicants.

With regard to existing residents, the 1971 Act inserted an amendment that "nothing in the Act will remove any rights from, or adversely affect the status of any Commonwealth citizen already settled in the U.K." Finally, the Act regulated the question of unlawful entry. The time limit of 35 days after which removal directions may not be given in respect of a person who has entered the U.K. illegally is abolished. The Act also introduced a new offence of helping unlawful entry, for which the penalties are an unlimited fine, and an imprisonment of up to 7 years. The court was given power to confiscate any ship, aircraft or vehicle used.

A word must also be said about the significant question of
appeals in the U.K. in matters relating to immigration. In May, 1969, the so-called Immigration Appeals Act was enacted. The Act provides for a two-tiered appeals authority, comprising an Immigration Tribunal and adjudicators. Under the 1971 Immigration Act, the above Tribunal and the adjudicators continue to operate. Thus a person refused permission to enter the U.K., or an extension of stay in the country, or a variation of entry conditions, can appeal to an adjudicator against the decision of British authorities. This also applies to a person who is refused a certificate of "patriality", an entry certificate, or a visa. If the Home Secretary rules that entry is against the public good, then the person is not entitled to appeal. Appeals can be made in respect of deportation orders and refusals to revoke them, but not in cases involving national security.

Whatever the restrictions on entry of British Asians into the U.K., Britain's obligations under international law for such Asians are unquestionable. English Common Law, in fact, has incorporated the general and fundamental doctrine of international law that every state has a duty to admit to its territory its own nationals. Also each state has a right to attach conditions to any permission it may give to a non-citizen to enter its territory. A state which has admitted a non-citizen may require him at any time to quit. From these general doctrines of international law, it is evident that the East African States have the right to expel British nationals of Asian origin, and that Britain has the duty to admit them to her territory. It is only in very exceptional circumstances - the writer does not recall any - that Britain may argue that the East African States have a duty, under international law, to admit British nationals to their territories or not to expel them.
Therefore, the enactment, by the British Government, of the British Nationality Act (No. 2), 1964 was indicative of the country's aim to evade its duties towards British Asians, via a discriminatory legislation. The 1964 Act favoured European settlers in East Africa. The Act had the purpose of getting around the nationality legislations in East Africa which prohibit dual nationality. Under the British Nationality Act, 1964, those "Britishers" - European nationals - who surrendered their British citizenshipship to become East African citizens can, at any time, reclaim British nationality. Such "Englishmen" certainly possess greater rights than the "Brown Britons" whose rights and British responsibility towards them, tend to be ignored. Thus many of the problems facing East Africa have been caused by Britain's unreadiness to accept and execute her responsibilities incurred at the time of the creation of the now defunct British Empire. Problems belonging, in reality, to Britain, have unnecessarily faced the East African States. Britain, therefore, should blow up her nose and talk and act sense as regards her international obligations towards her nationals of Asian origin in East Africa. She should grant these people automatic entry into her territory without subjecting to conditions this legal right of British Asians in East Africa. The 1971 Immigration Act and its concepts of "patriality" and "non-patriality" cannot be justified, for British citizens of Asian origin in East Africa have been unnecessarily put in an embarrassing situation, whereby most of them have been denied their legal right of entry into the U.K. The racial element openly provided for in British immigration law is regrettable. It is a blow to the legal and "acquired" rights of British Asians in East Africa. The racial element certainly minimised British responsibilities
for U.K. subjects, but whereas this minimisation is a big plus on the part of the United Kingdom, it has far-reaching negative repercussions on the international scene. It violates human rights, for instance. It contravenes the various Conventions and Declarations on human rights adopted within the scope of the United Nations and other international fora. The discriminatory element in British legislations on immigration and nationality has, it can be argued, been responsible to a large extent for the discriminatory laws in East Africa on citizenship, immigration, business licensing and the like. The former mother country - Britain - has greatly scandalized her "offspring" in East Africa. And while it is true to state that, as sovereign states the East African countries are entirely responsible for their acts and/or omissions, it is equally true to say that Britain as the former Colonial Power of these countries, which was responsible for the adoption of their Independence Constitutions and other laws, and of their emergence generally as sovereign entities, must be held responsible for some of the errors made by the East African states. The fact is that Britain has played a traditionally significant role in the advancement to international law. If this role and service are to be upheld, then it is essential that Britain should review her present contribution to the cause of both private and public international law. For sure, one of the areas requiring Britain's revision of her role in the development of international law is the question of her international responsibilities for the protection of her nationals, including her East African subjects of Asian origin.
CHAPTER NINE

ALIENS AND THE QUESTION OF HUMAN RIGHTS IN EAST AFRICA

The preceding Chapters have described the various situations of aliens in East Africa, problems of state responsibility for aliens in the region, and the general position of the new East African nations in international law and diplomacy. The way the writer has deemed best, and consequently chosen to tackle the complex subject, has been the historical method. Emphasis has, however, been placed upon the legal aspects of the question. But other aspects of the problem, notably its economic and political aspects, have also been explored. What has not, admittedly, been adequately provided, is an enquiry into the deeper, international implications of the question of human rights in contemporary East Africa. The treatment of aliens in the region, for instance, has only been touched on in passing. International reactions to racial discrimination in East Africa, or to the expulsions of aliens - Asians - from the region since 1961, have not been exhaustively discussed. All these issues are of crucial significance, and cannot, therefore, be ignored in a research programme of this sort. They certainly need to be examined against the background of the requirements and "standards" of international law. This Chapter will, therefore, discuss the national as well as international implications of the problem of human rights in East Africa.

The welfare of the individual, whether "alien" or "citizen", has always been a question of international concern. The fact is that international law is a discipline whose primary aim is to bring security, peace and joy to every individual wherever he may be. And since the individual has, "from time immemorial", played a vital role in the process of creating legal orders,
whether national or international, it is only fair that his fundamental rights and freedoms should be recognized, and fully protected by the law. International concern for the well-being of the individual is not a novel thing. For, already before the establishment of the League of Nations, the issue of human rights was the subject of regulation in many bilateral and multilateral treaties. When the League was created, it dealt with the question of national minorities and human rights that had become an international problem following the outbreak of World War I. Many documentations were prepared, and even conventions concluded, under the aegis of the League. For example, conventions and valuable documentations were produced at the International Conference on the Treatment of Foreigners, held in Paris in 1929, and the Codification Conference held at the Hague in 1930. When the United Nations was created twenty-nine years ago, it immediately became involved in the issue of human rights and fundamental freedoms. It will become clear that the U.N. has continued to be deeply concerned about the protection of minorities and human rights for all peoples without distinction as to language, race, religion, sex, tribe, and so forth.

1See L.O.N., 'Preparatory Documents', C.I.L.E. 1, 1922, 11.5; 'Proceedings', C.I.L.E. 62 1930, 11.5, pp. 419-21

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The available historical and legal materials provide evidence that the question of treatment of aliens is as old as the history of the law and relations among nations. This history reveals that two doctrines — legal, and inevitably political doctrines — exist which are not only contrasting, but very controversial. And their political and economic repercussions are very conflicting. According to one doctrine, 

"See, for instance, The Old Testament, Lev. 24, 22, and the relevant sections in the works of the following authors:—

WE. TERR. AUTHORS:

1) Oppenheim, Supra;

AUTHOR. AUTHORS:

1) Zareatski; Goralczyk; Libera and Tunkin (q.v. supra);
2) Masur K. Korovica: (Polish) In English: "Introduction to International Law"—The Hague, Martinus Nijhoff, 1959;
3) L. Zvlov (Russian)
In French: "Les Notions principales du Droit des Gens /La Doctrine Soivietique du Droit International"—70 HR, 411 (1947)
a sovereign has absolute authority over everything and everybody within his locus. Therefore, no distinction whatsoever should be made between the treatment of a citizen and an alien in the national territory of a given State. For, an alien, by voluntarily deciding to put himself within the territorial jurisdiction of a given sovereign or state, knowingly and willingly accepts not only the duties of allegiance — whether temporarily or permanently — to that sovereign or state, but also any other burdens which that sovereign's or state's laws may impose generally. Therefore, an alien must accept the laws as he finds them. He must, hence, be treated just like a citizen of the receiving state, for both of them fall under the same jurisdiction, and are subject to the same living conditions. This doctrine thus expounds equality of treatment under one domestic jurisdiction. The doctrine is normally described as the theory of national treatment. Its staunchest advocates include distinguished authors such as Borchard, Calvo and Oppenheim.

According to the other doctrine, an alien is a "visitor", and as such, he should be made to enjoy a much more favourable status than a citizen who (i.e., the citizen) is completely at the mercy of his own state — which, for the alien who owes allegiance to another state — is a host state. An alien should, therefore, be given a special position and treatment in the host state. The latter cannot, according to this theory, evade in every circumstance international responsibility by arguing that aliens and citizens had been accorded equal treatment. Clearly, then, this latter doctrine, known variably as "the theory of international treatment", "the minimum standard of civilisation", "the civilization standard", "the international standard of justice," "the moral standard of civilised nations", and "the international
standard of treatment," may be disadvantageous to the alien in many ways. But it is an ideal one, though it has only a few supporters including the Italian jurist M. Anzillotti.

The present writer supports this doctrine. For it imposes international responsibility on the receiving state to grant to aliens in its territory a treatment according to international standards - the minimum standards at least - laid down by international law. This means that a more than equality of treatment (with its own citizens) should be accorded to aliens by a state. This is all the more necessary if and where national standards fall below international ones. Thus execution of an alien without trial, wanton killings of aliens by local authorities, arbitrary or illegal arrests, detentions or imprisonations, deportations, denial of justice to aliens, unduly cruel, oppressive or unjust treatment of aliens, and so on and so forth are all good instances of national treatment below the international standard. For them, the state cannot escape international responsibility. In this writer's view, therefore, the doctrine of the international standard of treatment promotes respect for the rights of individuals and other Sovereigns. It is a sign of a "nature belonging" to the "civilised" society of nations; for it purports to advance the fundamental principle of comitas continens - international comity - whereby States agree to observe rules of convenience, politeness and goodwill in their mutual relationships, even though they are not bound to do so by any law. It was on the basis of international comity that the Vienna Convention on Diplomatic Relations of 1961 exempted, in Article 46, diplomats from customs duties, taxes and related charges. Thus jus gentium not only calls for mutual respect, considerations of humanity in questions of racial discrimination against aliens, for instance, and good neighbourliness, but it bestows upon
aliens privileges which citizens do not, in the normal circumstances, enjoy.

The doctrine of equality of treatment, on the contrary, favours the principle of equity (ex aequo et bono), through which the policies of justice, "open-door", reciprocity, most-favoured-nation treatment, compromise and the like are pronounced and may be arranged by treaty. Fair enough. But in reality, this doctrine tends to support the evasion of international responsibility towards aliens by the host State. The denial to aliens of political and civic rights by host States, including those in East Africa, is a good instance in point. According to the national treatment theory, aliens might quite as well serve not only in the police force, but in the armed forces as well of a host country. Is this not ridiculous? The national treatment doctrine also enables many States, including the East African States, to require aliens to obey the law as they find it. This is perfectly normal. But the repercussions of this requirement have a discriminatory character, since by it, aliens can be quite easily - and are in most States - restricted, if not excluded from performing certain functions, be they in the legal, economic, business or other spheres. Thus aliens may, for example, be denied access to legal assistance in cases before national tribunals. They may be required to deposit enormous amounts of money, or security in kind, for costs. It should be noted that East Africa applies the national treatment doctrine and imposes restrictions on aliens, and prevents them from carrying on certain functions. This we have explained above. Aliens may, under the national treatment, also be deported, as the East African practice has shown, without justified reasons being given by the deporting States. All
to freedom or personal convenience, or for the convenience of the community, or for the convenience of the government.

The question of the relationship between the government and the press is of great importance to the world. It is essential to maintain the independence of the press, and there should be no interference with the freedom of the press. The press should be free to express its views and opinions without fear of retaliation.

The press should be protected from undue interference by the government, and the government should respect the freedom of the press. The government should not interfere with the independence of the press, but should support and protect the press in its work of disseminating knowledge and information.

The press should be free to express its views and opinions without fear of retaliation.
provide religious instruction in the course of educating its
own members. Furthermore, there was a deliberate allowance for
racially discriminatory laws to be made for the employment of
a proportion of African citizens of Uganda in any trade, business,
profession or occupation. The same can certainly be said of the
provisions in the Kenya legislation. Most conspicuous and least
justifiable of these extraneous issues was the proposed change
in the citizenship regulations by which the child of Uganda
citizens, born after a date to be specified — most probably
the date the Constitution would come into effect — would have
to apply for registration as a Uganda citizen, unless one of
the child's parents or grandparents was, or had been an African
born in Uganda. Thus the existing Uganda citizenship could be
deprived of certain children or other minors, before independence,
who had been children of non-African citizens of Uganda. Thus
the alterations in the citizenship law were a deliberate deviation
from the generally — and internationally — accepted principles
of nationality law, under which the child of a citizen, whenever
born, and whatever his racial origin or pigmentation, succeeded
to his father's citizenship. That that new form of racial
discrimination was inscribed in the same law that was supposed
to guarantee against racial discrimination was a striking in-
stance of tolerance of racialism in legislation. The outcome
of such "racial tolerance" in law would inevitably be a new
class of stateless persons in Uganda. Article 4 of Uganda's
Independence Constitution, therefore, like the corresponding
Articles in the Independence Constitutions of Kenya and Tanzania,
needed to be reviewed.

What has not, it must be confessed, been examined so far is
the significant question of the role of the judiciary in the
treatment of aliens in East Africa. It is to it, then, that we
must now turn. At the outset, it should be observed that not
many cases of a serious nature involving have been brought
before East African tribunals. But because these tribunals
have variously interpreted the concept of "the rule of law", it
is necessary to look into the meaning of this concept here,
because it can help avoid abuse of power by the East African
immigration and other authorities, and thereby put right or
clarify the situation of aliens in East Africa.

The core of the expression "the rule of law" is the understand-
ing that nobody is above the law, and that all people
should be tried in the same courts, under the same laws,
irrespective of position or origin. However, it is noteworthy
that the notion of "the rule of law" does not mean that the
Government, its officials and agents - the source of the laws -
are vulnerable. In England, for example, the doctrine of "the
rule of law" went hand in hand with the expression "the
sovereign can do no wrong". This inconsistency in theory is
only apparent. It is not real. Thus the belief that "the
sovereign can do no wrong" does not mean that "anything the
sovereign does is always right". All then, that the doctrine
originally meant, and still means, is that the sovereign is in-
capsable of wrongdoing. The modern trends in the interpreta-
tion of "democracy", however, especially in the "civilized" world,
show that this traditional notion of "the rule of law" is being
challenged. The current demands for the impeachment of
President Nixon over the "Watergate Affair" are a case in point.

That aliens have rights - granted and guaranteed by inter-
national law - before municipal courts is an established and
widely accepted fact. The East African States recognize
this fact, fortunately. The States also recognize the existence of,
and apply the internationally significant principle of
"the Local Remedies Rule." According to this Rule, any controversy regarding human or property rights of aliens should be settled at local court levels first. This means that such controversy should be prevented, as far as possible, from growing into an international dispute between Sovereign States. Attempts to settle disputes regarding the rights of aliens should thus be made at the national tribunal level first, before bringing them to international tribunals of diplomacy.

The East African nations generally permit aliens access to their courts on a basis of equality with citizens. However, the existence of the practice in the three States of requiring excessive security bonds, and the frequent inability of aliens to sue in forma pauperis warrant an analysis of this issue here.

First, the East African practice does not know the historical and traditional doctrine of "extraterritoriality", by which aliens are governed by their own laws, even though abroad, and may be sued only in special courts in the host State which apply that law. It is instructive, however, to note that this doctrine is no longer applicable anywhere in the world to-day. The doctrine was once very frequently applied in the Middle and Near East.3

Secondly, the East African practice knows and applies the doctrine of reciprocity, by which the rights of aliens in East Africa depend upon the corresponding rights being accorded to citizens of the East African States in the country of aliens.

This reciprocity may be either:

a) **Reciprocity in fact,** where the alien will enjoy those rights which are granted by law, by the courts, or by administrative practice in his own country on citizens of his host State;

b) **Legislative,** where the alien will enjoy or enjoys only those rights which are granted by legislation to citizens of his host State; or

c) **Diplomatic,** when the alien has only those rights granted by treaty or even practice (custom). It should be noted that Kenya extensively applies this doctrine, for instance towards the diplomats of the Socialist States in Kenya except Yugoslavia's.

This Kenyan practice is questionable. The Soviet Union imposes restrictions upon Kenyan and other "non-Socialist" diplomats in their movement on Soviet soil. For example, a Kenyan diplomat in Moscow may not move out of certain radius within Moscow without prior consent of the Soviet authorities. The other Socialist States - Poland, for instance - affirm that they do not restrict foreign diplomats within their territories. Thus a Kenya diplomat in Poland is free to move anywhere in that country - barring, of course, the "restricted areas".

According to the Kenya diplomatic practice, all diplomats from East European States - except Yugoslav diplomats - are not allowed to leave the Nairobi area without prior consent of Kenyan authorities. Thus "Socialist" diplomats from Eastern Europe must apply for permission at least 10 days before their intended visit upcountry. The applications are subject to approval or disapproval. An interesting question that would be raised about the Kenya practice is why Kenya imposes restrictions on the movements of "Socialist" diplomats.
within its territory just because of the restrictions imposed on Kenyan diplomats in the Soviet Union by Soviet authorities. It seems that the argument expounded by Kenya is that the Socialist States are "Soviet satellites", because they belong to the "Soviet Bloc". Therefore, all their diplomats in Kenya must be treated in the same way (i.e., on a reciprocal basis) that the Soviet Union treats Kenyan diplomats within her territory. In the writer's view, it is difficult to justify the rationale behind Kenya's insistence that she adheres to the internationally recognized principle of reciprocity - on the treatment of diplomats - just because her Ambassador to Russia, Poland, Czechoslovakia, Hungary, Bulgaria and Romania happens to have his residence in the Soviet Union where he is restricted, and therefore all the diplomats of these countries should also be restricted in Kenya. Any argument, therefore, that Kenya displays "preferential" treatment - and this has certainly got a discriminatory flavour - to certain diplomats, - Yugoslav diplomats and those of Western Europe (British diplomats, for instance) and not to others has the support of this writer. It may be argued - and rightly so - that Yugoslavia has always fought with Kenya and other developing nations in the Non-aligned Movement. But it has been, in the writer's conviction, a matter of custom and practice that Yugoslav diplomats are not "discriminated" against in Kenya. There is no reason why a similar custom cannot be adopted towards those East European States which do not "discriminate" against, or restrict Kenyan diplomats in their territories. For sure, it would be best for Kenya to revise the question of treatment of foreign diplomats in the country and to give the principle of reciprocity its real meaning. This, as regards the East European States,
means that the Soviet restrictions on Kenyan diplomats should not make the diplomats of the other Socialist countries in Kenya suffer any discriminatory treatment at all. Such behaviour would also be best for Uganda and Tanzania.

Thirdly, the East African practice knows and applies the doctrine of "restrictive system", by which the rights of aliens are determined. According to this doctrine, equality between citizens and aliens is proclaimed in theory, but in practice, that equality is subject to so many important exceptions, combined with official and unofficial hostility, arbitrariness, discrimination, and suspicion, that any safeguards or guarantees to aliens are virtually meaningless.

Fourthly, the East African practice knows, as we have already explained, the doctrine of equal treatment or "assimilation", by which aliens are accorded the same rights as citizens in the host State, with minor exceptions, restricting commercial and political activity, and concerning expulsion from the host country. In the more recent years, however, the commercial restrictions in, and expulsions from East Africa have certainly not been "minor exceptions". Aliens have also experienced unreasonable and unjustified discrimination in the region.

Thus although the East African nations have granted aliens access to their national courts on an equal footing with citizens, and although the Local Remedies Rule has been adhered to, some discrimination has been discerned in practice. The recent expulsions of aliens from Uganda are a good case in point. Discrimination is an evil policy or practice, for it is a dict notion which advocates the granting of different treatment to different people according to their birth, race, sex, language, colour, religion, political or other opinion, economic
condition, national, ethnic or social origin. The purpose of discrimination is thus to nullify or impair equality of treatment. But because international law requires that all men should be treated justly and equally because "all are equal before the law and entitled without any discrimination to equal protection of the law," discrimination is a denial of human rights and fundamental freedoms. It is a distinction based upon grounds which have no justified consequences whether in political, legal or social relations, or on grounds of membership in social categories.

Discrimination, therefore, between human beings on the grounds of race, colour or ethnic origin is a direct offence to human dignity, a denial of the U.N. Charter principles besides those of other international conventions on human rights and fundamental freedoms, and an impediment to friendly and peaceful relations among nations. All States, including the East African nations, are under a duty to promote human rights without discrimination. Prevention of discrimination is the prevention of any action which denies to individuals, or groups of individuals, equality of treatment which they may wish. Similarly, the East African States are under a duty to protect their minorities, which are the non-dominant groups which, while wishing in general for equality of treatment with the majority, wish for a measure of preferential treatment - the international minimum standard - in order to protect them in their highly vulnerable situation before the majority of the population. In a research of this nature, it is unnecessary to examine, in broad perspective, the issues of human rights in the world and prevention of discrimination. Many International Instruments on human rights have been adopted under the aegis of the United Nations. These
Instruments regulate such a wide range of questions of human rights that books, and not just a thesis, can be written about them. Because, however, we are dealing here with the question of human rights at the decentralised or regional level, we cannot avoid mentioning international conventions regulating the observance of human rights in the world and imposing duties upon States, including East African States, to respect human rights and fundamental freedoms, and to prevent their violations. Among the international conventions adopted to regulate the observance of, and in respect for, human rights and fundamental freedoms to which everybody is entitled, and to prevent violations of human rights everywhere in the world, the following must be borne in mind:

1) The Universal Declaration of Human Rights adopted by the U.N. General Assembly on 10th December, 1948 (Resolution 217 A (III));

2) The International Covenant on Economic, Social and Cultural Rights adopted by the U.N. General Assembly on 16th December, 1966;

3) The International Covenant on Civil and Political Rights adopted by the U.N. General Assembly on 16th December, 1966. The two Covenants were declared in Resolution 2200 A (XXI);

4) The United Nations Declaration on the Elimination of All Forms of Racial Discrimination, proclaimed by the General Assembly on 20th November, 1965 (Resolution 1904 (XVIII));


6) The Discrimination Employment and Occupation Convention, adopted by the International Labour Conference on 25th June, 1958; and

As stated earlier, the subjects of regulation by the International Instruments are too broad to fit into a research of this sort.

But nevertheless, these Instruments outline certain salient points which are of relevance to our research. We shall therefore briefly examine these Instruments as they affect the status of, and protect the rights of aliens in, East Africa.

The Universal Declaration of Human Rights does not impose any treaty or contractual responsibilities upon the East African or any other states. But as an international charter of human rights, the Declaration cannot, or should not be ignored because it is an important, general guide concerning the content of the basic freedoms and rights of Mankind. One of its provisions is that everybody, irrespective of nationality, is entitled to freedom from torture or cruel, inhuman or degrading treatment or punishment, and to freedom from arbitrary arrest or detention. The fortunate thing is that the Universal Declaration is frequently referred to in national legislations such as Constitutions and other legislation, in judicial decisions and even in International Instruments. The East African States have based their constitutional sections relating to human rights partly upon the Universal Declaration. This practice of voluntarily including the Declaration's provisions in national legislations is very important, for the 1948 Declaration on Human Rights had no binding force. It was merely a declaration without any means of enforcement.

The International Covenants adopted in 1966 concern the right of all peoples to self-determination. For example, they prohibit torture or discrimination of any kind. They call for the protection, for example, of children, and ethnic, religious and
linguistic minorities. These Covenants provide for means of their enforcement, although the measures of their implementation are different. They impose obligations on their signatories to promote, respect and preserve human rights.

The other International Instruments mentioned herein have, as their main purpose, to prevent, or eliminate discrimination in all its forms. Elimination of racial discrimination is certainly a significant aspect of the protection of human rights. The above Instruments which provide an international legal prevention of discrimination contain practical measures for the elimination of racial discrimination and the prevention or prohibition of all practices of apartheid and other forms of racial segregation.¹

A question that must be examined at this juncture is the legal prevention of discrimination in East Africa. This is an important question because verbal promises by political leaders or Government spokesmen do not offer any reliable or static guarantees or safeguards. The Constitutions of Tanzania, Uganda and Kenya are the basic laws of these countries. It is, therefore, instructive that we find out at the outset what guarantees, if any, the Constitutions of the East African countries offer in the area of human rights. By constitutional guarantees or safeguards in the East African countries is simply meant those constitutional provisions and devices which were designed to prevent the abuse of power in East Africa. A short constitutional comparison, in the areas of citizenship, human rights and fundamental freedoms among the East African countries, reveals the

following. In Tanganyika, the Citizenship Act (No.15) of 1961 was entrenched as it were part of the Constitution. This we saw in Chapter Two. In Uganda, as in Kenya, as we also saw in the same Chapter, the law of Citizenship was entrenched in the country’s Constitution (Uganda: Cap.II; Kenya: Cap.I). The Constitutions of Uganda and Kenya only contain a Bill of Rights.

Uganda: Cap.III; Kenya: Cap IV. The Independence Constitution of Tanganyika did not contain a Bill of Rights. But the Preamble to the Republican Constitution of Tanzania (1965) contains important provisions on human rights or rights of the individual, which is in the same terms substantially as the opening declaratory section of the Uganda and Kenya Bills of Rights. The heading of the Preamble to the Republican Constitution of Tanzania is important: “An Act to declare the Interim Constitution of Tanzania (10th July, 1965)”. The Preamble reads:

"WHEREAS freedom, justice, fraternity and concord are founded upon the recognition of the equality of all men and their inherent dignity, and upon the recognition of the rights of men to protection of life, liberty and property, to freedom of conscience, freedom of expression and freedom of association, to participate in their own Government, and to receive a just return for their labours:

AND when men are united together in a community it is their duty to respect the rights and dignity of their fellow men, to uphold the laws of the State, and to conduct the affairs of the State so that its resources are preserved, developed and enjoyed for the benefit of its citizens as a whole and so as to prevent the exploitation of one man by another:

AND WHEREAS such rights are best maintained and protected, and such duties are most equitably disposed in a democratic society where the Government is responsible to a freely elected Parliament representative of the People and where the courts of
law are free and impartial:

HOW THEREFORE THIS CONSTITUTION, which makes provision for the Government of Tanzania as such a democratic society
is HEREBY ENACTED BY THE PARLIAMENT OF THE UNITED REPUBLIC OF
TANZANIA. 3

It is important to note the view expressed in a Government
Paper entitled: "Proposals of the Tanganyika Government for a
Republic", published on 31st May, 1962: "the rule of law is best
preserved, not by formal guarantees in a Bill of Rights which
invite conflict between the executive and the judiciary, but by
independent judges administering justice free from political
pressure."

Similar constitutional provisions in the legislations of Uganda
and Kenya regarding the protection of individual rights and freedoms, and the prevention of every kind of discrimination, can be
outlined as follows. Cap. V, Section 70 of the Kenya Constitution
corresponds to Section 3 of Cap. III of the Uganda Constitution.
In Section 70 of the Kenya Legislation, every person in the country
has the right to enjoy fundamental rights and freedoms, including
the right to life, liberty, security of the person, and the (equal)
protection of the law. Also, any deprivation of personal property
must be followed by compensation. Section 72 of the Kenya
Constitution talks of exclusion, admission, deportation,
extradition, restriction and control of aliens. These provisions
are in line with international law rules. The corresponding
provisions in the Uganda Constitution appear in Section 10 of
Cap. III. Emphasis in the Uganda provisions is placed upon the
protection of the right to personal liberty. Kenya’s Section
74, Cap. V of the Constitution corresponds to Uganda’s Section 12,
Cap. III of the Constitution. The talk is about protection from

3See "The Interim Constitution of Tanzania" - in 'Tanzania Acts,
inhuman treatment of every person in the country. It will be noticed that in all these provisions, there is a general conformity to international law rules relating to the prevention of discrimination and the respect for, and observance of human rights. Thus Kenya's Section 75 (1) provides protection from deprivation of property. Thus no illegal expropriation or nationalization of any personal property may be effected without prompt payment of adequate compensation. Similarly, nationalization or expropriation of such property without compensation may be lawful only if it is done for public purposes, such as defence, public safety, public order, public morality, health, town and country planning, or the development or utilization of any property in such manner as to promote the public benefit. The corresponding Section in the Uganda Constitution is Section 13. Of importance is the provision in these Sections that a person whose property is compulsorily expropriated has a right of direct access to courts and the High Court for determination of his interest, legality of expropriation, compensation, and the like. The question of slavery and forced labour does not, really, arise in East Africa, for it is simply non-existent. But Sections 73 and 11 of the Kenya and Uganda Constitutions respectively provide that individuals must be protected from slavery and forced labour. Sections 76 to 84 of the Kenya Constitution, and 14 to 22 of the Uganda Constitution respectively deal with the following issues:

1) Protection against arbitrary search or entry;
2) Provisions to secure protection of law;
3) Protection of the freedom of conscience;
4) Protection of the freedom of expression;
5) Protection of the freedom of assembly and association;
6) Protection of the freedom of movement;
7) Protection from discrimination on grounds of race, colour,
sex, language, religion, and the like;

3) Derogation from fundamental rights and freedoms; and

9) Enforcement of the protective provisions.

What must be re-stressed at once is that the above East African laws relating to human rights and freedoms generally conform to international law. The deviation from the latter has occurred, as we have observed above, more in the practice of the three countries. A few cases only have taken place, in which the prevention of (racial) discrimination in law has appeared in practice. A good example was the fascinating case of Ndhwa vs. City Council of Nairobi in 1963. In that case, the extent to which racial discrimination is prohibited by the Kenya Constitution was displayed. The events of the case were as follows: Six Asian stand holders, citizens of the U.K. and Colonies, were issued with notices to quit their stands in the Nairobi City Market following a resolution by the City Council that non-Africans be given notice, and that applications for the tenancies of the stands thereby rendered vacant be invited from suitable Africans. Subsequently, in correspondence with the plaintiffs' advocates, the Nairobi City Council affirmed its aim as being to allocate the stands to "Kenya citizens of African origin."

Four of the Asian plaintiffs had been born in Kenya, but because their parents had not been born in that country, they did not automatically become Kenya citizens under Section 1 (1) of the Kenya Constitution. It will be recalled that this sub-section guaranteed "automatic" Kenya citizenship only to citizens of the U.K. and Colonies or British protected persons who had been born in Kenya and were, on 11th December, 1963, such citizens and protected persons. All other persons would acquire Kenya citizenship only by registration, if their applications to register as
Kenya citizens would be submitted before a specified date, and approved by the Kenya Government. Four of the Asian Plaintiffs had so applied, although at the time of the court hearing their applications had not been processed, and certificates of citizenship had not been issued. It must be remembered, however, that the right to become a Kenya citizen is not dependent on the exercise of any discretion by any Government official, but it is an absolute right on proof that the applicant falls within the appropriate category. However, the legal status of such a citizen is less than that of a person who automatically became a Kenya citizen, because a citizen by registration may be deprived of his citizenship - and this has already been done, as we saw in an earlier Chapter - on the grounds, inter alia, that he has shown himself to be disloyal or disaffected towards Kenya. This is, in fact, the message in subsection 1, of Section 8 of the Kenya Constitution.

The ruling in the *Wadhwa v. City Council of Nairobi Case* was interesting. The learned judge held that all six Asian plaintiffs had to be treated alike as being citizens of the U.K. and Colonies, and that the four who had applied to be registered as citizens of Kenya could not be treated as Kenya citizens, since they had not yet obtained their certificates of registration. It seems that the right thing for them to do should have been to apply to the court for a declaration that the four were entitled to be treated as citizens, and that the Immigration Department had, therefore, the duty to issue at once the required certificates to them. The court held, however, that the Nairobi City Council had acted in a discriminatory manner, contrary to the Kenya Constitution, by treating non-citizen Asians less favourably than Kenya citizens.

citizens of African origin. Thus even though the Asians were "aliens" in East Africa, the City Council discriminated against them. It was hence "immaterial for the purpose of this suit whether or not they (were) citizens of Kenya"?

Section 26 of the Kenya Constitution prohibits, as we have been, every kind of discrimination. The latter was defined as an expression meaning "affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin or residence or other local connection, political opinions, colour or creed, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description". It is important to note that this is an exhaustive definition of "discrimination", which British Colonial draftsmen inserted into every independence constitution of a would-be ex-British State. Noteworthy also in the above definition is the deliberate omission of "the grounds of nationality or citizenship". As we have explained, the purpose of the (deliberate) omission was to make room for the making of laws - and thereby also make room for loopholes in the legislations - which would in whole or in part permit discrimination on the grounds of citizenship or nationality. Room was made for discrimination in Governmental policies and practices and by private individuals.

The writer's affirmation above that the legislations of the

Ibid.

Quoted in Section 26 (3) of the Kenya Constitution.
In many African countries, the freedom of assembly is protected by the Constitution, and the right to vote is also guaranteed by the Constitution. However, the Constitution also provides for the right to vote only for Kenyan citizens who have served in the armed forces or who have been employed by the government. Ordinary citizens in Kenya, but not Kenyan citizens, have the right to vote in elections.

Subject to the same qualifications, however, Commonwealth citizens who are citizens of a Commonwealth country and who have been employed by the government or who have served in the armed forces of the government of a Commonwealth country are eligible to vote in elections in Kenya. Hence, citizens who are

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rurop®»n«, Yhle te » ccr->leT legislative situation whlc^, in the writer’s view, expose too much of contradictions contained in Section 86 of the Kenya Constitution. In the case of the aforementioned plaintiffs, they were free to appeal to the High Court mentioned plantations, they were free to appeal to the High Court section 86 of the Kenya Constitution. In the case of the aforementioned plaintiffs, they were free to appeal to the High Court, yet the court decision indicates that non-citizen residents are entitled to non-discriminatory treatment under the Constitution. However, Section 86 of the Kenya Constitution, for example, does not provide that a declarator may not be unconstitutional. It provides that a declarator may be unconstitutional under subsection (4). The section on the grounds of race and nationality, under and subject to subsection (4) of the same section do not. The letter of Section 86, which provides a declarator that a declarator, thereby, whereby in some of the subsections, normally subsection (2) of the aforementioned plantations, both prevent and provide restraint on race
Discrimination by private individuals is very common in Kenya. It, therefore, deserves a short analysis here. It must be emphasized that subsections (1) and (2) of Section 25 of the Kenya Constitution deal with discriminatory laws or actions by public officers or authorities. Subsection (7) of that Section 25 is the only subsection which makes discrimination by private individuals illegal: "... no person shall be treated in a discriminatory manner in respect of access to shops, hotels, lodging-houses, public restaurants, eating houses, beer halls or places of public entertainment, or in respect of access to places of public resort maintained wholly or partly out of public funds or dedicated to the use of the general public." The lack, however, of a provision whereby an injured party can obtain damages for (illegal) discrimination, has by itself, encouraged discrimination by individuals in their private capacity.

This state of affairs exists in the other countries of East Africa as well. The writer's views on the imperfection of the East African Legislation relating to aliens have already been expressed. The repercussions of the shortcomings in the Legislation have also been explained. The whole truth is that unless the contradictions in the laws are removed and the loopholes in the same laws corrected, it is difficult to imagine how the situation of aliens in East Africa will distinctly fall above the average of the international standard of treatment.

So long as the situation remains as it is, accusations of discrimination and violations of basic human rights are to prevail. So long as the East African practice is allowed to go against East African law, negative reactions to the practice will not be confined to East Africa. They will assume repercussions abroad, as was the case when General Amin's Uganda expelled Asians in 1972. Kenya's violation of her constitutional provision in the 1960's
was also internationally condemned. It will be remembered that Section 25 (3) (d) of the Kenya (Independence) Constitution guaranteed to non-citizens who were ordinarily and lawfully resident in Kenya on the date of independence a right to reside in the country and protection from deportation. When the time came to expel the "undesirables" from the country, that right granted by the Constitution was disregarded; and many Asians were expelled, as we have seen. Similarly, Uganda expelled Asians who, in normal circumstances, had the right to reside in the country.

Apart from the repercussions of the expulsions of Asians from East Africa - which we have already examined - there are other important international implications of the expulsions and exoduses of Asians from the region. It is to these other international repercussions that we must now pay our attention.

The combination of the British colonial and municipal legislations and the laws of the East African States, together with the policies of these countries were the main causes of the expulsions and exoduses of Asians from East Africa.

The origins of the legal problems of Asians in East Africa can be traced back to 1948, when the British Government enacted the so-called British Nationality Act, 1948 - that came into effect on January, 1st 1948. It will be remembered that before that Act, the British Nationality and Status of Aliens Act, 1914 - 1943 divided, in the eyes of English common law, the world's population into two sections: aliens and British subjects. British subjects in British colonial possessions were divided into two groups: natives of a Colony - born in His Majesty's dominions such as Kenya Colony - were normally called British subjects. Natives of a Protectorate, Trust or Mandated Territory such as Tanganyika, Uganda or the Kenya Protectorate were normally called British protected persons.
The enactment of the 1948 British Nationality Act terribly complicated the whole situation. British nationality was substituted by British subjecthood - Commonwealth citizenship. National groups were henceforth divided into:

1) British subjects or Commonwealth citizens including the U.K. itself;
2) British protected persons;
3) Citizens of the Republic of Ireland who are not British subjects by virtue of their being outside the British Commonwealth of nations; and
4) Aliens, i.e., anybody who is not a British subject, a British protected person, or a citizen of the Republic of Ireland.

The mention here of this legal situation of people within the British former Empire is purposeful. The expelled Asians from East Africa were British subjects and protected persons - a British responsibility. They were given an option at independence in East Africa to retain British subjecthood or to acquire East African citizenship. Those that were expelled from East Africa held British subjecthood. Thus about 400,000 Asians opted to remain British citizens.10

We saw in Chapter Two that jus soli and jus sanguinis are the two primary doctrines of international law that govern the question of acquisition of nationality. Of these two doctrines, the jus soli is the usual and fundamental doctrine governing the question. But there is no legal obligation on the part of States to confer their nationalities on persons. However, although a person may not obtain a right of residence or business on a State's territory, even if he was born there, it is possible that he may obtain an "acquired" right of business. He could hence also acquire a right of residence. It might, therefore,
argued that "aliens" in East Africa of Asian origin have, by virtue of their long residence and conduct of trade in East Africa, or could acquire, a right of permanent residence and trade in the region.

The question of "acquired rights" was slightly touched on at an earlier stage. It must be stated here that acquired rights can be described as "any rights, corporeal or incorporeal, properly vested in a natural or juristic person, and of an assessable monetary value." The doctrine of "acquired rights" thus empowers international law to protect the "acquired" or "vested" interests of individuals which are not protected jure moli. The commercial privileges of the non-citizen Asians in East Africa are, in this writer's view, acquired rights and as such, the affected "alien" persons, whether physical or juristic, should have the right to bring cases before tribunals. This writer also believes that a licence lawfully granted to exercise a business is an "acquired right." It should not, therefore, be deprived of its bearer without sound reasons. It is a freedom granted lawfully to an individual to conduct business. This is an acquired right which none of the East African States takes into consideration before issuing quit notices or expulsion orders to non-citizen Asians in East Africa. In such circumstances, it must be argued that the expellees should be accorded a right to indemnity, if and when such expulsion orders are served to them.

One of the serious problems facing expelled Asians from East Africa is to find another home to settle in. We have seen that many of the Asian expellees who failed to acquire East African citizenship had hoped eventually to settle in their country of citizenship—Britain. But not all of them settled in Britain. According to a survey undertaken in Kenya in 1968,
for instance, of the Asians intending to emigrate from the country, about 18 per cent only preferred to settle in the United Kingdom. About 67 per cent preferred India, and about 6 per cent preferred Canada. This percentage shows that not many of them wanted to go to the United Kingdom as it had been feared by the "racists" in that country. The Asians feared being subjected to racialism in Britain that had prompted the enactment of the 1966 Immigration Act. Thus of the roughly 47,000 British passport-holding Asians in East Africa, only about 12,000 would have preferred to go to the United Kingdom.

The Indian Government also introduced legislation restricting the entry of East African Asians into India. But there was not much enthusiasm among the Asians for migration to India or Pakistan, even though these two countries offered the Asians best places from the cultural and religious viewpoints. Britain, however, offered better educational and living standards, but greater racism.

Apart from Britain and the Indian sub-continent, Canada also offered prospects for settlement. Thus some of the Asians expelled from East Africa in the mid-1960's decided to emigrate to Canada. In 1966 alone, it was estimated that 5,000 Asians went to Canada. But again, the immigration controls in Canada were also strict, and it seemed that only those Asians with definite professions and skills would be allowed to settle in that country. On the African continent itself, Zambia agreed to absorb some Asians expelled from East Africa to work on the Tanzania-Zambia (Tan-Zam) Railway. Ethiopia also recruited a few of them. It is important to note that the refusal by these and other countries to absorb the Asian expellees from Kenya and Tanzania was prompted by the
British immigration legislation of 1966. The countries believed that by absorbing British Asians, they would be bearing Britain's burdens. That they were unwilling to do. Pakistan introduced strict immigration controls. Thus the slamming of doors in the world behind the "undesirable" Asians in East Africa created a most serious situation of statelessness among the Asians. That unfortunate situation led to the conclusion of an agreement between India and Britain in July, 1966.

The purpose of the Anglo-Indian Agreement was to arrange for the resettlement of persons of Indian origin holding U.K. passports and resident in Kenya who were compelled to leave and wished to go to India. Where such persons were denied permits for residence or for the practice of their trade or profession, or their livelihood was curtailed by restriction of their right of trade, the British High Commission would place an appropriate endorsement in their passports giving the holders the right of entry to the U.K. The Indian Government agreed to provide, via the appropriate Indian authorities and representatives in Kenya, any such persons, if they were not disqualified from admission into India, with visas for entry into India, with a view to possible eventual settlement. The necessary administrative procedures were instituted in the British and Indian High Commissions in Nairobi. The results of the Indo-British arrangements were long queues of Indians at the Nairobi High Commissions of the two countries. Many of the Asians had lost their jobs and were thus desperately eager to go to India or Britain. The 1,500 vouchers available to them to enter the U.K. per year were too few. Thus a good 40,000 of them or so eventually emigrated to India up to 1968, and settled there permanently.
Another serious consequential problem of the expulsions of Asians from East Africa has been the splitting up of families and capital. This schism in Asian families has weakened the economic and industrial capacities of the Asians, and it is, in itself, a very sad experience and a serious violation of their fundamental family rights. The financial losses, physical separations, inconveniences, sufferings and other "evils" are all instances of violations of basic human rights.

The British Commonwealth Immigrants Act, passed by the British Parliament on 1st March, 1962, produced perhaps the most serious and negative repercussions for the expelled Asians from East Africa. For the first time, citizens of the U.K. and Colonies were deprived of their inalienable right to enter any part of the territories of which they were citizens. It will be recalled that until the enactment of the (British) Commonwealth Immigrants Act in February, 1962, it was a matter of principle that all citizens of Commonwealth countries, besides citizens of the British Colonies, had the free and unrestricted right of entry into the United Kingdom. With, however, the belief in Great Britain that that country was a Welfare State, the growing rate of immigration into that State, the emergence of former British dependencies — including those in East Africa — to full statehood, and the resulting burdens imposed upon Britain, and strains imposed upon her social and welfare services, many things changed. The 1962 Immigration Act introduced many restrictions that curtailed the number of Commonwealth immigrants into the U.K. The expelled East African Asians were affected very badly, for the discriminatory legislation was aimed only at Commonwealth citizens and those of the U.K. and Colonies whose place of origin and home was in a colony. Those Commonwealth
citizens resident elsewhere - e.g., in Canada, Australia or New Zealand - continued to enjoy the right of entry into the U.K. The excuse - a lame one - given by Britain for the control of the influx of certain Commonwealth citizens into the U.K., whether in search of employment - by West Indians of Pakistanis - or as a result of expulsions, from East Africa, for instance, was the necessity to avoid racial frictions in the U.K. caused by such forces as lack of employment, housing and schools for immigrants, educational facilities, and the like.

It will be remembered that Britain's decision to join the Common Market had, as its aim, to secure her economic survival. This meant, obviously, that Commonwealth immigrants had to be limited in their entry into the United Kingdom. These were some of the crucial problems that caused restrictions on the right of entry into the U.K. of some Commonwealth subjects, and that led to the imposition between 1962-1971 of immigration controls upon Commonwealth citizens. British "racialism" was responsible, to a very large extent, for the imposition of these controls. Racial discrimination in Britain resulted in the deliberate exclusion from entry into the U.K. of the British citizens of Asian origin in East Africa. Those who were admitted were unequally treated in the country, against the provisions of the existing international instruments prohibiting that type of treatment.

To be specific, Britain's rejection of Commonwealth immigration was motivated by the following factors, inter alia:

1) The fear of "diluting" English culture and traditions;
2) The determination to preserve the "Welfare State". This could be done by, for instance, avoiding strains on Britain's social services;
Complaints against the behaviour of immigrants, which tended to be "uncivilized" or below "English standards";

f) The fear that "racial" events in the United States might be repeated in the United Kingdom;

g) Fears of over-population; and

f) Financial fears.

One of the staunchest advocates of exclusion, or strict control of (Commonwealth) immigration into Britain was Mr. Enoch Powell, the Conservative M.P. for Wolverhampton in the Midlands. Although a very strong scholar, Powell has always been extreme in his racist attitudes. He began his "racist doctrine" following the expulsion of British Asians from Kenya in 1967 and their admission into Britain in February, 1968. In a speech to the Annual Meeting of the West Midlands Area Conservative Association, an area with a huge "coloured" population, Powell announced his famous 3-point doctrine for the solution of the (racial) immigration problem in the U.K.:

a) Legislation against racial discrimination should be enacted at once and unopposed;

b) Further immigration into the U.K. should be suspended indefinitely; and

c) Voluntary repatriation of "coloured immigrants" should be encouraged officially.12

This "Powellism" became very popular in Britain. And when Powell decided not to stand for re-election in February, 1974, most "Britishers" were very shocked. That was a clear indication of the support which most "Britishers" give to discrimination against certain British subjects.

12For Powell's racist views, see David Steel. Op. Cit. page 173 et seq.
In the more recent years, the expulsions of Asians from Uganda has sparked off a series of international implications. Some of these implications have been discussed above. Here, we need to look at those other significant repercussions of the expulsions which we have not touched on before. It must be stated at once that the legal implications of the expulsions have been most complicated. Thus it could be argued that, in the sense of municipal law, a citizen of the U.K. and Colonies, or of Bangladesh, Kenya, Tanzania or India is not an "alien" in Uganda. But that of Pakistan is, because the latter is no longer a Commonwealth country. Since Uganda continues to subscribe to the Commonwealth Code of Nationality in the Commonwealth, the expression of "alien" refers only to those people who are citizens of independent States outside the Commonwealth and Ireland, and to stateless persons. However, because the common legal status of British subjects now has a relatively small or no, effect at all on the legislation governing transactions between Commonwealth Governments – as we have established above – the right under traditional international law to expel aliens embraces the right of a Commonwealth country to expel those people who are exclusively citizens of other Commonwealth nations. It has been estimated that 14,451 Asians acquired Uganda citizenship by the "automatic" process. According to reliable Uganda sources also, 3,791 Asians acquired Uganda citizenship by registration. About 74,000 Asians became "aliens" in Uganda, or "citizens of the U.K. and Colonies", by association with India, Pakistan, Bangladesh, Kenya or Tanzania by birth or descent. The exodus of Asians from Uganda following the expulsion orders of 1972 was accelerated

as the November 8th (1972) deadline approached. By that time, the British High Commission in Kampala had issued entry permits into Britain to about 15,000 Asians. Processing continued at the rate of about 1,200 a day. The number of Asians expected to enter Britain was estimated at 30,000. The fighting on the Uganda-Tanzania border in the previous week had slowed down the process, for some Asians were kept at home, while others in up-country areas were physically unable to reach Kampala.

Thus the Uganda Government issued new regulations to ensure that the Asians did not delay their departure after receiving final clearance. By that time, no word had been uttered regarding the sale of, or compensation for, Asian properties in Uganda. Instead, all outgoing Asians had to buy their air, rail or sea tickets at the same time as they obtained their exit papers. The airlift of Asians to Britain ran at 500-600 people a day. Several countries— including Canada, the United States and Sweden — volunteered to absorb the expelled Asians. The Canadian airlift was underway, and about 1,500 Asians who had received entry visas to Canada were flown to that country. It must be remembered that most of the Asians who left the country for Canada were either stateless or Uganda citizens. The Canadian Immigration Office was, at the time of the deadline, also still processing another 6,000 applications for entry visas to Canada. By the same time also, about 1,000 of the 4,500 Indian citizens had already left, and 1,000 British Asians had been granted Indian visas. Other expelled Asians were expected to go to countries other than Britain, India and Canada. These other countries included Australia, Malawi, New Zealand, Mauritius, Pakistan and Bangladesh. It is noteworthy that Britain exercised her responsibilities for those Asians by holding consultations for accommodation with some 50 States.
Under normal circumstances, one would expect India, Pakistan and Bangladesh to accommodate, next to the U.K., the largest numbers of the Asian expellees. But that was not the case, for as we have seen, these countries enacted legislations restricting the entry of West African Asians. India’s Constitution bestows the right of entry and free movement, residence and settlement in its territory only upon its own citizens. Moreover, the so-called "Kenyan Asian" crisis led to the enactment, on 6th March, 1960, of a regulation applicable to the citizens of the U.K. and Colonies whose passports showed Kenya as the country of residence. The regulation provided that citizens of that category should no longer be allowed to enter India freely, but should require permission to settle in the country. The effect of that regulation was followed by the signing of an Indo-British Agreement, which we have explained above.

As regards citizens of the U.K. and Colonies resident in Uganda, however, it should be remembered that they continued to enjoy the right to enter India freely until 1972. Hence, a restriction was imposed upon the British citizens of Asian origin in Uganda in implementation of the Indian Home Secretary’s announcement that should a similar exodus of Asians take place anywhere else in the Commonwealth, "we shall not hesitate to extend it (i.e., the restriction) to other countries also." In line with that announcement, the Indian Government later amended its immigration laws in order to impose controls on the

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14 The regulation was called "The Passports (Entry into India) Amendment Rules, 1960.

15 Quoted in "The Times of India" of 7th March, 1968.
admission of citizens of the U.K. and Colonies holding passports specifying Uganda as the bearer's country of residence. In September, late, 1972, an Anglo-Indian Agreement was concluded whereby thousands of those affected by the alteration in the Indian legislation will be admitted to India for settlement. It is noteworthy that the administrative arrangements for the implementation of the 1972 Agreement are similar to those made in connection with the Kenyan Asians in 1968.

A serious problem resulting from the expulsion of Asians from East Africa and the refusals to accept them in Britain and the Indian sub-continent has been that of refugees and stateless persons. As we have explained, it is a general principle of international law that no State is under a duty to accommodate stateless persons or refugees. However, the International Community has, in the more recent years, promulgated some rules which demarcate a State's right to expel stateless persons. It now seems, in particular, that the expulsion of stateless persons is permissible only if undertaken in the interests of "public order or national security". The unlawfulness is obvious where statelessness is the outcome of a denaturalisation degree by the expelling State. Similarly, a State which deprives individuals of its citizenship in order to render them stateless violates international law, and the State is thus under a duty to allow such individuals to reside on its territory, unless denaturalisation itself is in line with international law. The above general principles of international law must be remembered when assessing the legal implications of Uganda's policy of scrutinising the position of the Asian population in that country. Thus to those Asians who

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16See "The Times" of 7th August, 1972, p.1
obtained Uganda citizenship but were later deprived of it by any action, the principle applicable is that third States have no duty to recognise the deprivation of Uganda citizenship, if the deprivation was motivated by racial considerations. A third State may thus continue to regard such Asians as Uganda citizens, and may return them - if expelled - to Uganda, or if Uganda refuses to readmit them, a third State may hold Uganda entirely responsible to make reparation for any expenses that may result from the need to accommodate the expellees. The case is not the same with those persons who have never possessed Uganda citizenship. For such persons are, and have always been, citizens of the U.K. and Colonies, if, of course, they fall within Section 2 of the Uganda Independence Act. Such persons are unquestionably a British responsibility, and must, therefore, be admitted to Britain.

Having seen the legal implications of statelessness in Uganda, we must now turn to the facts of the problem. It must be said immediately that the class of stateless Asians created following President Amin's expulsion orders remained the most intractable of the many problems the orders had ever produced. No official figures were released on the number of stateless Asians, but the estimate was put at 16,000 people who had been divested of Uganda citizenship in the Government's "verification" campaign. Asians exempted from expulsion by virtue of their Ugandan citizenship, or professional skills were then being required to buy identity cards to "facilitate their continued stay and movement in Uganda". The stateless Asians, however, had no identity, and no easily identifiable future, unfortunately.

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The wholesale expulsions of Asians from Uganda, with expropriation of their properties, have profoundly shocked world opinion. The expulsions of Asians, whether from Uganda, Kenya or Tansania, are bound to do substantial and lasting damage to the East African economy. The vigorous denunciations of General Amin's racism by African leaders in Uganda itself, and in Tansania, Zambia, Kenya and elsewhere, were no doubt in part an expression of the leaders' concern of its effects upon the future of the area as a whole. Evil as are these expulsions, they have certainly served to distract attention from the lawlessness and brutality with which the Uganda Government and armed forces have been acting towards their fellow-Africans.

The arrest by "soldiers" of Uganda's Chief Justice Benedicto Kiwanuka in the High Court building in Kampala was an outrage against the Rule of Law. There are persistent reports that Kiwanuka was beheaded within two hours of his illegal arrest. No reasons have been given for his arrest. It may be that, as a former Prime Minister, and as a person of statute and recognized integrity, he was thought to be a possible alternative Head of State. It may be that his independent judgement in a habeas corpus application shortly before he was seized, incurred the wrath of the authorities. Other prominent African Ugandans, and others from other countries, such as Tansania and Kenya, have also "mysteriously disappeared." A "disappearance" in Uganda has come to be tantamount to clandestine murder by the Uganda army men. Whether the murders have been effected as a result of fear by the mostly under-average educated Uganda army men, that the Uganda African elite might take over power, or as a result of revenge is not the main point. The whole truth is that the actions of the Uganda army men have been in direct and
gross violation of human rights and fundamental freedoms. Unless an end is put to the "disappearances" of prominent personalities, who are believed to be cruelly murdered by Uganda army personnel soon after their arrests, are definitely and incessantly to be levelled against Uganda. World, public opinion against the Uganda Government is also to prevail. President Amin's verbal condemnations of the disappearances, his promises of severe punishment to those army personnel found guilty of such murderous and barbaric acts, his dissociation of himself and his Government from such acts, and standard explanations that such disappearances have been caused by flights or escapes to other countries, will not help end the execration and abhorrence of Uganda's violations of human rights. For, in addition to prominent personalities, hundreds of suspected opponents of Amin's regime have disappeared, and are believed to have been murdered in all parts of the country, particularly in the northern districts of Acholi and Lango. The latter is, notably, ex-President Obote's district. Disappearances have also occurred in Uganda.

Thus complete defiance of the Rule of Law in Uganda extends to the treatment of common criminals. On 28th July, 1972 for example, three suspected thieves, known as "Kondas", were publicly executed in a field at Lugadi, a tiny town near Kampala. The executions were performed by members of the so-called Public Safety Unit, composed of selected public officers. There was no trial, no conviction and no sentence. This is but one instance of a practice that has been continuing indiscriminately elsewhere in Uganda, including the police barracks at Ngoro - another tiny town near Kampala - Mbale, and other places. It seems that the Senior Superintendent of the Public Safety Unit has been given unlimited power of execution.
On the international scene, General Amin has stressed that Uganda is not a lawless State. In defending his policy of "economic war", for example, the General has made it clear that he is not at all a racist. In a Note Verbale to U.N. Secretary-General Kurt Waldheim, General Amin declared: "All those people who are going (meaning Asian expellees) are being allowed to take their personal belongings as well as reasonable amounts of cash with them... there has not been any single instance of confiscation of property... The alleged harassment and mistreatment which might have reached you have been entirely unfounded, or at any rate grossly exaggerated."19

What must be remembered is that in spite of earlier rumours and even reports to the contrary, the expulsion policy was not extended to embrace the refugees living in Uganda under the auspices of the United Nations High Commissioner for Refugees (U.N.H.C.R.). These groups comprise about 75,500 Sudanese, 72,000 Rwandese, and 33,600 of them live in settlements organized by the U.N.H.C.R. Some Sudanese had, by the adoption of the expulsion policy in Uganda, already been repatriated following the Sudanese Peace Agreement. Others were expected to follow them.

At the United Nations itself, the problem of the Uganda Asians was brought before the General Assembly in September, 1972. On the 27th of that month, the British Foreign and Commonwealth Secretary, Sir Alec Douglas-Home requested the Assembly to discuss the problem without delay, owing to the serious nature of the problem. However, that British request was later withdrawn. But the East African States had already

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adopted their stands on the question. Kenya's stand, in the formula of which this writer was greatly involved, was important. Kenya's total opposition to all forms of racial discrimination and denial of fundamental human rights and freedoms was reaffirmed. Her strict adherence to the international instruments preventing all sorts of discrimination, particularly the Universal Declaration of Human Rights of 1948 and the two United Nations Covenants of 1966, to which she is a party, was declared. Her firm support of these and other anti-discrimination instruments, particularly the U.N. Declaration on the Elimination of All Forms of Racial Discrimination proclaimed in 1965 and the Convention on the same subject adopted in 1965, was stated with precision. Kenya's stand further revealed the country's commitment to uphold, at all times, all these instruments, to take all necessary measures for their universal implementation, and to cooperate with the U.N. to champion the cause of human rights.

The vast violations of human rights in the world, whether at the centralised or decentralised level need, in Kenya's view, closer co-operation and joining of forces of all States to suppress these violations and to eliminate inhuman acts of terrorism. While, therefore, commending the work of the U.N. and other international bodies charged with the duty of enforcing measures taken to prevent violations of human rights and freedoms, Kenya expressed the view that it was still imperative for those bodies to respond with promptness and skill to the requests made in the U.N. Resolutions, despite the difficulties of the task and their heavy programmes of work. While it is instructive to note that the language in Kenya's stand was "dogmatic", without any "element of condemnation" of Uganda's attitudes towards her Asians, Tanzania was direct...
in her condemnation of General Amin’s policy, which she described as “racist”. President Nyerere himself once remarked that, while it was normal to expel aliens from a country, General Amin’s decision to expel Uganda citizen Asians could not be less than racial. It will be remembered that criticisms of the Nyerere type compelled General Amin to cancel his expulsion decree requiring all Asians to leave the country, and to retain the one directed against non-citizen Asians in August, 1972.

In short, then, Kenya - like Tanzania - expressed the view in their stands that national judicial safeguards for the protection of human rights, besides the international legal prevention of discrimination provided for in the International Instruments referred to above, should be upheld.

Uganda’s stand on the issue was interesting. Although the U.N. General Assembly did not discuss the Uganda Asian problem, Uganda’s Permanent Representative to the U.N., Mr. Grace I. Imbingire, made a policy statement on the issue in the Assembly on 6th October, 1972. Uganda affirmed that of the nearly 60,000 Asians affected by President Amin’s expulsion decree, about 55,000 were British nationals. Therefore they were entirely a British responsibility. It was the U.K. that had organized an exodus of its subjects from the Indian sub-continent to Uganda, inter alia, at the close of the 19th century. Ambassador Imbingire also blamed many of the affected Asians who had “deliberately and voluntarily rejected Uganda’s offer” to them of citizenship by registration or ‘amnestation’.

The damage by these people to the Uganda economy which they controlled in 90 per cent, was enormous. The outflow of capital by these people greatly handicapped the country’s economic advancement. Imbingire went on: “there was (therefore)
no alternative but to ask those aliens to depart for their countries of nationality", for Uganda had the right to ask them to go. The Ambassador, however, acknowledged that many of the Asian expellees would become stateless persons, but he continued to blame them because they had deliberately refused to renounce their British nationality and to take up the Ugandan one within the period of three months that they had been given. Ambassador Imbingire then assured the Assembly that the "expelled" Asians still in his country would not be subjected to inhuman treatment after the November 8th, 1972 deadline. They would certainly not be thrown into concentration camps. Those "specific assurances" had already been communicated by President Amin to the U.N. Secretary-General, in a letter. The transit out of the country of those Asian expellees was protected by police escorts. The Ambassador then informed the Assembly that President Amin had noted that the Asians entering the U.K. from Uganda were being accommodated in many camps, which were similar to concentration camps. 20

The matter of the Uganda Asians was also taken up by the U.N. Sub-Committee of Human Rights - a branch of the U.N. Commission on Human Rights. A proposal that the Sub-Committee should send a telegram to President Amin, expressing serious concern at his proposed action, was defeated by 14 votes to 1, with 6 abstentions. A proposal to add the words "and expulsion" to a motion condemning racial discrimination in immigration policies of States was also defeated with only 3 votes in favour. However, a Draft Resolution referring to the Human Rights Commission the international legal protection of human rights of non-citizens was carried by a small majority: 12 - 1 - 10. The most active aspect of the U.N. involvement in the

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matter has, however, been the work undertaken by the United Nations High Commission for Refugees. This organisation has not only communicated regularly with the Ugandan Government in order to secure the welfare of the refugees under U.N. Mandate, but it has also taken measures to ease the condition of the expellees. On 19th October, 1972, for instance, the Commission communicated with 16 States with a view to securing the temporary or permanent settlement there (in those States) of Asian expellees who appeared to be stateless. From the start, the U.N.H.C.R. has closely co-operated with the Intergovernmental Committee on European Migration with a view to facilitating the travel of Asians expelled from Uganda. It is hoped that the U.N.H.C.R. will establish closer working relationships with the U.N. Commission on Human Rights, now that the latter's Sub-Commission on Prevention of Discrimination and Protection of Minorities, has devised a new procedure for dealing with communications to the U.N. Secretary-General, alleging violations of human rights and fundamental freedoms throughout the world.

The new procedure was, in fact, laid down by the U.N. Economic and Social Council (ECOSOC) in its Resolution 1503, adopted at ECOSOC's 48th Session in 1970. Under the new procedure, three stages are now operative:

I. The Sub-Commission — which is a Government-appointed but independent body of legal experts21 — is authorised to appoint a working Party. The purpose of the latter is "to consider all communications, including replies of Governments thereon... with a view to bringing to the attention of the Sub-Commission those communications, together with the replies of Governments, if any, which appear to reveal a consistent pattern of gross and reliably

attested violations of human rights and fundamental freedoms."

II. The Sub-Commission is requested to consider the communications brought before it by the Working Group, and any replies of Governments and any other relevant information" with a view to determining whether to refer to the Commission on Human Rights particular situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission".

III. The Commission on Human Rights, after examining any situation referred to it, is asked to determine—

(a) "Whether it requires a thorough study by the Commission and a report and recommendations thereon to the Council";

(b) "Whether it may be a subject of an investigation by an ad hoc committee to be appointed by the Commission, which shall be undertaken only with the express consent of the State concerned and shall be conducted in constant co-operation with the State and under conditions determined by agreement with it."

On 4th August, 1971, the Sub-Commission adopted Resolution 1 (XXIV) setting out the procedures for dealing with the question of the admissability of communications, and laying down the standards and criteria, besides rulings relating to the sources of communications, the existence of other remedies, and their timeliness. Admissible communications may, it is noteworthy, originate from individuals or groups who are victims of violations, persons having direct knowledge of violations, or non-governmental organizations acting bona fide, and not politically activated and having direct and reliable knowledge of such violations.

In this writer's view, this new system of suppressing violations of human rights in the world is a most useful one. The East African States which are multiracial societies, should strictly observe the new international rules for preventing discrimination. The significance of the new procedure lies in
the fact that, for the first time within the framework of the United Nations, there is a procedure under which private individuals, non-Governmental institutions and Governments alike, can raise complaints about violations of human rights within a given State, and have those complaints investigated and reported upon by an impartial international body. The new procedure came into operation for the first time in 1972. The Working Group met in New York in August, 1972. It considered the question of human rights in Greece, Iran and Portugal. Other areas where human rights have been reported to have been violated include: Bangladesh, Northern Ireland, Portuguese Africa, Turkey, South Africa, Rhodesia and, obviously, Uganda.

One question which we have not examined in depth so far, but which has a great impact on human rights and race relations in East Africa is tribalism. However, the nature of this Chapter does not allow us to tackle in greater detail the issue of tribalism in East Africa. But it must be pointed out and remembered that, to eliminate racial discrimination and thus ensure respect for human rights in the region, it is necessary to get rid of nepotism and tribalism. In other words, eradication of tribal imbalances in the East African Society is one way of lessening racial or ethnic inequalities and tensions in the Society.

The racial and tribal implications explicit in wealth in Kenya and the other East African States to-day originated, it should also be remembered, from the colonial discriminatory policies and practices, and the non-African control over private investment capital, which both protected and maintained the privileged positions of the immigrant communities — and their African favourite tribes — in Kenya and elsewhere in East Africa. The
racial and tribal inequalities and "separatism" made integration impossible. They have continued to menace tribal and racial harmony and equality in the region.

CONCLUSIONS: IDEAS AND PRACTICAL PROPOSALS FOR BETTER TREATMENT OF ALIENS IN EAST AFRICA.

The East African States are under a moral duty and a legal responsibility, imposed upon them by international law, to treat aliens according to international standards dictated by the "civilization" of States. What does this mean? It means, briefly, that by the time they acquired independence and joined the International Community, the East African people and their countries were supposed to be "mature enough" to differentiate between what is, and what is not acceptable in international behaviour, and to accord an egalitarian and just treatment to all people irrespective of origin, colour, language and the like.

It will be recalled that the Treaty of Westphalia of 1648 granted sovereignty and equality to the new States, which were for the first time recognized as the component units of the world's political organization. The doctrine of sovereign equality was later strengthened by the Dutch distinguished jurist Huig de Groot - known in Latin as Grotius - who, in his famous book "De Jure Belli et Pacis Libri, 1626" (Three Books on the Law of War and Peace"), strongly condemned savage wars and chaos. Grotius consequently appealed to all States to honour the existing universal standard of justice applicable to all States and individuals. For, thenceforward, all States would be equal, irrespective of their size, population, wealth or power.

Thus the above international standard requires that the
dignity, freedom, life, property and safety of aliens be protected sufficiently. Because the standard is sanctioned by international law, it is acceptable to the International Community, to which the East African States belong. Therefore, these States are under an international obligation to shun every practice that is contrary to the above universal standard of justice. They are also under the duty to honour or fulfil their international obligations resulting from international practice and custom. For example, honouring or exchanging diplomatic representation, settling international disputes by peaceful means only, and granting aliens a minimum standard of treatment.

The idea that rules of international law can be applied directly to individuals without the intervention of their own State is as old as the entire history of modern international law. In the history of humanity, there has been no epoch comparable in significance to the glorious years marking the end and beginning of the 16th century. It was in this most significant era that the discovery of the New World occurred, and lived one of the greatest fathers of international law: Francisci de Vittoria - Franciscus de Victoria (c. 1486-1546). Victoria received his surname from Victoria, the chief town of Alava in Spain. He has thus been variably referred to as Victoria or Vittoria. In International law, the name of Vittorio occupies a special place, for it is with his name mostly that the foundation or origins of modern international law is very closely associated. Other outstanding names include those of

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Orotole, as we have observed, and Vattel, as we shall see shortly.

Vittorio was a Professor of Theology at the Spanish University of Salamanca between 1526-1546 - the year of his death. In 1952, he pronounced his famous dissertations or lectures in French:

1. "Resortiones de Indorum" i.e., 'Researches on the Indians'; and
2. "De Jure Belli Fregnorum in Barbarorn" - i.e., 'On the Law of War of Spaniards among the "Barbarians". Professor Victoria did not publish any book during his life time, but his fame rests on his posthumously recovered lectures described above, which his enthusiastic students compiled and published. In brief, Vittorio's lectures asserted the rights of the native Indians in the New World, and the responsibilities which Spain owed them, even though they were "barbarians", i.e., not Christians. Like his predecessors - including Grotius ("De Jure Praednae" (1640)) and "De Jure Belli ac Peciae" (c.v.), Suarez ('"Tractatus de Lexibus ac Deo Legislatore" (1612 B.X.2) and others, Victoria argued that "the individual is the ultimate unit of all law, national and international alike, in the double sense that the obligations of international law are ultimately addressed to him, and the development, the welfare and the dignity of the individual human being are a matter of direct concern to international law. It is important to know what Grotius had to say on this view:

"Controversies among those who are not held together by a common bond of municipal law may arise among those who have not yet united to form a nation, and those who belong to different nations, both private persons and kings", and the law governing such controversies is "the law which is broader in scope than municipal law." The significant point to be made is what Grotius had to say on this view:

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about Vittoria is that he for the first time recognized that
the new system of States, and the new law among States which
are springing up were not confined to Europe or Christendom,
but they belonged to the whole world.

The man who was one of the founders of international law, but
the father of the law among nations in the strictest sense of
the term — though the Dutch jurist Hugo Grotius claimed to be
one — was the Swiss Lawyer Emerio de Vattel, born at Couvet,
in the principality of Neuchatel on April 23th, 1714. De Vattel
was a celebrated diplomat, an excellent publicist, and a
distinguished jurist. The most famous of his books appeared in
1758. It bore the title: "Le Droit de Genre, ou Principes de
la Loi Naturelle, appliques a la Conduite et aux Affaires des
Nations et des Gouvernains". The English version of this book
reads: "The Law of Nations or the Principles of Natural Law."

The relevance to our present research of the personalitites
and views of Vittoria and de Vattel lies in the fact that these
two jurists were the founders of the two doctrines of treatment
of aliens in international law. Vittoria was the father of the
national treatment doctrine. His pupils included L. Oppenheim
(U.K.); P. Cuggenheim (France); Charles de Muecher (France);
K. Strupp (Germany); E. Borchard (U.S.A.) and P. Jessup (U.S.A.).
It will be remembered that Vittoria's doctrine or school has
the most followers. 17 of the States at the 1930 Hague Codifica­
tion Conference supported this doctrine. To-day, almost all
the Latin American States, and the three States of East Africa,
are among the staunchest advocates of the doctrine. They apply
it unreservedly. Vettel was, on the other hand, the founder
and father of the international treatment. He discussed this

"Classics of International Law Edition (1916), translated by
James Brown Scott, reprinted in 1964 by Ocean Publications Inc.,
New York and Wildy and Son Ltd., London."
issue in Chapter VIII of his famous book. In it, he outlined principles of international law whose main objective was to secure the rights of aliens and foreign States, and to prevent the "peace of nations from being disturbed by the disputes of individuals." According to Vattel, an alien is accorded access only on the understanding that he will be subject to the general laws created for the maintenance of good order. Further, an alien must always be regarded as a citizen of his own State and treated as such, without being obligated to bear public burdens directly concerned with the citizenship of the host State. This School of thought has very few followers. They include M. Anzilotti, a distinguished Italian jurist. It is noteworthy that 21 of the States at the 1950 Hague Codification Conference supported this doctrine. To-day, some of the U.N. States, notably those signatory to the U.N. 1962 Declaration on Permanent Sovereignty over Natural Resources, seem to recognize the international treatment theory (See U.N. General Assembly Resolution 1805 (XVII) of 14 Dec., 1962). Many international tribunals and commissions also adhere to this latter doctrine. A good example of such commissions was the United States - Mexico (Joint) General Claims Commission, which was created by the Governments of the two States in 1927. The Commission ruled in that year in favour of the international minimum standard doctrine, in many cases, including the "Chattin Claim". In the ruling, the Commissioners argued that Mexican authorities had denied Chattin, a U.S. national, justice by subjecting him to sentence and to illegal arrest, trial and inhuman treatment while in a Mexican jail. Mexico was thus held responsible for neglect of an international responsibility,
and was consequently ordered to pay to the U.E. on behalf of B.E. Chattin, £5,000 as damages for denial of justice.

It has been argued by several writers on international law that no one standard should be taken as dogma. This writer, however, has expressed his support for the international standard of treatment, without, however, condemning the national treatment. In this way, the writer has acknowledged the view that the legal status and treatment of aliens are a matter for national legislation alone to determine. The big bug, however, is that international law cannot remain indifferent if the host or receiving State behaves, towards aliens, in a manner inconsistent with, or contrary to, the fundamental principles of international law. Aliens must, therefore, be treated according to standards laid down by international law.

The East African nations cannot thus evade the burdens of strict observance of this fundamental rules of international law. This means that, although the East African Governments have a right, (i.e., are permitted by international law) to expel aliens generally, the law of nations imposes upon the Governments certain conditions, culminating in international legal, and even moral responsibility, under which they may expel or deport aliens from East Africa. These conditions include:

1) Avoidance of personal injury to expellees, or damage to their private properties;

2) Expulsions of aliens may be rightly effected only if justified reasons for them exist, and can be given adversely verbia, if need be.

3) It is instructive to note that justified reasons for expulsion of aliens include these:

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a) Prostitution, and other similar, corrupt, social vices and evils;
b) Vagabondage;
c) Disease;
d) Conviction for a crime against public order and security;
e) Espionage, conspiracy, piracy, and other forms of "political intrigue";
f) Abuse of the flag (of an East African State);
g) Resistance to, or complete disregard of, the law; and
h) Violation of a human right or fundamental freedom established by law. The East African States must accept the fact that although they have absolute powers regarding the treatment of persons, their rights and duties within the States' territories, international law exerts protective influence which limits State absolutism and exclusive jurisdiction over aliens. This reduction of State absolutism in the treatment of aliens within State boundaries is the central purpose of International Instruments on human rights and fundamental freedoms. The East African States should also tolerate the restrictive influence which international law claims to exercise upon the East African laws relating to aliens. Therefore, existing laws of East Africa must comply with the requirements of international law. Those laws that do not, should be repealed and replaced by others that will comply with the demands of international law. Similarly, those laws that are missing but are essential to regulate certain crucial situations of aliens must be enacted at once. The legal position of aliens in East Africa is thus a matter of international law, which sanctions their rights in that region. The countries of East Africa should remember that once admitted into their territories, aliens are, in a way, legal subjects of rights and responsibilities. They should,
therefore, be accorded the international standard of civilization. The East African countries must hence concede a certain minimum of rights to aliens within their territorial jurisdiction. The powers of the countries should be restricted to a certain maximum. As members of the Community of "civilised" States, the countries of East Africa are expected to accord aliens certain, basic rights, and to treat them in a manner not violating the dignity of mankind. Aliens in East Africa should enjoy certain rights and freedoms. Those make the position of aliens in the region (seen to be) privileged, as compared with that of the host State. In international practice, this may be proved by the fact that, apart from being subjected to the territorial burdens of the receiving State, aliens also bear the burdens of their own (protecting) State. Therefore, aliens owe two kinds of allegiance, to their host State, and to their home State. This state of affairs makes aliens deserve a right to privileged treatment in the former State, and diplomatic protection of their own country. This right presupposes the legal institution of citizenship. Is it not ironical that international law grants protection to people when they reside abroad, which it denies to them in their own country? The answer to this question is in the affirmative, and it is because of these two jurisdictions to which aliens are subjected that international law intervenes and regulates the question in order to avoid difficulty and other inconveniences by demarcating the rights and duties of States in the treatment of individuals. Thus the host State has the duty to supply adequate judicial protection to the alien, and to furnish effective local remedies for repairing violations of rights. It has also the duty to comply with the requirements of "civilised" life, and the right to uphold its sovereign status. The home State
has, on its part, the right and duty to offer the required judicial diplomatic protection to its nationals abroad. This can be done by, for instance, safeguarding the interests and vested or "acquired" rights of such citizens against "invasions" by the authorities of the host State. In this writer's view, therefore, the East African States should apply the doctrine of the standard of civilized justice for several reasons. For instance, application of the national treatment doctrine means that there is no distinction between international law and domestic law. If this argument is true, then it means that aliens are "integrated" with nationals, the moment they enter a foreign State. Such an argument must be refuted at once. The distinction between the two systems of law is unquestionable. It is the strong conviction of the present writer that international law does not recognize the theory of national treatment. Hence the standard established by international law is the standard of international "civilisation" and it is this standard that the East African nations should apply, if they truly want to belong to the "civilized society" of nations and to avoid international delinquencies. The international standard is actually a "general principle of law recognized by civilized nations." It is a kind of universal command with respect to the treatment of aliens. It is the highest rule of "civilized" justice. It gives to aliens for greater privileges than those to citizens. It gives aliens all the rights essential for their existence, without restricting the sovereignty of a State. It gives the alien a legal position in international law and relations which assures him of his fundamental freedoms and all sorts of rights, without depriving him of his duties of obedience, allegiance, abstinence from "political intrigue", and so on and so forth. In a word, the
minimum or international standard of treatment of aliens is the doctrine of the consent standard of conduct which "civilised" nations have observed, and should always observe, in regard to aliens. For sure, then, there can be no better treatment, in East Africa, of aliens than that of the minimum standard of international law.
CHAPTER TEN

CONCLUSION: THE CONDITIONS FOR THE ELIMINATION OF RACIAL DISCRIMINATION IN EAST AFRICA

At the offset, it is necessary to point out that, apart from the term "the conditions for the elimination of racial discrimination in East Africa", the expression "the condition(s) of alien survival in East Africa" will also be used in this Chapter. By the latter expression will simply be meant what must be done to end or alleviate the existing communal and racial tensions in the region, to improve the general position of aliens in East Africa, and thereby make East Africa a better place for aliens to visit or live. Alien category are the most hated of all aliens in East Africa, the term "alien survival" will be used to refer in particular to aliens that are of Asian origin in the region.

The arguments contained in the preceding Chapters provide sufficient evidence to justify the conclusion that the survival of aliens in East Africa depends, and will, no doubt, depend upon the fulfilment of many conditions, not only by the countries of East Africa and their (private) nationals, but also by the aliens themselves. Effective and lasting solutions will thus have to be found to the existing numerous, racial and other most pressing problems resulting from such forces as tribalism, whose impact on racial and communal relations and the general position of aliens in East Africa is enormous; race; Africanisation; and the more difficult and complex legal questions of aliens in that region.

The wide misuse of the expression "tribalism" requires one to be cautious when dealing with it, and to avoid it altogether if one can. However, because tribalism greatly affects some
aliens economically, socially and even politically, in East Africa, mention of tribalism cannot be avoided here. For our purpose, the term "tribalism" has been, and will be used to mean ethnicity or "ethnico particularism". Tribalism is a form, by definition, of "group" identity. That is, it is a strong in-group loyalty and sentimental attachment to one's own group and its traits. The impact of tribalism on race relations in East Africa is not a novel thing. There are, however, certain ethnic groups in the region who have maintained, since the colonial times of divide et impera, a feeling of significance vis-a-vis the other ethnic groups. The most widely quoted are the Wachagga of Tanzania, the Baganda of Uganda, and the Kikuyu of Kenya. The Luoos and certain other ethnic groups were also used by the colonizers in the advancement of tribalism. On tribal functionalism in East Africa and its effect on aliens there, it is necessary to note that the disadvantages of tribalism outnumber its advantages. Thus the main advantage of tribalism is that it serves, though indirectly, the cause of regional unity by blurring national boundaries. The greatest disadvantage of tribalism is its advancement of exploitation, which is undoubtedly a colonial dogma. The Colonizers failed to eradicate tribalism because they failed to introduce a system of their own nationals and institutions at all levels of Government (direct rule). Instead, they introduced a system of indirect rule. They also refused to train local Africans for Governmental posts. Instead, the Colonizers employed traditional and tribal authorities who could not, naturally, help clinging to their own tribal principles. Another disadvantage of tribalism is that it is an isolating force that limits a man to a tiny world, consisting of numerous tribes - more than 120 in Tanzania, 31 in Uganda and 27 in Kenya. Some of these are large, others are very small.
This imbalanced, tribal distribution causes rivalry, tension, hatred, and even attempts at separation and war. Aliens cannot escape to experience the negative repercussions that may result from such unequal situations.

Tribalism also encourages social injustice and unhappiness. The results of tribalism thus include many factors that have a negative bearing on the position of aliens in a country afflicted with animosity, hostility, resentment, envy, corruption, and social besides political instability and insecurity in every possible way. Whereas aliens may regard tribalism as the main source of economic, educational, racial, sharp cultural, tribal, social, political and all other forms of "backward" developmental "compartmentalization" and social injustice, the envious and less favoured underprivileged individual citizen Africans and tribes have voiced a twofold resentment: against tribalism, and against unco-operation and unwillingness, the display of superiority, by non-Africans - whether citizens or aliens - to share their knowledge with Africans by teaching or training them in skilled jobs. It is instructive to note that this common charge has united citizen Africans against aliens in East Africa.

From the immediately foregoing remarks, it can be stated that adjustment of racial and tribal imbalances in all spheres of life in East Africa requires the development of equal educational opportunities, and to recruit into the public service people with required education and experience. The stress on individual merit means that some of the more educationally advanced tribes and aliens should continue to be favoured in the East African Civil Service recruitment, until such time as the rest of the population acquires the same
educational standards, and accepts the same values as do the better educated citizens and aliens. This also means that the development of the East African countries must be done in such a way as to eradicate the existing tribal imbalances. Furthermore, it means placing a special stress on the development of the less developed regions of East Africa. Education, then, is the basis of social justice and progress (equity), legal dignity and racial besides tribal harmony. Education plays a significant role both as an agent of social change and as an investment in training and skills.

Therefore, getting rid of tribalism is one of the necessary ways of eliminating racism in East Africa.

There are many reasons why, in the writer's belief, many aliens in East Africa will be retained in their good positions for a long time to come. For example, the present shortage of professional and sufficiently skilled African people such as architects, dentists, doctors and engineers, is a serious problem that cannot be solved overnight. It is the greatest impediment to the economic and political development and stability of the region. Therefore, a premature departure of alien workers from East Africa would certainly slow down development and create increased unemployment. Such an event would normally cause an inflation. The East African Governments are aware of this fact. They hence continue offering good working conditions to expatriates who intend to take up, or already hold, jobs in the region.

However, for those resident aliens, especially Asians, who leave school before the Fourth Form, there is simply no future, except for girls who can be expected to be married and become mere housewives. This argument has been backed by the refusal,
in Kenya, to renew the work permits all non-citizen secretaries (typists), except in a very few cases. The Employment Department directed that such secretaries would not have their work permits renewed after June 30th, 1974. East African Government projects to educate Africans whether locally or overseas have increasingly been intensified. Scholarships from abroad are granted to citizen Africans, mainly. Aliens in East Africa must, therefore, make their own arrangements for the education of their children, and training of their own people to become teachers, doctors, lawyers and the like, if they expect their own future to survive and prosper in the region.

What aliens in East Africa should do, it appears, is to create associations for raising funds, scholarships, and so on for sending their children to establishments of lower and higher learning. It also appears to be imperative that, in this great venture, the aliens of East Africa should be assisted by the Governments of East Africa, India, Bangladesh, Britain and Pakistan. Alien communities in East Africa should also assist in the important task, whether individually or collectively. Thus advantages of obtaining higher education and skills, open to aliens in East Africa - mostly those of Asian origin - include: their ability to perform useful services on their own behalf and on behalf of the Africans, and to obtain access to nearly any country in the world if they must quit East Africa in due course.

The stress on individual merit also means that Africanisation, which should be "citizenisation", whether rapid or gradual, can

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only be justified if no fall is experienced in the standards of efficiency. Otherwise, the economies of the East African States are bound to seriously suffer from the (negative) repercussions of Africanisation. It is, therefore, essential that Africanisation should remain compatible all the time with developmental goals. Also, Africanisation should not be carried out at the expense of justice. Therefore, "corrective justice" of bringing about equity or reallocating resources by offering Africans more opportunities than the other races - citizen or non-citizen - is a discriminatory practice which should be abolished. Racial discrimination in employment must also be eliminated. This is one of the necessary conditions for alien survival in the East African Society. The East African Governments should differentiate between "Africanisation" and "Kenyanisation/Ugandanisation/Tanganyikanisation". The evils of the unmade distinction have been many and varied. They have hit the alien very hard. If Africanisation essentially means transferring the country's assets, resources and the entire economy to Africans on an equitable basis, then Ugandanisation, for instance, means transferring such assets, resources and the economy to Uganda citizens, irrespective of colour. The interchangeable employment of these two expressions has led to a lot of confusion, corruption and victimisation of the innocent. So long as, however, Africanisation remains as expensive as it is to-day in East Africa, foreign investments will continue to pour into that region. And so long as investment agreements continue to be signed between East African and other Governments, the practice of exchanging specialists will prevail.
This is all the more so since the young graduate entrants are arrogant, and like changing jobs frequently in order to meet better conditions of work to suit their "better qualifications." The arrogance of such young graduates renders many jobs vacant. This situation, in turn, retards the tempo of "Africanisation" and is, therefore, also a condition for the retention, by aliens, of their good positions in East Africa.

Most of the local staff, however, hate the idea of continued recruitment and maintenance of foreign personnel who cost the East African Governments huge sums of money. In this writer's view, the argument of the local personnel must be rejected at once because developmental needs cannot be sacrificed for equity or any superiority demands of the locals. If the local staff are not good or scarce, and the Governments decide to retain expatriates, that is equity, in its truest sense, that is badly needed for the development of East Africa. It is, in this writer's conviction, perfectly justified. It is, therefore, totally ridiculous to argue, as most local staff do, that expatriates are unwilling to give up the good life and quit. It is not because they are unwilling, but because they are badly needed in East Africa.

If, therefore, the expatriate staffs stay and do not deter, but rather assist in the Africanisation of jobs — and this is the aim of most expatriate staffs — then they should not be accused of frustrating the local staffs.

On their part, however, aliens — especially those of Asian origin — must show their willingness and ability to comply with the developmental requirements of the region where, after all, the aliens have no full rights. But if aliens in East Africa are expected to train Africans more efficiently, then it is certainly desirable that they be integrated and
fully accepted into the East African Society. This require-
ment calls, inter alia, for full respect of the acquired
rights and vested interests of aliens in the region.

The retention of aliens in East Africa should not,
however, promote dominance on the basis of intellectual
and material superiority. It should not tolerate the concept
of higher "racial" standards and the greater spiritual or
intellectual efficiency in East Africa. The view of the late
Ghana's Dr. Kwame Nkrumah on racialism was that:-

"The foulest intellectual rubbish ever invented by men is
that of racial superiority and inferiority. The fact is
that the powerful forces which seek to block the advance
of the 280 million Africans to a place of full equality
in the world community, and which strive to maintain
neo-colonialism, or even overt colonial domination and
white supremacy rule in Africa, find it their interest to
perpetuate the mythology of racial inferiority. Thus it
is not simple ignorance of Africa, but deliberate
disengagement of the continent and its peoples, that
Africanist and encyclopaedien Africans must account with."

East Africa is a mixed society. What does this mean? It
means many things. It is, for instance, a society in which
its members, whether nationals or not, feel to make a home,
whether on a permanent or temporary basis, in the same place.
East Africa is also a multi-cultural society, that is, it is
a society in which ethnic diversities exist. The physical
composition of East Africa also makes it a multi-racial
society. If aliens are to survive in such a society, there
must be: absolute equality in the paths of knowledge and
culture; equal opportunities for those who strive; equal
administration for those who achieve, in racial and social
affairs, a separate path, each pursuing his own inherited
traditions and preserving his own pride; and equality in
spiritual matters.

See "The Daily Nation" (Nairobi) of 26th November, 1964,
Nkrumah spoke, at the University of Ghana at Legon in 1964,
to the First Meeting of the "Encyclopaedia Africana".
The present set up of the East African society does not, unfortunately, make it a perfect, multi-racial society. This is clear from the remarks which we have made at an earlier stage of this Chapter. Human relations in East Africa are, as we have seen, full of racial and other tensions, whose causes include cultural, religious, social, economic, traditional, tribal, lingual and educational differences. It must be stressed now that the core of the racial "threat" (i.e., feelings of racial antagonism and suspicion) in present-day East Africa are still the economic and social imbalances separating Asians from Africans. It will be recalled that the struggle for Uhuru (Independence) in East Africa was promoted by the feeling of humiliation of being ruled by aliens. Politically, the Asians identified themselves with this humiliation. There was also the humiliation of disease, ignorance, and poverty, which the attainment of independence stressed throughout East Africa. The challenge, then, to the non-African communities, particularly Asians, was whether they would continue expressing antics showing that they were willing to share that humiliation with the Africans. What the Asians could do in the circumstances was, inter alia, to contribute generously to the economic progress of East Africa. In this way, the attitudes and spirit of the body politic would be immensely bettered.

If, therefore, harmonious race relations are to be achieved in East Africa, then aliens (especially Asians) and East Africans must alter their attitudes ad nauseam. These two racial groups must completely remove the traditional barriers existing between themselves. Asians, whether nationals or not, must disregard their racial prejudices.
and attitudes of cultural arrogance. They must also change their patterns of economic activity, and show readiness to assist Africans in business, trade and other undertakings. East Africans, on their part, should not show blind hatred against Asians. The former should show their readiness to end revengeful and caustic practices and ideas, and to guarantee the security of Asians in the region. Citizens Asians, Europeans, and any other national (citizen) minorities in East Africa should not be regarded as "Second-Class" citizens. The central aim of all the racial groups in East Africa should, therefore, be to eliminate the racial menace in the region.

Another way of easing the communal and racial tensions in East Africa is to establish genuine co-operation among the various, ethnic and racial groups in the region. What are needed are national, or even regional, voluntary organizations of both Africans and other racial groups, devoted to the creation and continuance of sound race relations. It is appreciative to note that in Kenya, an organization called the National Christian Council of Kenya (N.C.C.K.) established in January, 1970, the so-called Community Relations Committee (C.R.C.). The central purpose of this Committee - comprising members from all walks of life, with different religious, racial and ethnic backgrounds - is to promote sympathetic understanding and harmonious relationships among the diverse, ethnic, racial and religious groups. The Committee comprises nationals and aliens alike. This Committee has already done useful researches on some of the complex problems resulting from the mixture of tribes, cultures and races in Kenya. Thus problems of employment, youth, students, Africanization and
racial minorities in the country, to mention a few only, have been tackled by the C.R.C.

To this writer's knowledge, the C.R.C. is one of the very few organisations in Africa that work for the ideals of harmonious mixed societies. The C.R.C. is the only organisation of its kind in East Africa. The creation of similar committees in Tanzania and Uganda is desirable. It would also be useful to create a similar organisation on an East African regional basis, whose primary function would be to co-ordinate the activities of national committees. In fact, each East African city, town or province requires an active organisation to direct its attention, primarily to immediate problems of racial difficulties, and secondly, to lay schemes for long-range efforts to eliminate the great social evil called racial discrimination. The inflammatory statements - some of them with racist tones - made over the years by East African politicians regarding the racial problem in the region can only alert East Africans to this great social problem which, if unchecked, could become a cause of open violence and racial chaos. It must be reiterated here that political utterances alone cannot solve the problem of ethnic and racial inequalities in East Africa.

Since the Governments of East Africa and the Indian Sub-continent (India, Bangladesh and Pakistan) reject the notion of dual nationality, alien Asians who want to reside in East Africa should be given and cease the opportunity of acquiring East African citizenship. It must be emphasised that those large numbers of Asians who wanted to stay in East Africa but did not opt for such Citizenship (during the two-year period of grace starting with the date of independence in East Africa) did themselves enormous harm. Those Asians that are now
permanently resident in East Africa should fully participate in the building of a successful and prosperous East African multicultural society. For example, East African Asians should intensify their efforts to assist Africans, as has already been explained, in all the key fields of development. This type of action will demonstrate to Africans that Asians in East Africa are committed to it and to its prosperous future. There is no reason why East Africa should not become a screen for sound and harmonious race relations. We cannot afford to let the region become a racial battleground.

No doubt, one of the important conditions for the elimination of racial discrimination in East Africa is strict observance of the constitutional provisions guaranteeing equality of rights and treatment of all people, irrespective of tribe or race. However, constitutional guarantees and safeguards, and a mere setting side by side of races in East African schools, universities, places of residence, employment and the like, will not, by themselves, solve the racial and communal tensions in East Africa. What is needed, then, is some form of effective integration: a relationship in which the hatred towards national minorities diminishes, or disappears altogether. Integration can be of two types: pluralism, also known as "accommodation," and assimilation. Pluralism advocates the continuation of the minority as a distinct group or unit within the larger society, while retaining community "awareness".

Assimilation, on the contrary, rules out every diversity between groups as such, e.g., in family life, culture, religion, club associations and other socio-cultural institutions, marriage, food, and so on and so forth. Assimilation further
implies the complete disappearance of minorities as distinct
unities in society. Assimilation is thus the opposite of
pluralism.

Resident aliens in East Africa have these two types of
integration open to them. They can choose either or both.
However, the continued existence in the region of racial
tensions despite the prevalence of pluralism in East Africa is
a clear indication that pluralism has not been an effective
type of integration. It therefore appears that assimilation
would be the better form of integration in East Africa.
However, the strong tendency towards pluralism in the region
makes the realisation of assimilation remote. In the circum-
stance, it seems that pluralism will prevail in the region.

But if the East African Society is to be a pluralistic
society in which racial harmony is to be ensured, then the
conditions, _inter alia_, which must be fulfilled can be summed
up as follows:—

1) The racial, ethnic minorities must be accepted as full
members of the Society, (or their country of residence), in
which they can thus play a role on an equal footing with
the majorities.

2) The minorities must accept, and be loyal to, the country of
residence. They must also respect the fundamental aspirations
of the majorities who, in turn, are obligated to be tolerant
and understanding.

3) The existing "intra-racial" institutions must be reconstructed
in such a way as to be capable of promoting trust and good-
will among the various racial groups in East Africa.

4) All forms of legal discrimination must be removed at once.
This condition essentially implies that racial discrimination must be prevented in East African laws. The removal of this discrimination must be effected through the East African tribunals and leaders. We shall return to this issue later.

For the moment, we need to examine briefly the question of the alien Asian community in East Africa. We have seen that some Asians refused to become citizens of East Africa partly because of such confusion, and misunderstanding about the implications of East African nationality. Primarily, their refusal to opt for this nationality and retain that of Britain, Pakistan or India was inspired by the fear that to release this would be to surrender the right to any kind of protection in the event of persecution or property confiscation. The Asians were aware of the gossip that once a person surrendered his (foreign) passport, he would not be permitted to go abroad, or at least not without the payment of large sums of money.

International implications of the problems of aliens — and for that matter any other racial minorities — in East Africa will continue to occur as long as the African (ruling) majorities fail to understand, and find the right solutions, to these problems, and the racial or ethnic minorities — citizens and aliens alike — remain persistently arrogant. In this case, the immigrant minorities will, or should, have the right to seek assistance from outside countries — whether of their origin, like India, Pakistan or Bangladesh, or of their nationality, like the United Kingdom. International law recognises the right of a State to intervene in order to protect the lives of its citizens abroad. Forms of intervention of the protecting State against the host State include:

(1) Bringing the problem before an international community
such as the United Nations, the Organisation of African Unity, the British Commonwealth Conference, the East African Community, and the Afro-Asian Consultative Organisation. Any of the organisations may either discuss the problem and recommend solutions to the countries concerned, or set up commissions of enquiry to investigate and report on the problem. This procedure has, as the reader knows, been very widely used by the United Nations Organisation.

(i) Protesting diplomatically against the State alleged to be persecuting, or to have persecuted, a citizen of another (home) State. This is, in reality, a form of minimum interference.

(iii) Severance of diplomatic relations with the State in which the citizens of the protesting State are, or have been, persecuted.

(iv) Direct military intervention to protect the home State's nationals abroad. Needles to say, this method was applied by the Belgian Government in July, 1960, against the Congo.

(v) Raising war, as Turkey has repeatedly done against Cyprus, where the former greatly feels committed towards its minority nationals.

To what extent, however the Governments of the United Kingdom and the Indian Sub-Continent would feel themselves morally obliged to interfere in East Africa, if ever there was a case of the persecution of alien minorities in East Africa, is a matter that requires a sharp analysis. The reactions of these Governments to the expulsion of Asians from East Africa in the years 1967, 1968 and 1972 revealed that the possibilities of the Governments' intervention in East Africa would be the last thing for them to do. This
leaves diplomatic protests, bringing the problem before the International Community, and "Wars of nerves and words" - the greatest forms of intervention most likely to be used, should such expulsions and other kinds of mistreatment of non-citizen Asians occur again in East Africa. One thing that seems certain is that the above home countries (Governments) will not intervene in East Africa just because of the economic imbalance between non-citizen Asians and the Africans in East Africa. Even if a strong position were to be justified by persecutions of such alien Asians in East Africa, it is very difficult to imagine a military intervention in the region by Britain, Bangladesh, India or Pakistan. The writer is unable to imagine any circumstances that might warrant a military intervention. If anything of the sort were imminent, it would only keep extremely busy the Foreign Offices of Britain, the Asian countries and the East African States. It might also appear in British Commonwealth and Non-aligned Conferences, besides the U.N. But the most serious repercussions of the alien problem in East Africa might appear on domestic lines - on the politico-economic fronts. This has already happened. The expulsion of Asians from Uganda in 1972 offers an excellent instance of the national - and indeed international - repercussions of racial tension.

A very curious phenomenon regarding the position of the Asian minority and the issue of human rights in Uganda in the more recent days has been the Report of the Geneva-based U.N. International Commission of Jurists. 3 The I.C.J. Report...
has bitterly accused President Amin's Government of creating a reign of terror in Uganda, through massive violations of human rights, arbitrary arrests, torture and murder. The comprehensive and most accurately prepared 63-page Report declares that "By a series of decrees overriding all constitutional safeguards, and by a system of arbitrary repression operating outside any legal framework, there has been a total breakdown in the rule of law." The I.C.J. Report further states that "The effect of these massive and continuing violations of human rights has been to create a reign of terror from which thousands of people from all walks of life, Africans as well as Asians, have sought refuge in voluntary exile. Those remaining are in a constant state of insecurity." The Report, based on statements from Africans, Asians and Europeans who were in Uganda after General Amin's coming to power in January, 1971, condemns Uganda's failure to uphold even the minimum judicial safeguards for the protection of human rights. General Amin was accused of overriding the Uganda Constitution by arbitrary decrees. The expulsions of Asians from Uganda in 1977 involved serious violations of human rights because, the Commission argued, the expulsions were based on an explicit policy of racial discrimination. Similarly, "The banishment of all Asians recognized as Uganda citizens to a remote and unfamiliarly rural life was an act of racial discrimination which had the (no doubt intended) effect of driving almost all of them out of the country".

The Report, drawn up by the I.C.J. Secretary, Niell Macdermott of Britain and his staff, sparked off a host of negative reactions on the part of General Amin's regime. The British Broadcasting Corporation's commentaries on the Report prompted
General Amin threatened taking drastic steps against Britain - by closing down the British High Commission in Kampala and expelling all British nationals in Uganda - if the B.B.C. did not stop broadcasting "malicious propaganda against". The B.B.C. alleged that over 300,000 people had been killed in Uganda during the Uganda "crisis". General Amin was about to carry out his threatened "drastic steps" when President Kenyatta phoned to advise him not to do so. However, President Amin soon greatly regretted to have obeyed President Kenyatta's request, when an editorial in the Kenya-Government-backing "Daily Nation" of 8th June, 1974 (p.6) condemned Amin's threats against Britain. The editorial affirmed that "The I.C.J. is an independent organization whose members are professional lawyers of the highest standing and integrity... drawn from all over the world..." Therefore, it was quite folly to accuse Britain for the Report's contents which were, after all, perfectly correct and accurate. General Amin's immediate reaction to the above commentary was to ban, with immediate effect, "all imperialist" newspapers for their perpetual stand against the Uganda Government, where they distort the true picture of the country and, at times, fabricate stories on issues which have never taken place." The papers banned included: "The Observer", "Daily Telegraph", "London Times", "Sunday Express", "News of the World", "The People", and the Kenya-based "Daily Nation", "Sunday Nation", "Sunday Post", and "East African Standard." The ban is still effective at the time of writing this Chapter (June 25th, 1974).

Uganda bitterly condemned "our brothers in neighbouring Kenya

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4 "The Daily Nation", 8th June, 1974, p.1
who are supporting imperialists", and seriously warned these "brothers" of their "provocative propaganda which Uganda hates because of the strain or interference with such good relationships. That accusation against "our brothers in Kenya" was promptly responded to in another editorial in 'The Daily Nation' of June 10th, 1974: "It is not necessary for us to whine because of insults hurled at us by a spokesman of General Amin. If the Uganda military spokesman calls us imperialists, or imperialist propagandists, or fabricators of issues, none of these things objectively represent what we are doing. They are simply states, and ideas, in the mind of the speaker... In our editorial of Saturday, June 8, we stated, among other things... that the nature of the document is such that it is imperative for the Uganda Government to give a satisfactory counter-explanation. We reiterate this position today. The present regime stands accused at the bar by world public opinion. And just what is General Amin trying to deny?... We are committed to the principles of good neighbourliness and peaceful co-existence. But we are not committed to levying praise on our neighbours whether they are right or wrong..."

Later in the same week, General Amin paid an unannounced visit to President Kenyatta at State House in Nairobi. The real purpose of that visit is any observer's guess, but it can be presumed that the two Heads of State discussed the I.C.J. Report Case.

The above example reveals one significant thing. The survival of aliens in East will also depend, and to a large extent, upon international interest in the position of aliens in that region. The role of international bodies concerned with the promotion of human rights - such as the United Nations High Commission for Refugees, and the U.N. Commission on Human Rights - will have to be intensified. Individual States will have to offer their good services and show readiness, keenness and great interest in the maintenance of respect for

7 "Daily Nation", Ibid., p.16.
8 "Daily Nation", Ibid., p.6
human dignity. They will have to observe the principle of humanitarianism. Canada did this, for instance, when she showed her preparedness to accept up to 6,000 of the Asians expelled from Uganda in 1972. Other Governments, notably those of the U.K., India, Bangladesh and Pakistan, will have to show their readiness to accept their moral and legal responsibilities for people of Asian origin in East Africa, imposed upon them by international law.

One of the things that these Governments could do to ensure alien Asian survival in East Africa is to introduce a system of agreements similar to the one signed between Her Majesty's Government and the Indian Government in July, 1968. It will be recalled that these two Governments made arrangements for the resettlement of British Asians resident in Kenya at the time of their expulsion from that country in 1967/68. Such people could go to India or to the U.K. and settle there. The necessary administrative and assistance procedures were instituted in the British and Indian High Commissions in Nairobi. The right of entry into either of these two countries was endorsed in the U.K. passport-holders, where there is no mother country to appeal to, appeal can be made either to humanitarianism, or to "abstract" standards of justice and morals.

The view has been expressed above that complete absorption of the non-African "out-groups" will most likely not take place in East Africa. The chief "out-group" concerned is the Asian community. It is this writer's further view that more and more Asians will most likely quit East Africa in the future. Their roles in the economic field, and dominance in the business sphere, have been reduced considerably. In the future, they

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9 See, for example "The Daily Nation" of Saturday, 26th August, 1972, p.1.
will most likely be reduced even to the point of "subsistence business" only. The economic position of the African is, on the contrary, rapidly improving. These developments might provide an ease in racial tensions in East Africa and lead to a complete integration of the "pluralism" type. The whole truth is that, if the Indians and Goans in East Africa were to be integrated completely with the Africans, the former's mentality - of culture consciousness, for instance - would be destroyed. But the continued existence in post-independence East Africa of purely Asian associations such as the Patel Club and the Goan Institute in Nairobi, is a clear indication of the determination of the Asian community to maintain their cultures and isolation. So long as this mentality prevails, the problems of Asians are to survive, despite the existence of such of their associations as the Lions Club, to which membership is now open to African and other "races".

It must be re-observed here that the Asian tendency is for "pluralism" or "accommodation". Asians have accepted African political victory and the new civic and political institutions. Beyond this, however, Asians would prefer to uphold their old mentality. But it is evident that acceptance of, and respect for, the new leadership; complete allegiance to the host State - which requires aliens (Asians) to invent locally rather than export their capital outside that State - and economic assistance to Africans, particularly in the creation of an African business class, are all prerequisites to any integration. Even if there is no clearly defined homogeneous culture in East Africa, the chances of complete integration exist not only in the political field, but also in the social and economic fields.
In the political sphere, integration is possible, but it is hindered by the inclination in the East African States towards a one-party system - in practice, at least, although in law, a two or multi-party system is permissible. Political leaders in a one-party system take the advantage of imposing policies, without opposition, that may obviously be risky and even dangerous to racial harmony and nation-building. It is because of this that the writer supports the concept of the Government-opposition Party system. For aliens, however, the one-party system is ideal, for no enemies exist from any other party that loses, or that the aliens do not support. Asian participation in politics was most active in Tanganyika, where the African leadership practised the most liberal racial policies of all the three States. That was possible to a large extent because Tanganyika had - and still has - a one-party system. Whether, nonetheless, in Tanzania, Uganda or Kenya, less efforts have, in general, been made to involve the minority groups in political parties and activities.

In the economic field, which is the key field that will determine Asian survival in East Africa, African hostility towards Asians can be ended through such things as Asian support to Africans in training and advice, in guidance, leadership, in credits and loans, and in partnership. Asians should also be given encouragement to participate in trade unions, which is a good area of racial integration. Trade unions in East Africa have been very racial-minded. This must be stopped if integration is to be achieved.

A point that the writer can make with certainty regarding the Asian problem in East Africa is that a part of the hatred noted out to Asians in the region is a function of their
being distinctive, and possessive of wealth which is more than that possessed by East Africans. A number of possibilities exist for the elimination of the hatred. For example:

(a) Asians should be good and not snobbish; and
(b) nationalization of that section of the economy run by Asians. At this juncture, the writer would like to re-emphasise his earlier argument that if the Colonizers of East Africa had introduced a system of "black capitalism" through which Asians would be nationalized — as were the Arabs — then the Asian problem, as we know it to-day, would not, perhaps, have survived at all.

The policies of the East African States towards Asians differ from one state to another. There is a lot of rhetoric in these policies, and what is laid down in law is quite often disregarded in practice. However, the established, official East African Government policies towards Asians are the following:

1) The official policy of each of the three States of East Africa is equal treatment and justice (of rights and duties) for the Asian citizens.

2) The expression "Africanization" is used in different senses. It is sometimes interchanged with "localization", meaning "citizenisation". But it implies "blackenization". The work of aliens and minority Asian citizens is appreciated, but the two categories of Asian minorities (aliens and citizens alike) are indiscriminately blamed for retarding the process of Africanization by tricky devices, especially in business. Severe punishment is threatened to those who frustrate and undermine the policies of Africanization.
5) Promises of security and full Government protection of minorities. The aim here is to turn East Africa into a large forum for peace, friendship, integration and equality.

4) Persistent accusation of Asians of racial arrogance and superiority complex, exploitation, isolation and of exporting large sums of money from East Africa. General Aalin has accused them of "milking the cow without feeding it." Hence Asian and other racial minorities are called upon to identify themselves with the commitments and aspirations of the African majority populations. Asian isolation must be ended at once for the sake of national unity and progress.

5) Discrimination against Asians, especially in business and schools. This policy is practised most frankly in Uganda and Kenya. Tanzania claims, with considerable justification, to have abolished discrimination in law, and in practice. But in certain areas of employment, Asians simply do not qualify even if they are citizens. Thus in the Foreign Office, Tanzania has offered the post of Ambassador to one Asian only (at the Hague). Kenya and Uganda have not done so. In these two, the thought of offering Asians the top positions of Ambassadors simply does not exist.

6) Priority is given to African demands for human rights, dignity and socio-economic besides educational equality. Hence equity in East Africa nowadays simply means raising the socio-material standards of Africans above those of any Asians and Europeans.

7) The central aim of the East African States' general economic policies towards Asians is to eradicate Asian dominance in the economic and commercial fields of East Africa. In Tanzania, this is reflected in her "socialization" of the economy as outlined in the Arusha Declaration of 1967. In Kenya, the
economic policy is that of Africanisation of commerce and industry. This is reflected in the Sessional (White) Paper No. 10 of 1965 on "African Socialism." In Uganda, the economic policy is a combination of Africanisation and Socialism (as in Tanzania). This is reflected in the so-called "Common Man's Charter", adopted by Dr. Obote's Uganda People's Congress at its Conference on 18th December, 1969, and in the country's Development Plans of the 1960's. It is important to note that, in the spirit of the Arusha Declaration, the Government of Uganda proclaimed, in May, 1970, the complete or partial nationalisation of the major sections of the Uganda economy. These included import and export trade, oil companies, banks, mining companies, public transport companies, and all manufacturing and plantation industries.

8) Integration, for example, in the educational field. Here, the call is for complete multi-racialism, which is strongly believed to offer an excellent opportunity for harmonious race relations. Both types of integration are favoured. However, some African leaders have shown preference for total assimilation, especially via inter-marriages. The Zanzibar Government has required this, particularly under the late Sheikh Karume's leadership. Karume decreed in 1970 for forced marriages between Africans and "Asiatics" (i.e., Arabs and Asians). Arabs were affected most. But Asians were also affected and pressurized. Karume impelled Asiatics to encourage the marriage of their daughters to Africans. He, himself took one Asian young girl as a wife under his own Presidential decree. He permitted other Zanzibaris to do the same. His Ministers widely

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10 The full title of this White Paper is: "The Common Man's Charter: First Steps for Uganda to move to the Left." Its author was the then President of Uganda, Dr. Milton Apolo Obote. The "Charter" was printed by the Government Printer, Entebbe.
made use of his ruling. The mainland Tanzania also showed
dilection for assimilation, but not by the Karume method.

This writer disapproves of integration by force. Compromise
and "natural inclination" offer a better chance of promoting
racial harmony than force or coercion. The fact is that there
is no standard or well-defined homogeneous culture in East
Africa to warrant total assimilation. The radicalism in the
African cultures, the conservatism of the Asian cultures and
the self-styled outlook of the Western culture meet in East
Africa, but do not offer integration by "assimilation" method
practicable. If any dominance of any of these three cultures
emerge, it is the Western one.

Some other Government leaders in East Africa have not shown
a marked preference for either of the two methods of integration.
This has been the case among the Kenyan and Ugandan leaders.
These have done very little to clarify their integration
policies, despite their continued references to racial inte­
gration. Of late, however, Uganda's General Amin has shown,
in his attitudes towards Asians, that he prefers "assimilation"
to "accommodation". His schemes of settling Asians in the
rural areas are a good case in point. In Kenya, the tendency
has been preference for "accommodation". This attitude has
been reflected in political speeches of Kenya Government
leaders. President Kenyatta himself has reiterated his
love and determination to maintain African cultures, traditions
and customs, which must never be diluted. He has also

11 See, for instance, the enlightening address by Kenya's
Foreign Minister, Dr. E. Moringo Kangal, to the Community Relations
Workshop of the Kenya National Christian Council of Kenya, on
Saturday, November 25th, 1972, reported in the "Sunday Nation"
(Nairobi), pp.1 and 5.
reiterated the Kenya Government's policy of fully protecting minorities and their denominational beliefs, plus cultural and other rights.12

To survive in East Africa, Asians must also divorce themselves from corrupt practices and people. The East African Governments have a duty to eliminate corruption, in all its forms, in practice, and not just by lip-service. The duty of the Governments is, therefore, to establish impartial bodies to inquire into the possibilities of ending corruption in society. The Presidents of East Africa have occasionally expressed their serious concern about corruption, and allegations of corruption, in their respective countries. But President Amin has been unique in his style of condemning corruption. He has on a good number of occasions promised to establish an independent organ to probe into charges of corruption in Uganda.13 General Amin’s idea is definitely commendable. It should be realised and spread throughout East Africa. President Kenyatta has particularly condemned, but in rhetorical speeches alone, "those disgruntled elements and economic prostitutes" who, by their corrupt practices have frustrated his Government’s policy of Africanisation. Obviously, Africans and Asians have been these "economic prostitutes." Alien survival in East Africa will also depend on the acceptance or otherwise of responsibilities of the East African States towards aliens in the region. Discrimination against brown and white citizens must also be stopped. It is thus imperative that the concept of the integrity of citizenship must be upheld.

12 See, for example, President Kenyatta’s brilliant speech delivered on Madaraka (Internal Self-Rule) Day (June 1st) on Friday, but reported in "The Daily Nation" of Saturday, June 2nd, (1973) pp.1, 8 and 24.

The above discussion has touched on the position of aliens in East Africa in the cultural, socio-economic and political spheres. On the legal front, we need to emphasize five areas where the legal conditions for the survival of aliens in the region are crucial:

1) Equality in the administration of justice.
2) The legal problems of minorities in East Africa.
3) The need to review East African legislations affecting aliens in the region.
4) The question of statelessness in East Africa; and
5) What the legal status of aliens in East Africa should be.

In the following analysis, the expression "arbitrary" will be used to mean arrest or detention either:

a) On grounds, or in accordance with procedures other than those established by law, or

b) Under the provisions of a law, the basic purpose of which is incompatible with respect for the right to liberty and security of person. The term arrest will be used to mean the act of taking a person into custody under the authority of the law, or by compulsion of another kind, and includes the period from the moment he is placed under restraint up to the time he is brought before an authority competent to order his continued custody or to release him. The expression detention will mean the act of confining a person to a certain place, whether or not in continuation of arrest, and under restraints which prevent him from living with his family or carrying out his normal occupational or social activities. The expression exile will mean the expulsion or exclusion of a person from the country of which he is a national, and the banishment of a person within the country by way of forcible
removal from the place of his habitual residence. These legal definitions are useful, especially when dealing with the treatment of aliens in East Africa.

The legal and procedural rights of aliens in East Africa, which international law imposes upon the East African States as duties towards aliens in their territories, are many and varied. They include: the right to habeas corpus; to access to East African courts; to a fair non-discriminatory and unbiased hearing in the determination of criminal charges; to be heard by an independent and impartial court; to be heard by their (aliens') lawful judge or judges; to be informed of the offence of which they may be accused and of their procedural rights; to defend themselves in person; to counsel; to a prompt and speedy hearing; to a public hearing; to a just decision rendered in full compliance with the State's laws; and the right to appeal to a higher court.

A prima facie reaction to the above legal rights of aliens in East Africa may be that they are too obvious to need any mention here. But wide violations of these rights abound in number. A good example of the denial to aliens of equality in the administration of justice in East Africa has been the violation of the Local Remedies Rule, which, to an alien, is a right. Discriminatory procedural legislation against aliens based upon nationalistic, and ideological considerations has been enacted in East Africa. Cases brought before East African courts regarding, for example, nationalisations, compensations and the like have on occasion been discredited in court decisions. Survival, therefore, of aliens in East Africa, requires that constitutional and statutory safeguards of fundamental human rights be implemented. No doubt, the best protection for aliens - and citizens alike - against
Excesses committed in the name of national emergency is via the courts. To function properly and impartially, these courts must be independent. They are an institutional machinery for enforcing guarantees of basic freedom and rights of mankind. Therefore, courts comprising judges subject to political influence and pressure are not courts at all. This is an important observation to aliens who require, for their protection in exacting their procedural safeguards and guarantees in courts, fair treatment based upon the integrity, impartiality and independence of the courts.

For East Africa, then, its countries have a heavy responsibility to enhance their judicial systems, because any neglect of their judicial systems will certainly be tantamount to a breakdown in fundamental human rights and freedoms. Luckily, the courts of East Africa, including the East African Court of Appeal, are independent. And so long as their independence prevails, alien survival in the legal field can be anticipated. The Local Remedies Rule requires that aliens be given the right of access to local courts, and that no recourse to diplomatic protection should precede local litigation. For East Africa, this essentially means that cases involving aliens must be given an exhaustive treatment at the local courts level before letting them mushroom into international disputes. The East African Governments should readily execute their moral and legal responsibilities towards aliens. For example, their actions infringing on the property rights of aliens should be corrected by compensation. The East African courts must maintain the international legal order. They must continue settling disputes between citizens and aliens impartially. They should intensify their fair application of the Local Remedies Rule.
The East African States should also review their legislations affecting aliens in the region. For example, a clear distinction should be drawn between expropriation and nationalisation. It is instructive to note that expropriation is mainly of individual or personal assets. It involves compulsory purchase(s) of particular pieces of property. Nationalisation is, on the contrary, mainly of State or corporation (big firm) assets. It has usually different motivations, and is of great economic and political significance. Further, expropriation is normally done by a permanent machinery for enabling individual acts of expropriation to be carried out when necessary. Nationalisation is, on the other hand, normally done by the Government of the nationalising State. That Government needs powers to carry through nationalisation. These powers are normally granted through special legislation.

Private investment is essential for the economic development of East Africa. If increased foreign capital is to be invested in the region, then it is imperative that the East African nations should ensure that no such capital is discriminated against, and that fair treatment to it, and distribution of it, are assured. Similarly, expropriation, nationalisation or other similar dispossession of private property must be accompanied by a fair, adequate, effective and prompt compensation. Furthermore, the East African States should bona fide carry out their international obligations arising from bilateral and multilateral treaties. The States must thus honour their international obligations regarding foreign investments. They should set up impartial tribunals, where they do not exist, for settlement of disputes, and make...
maximum use of the services of such tribunals. The existing
divergencies, how no matter minimal they may appear, in the
East African laws governing private alien investments in the
region, necessitate a conclusion of an East African multilateral
convention to regulate such investments. This would be a good
way of alluring and maintaining the confidence of private alien
investments, on which the economies of East Africa heavily
depend. The immediately preceding remarks clearly indicate
that enactment of new laws, and review of the existing laws
relating to aliens in East Africa, the proper interpretation
of these laws, the strict observance of them by both their
nations, citizens and aliens in East Africa, all these are
necessary for the better survival of aliens in East Africa.
There is an imperative need to codify or establish an East
African Law of Aliens that will clearly lay down rules to
govern the general position and treatment of aliens in East
Africa.

Thus the techniques for achieving minimum standards of
procedural justice in the courts of East Africa include:
1) Avoidance of incompetence in court administrations by
enacting impartial and non-discriminatory legislations.
2) According aliens access to international legal assistance
where possible and necessary.
3) Removing, by legislation, all existing loopholes in formal
legal mechanisms. Loopholes include the existing legal provisions
for discrimination.
4) Removing inadequacies of the economic, social and
political environment within which legal mechanism must
function. This can be done, for instance, by narrowing the
economic gap of the "have" and "have-nots", and encouraging
foreign investment or aid.
5) Establishing local bar associations, where they do not exist, and encouraging such bars to revitalise or alter judicial procedures.

6) Establishing political and economic stability. All these measures are essential, and they have a direct bearing on the position of aliens in East Africa. The granting to aliens of procedural rights in East Africa means that the East African States are under an international duty to open their courts to aliens. Such granting is a most important protection against the violation of the substantive rights of aliens. These rights include the (human) right to freedom of movement within and outside a State's border, and the right of (to leave the country) from his country of sojourn. This right of aliens should not be subject to any arbitrary restrictions.

The above rights, it should be stressed, are human rights as legal rights which were recognised by the 1948 Universal Declaration of Human Rights. In exclusively criminal proceedings, of particular significance are: the right to have enough time to prepare a defence; the right to cross-examine witnesses for the prosecution; the right to have an interpreter, without charges, if the accused cannot speak or understand the language employed in the court; freedom from what is known as "self-incrimination", i.e., freedom either to give evidence on oath at the trial of the accused, if he so wishes to testify, or to make an unsworn declaration at the end of the trial but before judgement is passed; the right to compensation for wrongful conviction; and the right not to be placed in double or multiple jeopardy for the same offence.

In assessing the procedural rights of aliens before East African courts, the latter should seriously consider the possibility of applying the international standard rather than
the national one. Extra-legal problems affecting aliens should be avoided. In this writer's view, the national standard of treatment was not, it seems, calculated to protect aliens, but to protect the State from aliens. However, it is also the writer's view that, to be complete, treatment of aliens should be subject both to the national and international treatment concepts. One of the reasons why the writer insists on the introduction and wider application of the minimum standard of treatment in East Africa is that it offers a much better opportunity of showing a country's pride and hospitality. It is important to note that in the alien, man discovered the concept of humanity. The alien was protected, already in the ancient world - as numerous passages in the Old Testament reveal - because he was a human being.

Aliens in East Africa are a minority that, when rejected by East African States, and refused entry to any other States, become stateless persons. Statelessness is one of the greatest challenges facing international law. The problem was regulated by Article 15 of the 1948 Universal Declaration of Human Rights, to which the East African States are signatories: "Everyone has the right to nationality." The lack of uniformity in the East African citizenship laws, and the rule, in the more recent years, by "Presidential decrees" - particularly in Uganda and Kenya - has inevitably given rise to complex problems of statelessness in the region. The Presidential decrees have, in most cases, bypassed the existing constitutional and other legal (statutory) safeguards and guarantees assured to aliens. International law principles have also, on occasion, been disregarded. While the "rule by decree" in East Africa cannot be said to have entirely ignored the crucial dogma of "rule of law", it must be stressed that, where aliens have been
concerned, Presidential decrees have deprived aliens of their legal rights. Good cases in point have been decrees enacted, particularly in Uganda and Kenya, to denationalize some citizens, to arrest, detain, imprison or expel them arbitrarily, and so on. A wider employment of the doctrine of "Presidential rule by decree" in East Africa will certainly imperil the position of aliens in the region. To avoid this possible dangerous menace to the status of aliens in East Africa, it is imperative that the East African States should ratify, if they have not yet done so, and strictly observe those international conventions, whose central aim is to reduce or eliminate causes of conflict of nationality laws that prompt statelessness. A good example of such conventions is the Convention on the Reduction of Statelessness adopted, within the U.N. framework, in 1961. Article 1 of the Convention imposes on the contracting States compulsory application of the doctrine of jus soli in certain cases, just in order to reduce or eradicate the possibilities of statelessness. Thus the Parties to the Convention agreed to grant their citizenship to people born in their territory who would otherwise be stateless, and to people not born in the territory of a contracting State, who would otherwise be stateless if the nationality of one of their parents at the time of their birth was that of the State (Article 4).

For aliens not to become stateless persons in East Africa, the States of that region will have to take the following measures, inter alia:

1) To stop denationalization of their citizens, and grant, on moral and humanitarian grounds at least, their citizenships to persons who will be stateless.

2) To (continue to) allow refugees and stateless persons to enjoy minimum rights and essentials of life. For example, stateless persons and refugees should be allowed the use of identity or travel documents, and to enjoy privileges of admission into East Africa, with rights of residence, of practising professions, of carrying on businesses, and so on and so forth. When expelling, deporting or reconducting aliens, (i.e., returning aliens to the frontier under police escort,) the East African countries should remember four things:—

a) Expulsion or reconduction must be effected without unnecessary injury;
b) Detention prior to expulsion must be avoided, unless the alien refuses to quit, or is most likely to evade the East African (State) authorities;
c) Deportation of aliens should not be to a country or territory where the person or freedom of the alien would be menaced, owing precisely to the alien's race, religion, nationality or political opinions;
d) The deportee or expellee should not be exposed to unnecessary indignity.

If, therefore, the legal position of aliens - whether stateless persons, refugees or not, whether residents or "sojourners" - in East Africa is to measure up to the international minimum standard of "civilisation", then the following principles must be upheld—

(1) Aliens may not be obliged to perform military service in East Africa. However, those aliens who are resident in the region, unless they prefer to leave their country of residence, may be compelled - but under the same conditions as citizens - to perform such essential functions as fire-protection and
police, or militia duties for the protection of their domicile against natural dangers or disasters not resulting from war.

(ii) The East African countries should extend to aliens, whether resident or in transit through their territories, all individual guarantees extended to East African citizens, and the enjoyment of basic civil rights without detriment, as regards aliens, to legal provisions governing the scope of, and usages for, the exercise of the aforementioned rights and guarantees.

(iii) Aliens, on their part, must avoid involvement in the political activities of their host State in East Africa. In cases of such involvement, aliens must be made liable to the penalties established by the laws of the East African host State.

To sum up, one of the conditions for the survival of aliens in East Africa is to find lasting solutions to the racial tensions in the region. These solutions necessarily include:

(1) adjustments and adaptations, by the racial minorities, to the changed circumstances in which they now find themselves. They should, for example, consider the necessity of learning the languages, customs and traditions of the other races.

Revisions of attitudes are also required on the side of the African majorities. Behaviours and other feelings of prejudice should be conquered at once. Distinctions should be made between minorities who are aliens and those who are citizens. This is necessary, particularly where the Asian community is concerned. Tribalism is a backward and "barbaric" doctrine. The writer reiterates his firm thesis that the attainment of independence in East Africa was premature. As such, it has created and even intensified intra-tribal tensions and conflicts which were not as great as before, ironical though this may sound. The Zanzibar Revolution, the army uprising in Tanganyika,
the Obote-Kivumbuka clashes in Uganda, the Odinga Oginga "schism" in Kenya in the 1960's, were all indicative of the unprepared conditions in which the leaders of East Africa were when they acquired independence. In such conditions, no lasting guarantees can be assured to aliens. The economic rivalries and inequalities, the imbalanced distribution of educational, social and other facilities also justify the above assertion of unpreparedness for independence.

Integration and co-operation are required at the national and regional levels. Aliens in East Africa are affected by the diverse cultures, languages, economic, political and traditional structures. It is, however, these very cultural differences that necessitate East African Unity in which aliens can prosper. Swahili is used as an administrative lingua franca in Uganda, Tanzania and Kenya. Swahili is the language of popular communication. English is the official language of East Africa. The best way for aliens of evading lack of communication in the region is to learn these two languages. Apart from these common working languages in East Africa, other factors necessitating East African unity include: the existing common, economic, social and political interests; a common ex-British colonial rule; similarities in the economic potential and development; the existing common problems - e.g., border disputes - whose solution requires East African Unity at federal level; the possession of common "properties" such as boundaries, customs, traditions, railways, roads, and so on that were separated by the Colonizers.

A prime facie reflection on the above factors excludes alien interests in the necessity for East African Unity. But a closer examination of the factors reveals that, if legal unity, for instance, were to be achieved in East Africa, the position of
aliens in the region would perhaps be improved. As things stand, that position is blurred. Alien employees, for example, working for the East African Community have complained of mistreatment in their employment conditions. They have on occasion been refused compensation for injuries done to them. Denial of justice has been meted out to them. In the more recent years, Kenyan and Tanzanian citizens have been most loath to work in the East African Community Offices situated in Uganda, owing mainly to the "disappearances" and alleged violations of human rights in General Amin's Uganda. Also, if the East African States inter se could conclude conventions on such crucial questions as dual nationality and diplomatic or consular relations, the position of aliens in the region could be made much clearer.

The fact, however, is that opportunities for effecting complete legal unity exist in East Africa. The legislations of the East African States are essentially based on English common law. This is revealed by the following considerations. Kenya, Uganda and Tanzania have, really, a common visa and passport area. As regards Kenya, for instance, the following countries do not require visas to enter Kenya:

1) All Commonwealth countries, including Tanzania and Uganda;
2) Denmark, Ethiopia, Italy, Norway, San Marino, Sweden, Spain, Turkey, Uruguay and West Germany. All that the nationals of these countries need are valid, return tickets to their own countries, and the right travel documents, including passports. Once admitted, aliens from the above States are granted passes and certificates according to the types of "visit" of the aliens. All other countries require visas to Kenya. Visas are of two types: referred visas, which are granted after obtaining permission
from the Kenya Immigration Department, and ordinary visas, which can be obtained from any Kenya Embassy abroad, or other embassies authorised to do so by the Kenya Government.

The position is similar in Uganda and Tansania, although minor differences exist. In Tansania, for instance, a Circular was issued in 1972 by the Tansania Tourist Office to the effect that from June 1st, 1973, all Kenyans and Ugandans of African origin should be required to hold valid passports if they desired to enter Tansania. Thus by that Circular, the thitherto existing immigration rules requiring all immigants into Tansania to possess valid passports, but exempting indigenous Africans from Kenya and Uganda, were amended. The period within which people from the Commonwealth States and the Nordic Nations could stay in Tansania was unaltered - three months. Exempted also from visas are members of African tribes indigenous to Mozambique, Rhodesia, Burundi, Rwanda and Zaire. It is important to note that Tansania has many refugees from these countries. It was also provided in the Circular that passengers entering Tansania in the course of a continuous and unbroken journey leaving by the same ship or aircraft need not have visas, but they cannot leave the aircraft or ship.

Similarly, resident aliens in any of the East African Territories holding valid immigration inter-State passes issued by any of the Governments of Tansania, Uganda and Kenya, do not need visas. The Circular further provided that an ordinary single journey visa might be granted without reference to the Principal Immigration Officer, except to citizens of Albania, Bulgaria, Czechoslovakia, East Germany, Hungary, North Korea, South Africa, North Vietnam, Poland, Saudi Arabia, South West Africa, Syria and Portugal. Citizens of Argentina, Columbia,
Ethiopia, Israel, Mexico, Peru, Salvador and Uruguay might be accorded continuous visas for all journeys within a 12-month period except when more restrictive visas are specifically authorised.

The current situation in East Africa, however, with regard to visas is that all visitors to any of the 3 States require passes except for members of tribes (African) indigenous to Tanzania, Uganda and Kenya. Also, the general policy of these States is that all travellers, by any means, wishing to visit any of the three States are divided into three categories: African citizens of an East African country do not need a passport or pass to enter another East African State. However, it is advisable for them to have identity cards or any other useful documents. All other people, whether Africans, citizens or not must bear passports or any other valid travel documents.

The above considerations provide enough evidence that there is a need for complete uniformity in the laws of aliens in East Africa. This legal uniformity can be achieved by reframing the existing laws, and adopting the required laws, in such a way as to avoid every possible divergence. For example, the rules for the expulsion of aliens should be made uniform. A possible consideration here would be enacting a rule that would limit the right of an East African State to expel aliens from its territory.

As the U.N. Covenant on Civil and Political Rights declared, an alien who is legally in the territory of a State party to the Covenant "may be expelled therefrom only in pursuance of a decision reached in accordance with law". Hence, before expelling an alien, a State is required, by international law, not to do that capriciously or arbitrarily, and to be prepared...
to give sound reasons at any time, if called upon to do so by a recognised international court. Also, the expelling State has a duty to have an alien's case reviewed by, and be represented for the purpose before, the competent authority. If the expelling State fails to do this, it may be accused of violating the minimum standard of substantive justice, and its action may constitute an international delinquency. Therefore, expulsion of aliens is to be effected as we have seen, without injury to them or their interests or rights, whether "acquired" or "vested". Arbitrary arrest, detention, exile, denationalisation or de-expropriation, are all not allowed by the 1948 Universal Declaration of Human Rights.

What aliens in East Africa should wish in their minds and thoughts is a steady growth of civilisation in East Africa, not entirely like their own, but comparable to it in certain respects. Aliens in East Africa should also wish for a true democracy with a liberal economy whose main aim is to provide for an increased standard of living of every inhabitant of East Africa. Aliens that come to East Africa as expatriates - to serve the East African Governments on contract - must make sure that they get accurate and relevant instructions about the East African way of life. Once in East Africa, expatriates should be encouraged to contribute commensurably to the process of nation-building via, for instance, guest membership to voluntary or philanthropic organisations such as "Umoja Wa Wanawake" (Women's Association), the Kenya National Christian Council and the Kenya Freedom From Hunger Campaign (Council).

Aliens in East Africa should also wish, in their minds, freedom of all people from fear and discrimination of every kind. They should further wish:
1) The promotion of social harmony and mutual respect;
2) The promotion of African art and culture;
3) The promotion of peaceful multi-racialism;
4) A mutual study, understanding and sincere appreciation by all the ethnic and racial groups of one another's character, history and potentialities in the modern world;
5) Aliens should also understand that the whole of Africa is now living in a transitional period, worsened by pressures of alien "civilisations". For East Africa, then, the *sensu stricto* period of transition still exists, for the region is still in the first post-colonial or post-independence phase. *Sensu large*, however, the period of transition in East Africa was the last ante-colonial phase. The radius of this period was about five years on either side of the independence dates of East Africa. This delimitation of the period is the writer's own demarcation.

The grounds for racial harmony and co-existence now exist in East Africa. Isolations can now be broken down without much ado. Wealth and jobs can now be distributed with justice, security and stability. The roles and position of aliens in East Africa can now be distributed with justice, security and stability. The roles and position of aliens in East Africa can now be properly assessed, appreciated, and corrected where and when necessary without much ado. The house has thus been completed. For, the foundations of the house, the erection of its walls, the plastering of its floor, the roofing of the house, et cetera have all been done. But the house still needs extra windows, extra doors, extra furniture, and extra flower gardens, if it is to be an ideal house - an ideal East Africa in which multiculturalism and multi-racialism can thrive, whether independently of each other, or by integration; an
East Africa to which aliens can come and go unharmed, while it goes on for ever. In a word, an East Africa in which citizens and aliens alike can enjoy the "civilised" treatment of substantive justice.

The firm principle of this Thesis has been to give an over-all assessment of the position of aliens in the East African States of Tanzania, Uganda and Kenya. This writer has started the gene. The field is wide. It is hoped that others will join in the gene, the ultimate winning of which will be a sign non-ante condition of alien survival in East Africa.
I. GENERAL

A. GENERAL STUDIES ON INTERNATIONAL LAW


(ii) Books on International Law

Western Authors:

a) In English

1. D.W. Greig

2. L. Oppenheim

3. F.V.O'Brien (Ed.)

b) In Italian (With a French Edition)

1. D. Anzilotti

Eastern Authors

a) In Russian:

1. G.I. Turkin
   "Veprosy Teorii Mezhdunarodnogo Prava" (with French and German Editions) ('Theoretical Problems of (Public) International Law') - Gosudarstveniy Universitet, Moscow, 1962.

2. V. Lissovski
b) In Polish:

1. C. Beresowski


2. W. C'oralezyk

w. Woswiecki

K. Liber


c) In English:

1. M. Grivlov


(111) The Individual in International Law

1. A.H. Borchard


2. G.J. Morgant


3. H.F. van Pashur


4. F.N. Drost


5. Rashubir Chakravarti


6. Pablo de Ascerate


7. Sir W.K. Hasecock


B. ARTICLES, LAW REVIEWS, MONOGRAPHS, PERIODICALS, REPORTS, ETC.

1) League of Nations Documentations:

E.g.:


11) United Nations Documentations:

E.g.:


6. U.N. Resolution 2263(III)

7. U.N. Resolution 1803(XVII)


111) Others:

Western Authors

1. Hudson

- "International Legislation" Vol.IV, U.S. Treaty Series, 615 (1923);
  "Havana Convention on the Status of Aliens".

2. P. Foot

- "Immigration and Race in British Politics" - Penguin Books Ltd

3. E.J. E. Rose


4. Eilson and Clute


5. "The British Nationality Act, 1948"

- Cap. 56 of "Laws, Reports, Statutes, 1948 (Vol.II)
  pp.1241-1265.

6. Ivan L. Bead

- "The Stranger in our Midst: A Sketch of the Legal Status of the Alien in Canada" - in 'Canadian Yearbook of International Law'
  (Can. Y.I.L., Vancouver, 1963-)

7. L.B. Sohn and R.R. Baxter

- "Responsibility of States for Injuries to the Economic Interests of Aliens" - in '55
  A.J.I.L. 545 (1961)"
8. Fred S. Dunn

9. British Nationality No. 2 Act, 1964

10. A.E. Kuhn

11. Voit

12. Samoré
    "Statelessness as a Consequence of the Conflict of Nationality Laws" - 'A.J.I.L., Vol.43 (1951)'

13. 'Hague Peace (1945)'
    "Legal Status of Stateless Persons"

14. Kessler

15. Bentwich
    "Human Rights, the Problem of National and International Protection" - 'British Survey', Vol.12, No.10 (1947).

16. E.M. Borchard

17. G. Kaackenbeek
    "The Protection of Vested Interests in International Law" - 'B.Y.I.L. 1936' (p.1).

18. L. Preun

19. E. Boot

20. J.F. Williance
    "International Law and the Property of Aliens" - 'B.Y.I.L.' (1928) p.1

21. Vladimir R. Idelson
22. Cohen

23. Huang (Yuen-Li)

24. Bengt

25. London

26. Makhinnoy

Eastern Authors:
1. Kulak

2. C. Bereznovski

3. Eisler
- "O Miedzinarodowych Stanunkach Nowego Typu" ('International Relations of the New Type'), Economista No. 2, 1955.

4. Brezinski
- "The Soviet Bloc: Unity and Conflict" (1961)

5. Gattal
- "Multilateral Co-operation and Integration in Eastern Europe" - 'The Western Political Quarterly' (March) 1960.

6. K. Grzeghowski
- "From Contract to Status, Some Aspects of the Reception of Soviet Law in Eastern Europe" - '2 Seminar'; 1953.
- "Public Policy and Soviet Law in the West After World War II" - 4 A.J.C.L. (1955)"
II. EAST AFRICA

a) GENERAL STUDIES ON EAST AFRICA

1. BOOKS


2. ARTICLES, LAW REVIEWS, MONOGRAPHS, PERIODICALS, REPORTS ETC.


4. British Command Papers, Colonial Sessional or "White" Papers were many and varied. For example:


b) CASE LAW AND STUDIES

1. Books

TANZANIA


4. Mainland Tanzania

UGANDA

1. A.D. Law and C. Pratt
- "Uganda and British Overrule: 1905 - 1955" (2 studies) - Oxford University Press, London, 1960

2. A.B. Herrick

3. Ingrid

4. P. Anta

KENYA


2. ARTICLES, LAW REVIEWS, MONOGRAPHS, PERIODICALS, REPORTS, ETC.

A. TANZANIA


UGANDA

2. Cad. No. 2164 (1928) - "The Final Report of the Uganda Railway Committee".


C. ENTA


C. ASIANS IN EAST AFRICA

I. GENERAL

(1) Books


(11) ARTICLES, LAW REVIEWS, MONOGRAPHS, PERIODICALS, REPORTS, ETC.


2. P. Theroux - "Hating the Asians" - in 'Transition' No. 53, October/November, 1967 (pp. 46 - 51).

II. CASE LAW AND STUDIES:

(1) Articles, Law Reviews, Monographs, Periodicals, Reports, Etc.

A. KENYA


B. UGANDA


d) EAST AFRICAN LAWS


III EASTERN EUROPE

A. GENERAL


B. CASE LAW AND STUDIES

2. Bratus (in Polish) - "O Prawach Prawnych Czestokowcow Majatkowych w USSR" (Property Law in the USSR) - in 'Statwo i Prawo' ('State and Law'), 1960.
V. People's Republic of Bulgaria
(1) "Law on Bulgarian Nationality"
   - Ministry of Justice, Sofia, 1972
(2) "Law on the Sojourn of Foreigners in the People's Republic of Bulgaria.

IV. THE PRESS
A. EAST AFRICA
2. "The Daily Nation" (Nairobi)
3. "The Uganda Argus" (Kampala)
4. "The Daily News" (Dar-es-Salaam)

B. EASTERN EUROPE
1. "Pravda" (Truth) - (Moscow)
2. "Inwestia" (News) - (Moscow)
3. "Trybuna Ludu" (People's Platform) - (Warsaw)
4. "Zycie Warszawy" (Life of Warsaw) - (Warsaw)

C. WESTERN EUROPE
1. "Le Monde" (The World) - (Paris)
2. "The Times" - (London)

V. PARLIAMENTARY DEBATES
In the:
1. Tanzanian National Assembly
2. Ugandan National Assembly
3. Kenyan National Assembly
4. British Parliament
5. Indian Parliament
6. Pakistani Parliament
7. Bangladesh Parliament