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Legacies of British Colonial Violence: Viewing Kenyan Detention Camps through the Hanslope Disclosure

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15 A number of works have recently been published that seek to re-narrate colonial
16 histories, with a particular emphasis on the role of law in at once
17 Q2 creating and marginalizing colonial subjects.¹ Focusing on mid-twentieth
18 century detention camps in the British colony of Kenya, this article illuminates
19 a colonial history that was deeply buried in a Foreign and
20 Commonwealth Office (FCO) building for many years. As such, the analysis
21 supports the revelatory work of David Anderson and Caroline Elkins,
22 who highlighted the violence that underpinned British detention and inter-
23 rogation practises in Kenya.² In particular, the article explores recently
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1. Samera Esmeir, *Juridical Humanity* (Stanford: Stanford University Press, 2012);
28 Fabian Klose, *Human Rights in the Shadow of Colonial Violence: The Wars of*
29 *Independence in Kenya and Algeria* (Pennsylvania: University of Pennsylvania Press,
30 2009); Roland Burke, *Decolonization and the Evolution of Human Rights* (Philadelphia:
31 University of Pennsylvania Press, 2010); Daniel Maul, *Human Rights, Development and*
32 *Decolonization: The International Labour Organization, 1940–70* (Palgrave Macmillan,
33 2012); and Steven Pierce and Anupama Rao, eds. *Discipline and the Other Body*
34 (Durham and London: Duke University Press, 2006).

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36 Q11

2. David Anderson: *Histories of the Hanged: The Dirty War in Kenya and the End of*
37 *Empire* (New York: W.W. Norton, 2005); and Caroline Elkins, *Imperial Reckoning: The*
38 *Untold Story of Britain's Gulag in Kenya* (New York: H. Holt, 2005).

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Review's anonymous reviewers. The author is responsible for any remaining errors.

43 declassified colonial files, and pieces together a picture of administrative
44 subterfuge, suppression of facts, and whitewashing atrocities, threaded
45 through with official denial, which long outlived its colonial genesis.
46 Against the hypothesis that detention laws created an architecture of de-
47 struction and concomitant custodial violence in Kenya, the article estab-
48 lishes that an accountability deficit is the legacy of detention without
49 trial as it was practiced in colonial Kenya. By untangling a complex web
50 of colonial records and government papers relating to Kenya, this article
51 reveals the often insurmountable pressure that was exerted to conceal evi-
52 dence of detainee violence, and the role of a highly sophisticated propagan-
53 da machine that controlled the public narrative of a violent incident when
54 outright denial was impossible.

55 In an earlier *Law and History Review* forum, John Wertheimer argued
56 that the legacy of colonial legal racism persists today, and it is, therefore,
57 important to comprehend the “conceptual and material consequences” of
58 these laws.³ It is striking that several British colonies experienced insur-
59 gencies prior to independence,⁴ and, as a response, emergency laws and
60 ordinances were enacted that targeted indigenous peoples, and, more spec-
61 ifically, groups that would not demonstrate loyalty to the British Crown.
62 This was all too true in Kenya, where detention of enemy suspects in an
63 expansive network of camps,⁵ underpinned by laws passed by the governor
64 or approved by an unelected executive council, was part of the military
65 strategy designed to tackle the Mau Mau insurgency.⁶ At the center of
66

67 3. John Wertheimer, “Introduction,” *Law and History Review* 29 (2011): 469.

68 4. Which, of course, were not unique to British colonies, Rita Maran, *Torture: The Role of*
69 *Ideology in the French-Algerian War* (New York: Praeger Publishers, 1989); and Marnia
70 Lazreg, *Torture and the Twilight of Empire: From Algiers to Baghdad* (Princeton:
71 Princeton University Press, 2008); see also A. W. Brian Simpson for other British end of
72 empire insurgencies, *Human Rights and the End of Empire: Britain and the Genesis of*
73 *the European Convention* (Oxford: Oxford University Press, 2001); and John Newsinger,
74 *British Counterinsurgency: From Palestine to Northern Ireland* (New York: Palgrave
75 Macmillan, 2002).

76 5. Kenya, with a complex of more than 100 camps, had a greater number of detainees per
77 target population (Kikuyu) than any other British colony where detention without trial was
78 used, see David French, *The British Way in Counter-Insurgency, 1945–1967* (Oxford;
79 New York: Oxford University Press, 2012), 111.

80 6. For more on British responses to the Mau Mau insurgency, see Daniel Branch,
81 *Defeating Mau Mau, Creating Kenya: Counterinsurgency, Civil War, and Decolonization*
82 (Cambridge: Cambridge University Press, 2009); Huw Bennett, “The Mau Mau
83 Emergency as Part of the British Army’s Post-War Counter-Insurgency Experience,”
84 *Defense & Security Analysis* 23 (2007): 143–63; John Lonsdale, “Mau Maus of the
Mind: Making Mau Mau and Remaking Kenya,” *The Journal of African History* 31
(1990): 393–421; John Newsinger, “Minimum Force, British Counter-Insurgency and the
Mau Mau Rebellion,” *Small Wars & Insurgencies* 3 (1992): 47–57; and Thomas

85 the Mau Mau rebellion was a struggle against a system of racial discrim-
 86 ination that maintained white Europeans at the top of the hierarchy in
 87 Kenya, with access to and ownership of the best lands, and control over
 88 government and administrative structures, while many Kenyan tribes,
 89 such as the Kikuyu, labored and toiled in substandard lands and plots of
 90 ever decreasing size.⁷ During the Second World War, white settlers in
 91 Kenya experienced an economic boom resulting from the market demands
 92 for agricultural produce caused by shortages in Europe.⁸ When new crops
 93 were introduced to the colony, accompanied by intensive farming methods
 94 and increased mechanization, many African “squatters,” some of whom
 95 had lived there for generations, were forced off European farms into home-
 96 lessness and destitution in urban areas. Fabian Close elucidates on the mul-
 97 tifactorial causes of African protest in Kenya, “the deterioration of African
 98 living standards, the disappointment over unfulfilled expectations raised
 99 during the war, the worsening of the squatter problem,” and, in particular,
 100 frustration with increased colonial involvement in all facets of Kenyan
 101 life.⁹ The deterioration in living conditions disproportionately affected
 102 the Kikuyu,¹⁰ and in his book, *The Kenya Question: An African Answer*,
 103 Tom Mboya described “the situation in his homeland as socially and polit-
 104 ically unjust in light of the pressing problem of land distribution, open ra-
 105 cial discrimination, and the total hegemony of Europeans.”¹¹ Mboya, one
 106 of only eight African members elected to the Legislative Council in 1957,
 107 concluded that the development of the Mau Mau movement was a direct
 108 “consequence of years of frustration and bitterness among the African
 109 population.”¹²

112 Mockaitis, “Minimum Force, British Counter-Insurgency and the Mau Mau Rebellion: A
 113 Reply,” *Small Wars & Insurgencies* 3 (1992): 87–89.

114 7. See, generally, John Overton, “The Origins of the Kikuyu Land Problem: Land
 115 Alienation and Land Use in Kiambu, Kenya, 1895–1920,” *African Studies Review* 31
 116 (1988): 109–26; and Frank Furedi, “The Social Composition of the Mau Mau Movement
 117 in the White Highlands,” *The Journal of Peasant Studies* 1 (1974): 486–505.

118 8. For more on the powerful influence of the white settler in British politics, see Frank
 119 Kitson, *Bunch of Five* (London: Faber, 1977), 6–7.

120 9. One of the most authoritative texts on this process is David Throup’s, *Economic and*
 121 *Social Origins of Mau Mau 1945–53* (London: Currey, 1987). See also Klose, *Human*
 122 *Rights in the Shadow of Colonial Violence*, 65–66.

123 10. Bruce Berman, “Bureaucracy and Incumbent Violence: Colonial Administration and
 124 the Origins of the ‘Mau Mau’ emergency in Kenya,” *British Journal of Political Science*
 125 6 (1976): 143–75.

126 11. Tom Mboya, *The Kenya Question: An African Answer* (Fabian Colonial Bureau,
 1956).

12. Mboya referenced in Klose, *Human Rights in the Shadow of Colonial Violence*, 197.

127 Fiona Mackenzie's work examines the agricultural crisis that developed
 128 in the Kikuyu reserves as a result of overpopulation.¹³ The Kikuyu were
 129 disaffected by evictions, forced labor, unemployment, and landlessness,
 130 with consequent urban pressures, and these factors galvanized a rapidly
 131 growing movement with an intricate "oathing" process at its core.¹⁴
 132 Unlike their moderate counterparts, Mau Mau adherents promoted the
 133 use of violence to eradicate British colonial rule.¹⁵ From the outset, the col-
 134 onial administration and metropolitan government portrayed the conflict in
 135 Kenya as a "clash of progress and atavism, of good and evil," rooted in the
 136 "collective insanity" of the Kikuyu.¹⁶ However, Bruce Berman regards
 137 Mau Mau violence as a response to the pre-emptive or "incumbent vio-
 138 lence" of colonial authorities, thus illuminating the complicity of the
 139 Kenyan administration in "shaping the origins and intensity of conflict."¹⁷
 140 To the network of prison and labor camps already in existence prior to the
 141 emergency,¹⁸ Florence Bernault estimates that approximately fifty deten-
 142 tion camps were added.¹⁹ From 1953 to 1960, between 80,000 and
 143 150,000 Mau Mau suspects were detained without trial in a variety of
 144 camps; some pre-existing, others hastily built "temporary" structures,
 145 and many characterized by poor living conditions.²⁰ An elaborate detention
 146

147 13. Fiona Mackenzie, *Land, Ecology and Resistance in Kenya, 1880–1952* (Edinburgh:
 148 Edinburgh University Press, 1998).

149 14. Elkins, *Imperial Reckoning*, 22–28. Frank Kitson also describes the significance of
 150 oathing among the Kikuyu tribe, and remarks that "[d]espite the fact that some Christian in-
 151 fluence had been disseminated in the half-century preceding the outbreak of the Emergency,
 152 nearly all the Kikuyu believed in the power of oaths in the same way as mediaeval
 153 Englishmen believe in witchcraft," in *Bunch of Five*, 8.

154 15. Klose, *Human Rights in the Shadow of Colonial Violence*, 68.

155 16. Frederick Cooper, *Decolonization and African Society: The Labour Question in
 156 French and British Africa*, (Cambridge: Cambridge University Press, 1996), 348, 351.

157 17. Bruce Berman, "Bureaucracy and Incumbent Violence: Colonial Administration and
 158 the Origins of the 'Mau Mau' Emergency in Kenya," *British Journal of Political Science*
 159 6 (1976): 143. Carl Rosberg and John Nottingham also point to the colonial administration's
 160 failure to introduce significant reforms as a key contributing factor to the emergence of the
 161 Mau Mau movement in *The Myth of "Mau Mau": Nationalism in Kenya* (New York:
 162 Praeger, 1966).

163 18. Daniel Branch describes the pre-emergency detention network of camps as a "carceral
 164 archipelago," see "Imprisonment and Colonialism in Kenya, C. 1930–1952: Escaping the
 165 Carceral Archipelago," *International Journal of African Historical Studies* 38 (2005): 256.

166 19. Florence Bernault, ed., *A History of Prison and Confinement in Africa* (Portsmouth:
 167 Heinemann, 2003), 13.

168 20. The figure of 80,000 detainees is propounded in the official record, whereas David
 Anderson estimates that the maximum number who may have been detained to be
 150,000 persons, *Histories of the Hanged*, 5. Anderson later clarified this figure, by stating
 that the actual numbers detained was probably between 100,000 and 110,000 (personal cor-
 respondence with David Anderson). In *Imperial Reckoning*, Elkins claims that between

system was created, infused with theories of Kikuyu psychopathology, underpinned by psychologically rehabilitative measures to “cure” detainees of their infected minds.²¹ The concept of rehabilitation through confession permeated the system, and those who resisted this approach were variously labelled “recalcitrant,” “irredeemable,” and “irreconcilable.” Camps were put under the administration of the “Department of Community Development and Rehabilitation,”²² and the system was conceptualized as a “pipeline,” with “hardcore” Kikuyu who were labelled as “Z” or “black” detained in remote high security encampments, eventually to be re-labelled as “white,” and passed through the pipeline to open camps before release and reintegration into society. To become “white” and successfully exit the detention pipeline the detainee had to demonstrate an attitudinal change: to confess taking the Mau Mau oath, to provide detail on the crimes committed, and to further demonstrate that he or she was once again a “useful citizen” through hard work and labor.²³ Detainees were excluded from the public sphere and were prevented from contributing to debate or commenting on conditions within the camps.²⁴ Nevertheless, occasionally information emerged that testified to a severe regime controlled by European officers and “loyalist” warders, who subjected detainees to violence with impunity.²⁵ Materials unearthed from the Hanslope

160,000 and 320,000 Kikuyu were detained during the emergency, but this assertion has been called into question, see Guardian article by John Willis, “External Ombudsman’s decision on David Elstein’s complaint,” April 7 2008 <http://www.guardian.co.uk/theguardian/2008/apr/07/opendoor> (April 18, 2015).

Q12 21. The National Archives (hereafter TNA) FCO 141/6321: Office of the Commissioner Kenya Prisons to the Secretary for Defence, May 31, 1956. See also, Pierce and Rao, *Discipline and the Other Body*, 1.

22. Cooper, *Decolonization and African Society*, 351.

23. *Ibid.*, and see TNA FCO 141/5666: Athi River Rehabilitation Camp, Moral Rearmament Army, document circa August 1953.

24. Although detainees were allowed to send and receive one letter per month, the officer in charge of the detention camp could confiscate “any book or paper which, in his opinion, contains any objectionable matter,” The Emergency (Detained Persons) Regulations 1954, s 14(2).

25. Eileen Fletcher resigned her post in charge of female “rehabilitation” facilities in Kenya after a mere 7 months, in protest over the conditions of detention, and she subsequently made statements to the press about what she had witnessed; see “Conditions in Kenya Detention Camps,” *The Times*, June 7, 1956. Fletcher’s claims were denied by the administration. The colonial secretary was deeply critical of Fletcher’s allegations, “I am quite satisfied that Miss Fletcher’s charges are based in the main on hearsay, on partisan opinion and personal prejudice. The negligible amount of criticism which could be levelled has proved to be wholly disproportionate to the impression that she has contrived to create. I would ask all fair-minded people to read carefully the documents in the Library of this House and to make up their own minds,” see Hansard October 31, 1956, vol. 558, cc

211 Disclosure,²⁶ although corroborating the biographical narratives of former
 212 detainees,²⁷ have the power to redress the historical silencing by elucidat-
 213 ing the contemporary colonial attitude to detainee protest.²⁸

214 A claim for “alleged torts of assault and battery and negligence” was
 215 submitted to the United Kingdom High Court by five elderly Kenyans
 216 (*Ndiku Mutua and Others v The Foreign and Commonwealth Office*), in
 217 which the complainants alleged that they had been tortured and mistreated
 218 by “officers and soldiers of the Kenya police force, the Home Guard and/or
 219 the Kenya Regiment” while detained in British camps between 1954 and
 220 1959.²⁹ The injuries suffered by the former detainees resulted from “phys-
 221 ical mistreatment of the most serious kind, including torture, rape, castra-
 222 tion and severe beatings.”³⁰ On the one hand, the British government
 223 rejected the argument that it had “through the Colonial Office and the
 224 Army (under General George Erskine), played a material part in the crea-
 225 tion and maintenance of a system for the suppression of the rebellion, in
 226 part by means of torture and other mistreatment of detainees.”³¹ Onn the
 227 other hand, however, the British Foreign Secretary, William Hague, accept-
 228 ed the need for an examination of colonial era abuses. The case was fought
 229 tenaciously by the British government, which resorted to detailed technical
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 232 1418–21. See also TNA CO 822/1236: Memoranda prepared by the Colonial Office on re-
 233 ports by Eileen Fletcher on detention and imprisonment of children in Kenya, 1957.

234 26. The “Hanslope Disclosure,” refers to the discovery in 2011 of more than 8,000 files
 235 pertaining to thirty-seven former colonies at a Foreign and Commonwealth Office building
 236 in Hanslope Park, Milton Keynes. Between April 2012 and November 2013, the majority of
 237 these files were released to the National Archives, Kew Gardens. Within the National
 238 Archives, the FCO 141 series is generally referred to as the “migrated archives.”

239 27. Marshall S. Clough ed., *Mau Mau Memoirs: History, Memory and Politics* (London:
 240 Lynne Rienner Publishers, 1998); Gakaara wa Wanjaii, *Mau Mau Author in Detention*
 241 (Nairobi: Heinemann Kenya, 1988); Wambui Waiyaki Otieno, *Mau Mau Daughter: A*
 242 *Life History* (London: Lynne Rienner Publishers, 1998); and Josiah Mwangi Kariuki,
 243 “*Mau Mau*” *Detainee: The Account by a Kenya African of His Experiences in Detention*
 244 *Camps, 1953–1960* (Transafrica Press, 2009).

245 28. For example, see the government’s response to Victor Shuter’s exposition of the bru-
 246 tality he witnessed in the Kenyan “rehabilitation” camps in Elkins, *Imperial Reckoning*,
 247 340–44. Also, Huw Bennett notes that one settler (Denning) complained about screening
 248 teams beating up his employees. The authorities dismissed Denning’s allegations, accusing
 249 him of being a man with “a rather unsavoury past,” Bennett, *Fighting the Mau Mau*, 37.

250 **Q13** 29. *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2011] EWHC
 251 1913 (QB), July 21, 2011, para. 1; and *Ndiku Mutua and Others v The Foreign and*
 252 *Commonwealth Office* [2012] EWHC 2678 (QB), November 5, 2012.

30. *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2011], para. 1.

31. For more on the mechanisms involved in governmental denial of human rights abuses
 and atrocities see Stanley Cohen, *States of Denial: Knowing About Atrocities and Suffering*
 (Cambridge: Polity, 2001).

253 arguments at an early stage of proceedings; a position described by Justice
 254 **Q3** McCombe as “dishonourable,” given the serious nature of torture.³²
 255 Therefore, the unexpected announcement by the foreign secretary in
 256 June 2013 that a settlement of £19,900,000 would be granted to 5,228
 257 Kenyan camp survivors appears to have been a complete reversal of the
 258 government’s position.³³ It must be borne in mind that the settlement
 259 came after the British government had experienced a number of setbacks
 260 in court, and evidence of systematic and widespread abuses in detention
 261 was mounting as historians analyzed declassified files (the “Hanslope
 262 Disclosure”) and other sources.³⁴ Hague stressed, however, that the gov-
 263 ernment was not accepting legal liability in the case, and he attempted to
 264 shut the door on prospective claims from other former colonies “[w]e con-
 265 tinue to deny liability on behalf of the Government and British taxpayers
 266 today for the actions of the colonial administration in respect of the claims,
 267 and indeed the courts have made no finding of liability against the
 268 Government in this case. We do not believe that claims relating to events
 269 that occurred overseas outside direct British jurisdiction more than fifty
 270 years ago can be resolved satisfactorily through the courts without the tes-
 271 timony of key witnesses that is no longer available.”³⁵ Aside from pointing
 272 out that the settlement was not precedent setting, Hague also vigorously
 273 defended the government’s right to fight such claims.³⁶

274 Pressure to locate missing colonial files stemmed directly from the *Ndiku*
 275 **Q4** *Mutua and Others v The Foreign and Commonwealth Office* case. Historians,
 276 such as David Anderson, were aware that hundreds of valuable files had been
 277 transferred from Kenya to the United Kingdom prior to Kenyan independence
 278 in 1963. An inquiry was submitted to the relevant section of the FCO regard-
 279 **Q5** ing these missing files, but it was unsuccessful. Finally, on foot of a second
 280 request, in January 2011 an official within “the defendant’s organisation re-
 281 ceived a telephone call from IMG [Information Management Group] indicat-
 282 ing that what appeared to be the missing 300 boxes had been found. The
 283 defendant then set in train a process of analyzing the new papers and disclos-
 284 ing those that they perceived to be relevant to the claimants.”³⁷ Upon
 285

286 32. *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2011], para. 154.

287 33. “Statement to Parliament on settlement of Mau Mau claims,” Foreign Secretary
 288 William Hague, June 6, 2013, full text of speech available at [https://www.gov.uk/govern-
 289 ment/news/statement-to-parliament-on-settlement-of-mau-mau-claims](https://www.gov.uk/government/news/statement-to-parliament-on-settlement-of-mau-mau-claims) (April 18, 2015).

290 34. Caroline Elkins, “Britain has said sorry to the Mau Mau. The rest of the empire is still
 291 waiting,” *The Guardian*, June 7, 2013 [http://www.theguardian.com/commentisfree/2013/
 292 jun/06/britain-maumu-empire-waiting](http://www.theguardian.com/commentisfree/2013/jun/06/britain-maumu-empire-waiting) (April 18, 2015).

293 35. Hague, “Statement to Parliament on settlement of Mau Mau claims.”

294 36. *Ibid.*

37. *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2011], para. 32.

295 examination, the “Hanslope Disclosure” (also referred to as the “migrated arch-
 296 ives” within the British National Archives system), revealed the existence
 297 of 8,500 files pertaining to thirty-seven former colonies at a FCO building in
 298 Hanslope Park, Milton Keynes. The majority of these files have been released
 299 to the National Archives, Kew Gardens.

300 Considering Nazi concentration camps, Giorgio Agamben, rather than
 301 questioning “how crimes of such atrocity could be committed against
 302 human beings,” regards it as more honest and useful “to investigate care-
 303 fully the juridical procedures and deployments of power by which human
 304 beings could be so completely deprived of their rights and prerogatives that
 305 no acts committed against them could appear [. . .] as a crime.”³⁸ This ques-
 306 tion is relevant to a retrospective inquiry into Kenyan detention camp abus-
 307 es. The crux of the matter is this: British politicians and colonial officials
 308 readily abandoned fundamental legal principles when the abrogation
 309 affected an “undesirable other.” Amnesties, such as the one applied to
 310 Kenya, which pardoned all violence that had occurred prior to January
 311 18, 1955, and ex post facto regulations, which legalized foregoing criminal
 312 acts,³⁹ effectively gave the accountability deficit a façade of legality. The
 313 “self-preserving violence” of the state was shielded by impunity in govern-
 314 ment, which was also fostered by the judiciary, even where evidence exist-
 315 ed that ill-treatment, torture, and unlawful killings had occurred in British
 316 custody.⁴⁰

317 This entire system would have collapsed under the weight of normal in-
 318 vestigatory standards and accountability; therefore, impunity upheld the re-
 319 stricted liberty conditions throughout the “emergency” and perpetuated a
 320 culture of violence. In framing the terms of decolonization, the British gov-
 321 ernment also defined the historical narrative of the Mau Mau insurgency
 322 and the counterinsurgency. This discourse portrayed state violence as nec-
 323 essary and the British colonials as rational and legitimate actors. To no
 324 small extent, this was a reaction to the postwar atmosphere which support-
 325 ed anticolonial struggles and self-determination,⁴¹ sponsored by the United
 326

328 38. Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life* (Stanford, CA:
 329 Stanford University Press, 1998), 171

330 39. For example, the British colonial administration passed Regulation 27A in Malaya after
 331 the Batang Kali massacre in December 1948; see Mark Townsend, “Revealed: how Britain tried
 332 to legitimise Batang Kali massacre,” *The Guardian*, May 6, 2012. [http://www.theguardian.com/
 333 world/2012/may/06/britain-batang-kali-massacre-malaysia](http://www.theguardian.com/world/2012/may/06/britain-batang-kali-massacre-malaysia) (April 18, 2015).

334 40. See, for example, Elizabeth Kolsky’s study of white violence in colonial India:
 335 *Colonial Justice in British India* (Cambridge: Cambridge University Press, 2010).

336 41. Klose, *Human Rights in Shadow of Colonial Violence*, 199. See also Burke,
Decolonization and the Evolution of International Human Rights, 39.

337 States and enshrined in the United Nations Charter.⁴² Frederick Cooper
338 identifies tensions that arose between American and British policy makers
339 attempting to agree on a self-governing framework for African states.⁴³
340 The Colonial Office was forced to present a “progressive colonial policy,”
341 promulgated in the Colonial Development and Welfare Act, which purport-
342 edly aimed to raise socioeconomic and labor standards of indigenous peo-
343 ples preparing for self-government.⁴⁴ Cooper argues that it did nothing of
344 the sort, and highlights the colonial secretary’s rationalization for maintain-
345 ing the colonial status quo, “I am not basing my argument on material
346 gains to ourselves, important as I think these may be. My feeling is that
347 in these years to come without the Commonwealth and Empire, this coun-
348 try will play a small role in world affairs, and that here we have an oppor-
349 tunity which may never recur, at a cost which is not extravagant, of setting
350 the Colonial Empire on lines of development which will keep it in close
351 and loyal contact with us.”⁴⁵ Moreover, the colonies had proven beneficial
352 during the war, and the economic significance of these acquisitions extend-
353 ed as certain promises made to British consumers were to be redeemed
354 after the war.⁴⁶ Another factor that may have conversely pushed colonial
355 era abuses underground is that the British government was heavily in-
356 volved in drafting the European Convention on Human Rights, with
357 Winston Churchill maintaining that the Strasbourg institutions “would
358 exist to draw attention to violations of human rights through a ruling
359 that represented a ‘judgment of the civilized world’.”⁴⁷ The British jurist,
360 Sir David Maxwell-Fyfe, is considered a founding father of the European
361 Convention.⁴⁸ In order to reconcile the dissonance between European
362 Convention ideals and the actual situation in many colonies, the colonial
363 administration had to hide evidence of abuses, and this created a culture
364 of denial that has contemporary resonance. Consequently, a massive propa-
365 ganda campaign was launched against Mau Mau, “one of the most inten-
366 sive propaganda attacks on an African national movement,” that sought to
367 delegitimize the movement, while at the same time withholding details of
368

369 42. Following the United States Charter, a United Nations commission was tasked with
370 drafting the Universal Declaration of Human Rights, which came into being in 1948.

371 43. Cooper, *Decolonization and African Society*, 112.

372 44. Colonial Development and Welfare Act 1940.

373 **Q15** 45. Cooper, *Decolonization and African Society*, 120, Cooper references TNA PREM 4/
374 43A/8: WP (44)643.

375 46. *Ibid.*, 123.

376 47. Winston Churchill quoted in Ed Bates, *The Evolution of the European Convention on*
377 *Human Rights: From its Inception to the Creation of a Permanent Court of Human Rights*,
(Oxford: Oxford University Press), 7.

378 48. *Ibid.*, 61.

379 colonial and administrative violence from public scrutiny.⁴⁹ Fabian Klose
380 describes the development of an “effective information machine” in Kenya,
381 which underpinned military endeavors. He elucidates a two pronged
382 British propaganda strategy, with the internal element directed toward man-
383 ipulating public opinion within the colony, whereas the external strand,
384 managed by the Kenya Government Press Office, “filtered information
385 on the situation in the crown colony to the national and international
386 media.”⁵⁰ An additional public relations hub was established in London,
387 the Kenya Government Public Relations Office, which was “chiefly re-
388 sponsible for the international public image of the Kenya question.”⁵¹

389 This concern with appearance and concealing security force violence
390 continued during decolonization, and within the Hanslope files it is possi-
391 ble to pinpoint significant directives issued by the Colonial Office in the
392 late 1950s that were central to the framework of official denial and amnesia
393 regarding the colonies. As British colonial territories were inching toward
394 independence in the mid-twentieth century, the British government redoubled
395 its efforts to bury any evidence that implicated its colonial officials in
396 violations that occurred in territories under British administration.⁵² On the
397 whole, there were two main sources of concern: international political dis-
398 approbation, and the consequence of litigation arising from a former colony.
399 As a result, all top-secret classified materials were rapidly centralized in
400 executive offices and marked for “European eyes only” prior to Kenyan in-
401 dependence, and the files were then either destroyed or removed to the
402 United Kingdom in the 1960s.⁵³ It was intended that evidence of serious
403 human rights abuses would be destroyed in these document purges. On
404 December 9, 1959, a secret dispatch was sent from the Colonial Office
405 in London to various colonial administrations regarding the “security of
406 documents.”⁵⁴ In essence, the circular granted authority to the governor
407 to destroy any top secret or “accountable” material prior to the transfer
408 of sovereignty to the independent territory. In addition, governors were
409 obliged to destroy “any Top-Secret or Accountable document if requested
410

411 49. Wunyabari Maloba quoted in Klose, *Human Rights in the Shadow of Colonial*
412 *Violence*, 199.

413 50. *Ibid.*, 200.

414 51. *Ibid.*

415 52. Ian Cobain, Owen Bowcott, and Richard Norton-Taylor, “Britain destroyed records of
416 colonial crimes,” *The Guardian*, April 18, 2012 [http://www.guardian.co.uk/uk/2012/apr/18/](http://www.guardian.co.uk/uk/2012/apr/18/britain-destroyed-records-colonial-crimes)
417 [britain-destroyed-records-colonial-crimes](http://www.guardian.co.uk/uk/2012/apr/18/britain-destroyed-records-colonial-crimes) (April 18, 2015).

418 53. *Ibid.*

419 54. These administrations were Tanganyika, Singapore, Leeward and Windward Islands,
420 and the East African High Commission, see TNA FCO 141/6957: Despatch signed by Lord
Q3 Perth on behalf of the Colonial Secretary, December 9, 1959.

421 to do so by the Secretary of State.”⁵⁵ To audit the process, the Colonial
422 Office required the submission of annual returns regarding which “account-
423 able” documents had been destroyed, and a list specifying “accountable”
424 documents that remained in the colony. A “Destruction Certificate” was
425 submitted to the colonial secretary when materials were destroyed, whereas
426 a “Handing Over Certificate” was submitted for any documents transferred
427 to a newly independent government.⁵⁶

428 There were various permutations across the colonies in how the directive
429 was applied and in Uganda, a memo entitled “Operation Legacy” was cir-
430 culated in February 1961, with the instruction that official papers should be
431 withdrawn (“either be destroyed or passed to a higher office”) and made
432 inaccessible to “unofficial” or “unauthorised officers.”⁵⁷ Materials destined
433 for this treatment were to be “known as ‘DG’ [Deputy Governor] pa-
434 pers.”⁵⁸ It was imperative that the following files be included in the series:
435 “any papers which might be interpreted as showing religious intolerance on
436 the part of H.M.G., the present Uganda Government or friendly countries,”
437 and “all papers which might be interpreted as showing racial discrimination
438 against Africans (or Negroes in the USA) on the part of H.M.G., the pre-
439 sent Uganda Government or friendly countries.”⁵⁹

440 In Kenya, sensitive materials were categorized as belonging to the
441 “Watch” series, but for purposes similar to the “DG” categorization in
442 Uganda. Overall, the “Watch” catalogue incorporated papers “which
443 must only be seen by ‘authorised’ officers. . . And which will ultimately
444 have either to be destroyed or to be removed to the United Kingdom.”⁶⁰
445 Alternatively, documents could have been filed under the “Legacy” series,
446 namely, “all those other papers which may safely and appropriately be seen
447 in the course of duty by persons who may not fit the definition of ‘autho-
448 rised’ officers, and which will eventually be inherited by an independent
449 Government.”⁶¹ In the event, an “authorised” officer entitled to handle
450 “Watch” materials was “a servant of the Kenya government who is a
451 British subject of European descent.”⁶² Underpinning this administrative
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454 55. TNA FCO 141/6957: Circular 1282/59, “Security of Documents,” December 9, 1959,
455 from Lord Perth on behalf of the secretary of state, para. vi.

456 56. *Ibid.*, paras. ii, iii, vi.

457 57. TNA FCO 141/6957: Circular memorandum, “Operation Legacy,” February 28, 1961,
458 para. 3.

459 58. *Ibid.*, para. 4.

460 59. TNA FCO 141/6957: Appendix to circular memorandum, “Operation Legacy,”
461 February 28, 1961, para. 1.

462 60. TNA FCO 141/6957: Undated draft entitled “The Designation Watch.”

61. *Ibid.*

62. *Ibid.*, para. 9.

463 directive was the assumption that the new classification would exclude
 464 black Africans; therefore, it enabled “social exclusion without slippage
 465 into transparently racist language.”⁶³ Reiterating the nomenclature of the
 466 Uganda circular (which was widely disseminated in Kenya), a Special
 467 Branch directive outlined that “[a]ll papers which might be interpreted as
 468 showing racial discrimination against Africans on the part of
 469 Government” must be included in the “Watch” series.⁶⁴ Against this, it
 470 was essential that the existence of the series be concealed, and to minimize
 471 the risk of exposure, a Kenyan Ministry of Defence official advocated a re-
 472 stricted distribution list to provincial commissioners, permanent secretaries,
 473 and a small number of heads of departments.⁶⁵

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474 As the pace of localization quickened, the destruction and removal of
 475 “Watch” material continued apace. An illustration of potentially inculpatory
 476 documentation included the “personal secret and confidential files” of
 477 approximately 1000 “officers, particularly those of certain district officers,
 478 police officers, prison officers, ex-field intelligence officers,” replete with
 479 information “which in the interests of those officers should not be retained
 480 in the Government Registries after independence.”⁶⁶ It is notable that some
 481 “Watch” materials survived the end of empire document cull and are in-
 482 cluded in the Hanslope Disclosure.⁶⁷ On the whole, the surviving
 483 Hanslope materials have been released to the National Archives, with
 484 some redactions.⁶⁸ The new information documented in this article may
 485 well be comprehended against the inscription of Kenyan peoples as sub-
 486 jects of British colonial law, and the constitutional arrangements in
 487 which an emergency detention regime would flourish without meaningful
 488 oversight mechanisms.

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 491 63. Christopher Lee, “*Jus Soli* and *Jus Sanguinis* in the Colonies: The Interwar Politics of
 492 Race, Culture, and Multiracial Legal Status in British Africa,” *Law and History Review* 29
 493 (2011): 507.

494 64. TNA FCO 141/6957: Measures for the Protection of Special Documents: Protection of
 495 Special Branch Material, use of the marking “Watch.”

496 65. TNA FCO 141/6957: minute by Geoffrey Ellerton attached to Designation Watch
 497 Circular, para. 22.

498 66. TNA FCO 141/6957: letter from the Governor of Kenya to the colonial secretary with
 499 subject line “Security of Personal Records of Officers,” September 21, 1961.

500 67. These documents may have been retained because of their historical importance, but a
 501 more likely explanation is that there was a lack of the requisite person-power needed to
 502 destroy such volumes of material in a relatively short time frame, see TNA FCO 141/
 503 6957–6959: these files contain numerous Watch documents all bearing the “W” stamp.

504 68. There may be further clues as to exactly which materials were destroyed. For example,
 the Colonial Office should have registries for the “Watch” series, copies of annual reports
 from each colony on “accountable” documents, and destruction certificates from various
 governors detailing the documents they had destroyed.

The Birth of Sovereignty: Kenya

The British government formally assumed administration of the Protectorate of East Africa in 1895, a territory covering modern day Kenya and Uganda.⁶⁹ Under the Protectorate, a dual system of law was established, whereby customary laws and native courts were preserved to arbitrate certain matters, whereas an English common law-styled legal system, which eventually drew from Indian penal and criminal codes, worked alongside the customary system.⁷⁰ In general, native sovereignty over legal issues was granted if not in conflict with European interests, but “in cases where vital issues were at stake, European states simply assumed sovereignty over the issues.”⁷¹ The vital issues in Kenya were land and political representation. All political and policy decisions, both at the regional and international levels, occurred to the exclusion of the African population, who were most adversely affected by them. The East Africa Order in Council of 1902 was a legal instrument that derived its power from the royal prerogative. British jurisdiction was extended to the territory by virtue of the 1902 Order, which established the office of a Commissioner “empowered to make Ordinances for the administration of justice, the raising of revenue and generally for the peace, order and good government of all persons in the Protectorate.”⁷² Local lawmaking powers were centered in this office until 1906, when the Legislative Council was created. It was not until 1944 that the first African was elected to the Legislative Council,⁷³ long after the most fertile highlands had been alienated to European settlers.⁷⁴

69. The British government took over from the Imperial British East Africa Company, because it was unable to fulfil its charter obligations as a result of financial difficulties, see C. W. Hobley, *Kenya from Chartered Company to Crown Colony* (London: Frank Cass Publishers, 1929), 124.

70. Sandra Fullerton Joireman, “The Evolution of the Common Law: Legal Development in Kenya and India,” *Commonwealth & Comparative Politics* 44 (2006): 190–210, see also Brett Shadle, “‘Changing Traditions to Meet Altering Conditions’: Customary Law, African Courts and the Rejection of Codification in Kenya, 1930–60,” *The Journal of African History* 40 (1999): 411–31.

71. Anghie, *Imperialism, Sovereignty*, 105.

72. Henry Morris, *Government Publications relating to Kenya (including the East Africa High Commission and the East African Common Services Organisation) 1897–1963* (London: School of Oriental & African Studies, University of London, 1976), see <http://www.microform.co.uk/guides/R96995.pdf> (April 18, 2015).

73. Anderson, *Histories of the Hanged*, 29.

74. Berman, “Bureacracy and Incumbent Violence,” 145, 153.

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British Settlement Act 1887

In 1920, the East African Protectorate was annexed by the Kenya (Annexation) Order in Council (June 11, 1920), under Section 2 of the British Settlement Act 1887,⁷⁵ to create the colony of Kenya.⁷⁶ The British Settlement Act further enabled the Crown by Letters Patent or a similar instrument “to delegate to any three or more persons within the settlement” the powers conferred by Parliament.⁷⁷ A Letters Patent (1920) fleshed out details of the new colony’s governmental institutions.⁷⁸ Article 1 set out the Office of the Governor General, whereas Article 3 conferred powers on the Governor General’s Office, provided these were not repugnant to other provisions of the Letters Patent. Lawmaking powers passed to the Legislative Council; provisions and regulations were to correspond to the laws of England and local lawmaking powers were delegated such as were “necessary for the peace, order, and good government of the Colony.”⁷⁹ The governor had the power to veto legislation drafted by the Legislative Council, and a subsequent document affirmed the status of the governor as the “single and supreme authority responsible to, and representative of, Her Majesty,” and, therefore, entitled to the aid and assistance of military and civilian servants within the Colony.⁸⁰ It was through this office that emergency powers, such as executive detention and warrantless arrest, were realized.

Emergency Laws and Detention Ordinances

Following an upsurge in violence against settler farmers and the assassination of the Paramount Chief for Central Province, Chief Waruhiu, on October 7, 1952,⁸¹ the Governor of Kenya, Sir Evelyn Baring, declared

75. Section 2 outlines that “[i]t shall be lawful for her Majesty the Queen in Council from time to time to establish any such laws and institutions, and constitute such courts and offices, make provisions and regulations for the proceedings in the said courts and for the administration of justice, as shall appear to Her Majesty to be necessary for the peace, order and good government of Her Majesty’s subjects and *others* within any British settlement,” The British Settlement Act 1887, s. 2.

76. The Kenya (Annexation) Order June 11, 1920.

77. Roberts–Wray, “Commonwealth and Colonial Law,” 168.

78. Letters Patent of September 11, 1920. The 1920 Letters Patent were “repealed by the Kenya Constitution Order 1958, Section 1(3) and the First Schedule. However, Section 3 of the 1958 Constitution re-produced a statement of the powers and duties of the governor in closely similar terms to Article 3 of the old instrument,” see *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2011], para. 23.

79. Letters Patent of September 11, 1920, s. 10

80. Directions for a General Guidance to Colonial Governors, Colonial Regulations, 1956.

81. Klose, *Human Rights in the Shadow of Colonial Violence*, 70.

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589 a state of emergency in the territory on October 20, 1952, which lasted
590 until January 12, 1960.⁸² It is notable that the wartime Emergency
591 Powers Order-in-Council 1939 was invoked,⁸³ which provided the gover-
592 nor with complete discretion to introduce any regulation he thought “nec-
593 cessary or expedient for securing the public safety, the defence of the
594 territory, the maintenance of public order and the suppression of mutiny,
595 rebellion and riot, and for maintaining supplies and services essential
596 to the life of the community.”⁸⁴ Notwithstanding these general powers,
597 6(2)(a) of the order specified that the regulations could “make provision
598 for the detention of persons and the deportation and exclusion of persons
599 from the territory.”⁸⁵ It was on this authority that the governor passed a
600 number of detention ordinances during the 1950s, providing the legal
601 basis for the incarceration of Mau Mau suspects without trial.⁸⁶
602 According to a Colonial Office memorandum, “the Governor may make
603 a detention order against any person over whom he is satisfied that it is nec-
604 essary to exercise control for the purpose of maintaining public order.”⁸⁷
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606 82. Political authorisation for the proclamation had been given by resolution of the United
607 Kingdom Cabinet of October 14, 1952, see *Ndiku Mutua and Others v The Foreign and*
608 *Commonwealth Office* [2011], para. 8. Proclamation reads as follows: “IN EXERCISE of
609 the powers conferred on me by section 3 of the Emergency Powers Order in Council,
610 1939, and of all other powers enabling me in that behalf, I DO by this Proclamation
611 bring into operation the provisions of Part II of the said Order in Council with effect
612 from the date of this Proclamation,” The Emergency Powers Order in Council, 1939,
613 Proclamation No. 38 of 1952.

614 83. “His Majesty, by virtue and in exercise of the powers vested in Him by the British
615 Settlements Act, 1887, the Foreign Jurisdiction Act, 1890, and of all other powers enabling
616 Him in his behalf, is pleased, by and with the advice of His Privy Council, to order, and it is
617 hereby ordered, as follows: 3. The provisions of Part II of this Order shall have effect in any
618 territory in which they shall from time to time, in case of any public Emergency, be brought
619 into operation by Proclamation made by the Governor, and shall continue in operation until a
620 further Proclamation directing that they shall cease to have effect is made by the Governor,
621 and shall then cease to have effect except as respects things previously done or omitted to be
622 done.” The Emergency Powers Order in Council, 1939, part I, s. 3.

623 84. The Emergency Powers Order in Council, 1939, March 9, 1939, Part II – Regulations,
624 s. 6(1).

625 85. *Ibid.*, s. 6(2)(a).

626 86. The governor passed the first emergency regulation pertaining to detention in 1952
627 drawing from powers contained in Section 3, part 2, 6 (2) (a) of the Emergency Powers
628 Order-in-Council, 1939, which conferred upon the governor of Kenya powers to detain in-
629 dividuals in an emergency context. The 1939 Order-in-Council was replaced by the
630 Emergency Powers (Amendment) Order-in-Council 1952 to deal with the exigencies of
631 the colonial situation, see TNA CO 822/725. Detention ordinances included: Emergency
632 Regulations 1952, Detention Orders and Power to Detain Suspected Persons; The
633 Emergency (Detained Persons) Regulations 1954; The Emergency (Detention Camps)
634 Regulations 1959.

635 87. TNA CO 822/725: Note on detainees in Kenya, Colonial Office.

631 Detention without trial became a cornerstone of counterinsurgency operations
632 in Kenya and enemy suspects were held in facilities ranging from
633 detention camps to Home Guard stations, screening centers, transit
634 camps, and makeshift units on white settler farms.⁸⁸

635 As it turns out, detention regulations were ratified on the same day that
636 the emergency was proclaimed. Section 2(1) of the Emergency Regulations
637 1952 read “[w]henever the Governor is satisfied that, for the purpose of
638 maintaining public order, it is necessary to exercise control over any person,
639 the Governor may make an order (hereinafter called a detention
640 order) against any such person directing that he be detained, and thereupon
641 such person shall be arrested and detained.”⁸⁹ Operation Jock Scott was
642 launched in Nairobi the following day, during which 180 alleged Mau
643 Mau leaders were arrested, including the moderate politician, Jomo
644 Kenyatta, who was a central figure in the Kenya African Union.⁹⁰
645 Kenyatta disavowed Mau Mau violence, but was sentenced to 7 years’ imprisonment,
646 after what was considered a highly politicized trial and he
647 “thus became a martyr of the movement.”⁹¹ Operation Anvil, launched
648 on April 16, 1954,⁹² gave rise to a new wave of arrests, and by
649 December 1954, 71,346 Mau Mau suspects were being detained in
650 camps across Kenya.⁹³ In Kenya and in Britain, the detention camps
651 were promoted as places of rehabilitation, so as to relieve the Kikuyu of
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654 88. Anderson, *Histories of the Hanged*, 5.

655 89. Emergency Regulations 1952, s. 2(1).

656 90. Klose, *Human Rights in the Shadow of Colonial Violence*, 70.

657 91. Ibid. See also Montago Slater, *The Trial of Jomo Kenyatta* (London: Secker &
658 Warburg, 1955). Although the administration went through the motions of a trial process
659 for Kenyatta, he and many others were to languish in appalling camp conditions for the duration
660 of the emergency. See John Lonsdale, “Kenyatta’s trials: breaking and making an
661 African nationalist,” in *The Moral World of the Law*, ed. Peter Coss (Cambridge:
662 Cambridge University Press, 2000), 196–239. Kenyatta went on to become Kenya’s first
663 president at independence; see also, Jomo Kenyatta, *Suffering without Bitterness. The
664 Founding of the Kenya Nation* (Nairobi: East African Publishing House, 1968); and Jomo
665 Kenyatta, *Facing Mount Kenya: The Traditional Life of the Gikuyu* (London: Heinemann,
1979).

666 92. Caroline Elkins observes that 16,500 were detained in Nairobi during Operation
667 Anvil, *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2011], para.
668 42. Cooper points out that during Operation Anvil all Kikuyu inhabitants living in
669 Nairobi were detained, purely on the basis of ethnicity, and that this led to a labor shortage
670 in the city, see *Decolonization and African Society*, 355. However, Klose maintains that half
671 of Kikuyu inhabitants in Nairobi were detained following Operation Anvil, whereas the
672 other half (mainly women and children) were returned to the (already overpopulated) reser-

673 93. Anderson, *Histories of the Hanged*, 313.

673 their Mau Mau “psychopathology.”⁹⁴ Essentially, however, the camps
 674 were sites of intelligence gathering underpinned by abusive methods,
 675 sites of cheap or free labor, and locations where sovereign power atomized
 676 communities, families, and villages in the production of dehumanized in-
 677 dividuals or to borrow Giorgio Agamben’s phrase, *homo sacer*, an allegor-
 678 ical figure from Roman history who could be killed without the
 679 commission of homicide.⁹⁵ Emergency codes and ordinances merely
 680 gave the violent architecture a façade of legality.

681 In her study on the history of confinement in Africa, Bernault argues that
 682 the colonial penitentiary merely supplemented the “public violence” en-
 683 demic to African colonial societies.⁹⁶ Corporal punishment as a penal sanc-
 684 tion was abolished in England and Wales in 1948, and shortly afterwards,
 685 the Colonial Secretary, James Griffiths, announced that the colonies should
 686 follow suit.⁹⁷ However, “in the 1950s, sentences of corporal punishment
 687 increased in [...] Kenya.”⁹⁸ A detailed punishment regime prescribed by
 688 detention regulations was applied within the Kenyan camps. Minor offens-
 689 es were punishable by one or more of the following: solitary confinement
 690 and reduced diet, removal of privileges, and reprimand.⁹⁹ A similar punish-
 691 ment regime could be invoked for major offenses, such as mutiny, assault
 692 on a prison worker, or aggravated assault on another detainee, and these
 693 could also attract corporal punishment. Regulation 17 of the Emergency
 694 (Detained Persons) Regulations 1954 stipulated that corporal punishment
 695 should not exceed twelve strokes and that the officer-in-charge of the
 696 camp was to be present while the punishment was being executed.¹⁰⁰ In
 697 their edited volume, *Discipline and the Other Body*, Anupama Rao and
 698 Steven Pierce argue that colonial “corporeal violence,” such as flogging,
 699 bodily violence and torture, was applied to individuals or “bodies” increas-
 700 ingly deemed irrational, even as they “simultaneously emerged as [...]”
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702 94. Pierce and Rao, *Discipline and the Other Body*, 1. The Kenyan administration com-
 703 missioned Dr. John Carothers to write a report, one of the sole surviving examples of gov-
 704 ernment sponsored “ethno-psychiatry,” purportedly to help understand the causes of the Mau
 705 Mau rebellion; see John Carothers, *The Psychology of Mau Mau* (Nairobi: Government
 706 Press, 1954); see also TNA FCO 141/5666: Athi River Rehabilitation Camp –undated mem-
 707 orandum circa August 1953.

708 95. See Agamben, *Homo Sacer*. See also Aoife Duffy, “Detainee as “Exile”: Theorizing
 709 the Politico-Legal Underpinnings of Executive Detention,” *Interdisciplinary Journal of*
 710 *Human Rights Law* 7 (2012–2013): 1–17.

711 96. Bernault, *A History of Prison and Confinement in Africa*, 3.

712 97. *Ibid.*, 109.

713 98. *Ibid.*, 109–10.

714 99. Minor offences included, inter alia, spitting, malingering, refusing to eat, and making
 excessive noise, the Emergency (Detained Persons) Regulations 1954, s. 17.

100. *Ibid.*, s. 17(a).

715 targets of humanitarian reform.”¹⁰¹ This pattern was evident during the
 716 Kenyan Emergency, whereby the use of corporal punishment proliferated
 717 with the introduction of Mau Mau detainees into what Daniel Branch
 718 terms the “carceral archipelago;”¹⁰² however, it was conversely under-
 719 pinned by Christian concern for these damaged subjects. In particular, an
 720 experiment was launched at Athi River Rehabilitation Camp by the
 721 Moral Rearmament Army (MRA), which offered “Christian and democrat-
 722 ic alternatives” to the Mau Mau “disease of the mind,” with the promise of
 723 curing “thousands of KEM [Kikuyu] now infected” and demolishing “their
 724 present faith” to substitute it with “a superior one.”¹⁰³

725 Substantively, there were two means through which detainees could
 726 challenge the basis of detention. First, every detainee had the right to
 727 make a representation in writing to the governor in respect of his or her
 728 detention order.¹⁰⁴ As the population was largely illiterate, this made ac-
 729 cess to justice difficult, and it is unclear from the surviving records how
 730 many detention orders were revoked as a result of these petitions. A
 731 **Q3** three person “Advisory Committee on Detainees” chaired by Justice C.P.
 732 Connell was established in 1953 to review detainee appeals.¹⁰⁵ It was
 733 the chairman’s duty to “inform the objector of the grounds on which the
 734 order [had] been made against him and to furnish him with such particulars
 735 as are, in the opinion of the chairman, sufficient to enable him to present
 736 his case.”¹⁰⁶ Detainees were not entitled to legal representation before
 737 the Committee, and only received a summary of the charges in advance,
 738 with more detail being provided during the oral hearing. As such, the
 739 Advisory Committee was not a judicial fact-finding body, but had a man-
 740 date to assess the risk that a detainee posed to public security if released.
 741 Caroline Elkins maintains that fewer than 250 appellants secured their free-
 742 dom through this procedure, but a letter dated January 4, 1960 from the
 743 Colonial Secretary Iain Macleod to Dingle Foot, MP outlines the number
 744 of appeals made to the Advisory Committee during the emergency and
 745 out of 2,604 submissions, 1,088 were successful, representing a 41%
 746

748 101. Pierce and Rao, *Discipline and the Other Body*, 6.

749 102. Corporal punishment constituted 17% of penalties for personal violence offenses in
 750 1938, but this rose to 61% by 1951; see Daniel Branch, “Imprisonment and Colonialism in
 751 Kenya, C. 1930–1952: Escaping the Carceral Archipelago,” *International Journal of African*
 752 *Historical Studies* 38 (2005): 256.

753 103. TNA FCO 141/5670: Working Party on Future of Athi River Detention Camp, May
 754 11, 1955, various government ministers were in attendance.

755 104. Emergency Regulations, 1952, s. 2(3)(b).

756 105. *Ibid.*, s. 2(3)(c).

106. TNA CO 822/1234: letter from Dingle Foot to John Profumo, November 25, 1957.

757 success rate.¹⁰⁷ Detainees were not immediately released following the
758 Advisory Committee's recommendations, but passed up through the "pipe-
759 line" to "open camps" for eventual reintegration into the community.¹⁰⁸
760 Although the recommendations were not binding upon the governor, in a
761 letter to the secretary of state for the colonies, Governor Baring asserted
762 that he had never overruled a decision made by the Committee.¹⁰⁹
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764 **Violence in the Detention Archipelago**

767 The emergency was a time of violent upheaval in certain regions of Kenya,
768 notably in the Rift Valley and Central Provinces, and none were more af-
769 fected by violence than the Kikuyu population, who were, in general,
770 deemed untrustworthy by the administration and as potential Mau Mau ac-
771 complices.¹¹⁰ The Kikuyu experienced "undesirable atrocities and tortures"
772 in their contact with the security forces and the Kenya Regiment.¹¹¹
773 Composed of several battalions, the territorial Kenya Regiment was staffed
774 by British army officers, whereas the rank and file were mainly European
775 settlers. It adhered to the normal army chain of command. By March 1953,
776 Home Guards units composed of loyalist Kikuyu, Meru, and Embu had
777 been formed.¹¹² Huw Bennett submits that the role of the Home Guard
778 evolved over time, and whereas initially they were charged with protecting
779 village chiefs and headmen, in 1953, "units began to patrol large areas and
780 fight in combat."¹¹³ Home Guard posts were fortified buildings located in
781 the new villages,¹¹⁴ which became increasingly implicated in violence as
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783 107. TNA CO 822/1234: letter from Ian Macloed, Colonial Secretary, to Dingle Foot,
784 January 4, 1960.

785 108. Elkins, *Imperial Reckoning*, 111, 120, 237.

786 109. TNA CO 822/1234: letter from Governor Baring to the secretary of state for the col-
787 onies, June 24, 1958.

788 110. Bennett, *Fighting the Mau Mau*, 8.

789 111. TNA FCO 141/5667: A petition from more than 1,000 detainees, Athi River
790 Internment Camp to all party Parliamentary delegation, c/o Government House, Nairobi,
791 January 20, 1954.

792 112. The Embu and Meru people were closely linked to the Kikuyu tribe and also targeted
793 by emergency regulations.

794 113. Bennett, *Fighting the Mau Mau*, 16.

795 114. Villagization was a counterinsurgency strategy adopted in Malaya, and transposed to
796 the Kikuyu reserves, where it was portrayed as a security measure designed to protect the
797 Kikuyu population from Mau Mau "infection;" see Carothers, "The Psychology of Mau
798 Mau," 20. See also TNA FCO 141/5666 for a detailed report on detention and rehabilitation
in Malaya, compiled by the Community Development Organisation following a visit to
Malaya, with recommendations for Kenya, August 27, 1953. The creation of these new vil-
lages was "an unprecedented opportunity for the introduction of liberal reform and British

799 the emergency unfolded.¹¹⁵ By 1955, approximately 800 Kikuyu “new vil-
 800 lages” had been established through the forcible relocation of more than
 801 1,000,000 Kikuyu living throughout the Kikuyu reserves.¹¹⁶ A petition
 802 from “more than 1,000 detainees” who were being held at the Athi
 803 River Internment Camp alludes to the violent destruction of Kikuyu home-
 804 steads by the British Army.¹¹⁷ Homes were burned to the ground, leaving
 805 families destitute, while under-aged girls “were raped by [...] unscrupu-
 806 lous members of the KAR [King’s African Rifles]¹¹⁸ and Home
 807 Guards.”¹¹⁹ Following arrest, detainees held in police cells and barbed
 808 wire encampments on the reserves were tortured by the police, security
 809 forces, or members of the Kenya Regiment.¹²⁰ This brutality included
 810 the “castration of men by beating the sexual organs or by electrifying,”
 811 and one of the *Mutua and Others* claimants, Paulo Muoka Nzili, was cas-
 812 trated while detained at the Embakasi detention center in 1957.¹²¹ As noted
 813 in the Athi River petition, Mau Mau suspects were hung upside-down by
 814 their ankles for days on end, and their money, livestock, property, motor
 815 vehicles, and other possessions were confiscated.¹²² At the same time,
 816 neighbors with petty grievances took the opportunity to settle old scores,
 817 and accused fellow residents of being Mau Mau adherents, inviting their
 818 neighbors’ arrest, detention and disenfranchisement.

819 Life in the camps was severe, which is illuminated by letters smuggled
 820 out of detention facilities. A letter of protest from “more than 2,000 detain-
 821 ees” incarcerated on Mageta Island in Lake Victoria describes unsanitary
 822 living conditions, whereby detainees were not allocated soap for personal
 823 hygiene. On Mageta Island there were no professional health workers,
 824 whereas at Athi River Rehabilitation Camp, which had a medical officer,
 825

826 civilising values” according to one influential settler; see Elkins, *Imperial Reckoning*, 236.
 827 The strategy’s true purpose was to destroy the supply lines issuing from bases of Kikuyu
 828 support to active Mau Mau fighters, and Elkins believes that the villages were “detention
 829 camps all but in name,” and were punitive in nature, 237.

830 115. Bennett notes that there were 18,000 Home Guards in Central Province, *Fighting the*
 831 *Mau Mau*, 13, 16.

832 116. *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2011], para. 42.

833 117. The petition dates from January 1954.

834 118. The King’s African Rifles was a battalion of the territorial Kenya Regiment.

835 119. TNA FCO 141/5667: A petition from more than 1,000 detainees, Athi River
 836 Internment Camp to all party Parliamentary delegation, c/o Government House, Nairobi,
 837 January 20, 1954. See also David Anderson and Julianne Weis, “Rape as a weapon of
 838 war? Sexual violence in Mau Mau Kenya,” *Law and History Review* (forthcoming).

839 120. *Ibid.*

840 121. *Ibid.*, and see *Ndiku Mutua and Others v The Foreign and Commonwealth Office*
 [2012], para. 37.

122. *Ibid.*

841 medical negligence allegedly led to the death of Stephen Kiunjuri, whose
842 raging fever was dismissed as “malingering.”¹²³ Similarly, two detainees
843 involved in a motor accident on Mageta Island were left without medical
844 treatment for several days.¹²⁴ In contravention of the basic safeguards set
845 out by Regulation 17, floggings occurred in the absence of medical super-
846 vision.¹²⁵ Three separate petitions testified to a culture within the camps of
847 casual beatings where “ribs, legs and arms” were targeted by camp officers
848 and warders.¹²⁶ On Saiyusi Island Camp, warders used “clubs and sticks,
849 knives and whips” against detainees, and the petition urged the administra-
850 tion to send an investigation team, so that detainees could show investiga-
851 tors the “wounds, bruises and teeth cracks” that they acquired as a result of
852 beatings.¹²⁷ These petitions were ineffectual because violence was author-
853 ized by the colonial administration and associated with government sanc-
854 tioned detention policies, including, “screening,” “dilution,” forced labor,
855 and the “Mwea procedure,” discussed subsequently.

857 858 *Screening*

859 Screening was a procedure organized by the district administration, work-
860 ing with the British army, the Kenyan police reserves, loyalist chiefs, and
861 the Special Branch, through which entire villages were rounded up into
862 cordoned off enclosures and “screened;” in other words, questioned by a
863 screening team (usually the local police), who used the information for a
864 variety of purposes, including to arrest the “interrogatee.”¹²⁸ The common
865 denominator across permutations of “screening” was “the extraction of in-
866 formation from suspects.”¹²⁹ As such, screening was founded on the as-
867 sumption that “everyone was guilty until proved innocent.”¹³⁰ To that
868 end, startlingly high arrest rates were achieved by some screening teams;
869

870 123. TNA FCO 141/5671: Letter from more than 2,000 detainees, Mageta Island to
871 Argwings Kodhek, November 20, 1956. TNA FCO 141/5667: A petition from more than
872 1,000 detainees, Athi River Internment Camp to all party Parliamentary delegation, c/o
873 Government House, Nairobi, January 20, 1954.

874 124. TNA FCO 141/5671: letter from more than 2,000 detainees, Mageta Island to
875 Argwings Kodhek, November 20, 1956.

876 125. Bennett also refers to the security forces flogging Mau Mau suspects in “Fighting the
877 Mau Mau,” 161.

878 126. TNA FCO 141/5671: letter from more than 2,000 detainees, Mageta Island to
879 Argwings Kodhek, November 20, 1956.

880 127. TNA FCO 141/5667: letter from Saiyusi Island Camp, petition to the chief secretary
881 Nairobi, January 22, 1956.

882 128. For more on screening, see Elkins, *Imperial Reckoning*, 76–90.

129. Bennett, *Fighting the Mau Mau*, 15.

130. *Ibid.*, 162.

883 for example, 87% of 3,800 suspects screened in Nanyuki were subse-
 884 quently arrested.¹³¹ In mid-1954, a massive screening operation dubbed
 885 “Operation Rat Catcher” was launched in Nairobi, which resulted in
 886 17,000 individuals being screened.¹³² Screening also formed an important
 887 cornerstone of the confessional system that operated within the detention
 888 camps. As mentioned, it was imperative for detainees to make full confes-
 889 sions in order to progress through the rehabilitative “pipeline” that but-
 890 tressed the network of camps.

891 Klose notes that British counterinsurgency techniques of this period de-
 892 pended on “systematic mass torture to extract information about the covert
 893 operation of the enemy,” and that all available means were operationalised
 894 in the “battle for information.”¹³³ Klose highlights some of the methods of
 895 violence utilized during screening and interrogation in Kenya.¹³⁴ The death
 896 of Kabebe Macharia on September 15, 1958 occurred as a consequence of
 897 an “extremely severe” beating at the hands of two Embu screeners.¹³⁵
 898 Following Macharia’s interrogation, he was removed to the camp dispen-
 899 sary where he died later that evening. A postmortem revealed the cause
 900 of death, and the two screeners were subsequently arrested and charged
 901 with murder. Ahead of the trial, the governor conceded that “it seems
 902 clear that brutality was used” against Macharia.¹³⁶ It was, therefore, impor-
 903 tant that rehabilitation staff were sent the message that government “will
 904 not tolerate improper methods and where these occur the most rigorous ac-
 905 tion will be taken to punish offenders.”¹³⁷ No European officer was present
 906 during the screening, and transcripts of the disciplinary proceedings sug-
 907 gested that it was “uncivilized African assistants” who were solely respon-
 908 sible for the murder.¹³⁸ The two accused were charged with murder, but
 909 found guilty of manslaughter and sentenced to 3 years’ imprisonment.¹³⁹
 910 **Q6** Against this and indicative of the racialization of justice, in 1953, two
 911 European officers responsible for the death of Elijah Gideon Njeru “were
 912 acquitted of manslaughter and only fined fifty and one hundred pounds, re-
 913 spectively, for battery.”¹⁴⁰

914 131. *Ibid.*, 163.

915 132. *Ibid.*, 21.

916 133. Klose, *Human Rights in the Shadow of Colonial Violence*, 173.

917 134. *Ibid.*, 173–78.

918 135. Elkins, *Imperial Reckoning*, 339–40.

919 136. TNA FCO 141/6332: draft telegram from the governor (undated).

920 137. *Ibid.*

921 138. Even though, as Elkins points out, it is likely that the officer in charge, Hugh
 922 Galton-Fenzi, who was physically present elsewhere in the compound, heard Macharia’s
 923 screams during interrogation, Elkins, *Imperial Reckoning*, 340.

924 139. *Ibid.*

140. Klose, *Human Rights in the Shadow of Colonial Violence*, 176.

925 A judgment from 1954 noted with concern that there was evidence that
 926 the defendants had been subjected to torture during screening “[f]rom this
 927 case and others that have come to our notice it seems that it may be a com-
 928 mon practice when a person is arrested in the commission of a terrorist of-
 929 fence, or on suspicion of such offence, for the police to hand him over to
 930 the custody of one of these teams where, if the accounts given are true, he
 931 is subjected to a ‘softening up’ process, with the object of obtaining infor-
 932 mation from him.”¹⁴¹ In short, the judge disclaimed confessions extracted
 933 by “unlawful violence,” and although several branches of the colonial ad-
 934 ministration denied responsibility for screening teams, the court found that
 935 “such methods are the negation of the rule of law which it is the duty of
 936 courts to uphold, and when instances come before the courts of allegations
 937 that prisoners have been subjected to unlawful criminal violence, it is the
 938 duty of such courts to insist on the fullest enquiry with a view to their ver-
 939 ification or refutation.”¹⁴²

940 Klose highlights the exemplary prosecution and conviction of a British
 941 **Q3** army captain, G.S.L. Griffith, who offered incentives to his soldiers for
 942 killing Mau Mau, and had “verifiably tortured then executed prisoners,”
 943 however, as Klose observes, brutality during interrogation and detention
 944 continued unabated.¹⁴³ In response to persistent allegations, an *Inquiry*
 945 *into Screening Camps and Interrogation Centres* was launched in 1954.
 946 Sir Vincent Glenday, who chaired the inquiry, interpreted his terms of ref-
 947 erence narrowly, as signifying the creation of prospective recommenda-
 948 tions, rather than a retrospective examination of the allegations that had
 949 already come to light. Glenday completely overlooked the violence of
 950 screening when he described it as “a process to obtain or extract a confes-
 951 sion by intensive interrogation from a multiple of facts and based on a
 952 promise of clemency if the confession be judged full and a veiled threat
 953 of reprisal if it be not so considered. To avoid any possible misinterpreta-
 954 tion of this I should explain that whereas in the beginning considerable and
 955 often undesirable pressure was applied in some Camps, to-day it has
 956 generally been reduced to what is terms ‘the psychological fear of being
 957 arrested and taken to the Camp as a detainee’.”¹⁴⁴ Glenday assumed that
 958 screening was successful because of efficacious threats and psychological
 959

960 141. *Criminal Appeals 988 and 989 of 1954* (from Emergency Assize Criminal Case No.
 961 584 of 1954 of HM Supreme Court of Kenya at Nairobi), Kenya National Archives (here-
 962 **Q12, Q17** after KNA): MLA 1/1098, cited in *Ndiku Mutua and Others v The Foreign and*
 963 *Commonwealth Office* [2011], para. 126.

964 142. *Ibid.*

965 143. Klose, *Human Rights in the Shadow of Colonial Violence*, 178.

966 144. TNA FCO 141/6521: “An Inquiry into Screening Camps and Interrogation Centres
 under the Control of the Provincial Administration,” (The Glenday Report), 1954.

967 pressure, but even the Commander-in-Chief of the British Army in Kenya,
 968 General George Erskine, recognized that it was a violent process, “I am
 969 quite certain prisoners were beaten to extract information.”¹⁴⁵ Invoking
 970 the diseased mind thesis, Glenday reported that “our Screening Camps
 971 are now mainly used for redemption or cleansing purposes so that a con-
 972 taminated person may once again be accepted by his people as clear and
 973 ready to assist the Government if called upon to do so.”¹⁴⁶ Steering
 974 clear of any evidence that testified to the violence of screening, Glenday
 975 largely supported the procedure, although he questioned the validity of
 976 “re-screening,” which entailed repeated screenings (one detainee could
 977 be screened three or four times), while accepting its purported cathartic ef-
 978 fects. Screening continued and in a letter to Governor Baring dated
 979 November 1954, the Chief of Police, Colonel Arthur Young,¹⁴⁷ high-
 980 lighted the horrors of “some of the so-called Screening Camps which. . . how
 981 present a state of affairs so deplorable that they should be investigated
 982 without delay.”¹⁴⁸ Young suggested that “elementary principles of justice
 983 and humanity” were not being observed in these camps; however, his crit-
 984 icisms were unacknowledged.¹⁴⁹

987 *Dilution*

988 “Dilution” was a technique whereby a small number of “hard-core incorri-
 989 gibles” were housed with cooperating detainees, who were tasked with
 990 “convincing” the noncooperating detainees to accept the “rehabilitative”
 991 regime of the works camp and to confess their Mau Mau activities.¹⁵⁰ In
 992 the surviving records, the first reference to its usage is in May 1956,
 993 when a rehabilitation officer, Major James Breckenridge, wrote to senior
 994 officers at the Gathigiriri camp, drawing attention to an allegation that
 995 “Jasiel Njau [a rehabilitation assistant] had been putting detainees in the
 996 cells for refusing to confess to their Mau Mau activities and that he had
 997 either beaten them himself or instructed Warders to do so.”¹⁵¹ Matters
 998

1000 145. TNA WO 32/15834: letter from Erskine to the secretary of state for war, December
 1001 10, 1953.

1002 146. TNA FCO 141/6521: The Glenday Report, 1954.

1003 147. For more detail on Colonel’s Young position in relation to detention violence, see
 1004 s. 3 below.

1005 148. Klose, *Human Rights in the Shadow of Colonial Violence*, 179.

1006 149. *Ibid.*

1007 150. TNA FCO 141/6301: letter from Governor Baring to MCD regarding the death of
 1008 detainee called Muchiri at Gathigiriri Works Camp, February 4, 1957.

151. TNA FCO 141/6301: Thomas Askwith, on behalf of the minister for community de-
 velopment to the attorney-general, February 11, 1957.

came to a head when a detainee, Muchiri Githuma, succumbed to the violence meted out by Njau and a number of “cooperating” detainees on January 25, 1957.¹⁵² Initially charged with murder, Njau and the detainees were later convicted of assault causing actual bodily harm,¹⁵³ and the event was portrayed as “an isolated incident” stemming from “the excessive and misguided zeal of the Rehabilitation Assistant.”¹⁵⁴

Thomas Askwith, the Secretary of Community Development and Rehabilitation, wrote to the attorney-general in consideration of the Githuma case, calling attention to a previous complaint raised by Major Breckenridge regarding the camp’s Community Development Officer, C.G. Hirst, and the officer in charge of Gathigiriri, Commander Rowe.¹⁵⁵ Writing to the colonial secretary, the governor indicated that Hirst was directly involved in the Githuma case, as he did not attempt to stop the improper use of force. Hirst admitted that after Githuma “had been revived from unconsciousness,” he forced Githuma to “run up and down pursued by another detainee with a rubber strap shortly before he finally collapsed and died.”¹⁵⁶ The attorney-general advised Governor Baring that no criminal charges could be supported by the evidence against Hirst and Rowe, but that “disciplinary proceedings. . . are being considered.”¹⁵⁷

As a method of dilution, sometimes “a bucket of water [was] thrown at the man,” which acted as “a form of shock treatment,” and had a “most salutary effect.”¹⁵⁸ On one occasion, a detainee, Kariuki Muriithi, died from hypothermia following water “shock treatment” during an attempted conversion at Athi River Detention Camp on July 18, 1957.¹⁵⁹ The coroner revealed that Muriithi had died from exposure to the cold, and seven detainees were charged with manslaughter. The accused informed the court

152. TNA FCO 141/6301: letter from Governor Baring to the minister for community development regarding the death of detainee called Muchiri at Gathigiriri Works Camp, February 4, 1957.

153. Elkins, *Imperial Reckoning*, 333.

154. TNA FCO 141/6301: B.A. Ohanga, Minister for Community Development letter to Baring, February 7, 1957.

155. TNA FCO 141/6301: Askwith correspondence to the attorney-general, February 11, 1957.

156. TNA FCO 141/6301: from the governor to the secretary of state for the colonies, March 21, 1957. On another occasion, Hirst discovered a detainee hanging upside-down by his ankles, and although he ordered his staff to cut the detainee down, he took no further action, *Ibid.*

157. *Ibid.*, and see TNA CO 1017/535: C.G. Hirst, Community Development Officer, Kenya: termination of contract, 1955.

158. TNA FCO 141/6301: undated memorandum on the rehabilitation of “Zs” by an unnamed government ministry.

159. FCO 141/6304: judgment of seven men charged with manslaughter of Kariuki Muriithi, July 18, 1957.

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that they were acting under the orders of the camp commandant and Major Breckenbridge, the Camp Rehabilitation Officer. Breckenbridge admitted authorizing detainees to sprinkle water on the detainee's face if he appeared to be falling asleep. The judge deemed the authorization to be unfortunate, but no charges were preferred against the British officers. Although following orders was not a valid defense in law, the judge concluded that it was as a mitigating factor, and in judgment, six of the accused were found guilty and sentenced to 1 month's imprisonment.¹⁶⁰

The Mwea Procedure

Writing to the colonial secretary on June 25, 1957, Governor Baring commented on the "very hopeful results" that were being achieved from the dilution technique, but noted that in its application on a "small number of very difficult men[. . .] risks are unavoidable."¹⁶¹ Apart from the Githuma killing, other incidents, such as a riot at Athi River Camp, had slowed down the progression of detainees through the "pipeline," and to overcome these difficulties an administrative officer, Terry Gavaghan, introduced a modified dilution procedure, known as the "Mwea technique." By this method, "hard-core" detainees arriving from Manyani camp were brought from the station in batches of twenty, with each group staggered at 15 minute intervals. Cooperating detainees accompanied the new intakes at a ratio of 10 to 1, and all steps "to deal with refractory detainees" were to be taken by staff instead of cooperating detainees. Although some success had been achieved in securing detainee compliance, Baring considered that additional regulatory powers were required. To this end, he explained:

The resistance of these men breaks down quickly in the great majority of cases under a form of psychological shock. . . Gavaghan has been perfectly open with us. He has said that he can stop secret beatings such as that which occurred in the case of Jasiel Njau. He has said that he can cope with a regular flow in of Manyani "Zs" and turn them out later to the district camps. We believe that he will be able to go on doing this a very long way down the list of the worst detainees. But he can only do it if the hard cases are dealt with on their first arrival in a rough way. We have instituted careful safeguards, a medical examination before and after the arrival of the intake, the presence of the officer in charge all the time, the force being used by European staff only.¹⁶²

160. Ibid.

161. FCO 141/6303: letter from Governor Baring to the colonial secretary, dated June 25, 1957.

162. Ibid.

1093 Either the whole procedure crafted by Gavaghan must be abandoned, argued Governor Baring, or “alternatively, we must give him and his staff
1094 cover provided they do as they say they are doing.”¹⁶³ In consequence,
1095 the Attorney-General, Eric Griffith-Jones, drafted a detailed memo outlining
1096 the Mwea procedure, and drafted a regulation to cover the violence
1097 planned under the scheme. Undoubtedly, this legally dubious framework
1098 gave the colonial secretary cause for concern.¹⁶⁴ A draft memo in the
1099 Hanslope files refers to a ministerial visit to the Mwea camp; the visiting
1100 party included the attorney-general, the minister for African affairs, the
1101 minister for community development, the special commissioner (C.M.
1102 **Q3** Johnston), the commissioner of prisons, the acting secretary for defence,
1103 and the district commissioner of Embu, and the party witnessed at first
1104 hand the Mwea intake procedure.¹⁶⁵ Gavaghan accompanied the party, explaining
1105 the full particulars of the operation.¹⁶⁶ After the new arrivals were
1106 hustled off the trucks by European prison and rehabilitation staff and
1107 through a barbed wire cul-de-sac catwalk:
1108

1109 The detainees were ordered to squat in two rows, one at each side of the cat-
1110 walk. The “receptionists” from the last intake then handed out the camp
1111 clothing to each man and set about shaving their heads with the hair clippers
1112 and razors, talking to the new arrivals as they did so. The detainees were ordered
1113 to change into the camp clothing. Any who showed any reluctance or
1114 hesitation to do so were hit with fists and/or slapped with the open hand. This
1115 was usually enough to dispel any disposition to disobey the order to change.
1116 In some cases, however, defiance was more obstinate, and on the first indication
1117 of such obstinacy three or four of the European officers immediately converged
1118 on the man and “rough-housed” him, stripping his clothes off him,
1119 hitting him, on occasion kicking him, and, if necessary, putting him on the
1120 ground. Blows struck were solid, hard ones, mostly with closed fists and
1121 about the head, stomach, sides and back. There was no attempt to strike at
1122 testicles or any other manifestations of sadistic brutality; the performance
1123 was a deliberate, calculated and robust assault, accompanied by constant
1124 and imperative demands that the man should do as he was told and change
1125 his clothes.¹⁶⁷
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1128 163. *Ibid.*

1129 164. A draft of this document is contained in the Hanslope files under the new catalogue
1130 reference: TNA FCO 141/6303.

1131 165. TNA FCO 141/6303: details of the ministerial visit are omitted from the final draft
1132 sent to the Colonial Office, see TNA CO 822/1251.

1133 166. TNA FCO 141/6303: “Dilution” Detention Camps. Use of Force in Enforcing
1134 **Q20** Discipline.”

1134 167. *Ibid.*, exactly the same text appears in the final document.

1135 Some “defiant” individuals attempted to raise the “Mau Mau moan,” and,
 1136 therefore, “it was essential to prevent the infection of this ‘moan’ spreading
 1137 through the camp, and accordingly a resister who started it was promptly
 1138 put on the ground, a foot placed on his throat and mud stuffed in his
 1139 mouth. A man whose resistance could not be broken down was in the
 1140 last resort knocked unconscious.”¹⁶⁸ Thereafter, the new intakes were forc-
 1141 ibly shorn, and resisters were met with violence, similar to the violence at
 1142 reception. In addition, when a detainee was asked if he intended to obey
 1143 the camp regime “if he said ‘no’ or did not answer, he was immediately
 1144 struck and, if necessary, compelled to obey by the use of force in the
 1145 manner described above. Out of the total intake the part witnessed that
 1146 day about a dozen needed minor ‘persuasion’ and 4 or 5 pretty rough
 1147 treatment.”¹⁶⁹

1148 The concept of integrating the technique into the intake procedure was
 1149 “to compel immediate submission to discipline and compliance with or-
 1150 ders, and to do so by a psychological shock treatment which throws off bal-
 1151 ance and overcomes any disposition towards defiance or resistance.”¹⁷⁰
 1152 Shock treatment was justified because those “Z” category detainees arriv-
 1153 ing from Manyani were “particularly ugly customers” according to the
 1154 attorney- general, and were impervious to “orthodox methods of non-
 1155 violent persuasion.”¹⁷¹ Indeed, he added, they were the type who
 1156 understood violence, when there was no appreciable response to “gentler
 1157 treatment.”¹⁷² Serious injury was to be avoided, and to this end, the
 1158 attorney-general explained how violence should be delivered in practice.¹⁷³
 1159 Placing responsibility for Mwea procedure beatings in the hands of
 1160 European officers was supposed to mitigate the consequences of dilution.
 1161 Griffith-Jones was concerned about the impact that the administration of
 1162 violence would have on the European officers involved, and urged the col-
 1163 onial secretary to support these officers “charged with this most difficult,
 1164 dangerous and unenviable task.”¹⁷⁴ To convey his point, the attorney-
 1165 general referred to the Prison Rules of England, 1949, and read an implied
 1166

1168 Ibid.

1169 Ibid., exactly the same text appears in the final document.

1170 Ibid.

1171 Ibid.

1172 Ibid.

1173. “Serious injury must be avoided; kicking with boots or shoes should not be permit-
 1174 ted; vulnerable parts of the body should not be struck, particularly the spleen, liver and kid-
 1175 neys; accordingly any blows should be confined to the upper part of the body and should
 1176 avoid any area below the chest, front or back,” Ibid.

1177 Ibid.

1177 power to violence in rule 34(1) of the English code, to frame the following
 1178 draft regulation

1179 [d]iscipline and order shall be maintained with firmness. Force shall not be
 1180 used in dealing with detained persons save when necessary to enforce disci-
 1181 pline and preserve good order, and no more force than is necessary shall
 1182 be used. Moreover, save by or under the personal direction of the
 1183 officer-in-charge or, in the case of his absence or incapacity, the senior prison
 1184 officer present in the camp, force shall not be used under this regulation
 1185 except when immediately necessary to restrain or overpower a refractory
 1186 detained person, or compel compliance with a lawful order or to prevent
 1187 disorder.¹⁷⁵

1188 Thomas Askwith witnessed the moderated intake procedure on July 11,
 1189 1957, which was based on the attorney-general's draft regulation. A num-
 1190 ber of the procedures were "substantially the same;" however, there were
 1191 some additional and troubling practices that violated the attorney- general's
 1192 direction that injurious force should not be used, and Askwith "saw one
 1193 man lifted up by an Officer to shoulder height and thrown down on the
 1194 ground on his back three times."¹⁷⁶ Blows to the head were frequent, a
 1195 practice that was explicitly prohibited in the attorney- general's directive:
 1196 "one detainee at Mwea resolutely refused to respond in spite of a most
 1197 drastic beat-up. He was thereupon dragged to the cells where Mr.
 1198 Gavaghan informed me he would be subjected to third degree methods
 1199 until he did, in fact, obey all orders given. The measures adopted were
 1200 to be kept awake all night, having water thrown at him and to be beaten
 1201 up on a variety of pretexts."¹⁷⁷ Against this, it is notable that Askwith's
 1202 report, warning about the dangers of the Mwea procedure, was written
 1203 only 6 days before Kariuki Muriithi died in his Gathigiriri cell after
 1204 being subjected to water "shock treatment."¹⁷⁸ Askwith remained uncon-
 1205 vinced of the technique's purported "successes," questioning whether a
 1206 state of "cowed submission" could be long-lasting, and adding that "the
 1207 methods employed are the negation of everything that rehabilitation has
 1208 stood for so far."¹⁷⁹ Given the number of staff and detainees involved in
 1209 the procedure, Askwith warned that it might become public knowledge,
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 1211

1212 175. TNA CO 822/1251: "Dilution" Detention Camps. Use of Force in Enforcing
 1213 Discipline."

1214 176. TNA FCO 141/6303: Rehabilitation – Mwea Camps, report by Thomas Askwith,
 1215 Provincial Secretary for Community Development, July 12, 1957.

1216 177. Ibid.

1217 178. See s. on "Dilution" above.

1218 179. TNA FCO 141/6303: Rehabilitation – Mwea Camps, report by Askwith, July 12,
 1957.

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1219 which would clearly be disagreeable to the British public.¹⁸⁰ There is no
 1220 evidence that Askwith's report ever reached the Colonial Office in
 1221 Whitehall, as he was quickly and quietly marginalized by the Kenyan ad-
 1222 ministration.¹⁸¹ Terry Gavaghan wrote a robust defense of his techniques,
 1223 contested the substance of Askwith's report, and further accused Askwith
 1224 of encouraging his "dirty work," insofar as Askwith allegedly made the
 1225 following comment, "Don't think I am squeamish at all about this," during
 1226 a camp visit.¹⁸²

1227 In the meantime, the colonial secretary was reluctant to approve
 1228 Griffith-Jones's regulation, and the matter triggered great debate among col-
 1229 onial legal advisors in London. Shortly afterwards, Governor Baring dis-
 1230 cussed the matter with senior legal advisors at the Colonial Offices and
 1231 signalled the possibility that he would accept an amended version of the
 1232 Mwea procedure. First, detainees who refused a lawful order, such as
 1233 the requirement to move from one compound to another, or to change
 1234 their clothing, could be compelled to do so by means of "overpowering
 1235 force," for which regulatory powers were already in existence. Second,
 1236 committing a major offense, such as defying a lawful order, could attract
 1237 on the spot corporal punishment (caning not exceeding twelve strokes).¹⁸³
 1238 Extant summary punishment procedures for dealing with recalcitrant de-
 1239 tainees could be invoked.¹⁸⁴ When the colonial secretary questioned
 1240 whether these powers would be sufficient in view of the critical task of
 1241 maintaining the flow of detainees through the rehabilitation system, the
 1242 governor responded that whereas the "treatment proposed would not ad-
 1243 minister the same psychological shock to the detainees," it was "adequate
 1244 to be effective."¹⁸⁵ A telegram was duly dispatched to Kenya, and the
 1245 Acting Governor, Richard Turnbull, circulated instructions for the modi-
 1246 fied procedure to the commissioner for prisons, the ministry for defence,
 1247 the ministry for African affairs, and the attorney-general, specifying that
 1248 the use of "beating force" was to be abandoned forthwith, and "overpow-
 1249 ering force" used instead.¹⁸⁶ Power to confirm corporal punishment
 1250

1251 180. Ibid.

1252 181. As a result of going against the tide, Askwith's colonial career abruptly ended and
 1253 **Q22** his contract was terminated in December 1957; see *From Mau Mau to Harambee: Memoirs and Memoranda of Colonial Kenya* (Cambridge: Cambridge African
 1254 Monographs, 1995).

1255 182. TNA FCO 141/6303: "Report on Mwea Intake by Secretary for Community
 1256 **Q3** Development," addressed to F.A. Loyd, Provincial Commissioner, Nyeri, July 22, 1957.

1257 **Q3** 183. TNA CO 822/1251: note of a meeting by J.I.F. Buist, July 16, 1957.

1258 184. The Emergency (Detained Persons) Regulations 1954, s. 17(a).

1259 185. TNA CO 822/1251: Note by W.A.C. Mathieson, July 18, 1957.

1260 186. TNA FCO 141/6303: Mwea Procedure by Acting Governor, R.G. Turnbull, July 17, 1957.

1261 was additionally delegated to the assistant commissioner and the deputy
1262 commissioner of prisons, one of whom had to be present at each new intake.
1263 In this manner, the sentence of corporal punishment could be confirmed on
1264 the spot.¹⁸⁷ In a sense, modifying the regulatory framework of detainee “cor-
1265 poral violence” was an experiment with disciplinary techniques and tech-
1266 nologies of governance that aimed to maintain colonial power in the camps.

1267 The modified Mwea procedure had the unintended consequence of slow-
1268 ing down the passage of detainees through the pipeline, because the officer
1269 in charge had to formally confirm and oversee the execution of corporal
1270 punishment on individual detainees. To expedite the process, noncooperat-
1271 ing detainees were physically separated from cooperating detainees and
1272 punished en masse.¹⁸⁸ The governor met with Gavaghan, John Cowan
1273 (the senior prison officer in charge of the Mwea camps), and several gov-
1274 ernment ministers at Government House on August 6, 1957 to tease out the
1275 finer details of the modified procedure.¹⁸⁹ The governor highlighted the
1276 following points, “the force to be used should be overpowering force
1277 only,” and that “in order to defend the position it was very important
1278 that over a period of, say three months, the percentage beaten following or-
1279 derly room proceedings should not exceed about 10%,” and, finally, that
1280 “we should keep up-to-date each month a dossier showing the results ob-
1281 tained with all detainees taken into the Mwea and particularly with those
1282 who at the time of intake had been beaten.”¹⁹⁰ Cowan affirmed the imple-
1283 mentation of the procedure, describing the intake of detainees at Mwea
1284 camp “[t]he first batch of 20 arrived at Mwea camp at approximately
1285 12.15pm and immediately offered strong resistance to being shaved and
1286 clothed. Considerable overpowering force was necessary in probably 15
1287 cases out of 20 and the final instruction to proceed to the compound was
1288 only accepted after frequent and aggressive repetition.”¹⁹¹ “Rough meth-
1289 ods” were similarly required in dealing with three subsequent batches,
1290 but only two men received the official punishment.¹⁹² There was a gradual

1291 187. Ibid.

1292 188. TNA FCO 141/6303: letter to Jack Cusack from Gavaghan, July 27, 1957.

1293 189. TNA FCO 141/6303: meeting at Government House, August 8, 1957. In attendance
1294 at this meeting were Governor Baring, John Cowan, Terry Gavaghan, and government
1295 ministers.

1296 190. Ibid.

1297 191. TNA FCO 141/6303: letter to the commissioner of prisons from Cowan, dated
1298 August 10, 1957.

1299 192. Ibid., in a subsequent report from Cowan, the Commissioner of Prisons, “No resis-
1300 tance was encountered from the Gathigiriri intake with the exception of the first man into the
1301 compound who instantly fought like a fanatic. This man was dangerous, striking both offi-
1302 cers and warders, and had to be severely restrained apart from receiving twelve strokes.” The
man who received the beating remained “uncompromising,” August 16, 1957.

1303 disjunction among some of the safeguards that were supposed to be applied
 1304 to the modified technique, and the actual implementation in practice. A
 1305 **Q3** Special Branch Officer, I.P. Kelloway, noted that detainees who wished
 1306 to make a confession were immediately screened, whereas “[t]he remainder
 1307 are asked individually if they have taken an oath. If they deny having taken
 1308 an oath they are given summary punishment which usually consists of a
 1309 good beating up. This treatment usually breaks a large proportion. If this
 1310 treatment does not bear fruit the detainee is taken to the far end of the
 1311 camp where buckets of stones are waiting. These buckets are placed on
 1312 the detainee’s head and he is made to run around in circles until he agrees
 1313 to confess the oath.”¹⁹³ Kelloway observed that approximately 80% of the
 1314 new detainees confessed on the day of their arrival, whereas others took a
 1315 day or thereabouts to comply. He further remarked that “at Thiba Works
 1316 Camp the treatment usually consists of beating the man with the regulation
 1317 baton which to date and to my knowledge, has resulted in one person being
 1318 placed in hospital with broken arms and a leg, and another person suffering
 1319 a perforated ear-drum. At Gathigiriri one person received injuries but to
 1320 what extent I have been unable to ascertain as I was not present. Any
 1321 other injuries that may have been caused have not been brought to my
 1322 notice.”¹⁹⁴ When the provincial commissioner learned of Kelloway’s report,
 1323 he advised against investigating the matter, because “an investigation
 1324 would have a strong adverse effect on the morale of officers at the
 1325 Mwea Camps, who, in any event had a most difficult and distasteful job
 1326 to perform and that the report was untrue or at best greatly exaggerated
 1327 in certain essentials.”¹⁹⁵ In the end, “overwhelming force” was in practice
 1328 no different from “beating force,” the only difference was semantic; on
 1329 September 12, 1958, a detainee arriving at Agathi camp from Nyeri
 1330 Prison died after undergoing the modified Mwea procedure. A postmortem
 1331 revealed significant external injuries, and the cause of death was recorded
 1332 as a pulmonary embolism.¹⁹⁶

1333
 1334
 1335 *Forced Labor and the Cowan Plan*

1336 The United Kingdom was instrumental in garnering support for the 1930
 1337 **Q8** ILO Forced Labour Convention, which had the effect of immediately
 1338

1339 193. TNA FCO 141/6303: I.P. Kelloway, Officer in Charge of Detainee Section, Special
 1340 Branch, Embu, writing to the senior assistant commissioner of police, November 28, 1957.

1341 194. Ibid.

1342 **Q3** 195. TNA FCO 141/6303: Trent to the commissioners of police, Catling, December 19,
 1343 1957.

1344 196. TNA FCO 141/6305: letter to the permanent secretary for home affairs from the provincial commissioner, Central Province, September 17, 1958.

1345 prohibiting all forms of forced labor for private purposes.¹⁹⁷ The primary
 1346 task of the 1930 Forced Labour Convention was to eliminate the conditions
 1347 under which individuals were coerced into slavery or slave-like situa-
 1348 tions.¹⁹⁸ Daniel Maul notes that there were loopholes in the Convention,
 1349 such as with military service, penal servitude following criminal convic-
 1350 tion, and service that could be considered as part of the “normal civic ob-
 1351 ligations of citizens.”¹⁹⁹ The following exemption to the prohibition on
 1352 forced labor found in Article 2(2)(d) of the 1930 Convention was relied
 1353 on by the British government in rationalizing its forced labor policy:
 1354 “any work or service exacted in cases of emergency, that is to say, in
 1355 the event of war or of a calamity or threatened calamity, such as fire,
 1356 flood, famine, earthquake, violent epidemic or epizootic diseases, invasion
 1357 by animal, insect or vegetable pests, and in general any circumstance that
 1358 would endanger the existence or the well-being of the whole or part of the
 1359 population.”²⁰⁰ The limited impact of ILO norms on the colonies has been
 1360 critiqued by Maul who suggested that separate and less stringent rules ap-
 1361 plied to the colonies before the Second World War, and further, that “nei-
 1362 ther the internal power structures of the ILO nor the thinking of its officials
 1363 permitted the application of the regular canon of norms to the colonies.”²⁰¹
 1364 Following the war, the self-determination ambitions of colonial states
 1365 were, in principle, supported by the United States, and, therefore, postwar
 1366 exploitation of the colonies had to be carefully justified by the United
 1367 Kingdom.²⁰² During a governor’s emergency meeting on April 16, 1953,
 1368 a finance official highlighted the twin effect of making detainees work
 1369 “from the point of view of morale, as well as finance.”²⁰³ The Colonial
 1370 Secretary, Oliver Lyttelton, quickly authorized a regulation that permitted
 1371 the extraction of labor from detainee suspects held in camps across the col-
 1372 ony, powers that were contained in the Emergency (Detained Persons)
 1373 Regulations 1953.²⁰⁴ The ordinance was subsequently modified in an effort
 1374

1375 197. Maul, *Human Rights, Development and Decolonization*, 24, 25. For more back-
 1376 ground on the United Kingdom’s engagement in this process, see TNA CO 323/1027:
 1377 “Proposed International Convention on forced labour.”

1378 198. Cooper, *Decolonization and African Society*, 29.

1379 199. Maul, *Human Rights, Development and Decolonization*, 27.

1380 **Q23** 200. C029 - Forced Labour Convention, 1930 (No. 29), *Convention concerning Forced or*
 1381 *Compulsory Labour*, (Entry into force: May 1, 1932) Adoption: Geneva, 14th ILC session
 1382 (June 28, 1930), article 2(2)(d).

1383 201. Maul, *Human Rights, Development and Decolonization*, 27.

1384 202. Cooper, *Decolonization and African Society*, 112.

1385 203. TNA FCO 141/5666: Governor’s Emergency Meeting, Memo for the Member of
 1386 Legal Affairs, April 16, 1953.

Q3 204. TNA FCO 141/5666: memorandum on the forced labor regulation by R.I. Guthrie,
 Assistant Legal Draftman, April 30, 1953.

1387 to comply with international law, but on the whole, these efforts were cosmetic,
 1388 and completely disregarded the illegal violence that was used to
 1389 compel detainees to work. Forced labor became a flashpoint of violence
 1390 between uncooperative detainees refusing to work and the camp authorities
 1391 who used “compelling force” to enact the policy. The implementation of
 1392 the scheme resulted in detainee deaths, most notably the notorious 1959
 1393 Hola Massacre, during which 11 detainees were killed. A closer examination
 1394 of the “migrated archives” reveals several other violent incidents associated
 1395 with forced labor prior to the events of March 3, 1959.

1396 Serious allegations were promulgated in a detainee petition from
 1397 Manyani Special Detention Camp, which was addressed to the secretary
 1398 of state for the colonies, calling on the government to investigate “[t]he
 1399 many deaths which occurred among the detainees who catered for the digging
 1400 of the Embakasi Air Field. It is a fact that while the detainees performed the
 1401 task they suffered malicious and brutish beatings by the warders, and this
 1402 brought about an average of three “on the spot” deaths per day, during
 1403 1953–1954.”²⁰⁵ H.F.H. Durant, the officer in charge of Manyani Special
 1404 Detention Camp, categorically denied the allegations of brutality, which, in his
 1405 estimation, were a “collection of wild and misleading generalities without
 1406 support by any concrete evidence” and “gross and unjustified allegations”
 1407 against European officers.²⁰⁶ As it turns out, a 1955 memo by the Ministry
 1408 of Defence on the “Movement of Detainees from Reception Centres to Works
 1409 Camps” unequivocally states that certain development projects were “planned
 1410 on the assumption that free convict labour [would] be available,” and that
 1411 the Embakasi airport development was one such project,²⁰⁷ “[i]n order to keep
 1412 up the labour force on certain essential projects such as Embakasi airport,
 1413 it will be necessary in the next few months to transfer convicts from a
 1414 number of the more remote prisons and prison camps.”²⁰⁸ That was to say,
 1415 ex-convicts, having served their sentences, were issued detention orders
 1416 and forced to work on these

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205. TNA FCO 141/5667: petition sent from J.G. Kariuki and S.M. Macharia from Manyani Special Detention Camp to the secretary of state for the colonies, April 1956.

206. TNA FCO 141/5667: H.F.H. Durant to the commissioner of prisons, May 12, 1956.

Q3

207. An allegation submitted by Captain Law, a former officer in the prisons systems, refers to “alleged beatings of Embakasi convicts in March 1958 and implies that convicts were merely refusing to come out and were not violent and that excessive forces was used by Turner, Haig-Thomas, Carnie, Bird and Morton. There was no resistance and prisoners could not defend themselves – ‘it was just a murderous onslaught’.” It is not clear whether Law was referring to detainees working on the Embakasi project, see TNA FCO 141/6307: telegram from the colonial secretary to the governor, September 29, 1959.

208. TNA FCO 141/6520: Movement of Detainees from Reception Centres to Works Camps, Council of Ministers on the Resettlement Committee. Memorandum by the Ministry of Defence, May 5, 1955.

Q3

1429 projects for nominal remuneration, “paid from Emergency funds.”²⁰⁹ It
 1430 was estimated that approximately half of the 6,500 Kikuyu prisoners due
 1431 to be released in 1955 would be served detention orders, and immediately
 1432 reassigned to these “essential projects.”²¹⁰ A letter composed by Mageta
 1433 Island detainees in November 1956 remarked that “50 detainees were
 1434 charged of refusing accepting [sic] work at the pay of 8/- per month and
 1435 were sentenced to 2 years hard labour,” and although the commissioner
 1436 of prisons contested other allegations contained therein, this specific accu-
 1437 sation was ignored.²¹¹

1438 There may have been some truth to the charge that detainees who re-
 1439 fused to work at Mageta Island were criminalized for disobedience, and,
 1440 therefore, received additional penal servitude. There was one such reported
 1441 incident at the camp in June 1956, when detainees refused to work at bush
 1442 clearing.²¹² Up until that point, refusing to work was deemed a minor of-
 1443 fense, a violation that could only be punished by a verbal reprimand, re-
 1444 duced diet, denial of privileges, or solitary confinement for up to 7 days.
 1445 The Kenyan administration sought to redefine disobedience as a major of-
 1446 fense, punishable by corporal punishment.²¹³ Repeat offences, under
 1447 Section 23 of the Regulations, could result in “prosecution before a subor-
 1448 dinate court and on conviction [. . .] imprisonment for a term not exceeding
 1449 two years.”²¹⁴ W.A.C. Mathieson, a senior legal advisor with the Colonial
 1450 Office, realized that “in effect, therefore, the Governor is asking for author-
 1451 ity to employ corporal punishment to break this strike.”²¹⁵ He sought coun-
 1452 sel from Colonel Heaton, a member of the Colonial Office’s Advisory
 1453 Committee on the Treatment of Offenders and a former commissioner of
 1454 prisons in Kenya, who, although doubtful as to whether the punishment
 1455 would expedite the forced labor scheme, considered that “discipline must
 1456 be reasserted and that it would be wrong to withhold the use of this weapon
 1457 from those in Kenya who have the responsibility for enforcing disci-
 1458 pline.”²¹⁶ Mathieson accepted this view, and advocated for the “authority
 1459

1460
 1461 209. It is unclear from the Ministry of Defence memo whether these individuals had been
 1462 convicted of ordinary crimes or terrorist-related offenses, see *ibid.*

1463 210. *Ibid.*

1464 211. TNA FCO 141/5671: A letter on behalf of 2,000 detainees at Mageta Island,
 1465 November 20, 1956.

1466 212. TNA FCO 141/6322: War Council, the Emergency (Detained Persons) Regulations,
 1467 1954, memorandum by the minister for defence.

1468 213. The new regulation covered: “Disobedience in such manner as to show wilful defi-
 1469 nance of authority, of any order lawfully given,” in *ibid.*

1470 214. *Ibid.*

215. TNA CO 822/802: Memo by W.A.C. Mathieson, August 27, 1956.

216. *Ibid.*

to use this weapon.”²¹⁷ The next day, the colonial secretary sent Governor Baring a telegram authorizing the creation of the additional major offense;²¹⁸ the amending regulation was published on September 4, and on September 10, strikers at Mageta Island were informed of the new powers.²¹⁹ Disciplinary action was taken against the detainees who persistently refused to work, and a telegram from Baring to the colonial secretary indicates that fifty Mageta Island detainees who refused to work were to be prosecuted under Regulation 23, corroborating the detainees’ complaint mentioned previously.²²⁰

The matter did not end there. The Mageta Island petition alluded to a violent incident during which detainees were beaten, “shorts [sic] were fired in one of the camps holding 800 men, and 13 people were wounded.”²²¹ By contrast, the official version recounted a story of violent detainees armed with “stones and other materials” attacking a prison party, and in this narrative, Greener guns were only discharged so that the party could withdraw.²²² The “belligerent” detainees were deprived of water and food for a number of days, after which point a military squad went into the compound to “disarm” them “[t]his was done and in the course of the operation some 30 to 40 detainees suffered from minor superficial injuries, of whom some 22 had their cuts subsequently stitched by the Medical Officer. At the same time 15 ring-leaders were extracted from the compounds and placed in the small cells where disciplinary action under Section 17 of the Emergency (Detained Persons) Regulations, 1954 is to be undertaken.”²²³ The commissioner of prisons sanctioned the use of corporal punishment, not only for the “ring-leaders,” but also for the remaining 860 detainees.²²⁴

A letter written by Mbirua Githua smuggled out of Aguthi camp to a British MP alleged that eighty-seven detainees had been badly beaten upon reception to the camp on October 24, 1958.²²⁵ A former officer in

1500 217. *Ibid.*

1501 218. TNA CO 822/802: telegram from the colonial secretary to the governor of Kenya,
1502 August 28, 1956.

1503 219. TNA CO 822/802: telegram from Governor Baring to the colonial secretary,
1504 September 19, 1956.

1505 220. TNA CO 822/802: telegram from Governor Baring to the colonial secretary, October
1506 3, 1956.

1507 221. TNA FCO 141/5671: a letter on behalf of 2,000 detainees at Mageta Island,
1508 November 20, 1956. (The date on the letter precedes an event described therein.)

1509 222. TNA FCO 141/6322: Disturbances at Mageta Island, report written by J.H. Lewis,
1510 Commissioner of Prisons, November 28, Commissioner of Prisons.

1511 223. *Ibid.*

1512 224. *Ibid.*

Q3 225. TNA FCO 141/5662: This letter is mentioned in a memorandum by D.W. Conroy,
Attorney-General, May 27, 1959.

1513 charge of the camp wrote a most forthright account of the intake when
 1514 “some Kikuyu detainees started to boo and taunt those who had submitted
 1515 confessions to the Screening teams,” and he realized that “something had
 1516 to be done. . .”²²⁶ and that “they had obviously to be brought under control,
 1517 and as they would not listen to commands from me or the camp staff I
 1518 called in the Special Platoon to deal with them. These warders used batons
 1519 on the more aggressive detainees, and inevitably some were badly bruised.
 1520 The doctor considered that a few men, (I think, four), should be treated at
 1521 the camp dispensary.”²²⁷ Men who refused to work the following day “re-
 1522 ceived” lights blows with batons, whereas on the 3rd day the “recalcitrants”
 1523 were put on half rations. The strike lasted until November 22,
 1524 1958, when thirteen “non-cooperating detainees” were sent to Karaba
 1525 camp. Nine of these detainees “confessed” and were returned to Aguthi,
 1526 where they subsequently retracted their confessions. Permission was granted
 1527 to cane these nine men; eight of whom were caned on December 16.
 1528 The officer in charge of the camp admitted certain irregularities as regards
 1529 the punishment:

1530 I must also testify to the fact that in some cases more than the stipulated num-
 1531 bers of strokes were given. Moreover, previous experience had taught me that
 1532 punishment with the regulation prisons case had no effect other than to make
 1533 the detainees mock at the authorities and deliberately try to incur more pun-
 1534 ishment to show how little they cared. I mentioned this to my superior offi-
 1535 cers on occasions before this incident occurred and suggested that, if corporal
 1536 punishment was approved, it was presumably intended to make some real im-
 1537 pression and therefore something other than the kind of cane which was used
 1538 to punish me at school should be employed, namely a “kiboko.” I gathered
 1539 the impression that everyone agreed with me and that is why a “kiboko”
 1540 was used and not the regulation cane ordered in the signal from the SSP.
 1541 A member of the staff entered the punishment as twelve strokes in the register
 1542 before the beating. When I went to sign the register after the beating it was
 1543 agreed not to alter the entry.²²⁸

1544 The attorney-general instituted a Criminal Investigation Department (CID)
 1545 probe into the caning because there had been no inquiry prior to sentenc-
 1546 ing, a regulation cane was not used, and excessive strokes had been deliv-
 1547 ered.²²⁹ However, instead of criminal charges being made against the
 1548 officer who authorized the use of the “kiboko,” “severe disciplinary action”

1550 **Q3** 226. TNA FCO 141/5662: letter from Brooks to the minister of home affairs, May 13,
 1551 1959.

1552 227. Ibid.

1553 228. Ibid.

1554 **Q3** 229. TNA FCO 141/5662: memorandum by D.W. Conway to the Ministry for African
 Affairs and the Ministry of Defence, May 27, 1959.

1555 **Q3** was instituted by C.M. Johnson, the Minister for African Affairs.²³⁰ In a
 1556 sense, defining the action as a “disciplinary violation” sabotaged the CID in-
 1557 quiry, and the criminal investigation was subsequently abandoned.²³¹

1558 The violence of the state in enforcing the forced labor policy was laid
 1559 bare when detainees persistently refused to work at Hola detention
 1560 camp. In a meeting at Government House, the permanent secretary of
 1561 the ministry for African affairs stated that Hola received “the dregs of
 1562 the Mau Mau barrel.”²³² In receiving these “violent men from Manyani”
 1563 and “persons unacceptable in the Central Province,” the permanent
 1564 **Q3** secretary reminded D.A. Marsden, the district officer in charge of the settlement
 1565 camps at Hola, that “certain persons are always ready to listen to com-
 1566 plaints from detainees, even though the statements made are false and ex-
 1567 aggerated. It is essential that there should be no grounds for any legitimate
 1568 complaint. Prisons rules and detention camp regulations must be followed
 1569 precisely.”²³³ However, in August 1958, a number of detainees were
 1570 “beaten because they refused duty,” resulting in the hospitalization of
 1571 four detainees.²³⁴ This incident would have been assigned to the annals
 1572 of historical amnesia, were it not for the killings at the camp later in
 1573 March 1959.

1574 From the declassified archives, it appears that there were two key factors
 1575 that led to the creation of the Cowan plan, the forced labor policy imple-
 1576 mented at Hola on March 3, 1959. First, the Commissioner of Prisons,
 1577 John H. Lewis, noted with frustration on February 5, 1959, that there
 1578 were a number of “apparently able-bodied men” “malingering” about
 1579 Hola, refusing to work outside the camp.²³⁵ A second source of frustration
 1580 for camp officials was that even the detainees who were working (“out on
 1581 *shamba*”) were adopting a “go slow” policy and were not achieving their
 1582 designated labor targets.²³⁶ The Cowan plan would tackle both of these
 1583 problems; summary punishment, that is on the spot corporal punishment,
 1584

1585 230. Ibid.

1586 231. TNA FCO 141/5662: letter from C.M. Johnston to the minister for legal affairs, June
 1587 3, 1959.

1588 232. TNA FCO 141/5653: Ministry of Defence minute of a meeting held at Government
 1589 House, December 1, 1958.

1590 233. TNA FCO 141/5653: directive from permanent secretary to the District Officer i/c
 1591 Settlement Camps, Hola, D.A. Marsden.

1592 234. TNA FCO 141/5662: The medical register at the hospital recorded that Mutai Theuri,
 1593 Mbuthia Thairu, Ndeqwa Gacheo, and Mwema Kinuthia were: “Beaten by squad for refus-
 1594 ing duty.” This incident occurred toward the end of August 1958.

1595 235. TNA FCO 141/5658: “Discipline – Hola Closed Camp,” letter from J.H. Lewis,
 1596 Commissioner of Prisons to Officer in Charge at Hola, February 5, 1959.

1597 236. TNA FCO 141/5658: situation report from Hola camp to the commissioner of pri-
 1598 sons, February 13, 1959.

1597 was the preferred solution for dealing with the “go-slow” policy, but ensuring
 1598 “absolute obedience from the 66 recalcitrant” detainees refusing to
 1599 work required a more sophisticated strategy.²³⁷ On the selected day “diffi-
 1600 cult cases” were to be divided into four smaller groups, and each group was
 1601 to be locked into an A-frame building. A special platoon was to target the
 1602 first group, enter their compound, and usher them into the catwalk, at
 1603 which point the officer-in-charge would order the detainees to work on a
 1604 labor scheme “requiring no tools or implements. . . it is assumed that the
 1605 party would obey this order but should they refuse they would be man-
 1606 handled to the site of work and forced to carry out the task.”²³⁸ Each
 1607 group in turn would be removed “until all were working,”²³⁹ and Cowan
 1608 insisted that “obedience must be maintained by more firmness on the
 1609 part of the staff,” but that this did not “imply a brutal and harsh regime
 1610 but a high standard of personal example and insistence always on immedi-
 1611 ate obedience.”²⁴⁰ Not everyone supported Cowan’s plan, and less than a
 1612 week later, the commissioner of prisons wrote to the Kenyan minister of
 1613 defence, warning that the plan “would mean the use of a certain degree
 1614 of force in which operation someone might get hurt, or even killed.”²⁴¹
 1615
 1616

1617 *The Hola Massacre*

1618
 1619 Despite the warnings, on March 3, 1959, a group of “hard-core” detainees
 1620 who persistently refused to work were savagely beaten by warders imple-
 1621 menting the Cowan plan at Hola detention camp. Eleven detainees were
 1622 killed, and dozens more were hospitalized with severe injuries.²⁴² A cor-
 1623 ner’s inquest revealed some of the injuries sustained, such as, “one re-
 1624 ceived a fractured skull. . . another’s brains were damaged, one had a
 1625 fractured jaw and two had fractured forearms.”²⁴³ The first official account
 1626 **Q3** to emerge can be seen as a complete whitewash. W.M. Campbell, Assistant
 1627 Commissioner of the Prison Service, reported that it was “the opinion of all
 1628 with whom we spoke that the compelling exercise was in no way
 1629

1630 237. TNA FCO 141/5658: notably, the work scheme manager, Mr. Filgate, “asked to be
 1631 dissociated entirely” from Cowan’s plan; situation report from Hola camp to the commis-
 1632 sioner of prisons, February 13, 1959.

1633 238. TNA FCO 141/5658: “The Cowan Plan,” February 11, 1959.

1634 239. *Ibid.*

1635 240. *Ibid.*

1636 241. TNA FCO 141/5658: note from Lewis, Commissioner of Prisons, to the minister of
 1637 defence, February 17, 1959.

1638 242. Elkins, *Imperial Reckoning*, 347.

Q24 243. TNA CAB 129/97 C92: memorandum from the colonial secretary to the Cabinet,
 June 2, 1959, para. 13.

connected with the cause of death of the detainees,”²⁴⁴ and the government issued a press statement claiming that “the deaths occurred after [the detainees] had drunk water from a water cart.”²⁴⁵ When W.H. Goudie, the inquest magistrate, revealed that the deaths “were due to shock and haemorrhage due to multiple bruising caused by violence,” the official press release was exposed as false.²⁴⁶

Despite the gravity of the case, the magistrate was unable to identify those responsible, and he expressed the view that some of the violence directed at the detainees was justifiable and lawful.²⁴⁷ In deciding not to prosecute, the attorney-general relied on similar arguments, citing numerous ordinances and standing orders that permitted the use of force against detainees in limited circumstances.²⁴⁸ He argued that unlawful violence could not be established in this case because of the lack of reliable evidence and the failure of witnesses to cooperate with the CID investigation. Blame shifted to the survivors, who were categorized as uncooperative and unreliable, and whose testimony was regarded as “valueless.”²⁴⁹ Unsurprisingly, the investigation stalled and the European officers and African subwardens avoided criminal prosecution.

A disciplinary commission, the Conroy Committee, was subsequently established, and it reported that the governor was concerned that “a further formal enquiry might have damaging effects on the morale of the Kenya Prison Service,” and advised that no further judicial action was needed.²⁵⁰

The only resulting “sanction” was that the Camp Commandant, G.M. Sullivan, was forced to retire without any loss of gratuity, and the Commissioner of Prisoners, John Lewis, was forced to retire 6 months early, whereas Walter Coutts, Sullivan’s deputy, was absolved of any

244. TNA CAB 128/33/CC32: Cabinet minutes, June 20, 1959.

245. KNA, M SS, 115/51: press office, handout number 142, “Death of 10 Detainees at Hola,” March 4, 1959.

246. TNA CAB 129/97 C92: memorandum from the colonial secretary to the Cabinet, June 2, 1959, para. 15.

247. *Ibid.*, para. 14.

248. “Section 18 of the Prisons Ordinance authorises the use of weapons, where necessary, by prison officers against detainees escaping or attempting to escape, engaged in a combined outbreak or using violence to any prison officer or other person. Prison Standing Orders forbid the striking by prison officers of persons in custody save to the extent necessary in defence or to overcome violence or resistance to escort. The Emergency (Detained Persons) Regulations, 1954, prescribe the circumstances and manner in which corporal punishment may be applied to detainees for offences against discipline,” Secret memorandum detailing the attorney-general’s reasons for deciding not to prosecute, TNA CAB 129/97 C92, annex I, para. 9.

249. Secret memorandum detailing the attorney-general’s reasons for deciding not to prosecute, TNA CAB 129/97 C92, annex I.

250. TNA CAB 128/33/CC32.

wrongdoing in the matter.²⁵¹ Several British MPs argued that responsibility for the events lay with those ranked above Sullivan and Coutts, with the government of Kenya, with Governor Baring, and, ultimately, with the secretary of state for the colonies. The failure of the inquiry to “pin down responsibility all along the chain of command” was criticized by Ronald Robinson, MP, who believed that it was a breach of ministerial responsibility to permit junior officers to shoulder the blame for this atrocity.²⁵² Criminal charges were not pursued, he argued, because “quite instinctively, sincerely and genuinely, without even being aware of it, hon. Members opposite do not believe that an African life is as important as a white man’s life.”²⁵³ This sentiment was echoed by the Conservative MP Enoch Powell, who departed from the Tory party line, and criticized the idea of African standards for Africa or lower standards of justice than those applicable in Britain. Powell argued that it was inappropriate to “pick and choose where and in what parts of the world we shall use this or that kind of standard. . . We must be consistent with ourselves everywhere. All Government, all influence of man upon man, rests upon opinion. What we can do in Africa, where we still govern and where we no longer govern, depends upon the opinion which is entertained of the way in which this country acts and the way in which Englishmen act. We cannot, we dare not, in Africa of all places, fall below our own highest standards in the acceptance of responsibility.”²⁵⁴ Finally, Barbara Castle, a great advocate of detainees’ rights in Kenya, recognized that to accept the government’s recommendations would result in “one of the gravest miscarriages of justice in British colonial history.”²⁵⁵ In the end, the opposition made a tactical error when it failed to submit a motion on the question of holding an independent inquiry into the massacre, and, therefore, no vote was taken after the debate, which allowed the government to evade accountability.²⁵⁶ Although an internal review (the Fair Commission) was established to investigate the procedures along the pipeline, similar to the Glenday Inquiry, it had no mandate to investigate past incidents, but could only make prospective recommendations.²⁵⁷

251. Walter Coutts was a district commissioner and deputy to Sullivan, the Camp Commandant. Hansard, House of Commons, vol. 610, col. 181, July 27, 1959.

252. *Ibid.*, col. 216.

253. *Ibid.*, col. 220.

254. *Ibid.*, col. 237.

255. *Ibid.*, col. 222.

256. Elkins, *Imperial Reckoning*, 353.

257. *Ibid.*, 349. See also, Klose, *Human Rights in the Shadow of Colonial Violence*, 182.

Accountability for Abuses

Recently, in the *Mutua and Others* case, the FCO claimed that security force indiscipline and allegations of ill-treatment during the emergency had already been investigated.²⁵⁸ There were no outstanding issues with respect to state-sponsored violence in British Kenya, so the government argued, when providing the court with a list of historic prosecutions. In March 1954, Colonel Arthur Young, on secondment from the city of London, was instated as police commissioner of Kenya to tackle the culture of impunity. Young, together with Donald MacPherson, head of the CID, attempted to prise open a space for CID inquiries into abuses committed by the police, the army, and the Kenyan Home Guard.²⁵⁹ The first of these cases, the Wamai case, which Young and MacPherson prosecuted, is worth examining in more detail because it points to executive interference in what should have been a matter for the judiciary.

Contemporary Accountability

The case against Muriu Wamai, a Home Guard headman, and his five co-defendants, stemmed from the deaths of two Kikuyu farmers who were beaten and tortured at the Ruthagathi Home Post. The two Kikuyu refused to confess Mau Mau allegiance and were taken outside the town and executed.²⁶⁰ Initially, Wamai claimed that their deaths occurred as a result of a shootout between Home Guards and Mau Mau insurgents, although evidence given by former detainees indicated that detainees were routinely beaten at the Home Guard post. The European officers compelled to give evidence supported Wamai's account of events.²⁶¹ However, on the 3rd day in the witness stand, Wamai dramatically changed his plea and gave a full confession.²⁶² The British officers were well aware that the Home Guard post was a "screening center" where torture was institutionalized, and Wamai had been encouraged to cover up the incident by a British District Officer.²⁶³ Alterations to the Home Guard post logbook concerning the prisoners were made after the killings. Wamai's confession

258. *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2011], witness statement of David Anderson.

259. Anderson, *Histories of the Hanged*, 298–99; Elkins, *Imperial Reckoning*, 276.

260. Anderson, *Histories of the Hanged*, 298.

261. *Ibid.*, 301.

262. *Ibid.*, 302.

263. *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2011], appendix C, para. (i).

implicated five British officers and an African chief in the subsequent conspiracy.²⁶⁴

Issuing his judgement on December 4, 1954, Justice Cram found Wamai and his codefendants guilty of murder and the judge, a former prisoner of war, was vitriolic about the conduct of European officers in the South Nyeri district.²⁶⁵ Unchecked arbitrary powers contributed to a barbaric detention and interrogation system that Justice Cram declared was illegal.²⁶⁶ Contrary to the officials' claim that the allegations of murder were part of a Mau Mau plot to discredit loyalist Home Guards, Cram found "the only plots revealed by their evidence [the European officers] is a plot to execute innocent prisoners, and then a plot to defeat the ends of justice, and maintain the barbarous tortures of Ruthagathi. . . They were a prey [sic] on the countryside. . ." ²⁶⁷ Justice Cram recognized that it was a short step from brutalized beatings and torture to "taking life without qualm."²⁶⁸ Governor Baring attempted to suppress publication of the judgment; however, copies were leaked, causing quite a stir in the United Kingdom.²⁶⁹ An inquiry resulted, presided over by a conservative judge, Justice Holmes, who concluded that Justice Cram had "grossly exaggerated the problems."²⁷⁰ Many were dissatisfied with the Holmes report, including the president of the East African Court of Appeal, who wrote to Governor Baring to request that the first section of the report, which gave the impression that outstanding issues from the Wamai case had been settled, be withheld.²⁷¹ The governor agreed to this proposal, which, according to Anderson, was a "tacit admission that the matters raised by Justice Cram in his judgment in the Ruthagathi case had *not* in fact been properly investigated by the Kenya administration, despite the establishment of a full judicial inquiry."²⁷²

At every level, the CID experienced obstruction in their attempts to further criminal prosecutions against colonial staff.²⁷³ The colonial government's

264. Two European officers committed perjury and one gave a false statement to the court, Anderson, *Histories of the Hanged*, 303.

265. Criminal Case No. 240 of 1954 of HM Supreme Court of Kenya at Nyeri.

266. *Ibid.*, 8.

267. *Ibid.*

268. *Ibid.*

269. *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2011], appendix C, para (i).

270. Anderson, "Histories of the Hanged," 306.

271. *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2011], witness statement of David Anderson, s. 16.

272. *Ibid.*

273. *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2011], appendix C, para (j).

1807 approach was to maintain the detention pipeline and security force morale,
 1808 even at the expense of justice in individual cases.²⁷⁴ Colonel Young sent
 1809 Governor Baring a series of communications between November and
 1810 December 1954, highlighting the difficulties he was encountering, but this
 1811 correspondence was unacknowledged, and in his frustration he resigned
 1812 his post pointing to “the continuance of the rule of fear rather than that of
 1813 impartial justice.”²⁷⁵ At the center of his predicament were “malpractices
 1814 committed against Mau Mau suspects” that were “condoned by officers of
 1815 the Provincial Administration,” and in his resignation letter, which he sub-
 1816 mitted to Governor Baring, Young stated that the governor himself had at-
 1817 tempted to interfere in the prosecution of one of these cases.²⁷⁶ Young’s
 1818 letter was not made public and he was forced to tone down the language con-
 1819 tained therein. Later, Young recalled how he had sent “an official report to
 1820 HE [His Excellency] expressing my apprehensions in writing, with the belief
 1821 that supporting evidence would soon be forthcoming. I also requested that he
 1822 should take an initiative in administration of action which would indicate his
 1823 own repugnance of brutality committed by security forces and do what he
 1824 could to bring this to an end. I received no acknowledgement of this appre-
 1825 ciation, far less an answer to it, in spite of a number of reminders.”²⁷⁷ On
 1826 January 18, 1955, the government announced a general amnesty for all vio-
 1827 lent actions committed by both the security forces and “Mau Mau surren-
 1828 derers” up until that point.²⁷⁸ On paper, the amnesty was accessible to
 1829 insurgents, however, to avail themselves of it, the rebels had to emerge
 1830 from hiding and surrender their arms. Overall, it had the effect of preventing
 1831 CID investigations into security force malpractices from coming to trial.²⁷⁹
 1832 The amnesty perpetuated the lack of security force accountability, and, ac-
 1833 cording to Elkins, “the blanket pardon left little doubt that the colonial gov-
 1834 ernment, including Churchill and his cabinet, who discussed and approved
 1835 the amnesty, were wholly willing to abandon the enforcement of law and
 1836 order and to subordinate the basic human rights of Mau Mau adherents in
 1837 order to maintain the support of the security forces and, ultimately, uphold
 1838 British colonial rule in Kenya.”²⁸⁰ Today, blanket amnesties are inimicable
 1839

1840 274. Anderson, *Histories of the Hanged*, 300.

1841 275. *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2011], appendix
 1842 C, para (j).

1843 276. This case was the attempted prosecution of Home Guard Chief Mundia, Klose,
 1844 *Human Rights in the Shadow of Colonial Violence*, 179–80.

1845 277. RH, Mss. Afr. s. 486, Sir Arthur Young, papers, box 5, file 1, Arthur Young,
 1846 “Introduction to Sir Arthur Young,” n.d., 14.

1847 278. Bennett, *Fighting the Mau Mau*, 27.

1848 279. Anderson, *Histories of the Hanged*, 308.

280. Elkins, *Imperial Reckoning*, 280.

1849 to international law principles, such as the duty to prosecute and punish
 1850 gross human rights violations and the fulfilment of a right to a remedy.²⁸¹
 1851 However, at that time, acts of indemnity had historical precedent in
 1852 England, with the English jurist, Alfred Venn Dicey admitting that although
 1853 “it is the legalisation of illegally,” the statute is essentially law, and could
 1854 only be questioned if indemnification pertained to, for example, “reckless
 1855 cruelty to a political prisoner,” or “the execution of a political prisoner.”²⁸²
 1856 That said, there is a deep ambivalence in Dicey’s legal scholarship, whereby
 1857 his principles of nondiscrimination and equality before the law were largely
 1858 abandoned in his wholehearted support of Irish coercion laws.²⁸³ Therefore,
 1859 his exceptions to indemnification probably would not have stretched to colonial
 1860 violence and counterinsurgency.

1861 Up until that point, there were several judgements at the East African
 1862 Court of Appeal that queried whether the unlawful violence of detention
 1863 could have continued “without the condonation [sic] of the authority.”²⁸⁴
 1864 Corruption was pervasive, and the appeals court protested against “the ill
 1865 treatment of captives.”²⁸⁵ Judicial recommendations for security force
 1866 prosecution were ignored, and the lack of consequences for criminal violence
 1867 resulted in the police force of Kenya becoming “a law unto itself.”²⁸⁶
 1868 Convictions were few and far between, and punishment was often perfunctory.
 1869 ²⁸⁷ A memorandum prepared by the colonial secretary defending the
 1870 administration’s response to security force violence referred to six cases,
 1871 none of which resulted in a custodial sentence for the European officers
 1872 involved.²⁸⁸

1874 281. Louise Mallinder, “Can Amnesties and International Justice Be Reconciled?” *The*
 1875 *International Journal of Transitional Justice* 1 (2007): 210, 213. Mallinder recommends
 1876 prosecuting the most guilty perpetrators of the worst atrocities, whereas conditional amnesties
 1877 for lower level offenders may be commensurate with international law, treaty, and
 1878 custom.

1879 282. Alfred Venn Dicey, *Introduction to the Study of the Law of the Constitution* (Liberty
 1880 Fund: Indianapolis, 1982), 145.

1881 283. Alfred Venn Dicey, *England’s Case Against Home Rule*, 3rd ed. (London: John
 1882 Murray, 1887).

1883 284. Criminal Appeals 988 and 989 of 1954 (from Emergency Assize Criminal Case No.
 1884 584 of 1954 of HM Supreme Court of Kenya at Nairobi), KNA: MLA 1/1098. See witness
 1885 statement of David Anderson for a list of relevant cases.

1886 285. Criminal Appeal No.818 of 1954 of Criminal Case No.289 of 1954 (Nyeri).

1887 286. Criminal Appeals 549, 550, 551, and 552 of 1954 (from Emergency Assize Criminal
 1888 Case No. 330 of 1954 of HM Supreme Court of Kenya at Nairobi) KNA: MLA 1/905.

1889 287. Anderson, *Histories of the Hanged*, 310, 311; Elkins, *Imperial Reckoning*, 278, 282–84.

1890 288. A commandant of Mara River detention camp, L.W. Lemon, was charged of causing
 actual bodily harm, but he was convicted of the lesser offence, common assault, and fined
 sh.500. Jasiel Njau, an African rehabilitation officer in the Gathigiriri Works Camp, was ac-
 quitted of murdering a detainee in January 1957, but convicted and sentenced to 12 months

The foregoing discussion raises the question of whether the detention regime instituted by the British government in the colony of Kenya was permissible under international law. Article 3 of the Universal Declaration of Human Rights (1948) holds that “Everyone has the right to life, liberty and security of person,” whereas Article 5 provides that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”²⁸⁹ Although the Declaration was not a legally binding instrument,²⁹⁰ there was unanimity among the diverse member states involved in legislating “on behalf of all peoples and all nations” regarding the importance of human rights norms after the war.²⁹¹ Colonized peoples were not represented in these negotiations, although Third World activists, according to Roland Burke, played a more significant role in contributing to the new human rights discourse after decolonization.²⁹² Although there was an assumption that the Declaration would apply to all colonies and dependencies,²⁹³ “screening,” “dilution,” and the “Mwea procedure” as practised in detention facilities across Kenya were contrary to the spirit of the Declaration.²⁹⁴ The emergency in Kenya began shortly after crimes against humanity were first prosecuted by the International Military Tribunal at Nuremberg, and international humanitarian law was already an established body of law.²⁹⁵ Mau Mau insurgents would not have met the strict criteria for “irregular forces” set out by customary humanitarian law, which would

imprisonment for manslaughter. The attorney-general decided not to prosecute the senior European officers associated with this case, although they were subject to disciplinary charges. In October 1957, Mr C.R. Harrison and two of the European officers were acquitted of the charge of causing actual bodily harm, when using force to extract labor from detainees. And finally, another case of the unlawful killing of a detainee during interrogation in the Gathigiriri camp resulted in the acquittal of two African interrogators on murder charges, with the imposition of a 3 year sentence for manslaughter, whereas the camp supervisor, Mr D.D. Luies, who was absent from the camp at the time of the incident, only received a reprimand. TNA CAB 129/97 C92.

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289. There are several other interlocking articles (including articles 2, 7, 8, 9, 10, 11, 12, 13, 19, and 20) that were contravened in Kenya during the emergency.

290. It may now have standing as part of customary international law.

291. Burke, *Decolonization and the Evolution of Human Rights*, 1.

292. *Ibid.*

293. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford, New York: Oxford University Press, 2001), 409.

294. Elkins, *Imperial Reckoning*, 319–321. See also: TNA CO 822/1251: “Dilution Detention Camps,” and *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2011], appendix B.

295. For more on the International Military Tribunal at Nuremberg and the codification of crimes against humanity, see chapter entitled: “Unimaginable Atrocities”: Identifying International Crimes,” in William Schabas, *Unimaginable Atrocities: Justice, Politics, and Rights at the War Crimes Tribunals* (Oxford: Oxford University Press, 2012), 25–46.

1933 have allowed them to benefit from prisoner of war protections.²⁹⁶ Although
1934 jurisdiction was lacking, humanitarian law offered states a powerful norma-
1935 tive framework for upholding standards in the treatment of detainees and
1936 prisoners, especially when considering that Nazi concentration camps
1937 were liberated by British and American soldiers. These ideals, alongside
1938 other obligations of international law that extended to the colony, should
1939 have elicited moral abhorrence at what was occurring in the Kenyan
1940 camps. However in the 1950s, Britain and other colonial states took a min-
1941 imalistic approach to international law obligations vis-à-vis the rights of
1942 their colonial subjects, and Klose regards the colonial response to demands
1943 for national independence as a combination of measures incorporating rule
1944 by emergency laws, an “emphasis on the new military doctrine of antisub-
1945 versive warfare,” and the “refusal to recognize the validity of international
1946 humanitarian law,” and that these factors underpinned “the unleashing of
1947 colonial violence.”²⁹⁷

1948 The United Kingdom government signed the 1930 ILO Forced Labour
1949 Convention on June 3, 1931 and it was accepted into Kenya without mod-
1950 ification. However, on February 17, 1954 the British Cabinet approved a
1951 forced labor policy for the Kenyan detention camps in the following
1952 terms “[...] the regulation authorising compulsory employment should
1953 contain words to the effect that any person detained in a special detention
1954 camp might be usefully employed in work which, in the opinion of the of-
1955 ficer in charge, would assist in bringing the Emergency to an end. He [the
1956 Colonial Secretary] proposed to instruct the Governor to make the regula-
1957 tion in this form. In these circumstances it would probably be unnecessary
1958 to pay market rates of wages for work undertaken by prisoners in the deten-
1959 tion camps.”²⁹⁸ Therefore, Regulation 22 of the Emergency (Detained
1960 Persons) Ordinance was worded so as to bring it within the meaning of
1961 the 2(2)(d) emergency clause.²⁹⁹ Notwithstanding these efforts, the ILO
1962 Committee of Experts criticized the government’s use of forced labor in
1963 Kenya

1964 [t]he committee has noted that in response to the observation that was made
1965 in 1956 the government declares that the forced or compulsory labour exacted
1966 under the laws and regulations in force falls within the exception covered by
1967

1968 296. The Convention (III) Relative to the Treatment of Prisoners of War, August 12,
1969 1949, which applied to conflict not of an international nature, was only extended to the col-
1970 onies in 1959. Humanitarian law instruments applicable in the colony before that time were
1971 the Hague Conventions and the Geneva Convention of 1929.

1972 297. Klose, *Human Rights in the Shadow of Colonial Violence*, 194, 234.

1973 298. *Ibid.*

1974 299. See note 197. TNA CO 822/1420: Regulation 22 denotes that the officer in charge
should be satisfied that the work “will assist in bringing the Emergency to an end.”

Article 2, paragraph 2(d) (cases of Emergency) and 2(e) (minor communal services). With regard to the regulations relating to a state of Emergency the committee considers that it may assume that the disappearance of the exceptional circumstances which justified the adoption of those regulations will enable the government to apply the letter of the Convention as well as the spirit.³⁰⁰

Descriptions of coerced labor depicted in detainees' testimonies are entirely at odds with the idea of purposeful work contributing to the end of conflict. Some of the tasks were manifestly designed to be cruel or punitive, as one detainee reported "[. . .] at Takwu Detention Camp detainees are working in sea-water, breaking mangrove forest trees in water and road making through where canal surface was to be broken with picks. . . We consider that removing of sanitary buckets for the Officer in charge and warders is purely punitive."³⁰¹ These testimonies suggest there was a violation of the ILO Forced Labour Convention 1930 when the labor exacted did not fall under the treaty's emergency clause, and in instances in which the forced labor policy continued after the emergency officially ended. Could there have been an actionable tort arising from the use of forced labour in the Kenyan camps? Although there may have been a violation of the 1930 Forced Labour Convention, ultimately, allegations of unlawful killing and torture are much more compelling, with the latter forming the backbone of the *Mutua and Others* claim.

Retrospective Accountability

The claimants in *Mutua and Others* submitted an action to the United Kingdom High Court for alleged torts of "assault and battery, and negligence."³⁰² Civil actions of the sort rely on a balance of probabilities test. As highlighted in Justice McCombe's summary of the 2011 judgment,³⁰³ the relevant tort law pertaining to the case is the 1980 Limitations Act, and through Article 33 of that Act, judicial discretion may extend the usual 3 year limitation clause for personal damages. Public interest may be a factor in issuing judicial discretion, and in the instant case, the state's duty was to investigate allegations of torture. At the same time, claimants needed to

300. Ibid.

301. TNA CO 822/402: petition detailing conditions in the camps and presented to Dingle Foot MP upon his inspection of various camps in September 1956.

302. Negligence being a common law duty to intervene or stop systematic abuses once that became known, see *Ndiku Mutua and Others v The Foreign and Commonwealth Office*, 21/07/2011, Summary of Judgment.

303. Ibid.

2017 have a reasonable chance of success, to outweigh the huge costs associated
 2018 with historic actions. Surviving historical documentation may illuminate
 2019 the “aims and purposes” that the British government had in relation to
 2020 the colonial emergency, which could establish responsibility for torts. A
 2021 factor that could influence judicial discretion in waiving the limitation is
 2022 evidence that the United Kingdom government and the colonial adminis-
 2023 tration had inhibited investigations into camp abuses and restricted the
 2024 remit of contemporary inquiries.³⁰⁴ However, no action in tort may be
 2025 brought for wrongs that occurred prior to June 23, 1954.³⁰⁵ Claims arising
 2026 from other colonies would need to furnish a United Kingdom court with
 2027 compelling reasons for a prolonged delay in submitting such a claim. It
 2028 is notable that in the Kenyan case, the Mau Mau organization was pro-
 2029 scribed until 2002–2003, and many of the elderly survivors of abuse resid-
 2030 ed in remote and rural areas.

2031 Justice McCombe had to decide whether the claimants had a “viable
 2032 claim in law,” and if they had any realistic chances of success with their
 2033 claim.³⁰⁶ As defendants, the FCO argued that acts committed by the colo-
 2034 nial government essentially were not acts of the United Kingdom govern-
 2035 ment, and that legal liability for these acts passed to the successor state at
 2036 independence. This was unchartered legal territory, as counsel for the
 2037 claimants explained, “Neither the Kenya Independence Act 1963, nor
 2038 any other UK statute or instrument, addresses the question of the succes-
 2039 sion of liabilities of the Colonial Administration for assaults against the
 2040 Claimants.”³⁰⁷ In such a case, the matter must be decided at common
 2041 law, but common law has to incorporate international customary law into
 2042 its decision making. Following consideration of arguments, including the
 2043 claimants’ reliance on postcolonial Algerian jurisprudence against
 2044 Q9 France, and the defense drawing from the *Quark* case, Justice McCombe
 2045 decided that the liabilities of the old colonial regime did not transfer to
 2046 the United Kingdom at Kenyan independence in 1963. However, under
 2047 the principle of “joint liability for torts,” the United Kingdom government,
 2048 named as a joint tortfeasor, could still have a case to answer for historic
 2049 wrongs committed by the army or the Colonial Office, and such matters
 2050 were fit for trial.³⁰⁸ Justice McCombe further examined General
 2051

2052 304. *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2012], para.
 2053 140.

2054 305. *Ibid.*, para. 38, citing *Arnold v CEGB* [1988] AC 228 and *McDonnell v*
 2055 *Congregation of Christian Brothers and others* [2004] 1 AC 1101.

2056 306. *Ndiku Mutua and Others v The Foreign and Commonwealth Office*, Summary of
 2057 Judgment, para. 2.

2058 307. *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2011], para. 81(a).

308. *Ibid.*, para. 116.

Erskine's role in the emergency and he concluded that there was sufficient documentary evidence to suggest Erskine's involvement in the detention system, and that, therefore, the issue was triable. He made similar conclusions in respect of the colonial secretary and the Colonial Office, "[a]ll these matters are, in my judgment, properly triable issues on the evidence before me, including the evidence of the continuing and still incomplete disclosure by the defendant of previously unseen materials. The evidence shows that those new materials were removed from Kenya upon independence precisely because of their potential to embarrass the UK Government."³⁰⁹

A significant point of dispute between the parties pertained to the role played by the United Kingdom government in the development and control of the detention camps. Both the Kenyan colonial government and the United Kingdom government were very much aware of the "extent of continuing misconduct in the treatment of detainees," and by not making any concerted efforts to stop the abuses, the United Kingdom government neglected their duty of care and could have been found guilty of negligence. However, the role of the United Kingdom government may have gone beyond simple negligence through acts of omission, and if the facts of the case presented by the *Mutua* claimants could be established, it suggested to Justice McCombe "the distinct possibility of an active direction of policy and an active part in its implementation on the part of Her Majesty's Government" which could only be clarified if the matter went to trial. Given the gravity of the matters being considered, Justice McCombe criticized the United Kingdom government for relying on technical constitutional legal theory so early in the proceedings (in an effort to get the case struck out), in a way the judge described as "dishonourable."³¹⁰

The British Prime Minister, Sir Harold Wilson, first accepted the optional clauses to the European Convention (pertaining to individual petitions and the compulsory jurisdiction of the Court) in 1966 for an initial 3 year period.³¹¹ At the time, it was considered that acceptance would apply only to prospective cases, which was a response to litigation taken by the Burmah Oil Company against the United Kingdom government for the destruction of its oil refineries in 1942. Lord Lester's examination of the period leading up to acceptance tellingly reveals little or no discussion of the possibility of colonial legacy issues.³¹² In this event, a temporal

309. *Ibid.*, para. 130.

310. *Ibid.*, para. 154.

311. Ed Bates, *The Evolution of the European Convention on Human Rights: From its Inception to the Creation of a Permanent Court of Human Rights* (Oxford: Oxford University Press, 2010), 185.

312. Lord Lester of Herne Hill, "UK Acceptance of the Strasbourg Jurisdiction: What Really Went on in Whitehall in 1965," *Public Law* (1998): 237.

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2101 limitation was incorporated, “into the U.K.’s declaration of acceptance a
2102 limitation making it clear that acceptance applied only to matters arising
2103 after its effective date, thereby excluding a once-and-for-all action of the
2104 kind taken in connection with the Burmah Oil claims, occurring before
2105 that date.”³¹³ This declaration effectively annulled approximately eighty
2106 applications that had been received by the Commission in anticipation of
2107 Britain’s acceptance of the optional clauses, but equally, the declaration
2108 “did not extend to petitions relating to matters arising in any dependent ter-
2109 ritory, or to anything done or occurring in the United Kingdom in respect
2110 of any such territory or of any matters arising there.”³¹⁴ The 2014
2111 “Practical Guide on Admissibility Criteria,” produced by the European
2112 Court of Human Rights, notes that when countries have drafted declara-
2113 tions with temporal limitations, “the Commission and the Court have
2114 accepted temporal limitations of their jurisdiction with respect to facts fall-
2115 ing within the period between the entry into force of the Convention and
2116 the relevant declaration.”³¹⁵ However, the evolving jurisprudence of the
2117 Court has provided for exceptions to the test criteria on admissibility per
2118 *ratione temporis*,³¹⁶ and such consideration can occur when the right to
2119 life (Article 2) is violated or breaches of the prohibition on torture
2120 (Article 3) are alleged. It is significant that the Court in *Silih v Slovenia*
2121 elaborated the concept of procedural detachability applying to the right
2122 to life. In essence, this means that the state’s investigation into a death
2123 may be examined by the Court even if the substance of the claim occurred
2124 prior to the Court assuming jurisdiction in that member state’s territory.
2125 The criteria outlined in *Silih v Slovenia* are not unlimited, and must be
2126 in accordance with the principle of legal certainty:

2127 162. First, it is clear that, where the death occurred before the critical date
2128 [entry into force of the Convention], only procedural acts and/or omissions
2129 occurring after that date can fall within the Court’s temporal jurisdiction.

2130 163. Second, there must exist a genuine connection between the death and the
2131 entry into force of the Convention in respect of the respondent State for the
2132 procedural obligations imposed by Article 2 to come into effect.

2133 Thus a significant proportion of the procedural steps required by this provi-
2134 sion—which include not only an effective investigation into the death of the
2135 person concerned but also the institution of appropriate proceedings for the
2136 purpose of determining the cause of the death and holding those responsible

2137
2138 313. *Ibid.*, 252.

2139 314. *Ibid.*, 253.

2140 315. European Court of Human Rights, *Practical Guide on Admissibility Criteria*, 47,
2141 para. 199.

2142 316. This test criteria is set out in *Blečić v. Croatia*, (Application no. 59532/00), March 8,
2006, para. 67.

to account. . .—will have been or ought to have been carried out after the critical date.

However, the Court would not exclude that in certain circumstances the connection could also be based on the need to ensure that the guarantees and the underlying values of the Convention are protected in a real and effective manner.³¹⁷

Of these, perhaps the latter Convention values test is most significant to the current discussion, but it is also notable that the detachability principle has been invoked by the Court to examine investigations into torture and ill-treatment, where, in the main, proceedings occurred after the entry into force of the Convention, whereas the actual violation preceded that critical date.³¹⁸ Therefore, although the United Kingdom only accepted individual petition mechanism in 1966, applicants to Europe could argue that they were prevented from accessing a remedy for these most serious violations, not merely because of the temporal limitation on the state's declaration, but because of historic, structural, and evidentiary legal obstacles, and that fresh evidence coming into the public domain via the Hanslope Disclosure cast a new light on the circumstances of historic violations.³¹⁹ Claimants in the *Mutua and Others* case argued that the coming into being of the Human Rights Act, and the unearthing of voluminous documentation in 2005 and 2011, triggered a duty upon the state to investigate allegations of torture, and that the procedural obligation attached to this article was “revived.”³²⁰

Another possibility would be to argue the Convention values test, as a short period in between the violation and the entry into force of the Court's jurisdiction was established in the *Silih* judgment.³²¹ The Court may depart from this rule and permit a “further extension of the Court's jurisdiction into the past. . . if the triggering event has a larger dimension which amounts to a negation of the very foundations of the Convention (such as in cases of serious crimes under international law), but only to events which occurred after the adoption of the Convention, on 4 November 1950.”³²² Torture was “institutionalised and systematic, but

317. *Silih v. Slovenia*, (Application no. 71463/01), April 9, 2009, paras. 161–63.

318. *Yatsenko v Ukraine*, (Application no. 75345/01), February 16, 2012, para. 40; *Lyubov Efimenko v. Ukraine*, (Application no. 75726/01), November 25, 2010, para. 63.

319. *Janowiec and Others v Russia*, (Applications nos. 55508/07 and 29520/09), April 16, 2012, para. 139.

320. *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2012], paras. 142, 147.

321. *The Practical Guide on Admissibility Criteria* states “not exceeding ten years,” para 212.

322. *Ibid.*, 214.

2185 also casual and haphazard” during the emergency in Kenya.³²³ Practices
2186 associated with “screening” or the interrogation of Mau Mau suspects in-
2187 cluded whipping, beatings, use of electric shock, administering cigarette
2188 burns, Chinese water treatment, sexual violence, and sterilization.³²⁴ The
2189 claimants in *Mutua and Others* experienced “physical mistreatment of
2190 the most serious kind, including torture, rape, castration and severe beat-
2191 ings” while in detention.³²⁵ In this light, the scale of the abuses that oc-
2192 curred within a network of extrajudicial camps established not 10 years
2193 after the liberation of Nazi concentration camps might be considered a ne-
2194 gation of the very values enshrined in the European Convention that encap-
2195 sulated a postwar abhorrence of violence and human degradation.

2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222

This article examines the legal regime that facilitated the detention without trial of somewhere between 80,000 and 150,000 people during the Kenyan emergency. Abuses that occurred in the detention camp network were highlighted through a thematic study. In general terms, detention laws and ordinances appear far removed from the environment that facilitated torture, mistreatment, starvation, and forced labor. However, as Samera Esmeir points out, a condition of rightlessness does not necessarily mean “expulsion from the law.”³²⁶ The emergency regulatory framework in Kenya facilitated the “lawful” confinement of Kikuyu subjects, and the bare violence of the system was translated into a language of euphemism, through the invention of nomenclature such as “dilution,” “screening,” and “the Mwea procedure.” These techniques occurred in camps that represented the “spatialization of the colonial state of emergency,”³²⁷ and this architecture dehumanized detainee suspects, and it is, therefore, essential for the essential humanity of those affected to be finally recognized. It is doubtful whether William Hague’s “apology” achieves this “[o]n behalf of Her Majesty’s Government, that we understand the pain and grievance felt by those who were involved in the events of the Emergency in Kenya. The British Government recognises that Kenyans were subject to torture and other forms of ill treatment at the hands of the colonial administration. The British government sincerely regrets that these abuses took place, and

2223 323. Elkins, *Imperial Reckoning*, 293.

2224 324. Anderson, *Histories of the Hanged*, 65–68; 208–209.

2225 325. *Ndiku Mutua and Others v The Foreign and Commonwealth Office* [2011], para. 1.

2226 326. Esmeir, *Juridical Humanity*, 93.

327. Klose, *Human Rights in the Shadow of Colonial Violence*, 236.

2227 that they marred Kenya's progress towards independence."³²⁸ It is submitted
2228 that this "recognition" falls short of fully accepting responsibility for
2229 colonial era abuses in Kenya, especially as a foregoing paragraph alludes
2230 to Mau Mau "guilt" for 2,000 emergency-related deaths, whereas no comparable
2231 figure is given for state-sponsored killings, "[d]uring the
2232 Emergency Period widespread violence was committed by both sides,
2233 and most of the victims were Kenyan. Many thousands of Mau Mau members
2234 were killed, while the Mau Mau themselves were responsible for the
2235 deaths of over 2,000 people including 200 casualties among the British
2236 regiments and police."³²⁹ Violence was used to elicit intelligence and enforce
2237 compliance with detention regimes in other colonies.³³⁰ It is submitted,
2238 however, that the pernicious fusing of a "civilizing mission" with
2239 counterinsurgency strategy underpinned by a racist ideology resulted in
2240 deadly violence against detainees in the Kenyan camps. This unholy convergence
2241 demands a reassessment of the historical narrative regarding the
2242 "defeat" of the Mau Mau insurgency in Kenya.

2243 Moreover, the article clearly argues that a culture of whitewash and denial
2244 framed the manner in which colonial officials in Kenya and London
2245 responded to allegations of detention-based violence and abuses that
2246 surfaced, which was certainly not unique to the colony of Kenya.
2247 Government ministers, such as the colonial secretary, endorsed a quasilegal
2248 regulatory framework that resulted in violence; however, to keep the violence
2249 hidden, a discourse constructed around the "rehabilitative" nature
2250 of detention camps was publicly narrated, further constricting the space
2251 for detainees to access justice. The Hanslope files, read alongside other
2252 declassified documents, reveal a general trend toward concealing detention-
2253 based violence at local, colonial, and metropolitan levels, depending
2254 upon the exigencies of the situation. The overarching framework of
2255 concealment, was, at times, punctuated by acknowledgement of these acts
2256 when irrefutable evidence entered the public domain (as was the case
2257 with the Hola Massacre). The article highlights how unresolved or unacknowledged
2258 detention-based violence, torture, or mistreatment, even for
2259 events that occurred many decades ago, may have contemporary salience.

2261
2262 328. Hague, "Statement to Parliament on settlement of Mau Mau claims."

2263 329. Ibid.

2264 330. French, *The British Way in Counter-Insurgency*. See also Klose, *Human Rights in
2265 the Shadow of Colonial Violence*.