

## **Leigh Day Submissions to the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence regarding Transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts in the United Kingdom**

### **Background**

Leigh Day is an English law firm that works for individuals and communities who have been harmed or treated unlawfully. Our international human rights and environmental specialists represent people all over the world fighting for justice and challenging powerful corporate and government interests.

We are recognised for our broad expertise on the human rights issues arising from business activities. Our cases have led the development of the law in this area and our lawyers are frequently invited as legal experts to the British Parliament, the United Nations, and a host of other international meetings. Our team is also known for our expertise in navigating the complex laws applicable to claims against the British Government. These cases cut across national and international laws, including the European Convention on Human Rights, the Geneva Conventions and UN Security Council Resolutions.

Please see our [Brochure](#) for further details about our work.<sup>1</sup>

### **Questionnaire Answers**

- 1) Please indicate which mechanisms have been established in the concerned country to hold accountable persons accused of committing or bearing responsibility for gross violations of human rights and serious violations of international humanitarian law in colonial contexts. If such mechanisms were not adopted, please explain why. Please indicate the challenges and opportunities encountered in investigating, prosecuting and sanctioning such crimes.**

Through our work on the Mau Mau Case<sup>2</sup> we are aware of several historic Government investigations and inquiries which were conducted into allegations regarding the severe mistreatment of detainees and prisoners during the Kenya Emergency (October 1952 to January 1960).

Details of these investigations/inquiries are set out in the witness statements of Professor David Anderson and Dr Huw Bennett. These statements were filed at Court in support of our clients'

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<sup>1</sup> See <https://www.leighday.co.uk/media/3ghjfnco/ld-international-digital-brochure-feb2021.pdf>

<sup>2</sup> *Mutua & Ors vs Foreign & Commonwealth office* [2011] EWHC 1913 (QB) and [2012] EWHC 2678 (QB). On 23 June 2009, Leigh Day issued five test cases against the British Government for compensation for alleged torture during the Kenya Emergency (1952-1960). The torture cited by the five Kenyan claimants included castration, systematic beatings and rape. The case was strongly defended by the British Government over a four-year period on the grounds that liability for these events had passed to Kenya and that they occurred so long ago that the claims were time barred. A settlement was finally reached and on 6 June 2013, the then Foreign Secretary, William Hague, in a statement to the House of Commons expressed regret that thousands of Kenyans had been subjected to torture and other forms of ill-treatment at the hands of the British colonial administration in the 1950s.

claims. We have annexed these statements for reference and direct you to the following relevant sections:

- The Third Witness Statement of Professor David Anderson dated 11 June 2012 – see paragraphs 17-110.
- The Second Witness Statement of Dr Huw Bennett dated 01 April 2011 – see paragraphs 9-12 and 39-44.
- The Third Witness Statement of Dr Huw Bennett dated 25 May 2012 – see paragraphs 81-115.

More recently, there have been attempts to identify and hold accountable British persons responsible for human rights violations during overseas conflicts in Northern Ireland, Iraq and Afghanistan. A full explanation of why these attempts have collapsed is beyond the scope of this submission.

In relation to allegations of human rights violations by British forces in Iraq, there have been a series of attempts, via the courts, to ensure that the investigative obligations entailed in Articles 2 and 3 of the European Convention on Human Rights (**ECHR**) were fulfilled. This took the form of a series of judicial review claims that led to two public inquiries (the Baha Mousa Inquiry and the Al Sweady Inquiry) and scrutinised whether the process established for the investigation of such allegations was sufficiently independent and effective to meet the requirements of the ECHR, as well as to establish whether the allegations fell within the jurisdiction of the ECHR<sup>3</sup>. The Iraqi Historic Allegations Team (**IHAT**) was established, with prosecution decisions being considered by the Service Police Authority (**SPI**) and a High Court judge was appointed as the “*designated judge*” to have an overview of the inquiries and deal with issues arising from them. A number of judge-led inquiries into the deaths of Iraqi civilians took place in parallel to the IHAT process.

The nature of such inquiries changed when Phil Shiner, the principal solicitor leading the firm that had acted in these judicial reviews, was found to have committed professional misconduct.<sup>4</sup> The allegations of human rights violations were considered to have been tainted by such misconduct, which led to a decision to close IHAT<sup>5</sup> and refer a small number of allegations to the Service Police Legacy Investigations (**SPLI**). The politicised nature of such decision-making has been referred to by NGOs<sup>6</sup> as well as in the ICC report referred to below. The closure of IHAT has enabled a prevailing narrative in Britain that allegations of human rights violations are/were “*vexatious claims*”. This is despite the settlement of a large number of civil claims and the High Court judgment in *Alseran*<sup>7</sup>, which held that in 4 test cases, the claimants had been subjected to inhuman and degrading treatment and unlawful detention in breach of the ECHR.

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<sup>3</sup> See below our response to Question 5 for more information on this aspect.

<sup>4</sup> Misconduct proceedings were also brought against Leigh Day and three Leigh Day solicitors – however, the Solicitors’ Disciplinary Tribunal cleared Leigh Day and its solicitors of all misconduct. This finding was upheld on appeal.

<sup>5</sup> The announcement of the IHAT closure by the then Secretary of State for Defence, Michael Fallon, stated that the closure of IHAT was “enabled by the striking off of Mr Phil Shiner”. See <https://www.gov.uk/government/news/ihat-to-close-at-the-end-of-june>

<sup>6</sup> See for example the report of the European Center for Constitutional and Human Rights [https://www.ecchr.eu/fileadmin/Juristische\\_Dokumente/ECCHR\\_Follow\\_Up\\_Communication\\_to\\_OTP\\_War\\_crimes\\_by\\_UK\\_forces\\_in\\_Iraq\\_July\\_2019.pdf](https://www.ecchr.eu/fileadmin/Juristische_Dokumente/ECCHR_Follow_Up_Communication_to_OTP_War_crimes_by_UK_forces_in_Iraq_July_2019.pdf)

<sup>7</sup> *Alseran v Ministry of Defence* [2017] EWHC 3289 (QB). Leigh Day acted for the successful claimants.

We refer to the detailed report from the Office of the Prosecutor dated 9 December 2020<sup>8</sup> as to why the ICC will not be conducting a full investigation into allegations of widespread human rights abuses committed by British armed forces in Iraq.

In summary, the ICC stated that there was a “*reasonable basis*” to believe that members of the British armed forces committed war crimes in Iraq. The Prosecutor also found that there was “*institutional civilian supervisory and military command failures*” and that the initial response by the British army to investigate was “*inadequate and vitiated by a lack of a genuine effort to carry out relevant investigations independently or impartially*”. Subsequent attempts to establish mechanisms to address the allegations (for example, IHAT) failed to result in a single prosecution, which the Prosecutor attributes in part to “*to the inadequacies of the initial investigations conducted by the British military in theatre.*”

But the most serious allegation – that the British Government had “*shielded*” alleged perpetrators – was not made out in the Prosecutors’ view.

At the time of this submission, the situation in relation to accountability for Northern Ireland is developing rapidly. We understand that, following the collapse of the recent trials of Soldiers A and C, the British Government is finalising plans for a South African style “*truth and reconciliation*” model to investigate The Troubles.

- 2) Please indicate which measures have been established in the concerned country to inquire on and establish the truth about gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such mechanisms were established, please indicate how was the outcome of the inquiries made public and conveyed to victims and civil society in the affected country as well as to civil society in the former colonizing power. If such mechanisms were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.**

To our knowledge, no such measures have been established in Britain. Shamefully the contrary is true, with the British Government historically (and still) taking steps to prevent and frustrate any such measures. Please see the witness statements referenced above for some examples of this, also see:

- [Operation Legacy](#), in which British colonial archives were deliberately cleared of documents to hide the truth.<sup>10</sup>
- The British Government’s resistance to calls for a public inquiry into the alleged killing of 24 men by British troops in what was then Malaya in 1948.<sup>11</sup> This incident is known as the [Batang Kali Massacre](#).<sup>12</sup> The British Government resisted the legal case all the way to the

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<sup>8</sup> See <https://www.icc-cpi.int/itemsDocuments/201209-otp-final-report-iraq-uk-eng.pdf>; <https://www.icc-cpi.int/Pages/item.aspx?name=201209-otp-statement-iraq-uk>

<sup>9</sup> See <https://www.independent.co.uk/news/uk/home-news/northern-ireland-veterans-prosecution-protection-b1842832.html>

<sup>10</sup> See <https://www.theguardian.com/uk/2012/apr/18/britain-destroyed-records-colonial-crimes>

<sup>11</sup> See <https://www.bbc.co.uk/news/uk-32408433>

<sup>12</sup> See <https://www.theguardian.com/world/2012/may/06/britain-batang-kali-massacre-malaysia>

Supreme Court, successfully arguing that not holding an inquiry was a reasonable exercise of their discretion.<sup>13</sup>

The failure to establish such measures is a consequence of a lack of political will by successive British Governments. Whilst there is a growing call for such measures to be established, there is a perception that much of the wider British public would not yet support them. Reasons for this are complex and varied, there is no one explanation. However, a broad explanation would be that for many people such measures would constitute a challenge to their perception of British history and British identity, which they are unwilling to accept. There is therefore a resistance to re-evaluate British history and a desire to maintain a narrative in which the British empire was an overwhelming force for good in the world – bringing the benefits of British civility, the rule of law and education. In short, it is a history which many remain proud of and there is therefore resistance to anything that challenges it. Such views are arguably held by senior members of the [British Government](#)<sup>14</sup>, including the serving [Prime Minister](#)<sup>15</sup>, and broad swathes of the British Media.

Although there have been no formal measures established by the British Government, civil society in Britain and other public bodies and institutions have taken steps to inquire upon and establish the truth about gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. See for example:

- The National Trusts<sup>16</sup> efforts to address the histories of histories of colonialism and historic slavery.<sup>17</sup>
- The University of London’s School of Oriental & African Studies (SOAS) has a [Centre for the study of Colonialism, Empire and International Law](#)<sup>18</sup>, which is a hub for interdisciplinary collaboration and research on public international law and its historical and contemporary relationship to colonialism and empire.
- The British Broadcasting Corporation (BBC) has created documentaries on both the [Kenya Emergency](#)<sup>19</sup> and the [Batang Kali Massacre](#)<sup>20</sup> which seek to investigate and retell their history.

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<sup>13</sup> Judgement available at <https://www.supremecourt.uk/cases/docs/uksc-2014-0203-judgment.pdf>

<sup>14</sup> See <https://www.civilsociety.co.uk/news/minister-summons-heritage-charities-to-meeting-over-empire-row.html>, whereby the current Culture Secretary criticised national heritage bodies for wanting to re-examine their colonial past; “History is ridden with moral complexity, and interpreting Britain’s past should not be an excuse to tell an overly-simplistic version of our national story, in which we damn the faults of previous generations whilst forgetting their many great achievements”.

<sup>15</sup> See <https://www.independent.co.uk/news/uk/politics/boris-johnson-bbc-proms-rule-britannia-lyrics-row-british-history-black-lives-matter-a9687816.html>, where Prime Minister Johnson stated that “it’s “I think it’s time we stopped our cringing embarrassment about our history, about our traditions, and about our culture, and we stopped this general fight of self-recrimination and wetness.”

<sup>16</sup> The National Trust was founded on 12 January 1895 by Octavia Hill, Sir Robert Hunter and Hardwicke Rawnsley. Over the last 125 years it has grown to become Europe’s largest conservation charity, caring for historic properties and areas of beautiful countryside.

<sup>17</sup> See <https://www.nationaltrust.org.uk/features/addressing-the-histories-of-slavery-and-colonialism-at-the-national-trust>

<sup>18</sup> See

<https://www.soas.ac.uk/cceil/#:~:text=Centre%20for%20the%20study%20of%20Colonialism%2C%20Empire%20and%20International%20Law,-Building%20on%20SOAS's&text=International%20Law%20and%20the%20Cold.known%20as%20the%20Cold%20War.>

<sup>19</sup> See Kenya: White Terror BBC Documentary: <https://www.youtube.com/watch?v=XV0udfKrzTQ>

<sup>20</sup> See In Cold Blood- the truth of Batang Kali massacre: <https://www.youtube.com/watch?v=AX1rSnudbzQ>

- 3) Please indicate which measures have been established in the concerned country to provide reparation to victims of gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such processes were established, please indicate which type of reparation was provided to victims (for example: restitution, compensation, satisfaction, and /or rehabilitation). If such measures were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.

The British Government has taken no measures to provide reparations to victims of gross human rights violations in colonial contexts.<sup>21</sup> There has been a marked reluctance – with one exception that we are aware of<sup>22</sup> – to even apologise for such violations. For example, in spite of pressure to do so, British Prime Ministers have failed to formally apologise for the Amritsar Massacre, only going as far as to express “*deep regret*”.<sup>23</sup> A campaign by CARICOM (an organisation of 15 Caribbean states) to obtain reparatory justice for the victims of genocide, slavery, slave trading, and racial apartheid<sup>24</sup> was met with the response “*We do not see reparations as the answer.*”<sup>25</sup>

There have been some attempts to obtain compensation for such abuses via the courts. As referred to above, Leigh Day brought a claim in the English High Court on behalf of five Kenyan claimants who had been subjected to grave human rights violations (including castration, systematic beatings and rape) during the Kenya Emergency, whilst Kenya was part of the British Empire. The British Government strongly defended the claims, including by arguing that the British Government was not responsible for what had happened. In respect of the three claimants who gave oral evidence to the Court, the British Government accepted that they had been tortured “*at the hands of the Colonial Administration*”.<sup>26</sup> Leigh Day later acted on behalf of 5,228 Kenyan claimants, and in 2013, a settlement was agreed. That settlement included compensation for the claimants, a statement of regret by the then Foreign Secretary, William Hague, and the funding of a memorial to all those who suffered during the Kenya Emergency in Nairobi.<sup>27</sup> The Mau Mau War Veterans Association and the Kenya Human Rights Commission were members of the committee which oversaw the design and construction of the memorial.

Other than compensation awarded in respect of human rights violations in Iraq and Afghanistan<sup>28</sup>, we are aware of only one other successful attempt to obtain redress for grave human rights violations in colonial contexts. This was in respect of alleged torture during the Cyprus Emergency (1955-1959)<sup>29</sup>.

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<sup>21</sup> We are defining the “colonial context” as where the UK has occupied or has had political or economic control of an overseas sovereign territory.

<sup>22</sup> Tony Blair, when he was Prime Minister, publicly apologised for Britain’s role in the slave trade. His formal statement, in November 2006, only went as far as expressing “*deep sorrow*” but in March 2007, informally, he stated that he was sorry.

<sup>23</sup> Theresa May, on 10 April 2019 said, “*We deeply regret what happened and the suffering caused,*” and David Cameron, in 2013, described the massacre as “*deeply shameful*”.

<sup>24</sup> For detail of the CARICOM plan for reparations see <https://www.leighday.co.uk/latest-updates/news/2014-news/caricom-nations-unanimously-approve-10-point-plan-for-slavery-reparations/>. Leigh Day advised CARICOM regarding reparations.

<sup>25</sup> See <https://www.theguardian.com/world/2014/feb/24/uk-resists-reparation-slavery>

<sup>26</sup> *Mutua v FCO* [2012] EWHC 2678 (QB) §27

<sup>27</sup> See <https://www.bbc.co.uk/news/world-africa-34231890>

<sup>28</sup> Please see below, our response to question 5.

<sup>29</sup> See *Sophocleous v Secretary of State for Foreign and Commonwealth Affairs* [2018] EWCA Civ 2167. The claim settled in 2019.

A subsequent attempt by other lawyers to bring a wider claim in respect of the Kenya Emergency on behalf of tens of thousands of people was unsuccessful,<sup>30</sup> and an attempt to obtain a public inquiry into the Batang Kali massacre also failed. These cases, and others like them, evidence the limitations upon the English legal system's ability to provide redress to the victims of colonial era torture. Indeed, in the former case, the judge, Mr Justice Stewart, specifically noted that "...*this litigation is a court process. It is not an inquiry. There are fundamental differences*".<sup>31</sup> This led to the claim failing on legal grounds (limitation) due to the claimants' inability to overcome an evidential burden of proof which would not have been so significant in non-adversarial processes of providing redress.

As such, and despite the success of the first Mau Mau case, we do not consider that legal claims offer a sustainable route to obtaining reparations for gross human rights violations that have taken place in Britain's imperial past. The English legal system has too many barriers in place for a successful outcome to be obtained in many such cases. There is currently a statutory bar to bringing claims against the British Government in respect of events which occurred before 1954 and many claims even after that date may fail due to difficulties in overcoming limitation barriers in respect of events occurring many years ago. British constitutional law also creates further hurdles for a victim of colonial era wrongs as it recognises a legal distinction between the government of a British colonial territory and the British Government. This allows the British Government to defend a claim by arguing that it is a distinct legal entity from the colonial government and that it was the colonial government and not it that was responsible for the alleged wrongs.<sup>32</sup>

Further, such litigation is prohibitively expensive and there is no legal aid available for such claims. More fundamentally, the process of litigation focusses on a detailed analysis of the specific facts and evidence available in individual cases but is ill-suited to a broader inquiry into the past. Nor does the English legal process currently have adequate tools to address the fact that power imbalances, the racism of the Empire and the realities of access to justice have meant that such claims have been impossible until recent times, and even now, many of the descendants of past atrocities face very significant hurdles in bringing such claims.

In our view, reparations will need to result from political solutions and campaigning, rather than legal claims. Moreover, education and awareness about the realities of the British Empire will be crucial in changing public opinion in Britain and creating the space for reflection. There have been important steps towards this, notably the UCL "*Legacies of British slave-ownership*" programme<sup>33</sup> and most recently, recognition of the discriminatory approach to commemorating soldiers who died in service of the British army during the First World War.<sup>34</sup> Sadly, there will need to be a major shift in the prevailing political climate for a broader recognition of the need for reparations.

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<sup>30</sup> See *Kimathi and Others v Foreign & Commonwealth Office* [2018] EWHC 2066 (QB)

<sup>31</sup> See *Kimathi*, paragraph 20.

<sup>32</sup> See the precedent set by: *R v Secretary of State for Foreign & Commonwealth Affairs ex parte Quark Fishing Limited* [2005] UKHL 57; as distinguished in *Mutua & Ors v FCO*.

<sup>33</sup> See <https://www.ucl.ac.uk/lbs/> The programme looked at tracing where monies paid to slave-owners went and creating a national discussion about reparations and the legacy of slavery. This discussion has led to concessions made by businesses in the UK to look into their slavery links and provide reparations, for example, Lloyd of London (see <https://www.theguardian.com/world/2020/jun/18/lloyds-of-london-and-greene-king-to-make-slave-trade-reparations>).

<sup>34</sup>See <https://www.theguardian.com/uk-news/2021/apr/21/uk-inquiry-blames-pervasive-racism-for-unequal-commemoration-of-black-and-asian-troops>

- 4) **Please indicate which measures have been established in the concerned country to memorialize the gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If yes, please indicate whether memorialization processes were established in the affected country and /or in the former colonizing power. If such measures were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.**

As stated above, as part of the settlement which we negotiated on behalf of our clients on the Mau Mau case it was agreed that the British Government would fund the construction of a memorial to all those who had suffered during the Kenya Emergency. That memorial was constructed in Uhuru (Freedom) Park, Nairobi.

- 5) **Please indicate which measures have been established in the concerned country to guarantee non-recurrence of the gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such mechanisms were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.**

We are unaware of any specific measures in Britain, or anywhere, which guarantee the non-recurrence of gross violations of human rights committed in the colonial context.<sup>35</sup>

The primary mechanism to prevent reoccurrences is the application of international treaties and adherence to the rule of law when Britain operates overseas. In particular, we note the importance of the Convention Against Torture, the Rome Statute, Geneva Conventions (especially Geneva IV), and the ECHR as incorporated into English law by the Human Rights Act 1998 (**HRA**).

In particular, the extraterritorial application of the ECHR provides a safeguard against violations of humanitarian law as it allows victims to enforce their rights in the domestic courts of the states and seek accountability and redress if such violations are alleged.

While jurisdiction under Article 1 ECHR is primarily territorial, English and European courts have long recognised that there are a number of exceptional circumstances that can give rise to the exercise of jurisdiction outside a country's territorial boundaries. This is known as "*extra-territorial jurisdiction*". These exceptions were considered by the European Court of Human Rights (ECtHR) in *Al-Skeini v United Kingdom* (App no 55721/07, 7 July 2011). *Al-Skeini* related to Iraqi civilians who were detained and subjected to gross human rights violation by British forces during the war in Iraq, including Baha Mousa, who was beaten to death in British custody in September 2003.

In *Al-Skeini*, the ECtHR considerably expanded the scope of a state's Article 1 jurisdiction outside its own territorial boundaries. It held that Article 1 applies not only where a contracting state exercises effective control over foreign territory but also where the state exercises physical power and control over an individual who is situated on foreign territory.

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<sup>35</sup> We are defining the "colonial context" as where the UK is occupying or has political or economic control of an overseas sovereign territory.

In English law, the next significant case to grapple with this issue was *Smith & Ors v Ministry of Defence* [2013] UKSC 41.<sup>36</sup> *Smith* concerned 3 sets of claims, arising out of the deaths/injuries of British soldiers while serving in Iraq between 2003 and 2006. The Ministry of Defence argued the cases should be struck out because at the time of their deaths the soldiers were not within the jurisdiction of Britain for the purposes of the ECHR. The United Kingdom Supreme Court relied on elements of the *Al-Skeini* judgment to conclude unanimously that the jurisdiction of Britain under Article 1 ECHR extended to securing the protection of Article 2 ECHR to members of the armed forces when they served outside its territory, and that the deceased were within Britain's jurisdiction for the purposes of the Convention at the time of their deaths.

While *Smith* related to British soldiers, the principle of the extra-territorial jurisdiction has subsequently been applied in a series of cases involving non-British nationals whose rights were violated by the British state. Leigh Day has represented many hundreds of Iraqi and Afghan claimants alleging unlawful detention and/or unlawful mistreatment by British soldiers during those two conflicts. Due in a significant part to the extra-territorial reach of ECHR, many of these claims resulted in compensation being paid by the British government to the alleged victims.<sup>37</sup>

Ominously, Britain's future with ECHR is currently uncertain. Successive governments have indicated a desire to repeal or amend the HRA, specifically to remove the extraterritorial element of its protections so that it does not apply to British armed forces on overseas operations. For example, the 2019 Conservative Party manifesto contained a vague commitment to “*update*” the HRA, and the recent draft Overseas Operations Bill contained a provision mandating future governments to consider derogating from ECHR before committing troops abroad. Thankfully, this provision was abandoned after criticism by the House of Lords.

Relying on international treaties to prevent human rights violations in the colonial context is not a perfect solution by any means. We have serious concerns about the lack of adequate enforcement mechanisms, and the multiple barriers (both financial and practical) which prevent individuals from enforcing their rights. We also note that the British state continues to commit human rights violations and breach international law (for example in respect of the Chagos Islands<sup>38</sup>) despite its treaty obligations and international condemnation.

However, we remain of the view that international treaties, ECHR and HRA represent vital protection against future reoccurrences of human rights abuses committed by Britain in the colonial context, as well as being an essential mechanism for providing redress and accountability if those abuses occur.

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<sup>36</sup> Leigh Day acted in this case on behalf of one of the claimants, Ms Allbutt.

<sup>37</sup> We draw attention to the seminal judgment of Mr Justice Leggatt (as he was then) in *Alseran v Ministry of Defence* [2017] EWHC 3289 (QB), where Leigh Day acted for the successful claimants.

<sup>38</sup> See: UN court rejects claim to Chagos Islands in favour of Mauritius: <https://www.theguardian.com/world/2021/jan/28/un-court-rejects-uk-claim-to-chagos-islands-in-favour-of-mauritius>

1. Party: Claimant
2. Witness Name: David McBeath Anderson
3. Statement No.: 3
4. Exhibits: 3
5. Dated: 18 June 2012

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

**CLAIM NO: HQ09X02666**

**BETWEEN:**

**NDIKU MUTUA & OTHERS**

**Claimants**

**- v -**

**FOREIGN AND COMMONWEALTH OFFICE**

**Defendant**

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WITNESS STATEMENT  
OF DAVID MCBEATH ANDERSON

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I, DAVID MCBEATH ANDERSON, of the African Studies Centre, the University of Oxford, 13 Bevington Road, Oxford WILL SAY AS FOLLOWS:

1. Having now been able to review almost 400 of the files on Kenya revealed as part of the Hanslope Disclosure, in this supplementary statement I wish to address the new evidence in these documents relating to this case. I will begin by giving an account of the general significance of the Hanslope Disclosure, so as to assist the court in understanding the full extent to which these documents bring new evidence to light in contrast to the evidence that was available before February 2011. This will include a comment on document destruction, both in Kenya and here in the UK.
2. I will then refer the court to documents from the Hanslope Disclosure which are relevant which are relevant to the following issues which I am informed arise in the case:

- a. The nature of the policies and systems implemented to restore law and order such as Operation Anvil, screening, villagization, the creation of detention camps;
  - b. The nature and frequency with which suspected Mau Mau were subject, in the course of implementing such policies, to ill-treatment including torture;
  - c. The role of the British Army in the restoration of law and order through the creation and/or implementation of such policies and systems;
  - d. The role of the Colonial Office in the restoration of law and order through the creation and/or implementation of such policies and systems;
  - e. The knowledge of the British Army and Colonial Office of ill-treatment of Mau Mau suspects including torture in Kenya; and
  - f. Their responses to such ill-treatment.
3. In this statement I will concentrate primarily on issues (d) to (f), and primarily the rule of law in Kenya during the Emergency. I will also provide examples which elaborate upon the extent to which the Colonial Office, and specifically the Secretary of State for the Colonies, the senior official with responsibilities to the Cabinet, had knowledge of the extent of abuse and torture, and were directly complicit in the continuation of those practices and, on occasion, their concealment. A final section will link the Hanslope documents to those recently reviewed at the archive of the International Committee of the Red Cross, in Geneva, which concerns the extent to which Governor Baring acknowledged the systematic character of abuse in Kenya's detention camps.
4. Two key points emerge from what follows, and these may be offered in summary at the outset:
  - i) **The first key point concerns the considerable documentary evidence surrounding the "dilution technique".** The court

will be taken to the evidence relevant to the question of whether the use of systematic violence was brought within regulated codes of practice after the fact.

- ii) **The second key point concerns whether there was interference by the Executive in the due process of the law** in cases where colonial officers or security forces were accused of abuse and torture. The court will be taken to evidence which is relevant to the Claimants' contention that the Executive repeatedly acted to delay, deflect and suppress the investigation of such accusations.

- 5. These key points thus derive directly from the evidence contained in the documents. They are relevant to the extent of knowledge of senior officials in both Nairobi and London of the extent of abuse and tortures in Kenya, whether they were complicit in the implementation of the policies that led to those abuses and tortures, and whether they at times acted to knowingly conceal the facts of this from the wider public.

### **PART 1: The significance of the Hanslope Disclosure**

- 6. It is important to fully appreciate the significance of the new evidence that the Hanslope Disclosure has revealed. My own historical work, published on the Mau Mau rebellion since 2005, has been based on extensive documentary research in both the British National Archives (at Kew) and the Kenya National Archives (in Nairobi). While these collections illuminated the events of the period, the Hanslope papers has enlarged and elaborated my understanding of events in Kenya during the 1950s in highly significant ways, giving a much clearer and more detailed view of the extent of abuse, the behaviours of the Colonial Administration, and the character of executive oversight.

7. In broad terms the Hanslope archive has provided the following additional categories of evidence:

- i) Complete minutes of the War Council, which provides a direct historical record of all key decisions taken in relation to the formulation, implementation and review of the delivery of policies implemented to restore law and order, including policy on detention, screening and interrogation of detainees. Prior to Hanslope it was necessary to piece together the Commander-in-Chief's role in the restoration of law and order from disparate indirect documentation which only provided an incomplete picture.
- ii) The papers of the Provincial and District Emergency Committees also provide the details of all key decisions taken in relation to the formulation, implementation and review of the delivery of policies implemented to restore law and order at the Provincial and District level. These papers were not previously available either at Kew or in Nairobi.
- iii) The papers of the Chief Secretary's Complaints Coordinating Committee ("CCC") which was set up in 1954 to monitor and manage serious complaints made against members of the security forces and the Colonial Administration. The CCC provides us for the first time with a full account of all such cases from 1954 to 1959. Many of these cases were never prosecuted and provide significant new evidence as to the nature and integrity of investigations and prosecutions. The papers of the CCC were widely circulated and all relevant senior officials in London and Nairobi had sight of these papers – including the Secretary of State for the Colonies. These papers are critical in establishing that officials in London were aware of the full extent

of complaints of abuse against colonial officials and security personnel in Kenya.

iv) Lastly, the extensive correspondence and minutes of Colonial Office, Army and Colonial Administration personnel have provided a much greater degree of understanding on the issue of detainee abuse, the reaction of the authorities to allegations of abuse, the 1955 Amnesty, the rule of law in Kenya and the development of the “dilution technique” by the authorities in London and Nairobi. Fragmentary evidence has been available on all these matters previously, but the Hanslope files provide for the first time a coherent and complete account of key policy debates and decisions, especially relating to the introduction of abusive interrogation methods and the management of complaints against such abuses.

8. There are large and highly important gaps in the materials held in Nairobi that I studied as part of my research for *Histories of the Hanged*. Much material was destroyed *in situ* in Kenya on the eve of independence, a fact that was widely attested at the time and was confirmed in the documentation relating to the release of the Hanslope files last year, and much else has never found its way into the Kenya National Archive after independence. There are no deposits in Nairobi relating to the detention camps, for instance, and papers relating to police investigations only turn up in the limited collections of legal papers that have only been available since the early 1990s.

9. The Kenya National Archive was opened to the public in the late 1960s, but as the archive operates a 30-year rule governing release of files, nothing on the Mau Mau period was available until the mid- to late-1980s.

10. The fragmentary character of this material makes it difficult to identify and to access. It would not be possible for members of the public to

enter this archive and easily locate material relating to specific incidents, or the history of camps, or screening, or interrogations, or Home Guard posts, or any of the other substantive manifestations of the Emergency. To gather information on these things has taken trained historians many years of diligent and painstaking work: my research for *Histories of the Hanged* began in 1992, and the book was only published 13 years later.

11. The records available in the British National Archives at Kew are less full, and certainly less detailed than those available in Nairobi. Only a small portion of the correspondence between Nairobi and London from the 1950s has survived in the British archive, much of it being destroyed by the FCO in the normal process of selection and sifting that goes on each year to decide what is retained for the archive.
12. Aside from its normal 30 year rule, the British National Archive at Kew may also withhold documents for longer periods, of 50, 75 and even 100 years. Until the late 1990s virtually all of the most pertinent files relating to the Kenya Emergency held at Kew were under restrictions greater than 30 years and so were still not in the public domain. This gradually eased as requests for release were made in the 1990s and thereafter, but some documents in these categories have only very recently been released in relation to this case, such as the CO 938 docs which are relevant files on Court Martials and Colonial Political Intelligence and Security in the Colonies.
13. The largest collection of private papers relating to Kenya's Emergency is held at Rhodes House in Oxford, but this collection alone is insufficient to reconstruct a detailed narrative of events. Furthermore, many of the documents held at Rhodes House were under access restrictions even after 2003.
14. The papers revealed in the Hanslope Disclosure therefore add important elements to our knowledge of events in Kenya during the rebellion of the 1950s, allowing us to see with clarity the connections

between actions and outcomes. Among the papers that were not previously available and that are especially important are those of the Chief Secretary's Complaints Coordinating Committee (limited papers were available prior to the Hanslope Disclosure), the papers of the War Council meetings (again only limited papers were available prior to the Hanslope Disclosure), those relating to the Council of Ministers, and the Intelligence Reports from district level. In addition, the abuse and complaints enquiries files from the Ministry of African Affairs deposit have been invaluable, as have been the many files from the legal division, especially those from the Attorney General and the Solicitor General offices. None of these records is available in Kew or in Nairobi.

15. Finally, I would add that prior to the publication of my own research and Prof Elkins' book in 2005, there was little understanding of:

- i) The full extent of the abuses against detainees during the Kenya Emergency;
- ii) The extent to which the Colonial Office and Colonial Administration had knowledge of those abuses; and
- iii) The degree to which those abuses were tolerated and sanctioned by those in authority.

16. Further, I support Dr Bennett's contention that the precise role played by the British Army has only really become apparent as a result of the Hanslope Disclosure. Prior to 2005, I would have been sceptical that a claim could have been brought against the British Government on the facts. The factual position has been transformed by recent research and my own views have consequently also changed significantly.

## **PART 2: The Evidence**

17. I refer the Court to paragraphs 18 to 20 of my second statement, which refers in brief to the rule of law in Kenya during the Emergency and, in particular, to the integrity of the investigations, prosecutions and

inquiries which were put in place by the Colonial Administration in conjunction with the Colonial Office.

18. In my book, *Histories of the Hanged*, published in 2005, I analyse the court records from Kenya which demonstrate that those accused of Mau Mau offences were rigorously prosecuted and were punished with severe sentences. In total 1,090 Kenyans were executed for Mau Mau offences between October 1952 and March 1958 and many thousands were given lesser sentences. By contrast the investigation and prosecution of abuses was far from robust, as I state in my second statement at paragraph 18:

“Allegations of abuse were often covered up by an Administration which actively interfered in any investigation which showed a tendency towards independence or rigour, which led, for example, to the resignation of Commissioner of Police Arthur Young in December 1954. Both the Colonial Office and the Colonial Administration consistently resisted calls for independent investigations over which they would have no control. The Administration and the Army also strongly resisted the prosecution of security forces for detainee abuse. Prosecutions which did occur (usually because there had been considerable public pressure) were on the whole ineffective and the sentences handed down to those convicted were often derisory.”

19. The Court will naturally wish to understand the nature and scope of the primary evidence which supports these assertions. Therefore, in this statement I set out the evidence at some length and refer in detail to the new information which has emerged from the Hanslope Disclosure.

20. In this section I wish to draw the attention of the Court to six substantive issues upon which the Hanslope documents shed further light:

- (i) The resignation of Commissioner of Police Arthur Young in December 1954;
- (ii) Screening and interrogation;
- (iii) The workings of the Complaints Coordinating Committee;
- (iv) Rape and defilement;
- (v) Cases relating to the Mwea camps and ‘dilution’;
- (vi) The involvement of the International Committee of the Red Cross.

**(i) Interference by the Executive: Young's resignation**

21. In my book I discuss the circumstances surrounding the resignation of Kenya's Commissioner of Police, Arthur Young, in December 1954 (pp299-307). It was known from documents then available that Young had resigned because of executive interference in the investigation and prosecution of several cases where police and members of the Colonial Administration, both European and African, were accused of abuses, tortures and murder. Led by Assistant Police Commissioner D.G. MacPherson, the head of Kenya's Criminal Investigation Department ("CID"), acting under Young's instructions, had endeavoured to bring some 16 cases to court, but found that they were obstructed by a combination of non-co-operation from administrative officers and interference by the Executive.

22. When one case of murder was eventually successfully prosecuted, despite the revelation of systematic perjury by several European colonial administrators in an attempt to provide the accused African Headman with an alibi, Governor Baring proposed to pardon the guilty man and, in response, Arthur Young tendered his resignation. This case, known as the 'Ruthagathi case', was prosecuted in November-December 1954 and is described in detail in my book, *Histories of the Hanged* (pp.297-307).

23. This much was known in outline, but the details of the other cases concerned could not be established because of a lack of documentation. The Hanslope Disclosure contains several crucially important files that allow us now to see the full extent of obstruction in these investigations, and to see how executive interference affected the prosecution of the cases.

24. While there were numerous public announcements condemning abuses throughout the Kenya Emergency, in private the colonial administration often sought to excuse abuses and resisted investigations and prosecutions. I refer the Court to the chronology in Professor Elkins

first statement, paragraphs 64 to 134. For example, Governor Baring's reaction to the Secretary of State with regard to the beating to death of Elijah Njeru in March 1953 by two British soldiers explicitly excuses the use of torture:

"While my enquiries are not yet completed, there is every reason to believe that this is a case where a Mau Mau man was beaten in order to get information vital in the public interest and died in consequence, although this consequence was not to be expected.

There was provocation for the beating; reliable information showed....The person(s) responsible for the beating, I am satisfied, felt that neglect of any possible measure to discover the firearms was tantamount to signing the death warrant of the inhabitants of a mission station....The person(s) responsible for the beating had no reason to believe that the deceased suffered from any physical infirmity...."<sup>1</sup>

25. The Hanslope Disclosure adds significant further evidence on this issue. I refer to a schedule of 16 cases under investigation in 1954 by Assistant Police Commissioner MacPherson at **exhibit 'DMA 1'**. In 5 cases there was direct and demonstrable interference in the legal process by the colonial administration and/or the Executive. 7 cases were not notified to the police by the colonial administrators at the camps and Home Guard posts where the relevant beatings or murders occurred; thus there was an attempt at concealment before the CID was informed of the cases (usually by the local population or relatives of the deceased). In 4 cases there is no documentary evidence of interference in the investigation, but in three of these cases the investigations did not get far enough to mount a full prosecution and the record remains scanty. In only one of these four cases, therefore, do we have prosecution without interference.

26. Assistant Police Commissioner MacPherson lamented that the appeal to political expediency that underlay the attitude of the Colonial Administration to these prosecutions represented "a clear interference with the course of Justice and completely conflicts with the basic

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<sup>1</sup> PRO, CO 822/471/12, "Telegram no 282 to Secretary of State", 9 March 1953

principles of police procedure”.<sup>2</sup> Of the 16 cases of torture, ill-treatment and murder by government forces that MacPherson investigated, the Police were informed and collaborated with in only 4. Interferences with MacPherson’s inquiries included the production of false reports, testimonies and evidence by Chiefs and Home Guards, as well as the deliberate falsification of evidence by European Colonial Administrators. After Young’s resignation, his successor, Catling, sought to deter MacPherson in January 1955 from continuing with the investigations by invoking the authority of the Attorney General and the rationale of the newly declared Amnesty. MacPherson disobeyed Catling’s order and concluded several of his investigations before resigning in November 1955.<sup>3</sup>

27. It is important to recall that the details of the MacPherson and Young resignation were known about in the Colonial Office, including their allegations of repeated executive interference in investigations. Further, Young personally met with the Colonial Secretary and after his resignation the Colonial Office refused to make his allegations public or to disclose them in any meaningful detail to Parliament.

28. I now wish to briefly refer the court to two examples from this body of new evidence on the cases being investigated by MacPherson in 1954, to give an indication of the extent and character of these events.

### ***The Taylor Case***

29. The Taylor case concerns two detainees who “were battered to death” by personnel of the Miathene Screening Camp in the Meru District on 13 September 1954.<sup>4</sup> Both men were buried within the Camp’s perimeter without an investigation, but the CID came to the camp when they learned of the deaths. They were met by the head of the

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<sup>2</sup> Assistant Commissioner of Police D.G. MacPherson to Commissioner of Police A. Young, 10 December 1954 in E 19-14171, p.14

<sup>3</sup> Commissioner of Police R.C. Catling to Minister for Defence and Internal Security, 25 June 1959 in E 19-14171, p.7

<sup>4</sup> Assistant Commissioner of Police D.G. MacPherson to Commissioner of Police Colonel Young, 10 December 1954 in E-14171, p.12

screening team, an officer named W.E. Taylor, who refused to cooperate as they did not have an exhumation order. Having acquired the exhumation order, when the police returned to the camp on 18 September 1954, they found that the bodies had been dug up and removed.<sup>5</sup>

30. The bodies had been “taken to a place in the bush about 35 miles away”.<sup>6</sup> With the eventual retrieval of the bodies, murder charges were laid against six Home Guards working as screening officers in the camp. Believing that Taylor’s actions had “only one object - to hamper and impede police enquiries and the course of justice”, MacPherson also wanted to investigate Taylor’s role in events.<sup>7</sup> When after inordinate delays a final effort was made by CID to bring the case to court one year later, the Chief Secretary, R.G. Turnbull, simply declared that “by virtue of the Act of Clemency of the 18th January this year that matter is now closed”.<sup>8</sup> At this point a memorandum from Meru’s District Commissioner sought to disassociate Taylor from irregularities at Miathene,<sup>9</sup> while Provincial Commissioner ‘Monkey’ Johnston, provided Taylor with what a senior legal officer described as a “perfect alibi”<sup>10</sup> as well as with a witness prepared to clear him of the key allegations of having ordered the bodies to be removed in his own Jeep.<sup>11</sup> The prosecution did not go ahead.

### ***The Case of Chief Mundia***

31. On the 31 July 1954, the body of Nuhu Hiuhu, was found murdered at Karura in the South Nyeri Reserve. It was evident that he had been severely beaten before being shot from close range. The body was

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<sup>5</sup> Extract from the minutes of the Provincial Administration’s meeting on 11 February 1955, cited in a minute to the Governor, 16 April 1955 in E16-3-8A, p.25-26

<sup>6</sup> Ibid.

<sup>7</sup> Assistant Commissioner of Police D.G. MacPherson to Commissioner of Police Colonel Young, 10 December 1954 in E-14171, p.12

<sup>8</sup> R.G.Turnbull to A.C.C. Swann, Police Commissioner of Central Province, 10 September 1955 in E16-3-8A, p.15

<sup>9</sup> Memo by District Commissioner Cumber, 23 September 1955 in E16-3-8A, p.13-14

<sup>10</sup> Memo by MLA Jones, 6 May 1955 in E16-3-8A, p.24

<sup>11</sup> PC Johnston to R.G.Turnbull, 15 November 1955 in AA 45-55-2A (1), p.80

taken to Karatina and displayed outside the police station “for the purposes of investigation.” Witnesses came forward, claiming to have seen the shooting, and identified the powerful loyalist Chief Mundia, as the murderer, implicating four Home Guards who had been on patrol with him.<sup>12</sup>

32. For the CID, this case became a test of the extent to which the Emergency was undermining the rule of law. ‘Monkey’ Johnston, the Provincial Commissioner, did all he could to hamper the trial, writing explicitly to the CID on 16 September 1954 to ask that the case be dropped. According to MacPherson, Johnston then appealed to the Governor, informing him of the politically detrimental ramifications of the case. This prompted Governor Baring to discuss the case with the Assistant Commissioner of Police.<sup>13</sup>

33. When the CID pushed ahead with the investigation, Johnston then bluntly refused to collaborate, declaring that the officer sent to question him was “too junior a Police Officer to record a statement from him”.<sup>14</sup> He then appealed to R.G. Turnbull, the Minister of African Affairs, to have the two CID officers removed from the case.<sup>15</sup>

34. When the trial of Chief Mundia finally began in January 1955, the irregularities that had defined the inquiry into the case continued in court. Major C.E.V. Buxton, District Officer at Nyeri, openly assisted the defence.<sup>16</sup> As a consequence of Buxton obtaining the names of prosecution witnesses,<sup>17</sup> these witnesses were then “made the subject of threats and Detention Orders were issued” against them.<sup>18</sup> Remarking in his judgment in the case on the intimidation of many witnesses and the detention of others, Judge Bourke declared this to be

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<sup>12</sup> Emergency Assize Criminal Case Number 2 of 1955, Judgment, p.1

<sup>13</sup> Assistant Commissioner of Police D.G. MacPherson to Commissioner of Police Colonel Young, 10 December 1954 in E-14171 at p.13

<sup>14</sup> *Ibid.*, p 14

<sup>15</sup> Police Commissioner Johnston to R.G. Turnbull, Minister for African Affairs, 9 December 1954 in AA 45-55-2-2A, p.47

<sup>16</sup> K.K. O'Connor to Honorable R.G. Turnbull, Minister for African Affairs, 11 January 1955 AA 45-55-2-2A, p.37

<sup>17</sup> Constable Njiru S/O Mburugu, Police Case N. DA, 4 January 1955 in E 19-14171 at p. 33

<sup>18</sup> Assistant Commissioner of Police D.G. MacPherson to Commissioner of Police Colonel Young, 10 December 1954 in E-14171 at p.13

“almost too remarkable for mere coincidence”,<sup>19</sup> confirming that there was “disquieting evidence” pointing to the Provincial Administration’s role in this intimidation and detention.

35. The defence produced two witnesses, District Officers Elworthy and Richmond, who provided Mundia with an alibi by alleging that the Chief had been visiting a dispensary at the time of the killing and only arrived at the scene later. While Richmond held to his story under cross-examination, Elworthy, a junior officer, struggled to uphold this testimony and eventually “broke down in court and admitted [lying to the Police]”.<sup>20</sup> Richmond’s dubious role in this and other cases eventually led to his dismissal from his post, but after 4 months leave he was later re-employed as African Affairs Officer in Aberdare County.<sup>21</sup> Due to the contradictions that emerged in the evidence in the case, Mundia was found not guilty and acquitted, and retained his position as a colonial Chief, leaving Governor Baring to comment that “the Mundia case has been a notorious one. The sooner it is forgotten the better”.<sup>22</sup> The documentary evidence shows us that Governor Baring had been fully aware of all of the ramifications of this case throughout its course.

36. The other case records which have been disclosed by Hanslope reveal:

- i) A regular pattern of institutional resistance to accountability for abuses;
- ii) Regular complaints by officials and the military chain of command that robust investigations and prosecutions into abuses would be disastrous for morale of the local security forces;
- iii) Persistent attempts to remove the Police and CID from any investigatory role. Instead the local district administration, who were not

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<sup>19</sup> None, Box 184, p.8; cf. the account in Daniel Branch, *Defeating Mau Mau, Creating Kenya*.

<sup>20</sup> Assistant Commissioner of Police D.G. MacPherson to the Attorney General E.W. Griffith-Jones, 5 October 1955 in E 19-14171 at p. 33

<sup>21</sup> Acting Secretary for Local Government and Housing C.F. Atkins to the Director of Establishments, Nairobi, 28 December 1956 in E 19-13807A at p.1-11, 26

<sup>22</sup> Governor Baring, 14<sup>th</sup> March 1955, AA 45-55-2-2A, p.21

impartial, would investigate cases of abuse by way of “preliminary investigation”. I set out the evidence in relation all these points further below.

### **1955 Amnesty**

37. It is important to remind the Court of the nature of the 1955 Amnesty (the “Amnesty”). In essence, both the Military Chain of Command and the Colonial Administration were of the view that the revelation of any systematic investigation and prosecution of war crimes would be “shattering”, to use General Erskine’s term. As set out in Professor Elkins third statement at paragraph 56 to 61, the Kenyan Attorney General was initially of the view that the Amnesty could not be applied to “atrocities”. However, this is precisely what took place when the Amnesty took effect in January 1955. Under the guise of presenting Mau Mau fighters with new terms for surrender, the amnesty of January 1955 in fact swept away all pending cases against government staff and security personnel.
38. The Amnesty was then used to resist all calls for an inquiry into allegations of abuse prior to January 1955. I remind the Court of the contents of Disclosed File AA 45/35 1A in relation to the aftermath of an atrocity known locally as the Chuka Massacre, and to the enquiries set up by Colonel Young into abuses committed by the Home Guard, administration, and police. A document on this file shows Provincial Commissioner C.M. ‘Monkey’ Johnson writing to the Attorney General, urging him to use the Amnesty as a basis ‘to refuse to institute any enquiry into allegations of malpractices’. In a further letter, dated 2 February 1956, ‘Monkey’ Johnson acknowledges that if prosecutions are to go ahead, then: *‘It would now appear that each and every one of us, from the Governor downwards, may be in danger of removal from public service by a commission of enquiry as a result of enquiries made by the C.I.D. in respect of incidents which occurred prior to 18 January 1955’* [the date of the amnesty announcement].

## **(ii) “Screening” and Interrogation**

39. In my second statement I drew attention to the evidence relevant to the extent to which abuses and tortures were committed during procedures of interrogation known as “screening”. Further important evidence on this point has now been found in more detailed examination of the Hanslope Disclosure documents, and I wish now to set this out.

40. To give context for these comments I would again remind the Court that serious concerns were raised about “screening” in Appeal Court judgments at the time: for example, in the judgment on *Criminal Appeals 988 and 989 of 1954 (from Emergency Assize Criminal Case No. 584 of 1954 of HM Supreme Court of Kenya at Nairobi)*: (KNA: MLA 1/1098), relating to two accused who were tortured repeatedly in a ‘screening camp’ during 1954, the following comments were laid down:

“We cannot, however, conclude this judgment without drawing attention once more to the activities of the so-called ‘screening teams’. ... From this case and others that have come to our notice it seems that it may be a common practice when a person is arrested in the commission of a terrorist offence, or on suspicion of such offence, for the police to hand him over to the custody of one of these teams where, if the accounts given are true, he is subjected to a ‘softening up’ process, with the object of obtaining information from him. To judge by the same, the function of a ‘screening team’ is to sift the good Kikuyus from the bad; but if that was its only function, there could not have been, in the instant case, any reason to send the appellant to such a team for he had been arrested in the actual commission of an offence carrying capital punishment. What legal powers of detention these teams have or under whose authority they act we do not know. The power to detain suspected persons given in Emergency Regulation No.3 would not seem to be exercisable in this case and the right of a police officer to detain in police custody pending trial ... does not authorise the handing over of the person detained into some other custody. It has certainly been made clear to us by the disclaimer made to Mr Brookes for the Crown and respondent that the Attorney General is not in any way responsible for screening teams and there are some indications that they are not under the control of the police but are under administration officers. But, whatever be the authority responsible, it is difficult for us to believe that these teams could continue to use methods of unlawful violence without the knowledge and condonation of the authority. Such methods are the negation of the rule of law which it is the duty of the courts to uphold, and when instances come before the courts of allegations that prisoners have been subjected to unlawful and criminal violence, it is the duty of such courts to insist on the fullest enquiry with a view to their verification or refutation.” [Emphasis added]

41. The term ‘screening’ came to be used by the Colonial Administration as a euphemism for ‘interrogation’, and was most commonly carried out,

as the judgment suggests, by officers of the Colonial Administration, often in camps not legally designated as places of detention and for periods of time that exceeded legal stipulations.

42. Amongst the documents released through the Hanslope Disclosure we have found much new evidence relating to abuses committed by screening teams, some of it relating directly to the Glenday Report (of July 1955) into the operation of screening and interrogation. I therefore wish to refer the court to some of those documents that are relevant to accusations of the systemic practice of abuse and torture in the screening procedures.

43. A significant body of evidence was submitted to the Colonial Administration in June 1954 by a European settler-farmer named Jack Hopcraft. His concerns were first alerted when he collected two of his Kikuyu labourers from a screening camp at Nakuru and was shocked to find that neither of them were able to walk normally, “owing to severe beating on the feet”. Despite complaining to both the Provincial Commissioner and the local District Commissioner, Hopcraft was unable to get the officials to make any enquiry into what had happened. When other employees then underwent similar abuse, Hopcraft arranged an interview with the Attorney General and “submitted a long detailed statement containing a series of allegations against the conduct of screening teams in the Nakuru area”. A full copy of this document is included in the Hanslope Disclosure.<sup>23</sup>

44. Hopcraft gathered testimonies from all of his employees who underwent screening, and provides details of their statements in his report. A summary of complaints he raises can be offered here:

- a. Two of Hopcraft’s employees were tortured by a woman screening officer, who beat them on the feet with a short whip (kiboko).<sup>24</sup>

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<sup>23</sup> Hopcraft Report, 10 September 1954 in AA 45-26-2A Vol. 1 Box 135

<sup>24</sup> Ibid., p.27

- b. Two other African workers, Kibui Ngure and Gatenjwa Kibe, were left to be screened by the notoriously violent Chief Willie, with the District Commissioner of Nakuru taking “no steps whatsoever to tighten control” of screening procedures in spite of being repeatedly informed of irregularities.<sup>25</sup>
- c. The detainees “were made to hit each other to provide amusement for Chief Willie, and to break down their resistance, until each admitted to taking an oath or oaths which they had not taken”.<sup>26</sup>
- d. It is noteworthy in this context that Chief Willie had previously been responsible for abuses during screenings at Elmenteita and was put in charge of the Nakuru screening team after an inquiry into his violent behaviour there. At Nakuru he was left alone to implement his screening methods without any control or direct oversight.
- e. On the 24th of July 1954, six of Hopcraft’s employees were brought to the camp, where they “were beaten on arrival, and from then until 5th August they were beaten, threatened, kept naked and subjected to ill-treatment of one kind or another”.<sup>27</sup>
- f. Hopcraft’s labourers made particular mention of the violence dispensed by A.R. Webster, at the Njoro camp to the west of Nakuru.<sup>28</sup> Four men gave evidence of Webster’s screening tactics, which included keeping detainees under a constant threat of castration, in some cases naked for weeks, and making a detainee “go round and round with the forefinger in a small hole in the ground, being beaten when he fell giddy on the floor. Others were made to hang from a tree, both by the arms and upside down”.<sup>29</sup>
- g. In July 1954, Webster had an eleven-year-old girl brought to his room and according to the girl’s family raped her there. While

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<sup>25</sup> Ibid., p.33

<sup>26</sup> Ibid., p.33

<sup>27</sup> Ibid., p.36-7

<sup>28</sup> Ibid., p.34

<sup>29</sup> Ibid., p.35

Webster denied the rape, he admitted “calling the girl to the house and slapping her.”<sup>30</sup> According to Hopcraft, “many men testify that they saw her next day unable to walk properly, as being only eleven she had been brutally forced”.<sup>31</sup> (Webster eventually resigned when he was confronted with the complaints brought against him, but no legal action was taken despite the Colonial Administration having abundant evidence relating to his conduct.)<sup>32</sup>

45. It is notable that these incidents occurred over a period of several months and in several different camps in the Nakuru area. Hopcraft’s report also includes uncontested confessions from European officers that abuses were a normal part of the screening process. District Officer Townley, for example, in charge of screening at Nakuru, “admitted freely to using force”, and tellingly added that “he thought he was doing what was required of him”.<sup>33</sup>

46. Hopcraft’s report offers a particularly full and detailed example of complaints of this kind, but there is much further evidence in the Hanslope Disclosure of the abuses committed during screening, in addition to the substantial evidence which existed prior to the Hanslope Disclosure. To cite but three further examples:

- i) J.F. Wisden, a settler farmer, wrote to the Chief Secretary in October 1953, detailing abuses experienced by his Kikuyu staff.<sup>34</sup>
- ii) A similar statement was sent, also in October 1953, by Richard Frost, to the Chief Native Commissioner after one of his Kikuyu labourers was severely beaten with a kiboko during screening.<sup>35</sup>

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<sup>30</sup> Provincial Commissioner, Rift Valley to Chair, Chief Secretary’s Complaints Co-ordinating Committee, 11 November 1954 in AA 45-26-2A Vol. 1 Box 135, p.9

<sup>31</sup> Hopcraft Report, 10 September 1954 in AA 45-26-2A Vol. 1 Box 135, p.35

<sup>32</sup> Provincial Commissioner Rift Valley to Chair, Chief Secretary’s Complaints Co-ordinating Committee, 12 October 1954 in AA 45-26-2A Vol. 1 Box 135, p.20

<sup>33</sup> Hopcraft Report, 10 September 1954 in AA 45-26-2A Vol. 1 Box 135, p.31

<sup>34</sup> Wisden to Chief Secretary, 19 October 1953 in AA 45-26-2A Vol. 1 Box 135, p.123-126

<sup>35</sup> Frost to Chief Native Commissioner, 27 October 1953, AA 45-26-2A Vol. 1 Box 135, p.120

iii) Further evidence of the widespread use of violent methods is provided by two Christian screeners who wrote a report sharply condemning the brutality and bribery they encountered in screening camps they were placed at.<sup>36</sup>

47. The extent and merit of these complaints was acknowledged at the time by senior officials in the Colonial Administration, a fact also documented in the Hanslope Disclosure. Partly in response to Hopcraft's detailed complaints, the Minister for African Affairs, R.G. Turnbull, sent a circular to Provincial and District Commissioners in October 1954 lamenting that he "had received a disturbing number of complaints from reliable sources which indicate that unnecessarily harsh and even brutal methods are all too frequently being used against Africans who have done nothing whatever to deserve such treatment".<sup>37</sup>

48. Governor Baring was also aware of the widespread violence in the screening process, as this came to light in the investigations he initiated when the notorious Hayward affair was publicised in Britain. Correspondence relating to this case, concerning abuses committed by a screening team in Tanganyika, is detailed in the Hanslope Disclosure and shows that the Governor was well aware that it was not an isolated incident.<sup>38</sup> A minute by Baring relating to a further example of abuses, this time by "the Kiambu screening team which had misbehaved itself in Nyanza", revealed that the Governor held an ambiguous attitude as to how such cases should be treated: "I believe", Baring wrote, "that there should be no attempt to cover up the case, but I also believe that Government Officers should make no attempt to give it publicity either".<sup>39</sup>

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<sup>36</sup> Report, Onesimus Waitara and Elizaphan Machaga (nd), AA 45-26-2A Vol. 1 Box 135, p.46

<sup>37</sup> Circular by R.G.Turnbull, 25 October 1954 in AA 45-26-2A Vol. 1 Box 135, p.14

<sup>38</sup> Correspondence from Governor, 20-23 March 1954, AA 45-26-2A Vol. 1 Box 135, p.58-60

<sup>39</sup> Min. by Baring, cited by Private Secretary, 13 April 1954, AA 45-26-2A Vol. 1 Box 135, p.51

49. Hopcraft's allegations, along with many others relating to screening abuses, were ultimately dismissed from consideration by a ruling from the Chief Secretary's Complaint's Coordinating Committee that they all fell within the remit of the Amnesty. The Executive was therefore fully aware of these abuses, but they did not act to stop them or to prosecute those who were responsible: indeed, through the implementation of the amnesty they took steps to ensure that no prosecutions would take place.

***The Glenday Report on "screening": admitting abuse***

50. One year after the Hopcraft allegations, Kenya's Colonial Administration initiated a formal inquiry "into screening camps and interrogation centres" headed by Sir Vincent Glenday (the "Glenday Report"). A copy of the Glenday Report and the key papers relating to it are included in the Hanslope Disclosure files. This enquiry was intended to recommend practical steps designed to prevent any recurrence of irregularities at the camps and centres, and to recommend measures to be taken "to guard against irregularities and abuse of office".<sup>40</sup>

51. Glenday's enquiry was not, however, designed to investigate or document these "irregularities". As Glenday explicitly asserts, his concern "lay with the present, and especially future, organization of the Camps and Centres rather than with what may have happened in the past".<sup>41</sup> Glenday simply took all past cases of abuse to be covered by the Amnesty of January 1955,<sup>42</sup> a position fully endorsed and corroborated by the actions of the Chief Secretary's Complaint's Coordinating Committee, and so sidestepped any potential criticism of the practices of the Colonial Administration and Security Forces.

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<sup>40</sup> Glenday Report in AA 45-26-2-2 Box 136, p.2

<sup>41</sup> *Ibid.*, p.2

<sup>42</sup> *Ibid.*, p.9

52. Nonetheless, Glenday's report not only admits that violence was used systematically in screening processes to extract confessions, but he also argues that the success enjoyed by screening teams at the time of writing (July 1955) continued to depend on the fear instilled by earlier torture.

53. The Glenday report begins with a definition of the screening process that clearly indicates the character of the procedure and its intent:

Screening is a process to obtain or extract a confession by intensive interrogation [...] based on a promise of clemency if the confession be judged full and a veiled threat of reprisal if it be not so considered"<sup>43</sup>

54. In elaborating upon this, Glenday admits that "considerable and often undesirable pressure was applied in some Camps".<sup>44</sup>

### **(iii) The workings of the Complaints Coordinating Committee**

55. Amongst the most important files in the Hanslope Disclosure are those containing papers of the Chief Secretary's Complaints Coordinating Committee (CCC). Set up in 1954 to monitor and manage serious complaints made against members of the Security Forces and later by the Colonial Administration, the CCC should ostensibly provide us with a full account of all such cases from 1954 to 1959. Only one small portion of these committee papers had come to light previously, in the British National Archive at Kew, so the Hanslope Disclosure has given us the first near complete view of these important documents (some meeting papers remain missing from the files).

56. The papers of the CCC were widely circulated. Copies went to all relevant senior officials in Nairobi, including the Governor and other members of the War Council, senior legal officials, and other ministers. The papers also came directly to the Secretary of State for the Colonies in London. The absence of a full set in the records at Kew suggests

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<sup>43</sup> Ibid., p.3

<sup>44</sup> Ibid., p.3, quotation marks in the original

they have been destroyed, or withheld. We therefore know that at the time, all relevant senior officials in London and Nairobi had sight of these papers.

57. I wish to refer the court to several aspects of the CCC records that are relevant to the management of charges against security forces and colonial personnel in cases of abuse, torture and murder.

58. However, I must emphasise to the Court that at no point have I found solid evidence to suggest that judicial decisions themselves were interfered with in Kenya at the time. All of the evidence of interference suggests that the CCC were involved with the extrajudicial management of cases so as to have the charges struck out or reduced, or to alter the presentation of evidence to be brought before a court.

### ***Murder Cases in the Complaints Coordinating Committee***

59. For example, of the 41 cases raised before the Complaints Coordinating Committee between 1954 and 1959 that originated as the consequence of a death, only four resulted in murder convictions<sup>45</sup> (of which one was altered to 'guilty but insane' by the Appeals Court).<sup>46</sup> There were six convictions for manslaughter,<sup>47</sup> and five for variations on assault, including grievous or actual bodily harm.<sup>48</sup> Of the total 41 incidents, 13 cases were dropped before reaching court, and in 9 cases the accused were found not guilty – although the charge was usually not one of murder. One further case was subject to an amnesty.<sup>49</sup> The outcomes of three cases remain unknown.<sup>50</sup> I refer to a schedule of

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<sup>45</sup> Cases **14** (Fusilier Leo James Hoyle), **18** (TP Mutungi s/o Katuno), **27** (Headman Francis Gatari s/o Ngalii) and **29** (TPR Cpl Mungai s/o Ndegwa).

<sup>46</sup> Case **14** (Hoyle).

<sup>47</sup> Cases **10** (Fusilier Brian Stafford), **15** (KG Joseph Kariuki s/o Wamburu), **16** (TP Karanja s/o Njuguna), **22** (Headman Nyoiki s/o Ritho).

<sup>48</sup> Cases **2** (Kiptano s/o Kaptinge, assault and ABH, unknown military but charged in civil courts), **13** (Inspectors Coppen, Fuller and Walters, DO Bosch, GBH [Kamau Gichira Case]), **26** (RO Jasiel Njau Kariuki, Assault), **36** (RO Samuel Githu, Assault [Kabugi Njuma Case]), and **40** (Headman Mwangi s/o Njeroge, Assault).

<sup>49</sup> Case **39** (PCs Jonathon Somani, Ngala Mbaro, Paul Wambua Kavita, Emanuel Albert and Mutpini Kihungu, charges of murder shelved during the Amnesty of November 1959).

<sup>50</sup> Cases **11** (DO Kangema (name unknown), charge reduced to wilful damage to property and removed

CCC murder cases which I have identified in the course of the review marked exhibit '**DMA 2**'.

60. Certain categories of deaths were not even investigated such as deaths “attributed to authorized legal orders”. Such cases included the shooting of individuals in areas or situations in which they were obliged to halt on command. These were routinely dismissed by the CCC without investigation. In this category we find the death of Kibienda s/o Oranzel (Case 3), a messenger in the Parliament Buildings, who was shot and killed in the area of Princess Elizabeth Way in Nairobi by the Kenya Police Reserve.<sup>51</sup> Similarly, in January 1957 a Magistrate in Kangema was able to dismiss the shooting of a man by Tribal Police on the grounds that the Police had given the order to halt.<sup>52</sup>
61. Further, the investigations which did occur were not independent of the Executive. The CCC’s procedures subjected all alleged cases to a Preliminary Investigation (“PI”). Although technically ordered on the authority of the Attorney General, the PI was not a judicial procedure, and nor was it in the hands of the CID, or even necessarily the local police (although they might be asked to participate). The PI was placed under the control of the local district administration, with all those of the rank of District Officer (“DO”) and District Commissioner (“DC”) having the standing of magistrates. This conflation of legal and administrative roles was a critical element in the conduct of such investigations. European officers placed in charge of Home Guard posts, many of whom were on service with the military (notably the Kenya Regiment), were also given the rank of DO and so held the powers of a magistrate even though they were unlikely to have had any training in this capacity.<sup>53</sup> In effect, this meant that PI’s were often carried out by the

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from purview of Council), **25** (TP Ngumbao s/o Kaimu, charged with murder at Supreme Court, no further record), and **28** (Headman Stanley and six others, submitted to Supreme Court on charges of murder and assault, no further record).

<sup>51</sup> Minute 129, 26 April 1954, CAM 19/4 Vol. I Box 207, f. 140; Minute 176, 14 June 1954, CAB 19/4 Vol. I Box 207, f. 125

<sup>52</sup> Case **24**, Minute 624, 12 February 1957, CAB 19/4 Vol. I Box 207, f. 84.

<sup>53</sup> Serving officers who held the rank of magistrate were permitted to record confessions from prisoners, these being admissible as evidence in court.

direct colleagues of the persons against whom allegations had been made. As a result, in many cases the outcome of the PI appeared to be more helpful to the defense than to the prosecution.

62. It was concern about this procedure that led Commissioner of Police Young to direct MacPherson to open the independent CID investigations I have discussed above, many of these running in direct parallel with PIs and revealing witnesses and other evidence that the PIs did not declare. For example, Ndirangu s/o Kamau was arrested by CID in connection with the murder of a Kikuyu school teacher at the end of August 1954 and died in police custody. MacPherson and CID had identified 47 witnesses (whose testimony as ultimately ignored by the PI) and the DPP ultimately dismissed the case. And in the Mundia case, already discussed above, the judge commented in his summing-up on the interference with prosecution witnesses carried out by colonial administrative officers while the case was still being heard.

63. Cases often came to the CCC from CID reference, but the CID played no role in PIs. In fact, restricting the degree to which investigations could be carried out by the CID, and thus relinquishing independent control over the gathering of evidence, appears to have been a principal function of the PI.

64. More generally, officers of the Colonial Administration resented the investigations mounted by the CID and frequently sought to obstruct them. Complaints of the unsympathetic attitude adopted by CID are commonplace among the papers in the Hanslope Disclosure. In April 1955, for example, the European Minister without Portfolio sent a memorandum to the War Council remarking that “the activities of the CID are causing some concern to our own security forces in the Embu area, Fort Hall and Kiambu. I do not think that this is a problem which we have as yet solved satisfactorily.”<sup>54</sup> A restricted discussion of this

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<sup>54</sup> Blundell, Memorandum to the War Council, 12 April 1955, CAB 19/4 Vol. 1 Box 207 f. 41

memo took place, of which a record was made but not circulated. The meeting concluded that the Governor would meet with the Minister for Legal Affairs, the Minister for Defense and the Commissioner of Police to 'discuss certain public apprehensions' regarding the priorities of the CID.<sup>55</sup>

65. The resistance against CID intervention was partly based in peculiar designations of authority. CID officers appear to have had no official jurisdiction to enter detention camps, for example, and it was not until 1957 that the CID conducted its first enquiry into any death that took place inside a camp.

66. In summary, the CCC cases show repeatedly that initial criminal investigations by the police are suspended by the Attorney General who then orders a Preliminary Investigation, after which the charge is altered in the records of the CCC without explanation and a conviction on that lesser charge then rapidly achieved. In total, there are more than 400 cases of abuse which are recorded by the CCC and which provide detailed evidence as to the nature of investigations and prosecutions during the Kenya Emergency.

#### **(iv) Rape and Defilement**

67. It has previously been difficult to locate documentary evidence on rape and defilement, but from examining the Hanslope Disclosure documents we have been able to identify sixty-five separate allegations of rape and sexual assault that were subjected to investigation by the Kenyan Government between 1954 and 1959.<sup>56</sup> These include cases of defilement, where bottles, hot stones and other objects were inserted into the vaginas of female detainees. All but seven of the cases were discussed within the bi-weekly Chief Secretary's Complaints Coordinating Committee, attended by the Deputy Public Prosecutor and

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<sup>55</sup> Private Secretary to Governor, "Priorities in CID Investigations", 22 April 1955, CAB 19/4 Vol. 1 Box 207 f. 39.

<sup>56</sup> SEC 5 Box 226, CAB 19/4 Vol I, CAB 19/4 Vol II, AA 45/55/2A, AA 45/26/2A Vol I

Under Secretary of Defence, with minutes of the meetings later circulated among the Governor, Secretary of State for the Colonies and Attorney General's offices.<sup>57</sup> I refer to the schedule of rape and defilement cases which I have identified in the course of the review marked '**DMA 3**'.

68. Of the sixty-five alleged incidences, all were perpetrated by employees of the Colonial Administration or members of the Security Forces: thirty-five were by members of the Tribal Police force, fourteen by Home Guard or Headmen, seven by British Military officers, six by detention camp officers, while four remain unspecified. They occurred in a wide variety of locations and circumstances.

69. Within the sixty-five cases, fourteen persons were convicted of rape or attempt to rape, with a further eleven acquittals, two *Nolle Prosequi*, and four incidences where the charges were reduced to assault. However, the majority of cases were either left pending in investigation (ten cases) or were investigated but determined not suitable for judicial action (twenty-five cases).

70. In examining the cases more closely, three important trends in the handling of rape and sexual assault emerge:

- i) First, a tendency for officials to dismiss allegations of rape without proper investigation. For example, in early 1956 Headman David Mutinda at Ndithini Camp had been accused of raping two girls. In a letter dated 26 March 1956, E.H. Windley of the Secretariat states directed the charges of rape to be dropped, admitting that while "it is pretty obvious that the Headman took full advantage of the sexual opportunities that his position and the detention of a number of girls presented him with," but despite the fact that Mutinda was in a position of authority in the camp he was of a view that "the question of consent and the circumstances of the alleged

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<sup>57</sup> CAB 19/4 Vol I, CAB 19/4 Vol II

‘rapes’ are too dubious to warrant persecution.”<sup>58</sup> Further, the Secretary for African Affairs reported in December 1956 that “of the women concerned who slept at the camp, 90% have been interviewed and sworn statements taken before the Elders show that no attempts whatever were made on them.”<sup>59</sup> Accusations of abuse and maltreatment in and around Ndithini led by Mutindi were eventually investigated by the Attorney General and confirmed Windley’s suggestion that the rape allegations should in fact be dropped from the wider case.<sup>60</sup>

- ii) Second, in cases of multiple-perpetrator rape, particularly those conducted by members of the British Military, it was invariably ruled that the entire case should be dropped given that prosecution of a sole individual could not be achieved. There were five such incidents in 1954 alone, three of the alleged rapes perpetrated by identified units of the King’s African Rifles, one by three members of the 22<sup>nd</sup> platoon of the General Service Unit at Nakuru, and one by unnamed Military Askaris.
- iii) Third, it is apparent that legal officers were reluctant to prosecute in cases where forms of harmful or unconventional rape practices were reported. A notable example is a case where the Attorney General dropped charges of vaginal cutting from the insertion of glass bottles, which took place at Kirigiti screening camp in 1957. Njiri, daughter of Magothe brought charges against four wardresses at Kirigiti for assaulting her by placing broken glass bottles into her vagina causing severe cuts. Njiri’s collarbone was also broken in the assault. While the defilement and injuries to the vagina were ignored, a charge was preferred for the broken collarbone – though this, too, appears not to have resulted in prosecution.<sup>61</sup>

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<sup>58</sup> Honorable E.H. Windley, C.M.G. to the Attorney General, 22 March 1956, AA 45/55/2/5A

<sup>59</sup> Secretary for African Affairs to the Attorney General, 24 December 1955 AA 45/55/2/5A

<sup>60</sup> AA 45/55/2/5A

<sup>61</sup> CAB 19/4 Vol II

**(v) Cases relating to the Mwea camps and 'dilution'**

71. The application of violence in the treatment of detainees in the Mwea camps, and the use of a system of 'compelling force' known as the 'dilution technique', has been referred to in previous statements to the Court. In this section I wish to refer the Court to new documentary evidence from the Hanslope files which is relevant to the issue of the extent of knowledge which officials in the Colonial Administration and Colonial Office had that the technique carried a risk of serious injury or death and their role in providing official sanction of and support for the abuses committed in the Mwea camps. In summary, these materials demonstrate that the authorities had knowledge of the risk of injury and death and yet they persisted with the implementation of the technique and its exportation to other camps. When they were unable to avoid the prosecution of camp officials they ensured no mention was made of the dilution technique by the Defence.

72. The evidence I will refer to relates to deaths that took place at the Mwea camps in September 1958, and the subsequent actions of the authorities in response to the investigations that took place. Over a period of ten days between 6 and 15 September 1958, three detainees died in three separate incidents at Aguthi Works Camp<sup>62</sup> and at Gathigiriri Camp.<sup>63</sup>

***The Case of Samuel Githu***

73. The first of these murders, of a detainee named Kabugi, occurred during the 'intake system', in which new arrivals at the camp were subjected to sustained abuse and beatings in an effort to 'confess and

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<sup>62</sup> Resident Magistrate, Nyeri, 'Criminal Case no. 203 of 1959, Judgment', 23 April 1959. AA 57/21A Vol. II Box 164, ff. 224-247: 224. The account of the incident here is purely constructed from the judicial verdict passed by this Magistrate and the AG's report of the previous CID investigation; witness accounts, and the details given by detainees' letters of complaint on the matter, are not here included where they go beyond the story finally accepted by the Court.

<sup>63</sup> DO in charge of Rehabilitation, Mwea Special Camps, to Secretary for African Affairs, 23 September 1958, AA 57A Vol. VIII, ff. 61-62; AA 57/21/2A, entire file.

cooperate', under the direction of Rehabilitation Officer Samuel Githu.<sup>64</sup> 'The detainees were squatting and Samuel himself went among the detainees and kicked and struck them,' before they were 'hustled' to the Screening office outside the Camp.<sup>65</sup> There they were again beaten and told to confess, and 'there was a good deal of screaming and shouting'. This carried on all morning, until eventually, all but 5 of the detainees made their 'voluntary' confessions and were admitted to the Camp.

74. The fate of the 5 was different. At 3 o'clock in the afternoon, Samuel Githu ordered them into a pit 8 feet deep. He said he would bury them alive, and for a quarter of an hour earth was kicked down onto them.<sup>66</sup> Being taken from the pit, they were given buckets filled with earth, their shirts tied with rope about the waist and soil poured in about their chest, and they were made to run repeatedly up and down the yard with the buckets on their heads; "each bucket filled with earth weighed about 50 lbs". After a few laps, Kabugi collapsed. As he lay on his face Samuel beat him, kicked him in his side and shouted at him that he must confess. "Kabugi did not reply and appeared to be unconscious". The other 4 detainees then confessed and were taken into the camp.<sup>67</sup>

75. Kabugi was left lying where he had fallen for two hours. He was seen by District Officer Duffy, who ordered that he be taken to the cells. The guards then took him to the Camp Dispensary, where three other detainees were "detained ... for injuries received from being beaten during the day".<sup>68</sup> Kabugi was found to be dead on arrival. Kabugi's

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<sup>64</sup> AG, Summary of CID Report, "Death of Kabugi Njuma at Aguthi Works Camp", 7 January 1959. AA 57/21A Vol. I Box 164, ff. 103-105: 103. The full CID report does not appear to be in the files; later it was claimed that the full report contained far more details and stories that encouraged the prosecution of Samuel Githu, but that these details were kept out of court by Government. See MAA to SG, 11 April 1959, AA 57/21A Vol. II Box 164, f. 265, and following correspondence, ff. 261-263.

<sup>65</sup> *ibid.*

<sup>66</sup> RM Nyeri, 'Judgement', AA 57/21A Vol. II Box 164, ff. 224-247: 246; AG, CID, *Death of Kabugi*, AA 57/21A Vol. I Box 164, ff. 103-105.

<sup>67</sup> AG/CID, 'Death of Kabugi', AA 57/21A Vol. I Box 164, ff. 103-105: 103; Image here is unclear, exact figure of weight is difficult to read, but it is clearly printed as '50 lbs' in the earlier draft summary of the report intended to be sent to the Secretary of State, AA 57/21A Vol. I Box 164, ff. 52-55: 53.

<sup>68</sup> Chief Secretary's Complaints Coordinating Committee Minutes, Case 980, 1 January 1959, CAB 19/4 Vol. II Box 207, ff. 20-21.

body was then delivered to Nyeri Hospital, without any identification or explanation.<sup>69</sup>

76. The death report was not filed until 16 September 1958, although the magistrate at the inquest acknowledged that the correct date was 5 September 1958.<sup>70</sup> And the cause of death was wrongly reported as 'pulmonary infection', when it should have been 'pulmonary infarction'.<sup>71</sup> At the inquest, European officers lied under oath in an effort to cover up the circumstances in which Kabugi had died. This led the magistrate to return a verdict of death from natural causes without questioning any other witness.<sup>72</sup>

77. There the story might have ended, but for a letter that was smuggled out of Aguthi, and delivered to the Secretary of State, Lennox-Boyd, in London the following week. The letter described the circumstances of Kabugi's death and named Samuel Githu as the man responsible.

78. Lennox-Boyd sent a query to the Governor of Kenya on the 25 September 1958 asking for any comments on the allegations.<sup>73</sup> The reply merely repeated the inquest findings.<sup>74</sup> But a second prisoners letter then reached Barbara Castle MP,<sup>75</sup> who pressed Lennox-Boyd. His requests to Nairobi for clarifications led to the re-opening of the investigation, this time through the CID.<sup>76</sup>

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<sup>69</sup> RM Nyeri, *Judgment*, AA 57/21A Vol. II Box 164, ff. 224-247: 234.

<sup>70</sup> RM Nyeri, *Judgment*, AA 57/21A Vol. II Box 164, ff. 224-247: 238.

<sup>71</sup> SJ Oakley, 'Death Report Details', 16 September 1958. AA 57/21A Vol. I Box 164, f. 41, also f. 127. The submission of the Report to CID was a standard procedure, so that the police could close any files they might have on the deceased (Governor to SoS, 25 April 1959, AA 57/21A Vol. II Box 164, ff. 35-36); whether or not the police received this report would be a significant and mysterious detail regarding higher administrative knowledge, discussed below.

<sup>72</sup> EJ Carthew, RM Nyeri, 'Inquest no. 19/58', 19 September 1958. AA 57/21A Vol. I Box 164, ff. 42-43: 43.

<sup>73</sup> The missing documents are frequently mentioned in subsequent communications. The Secretary of State's missing inquiry was Savingram no. 1677 of 25 September 1958, according to the reply sent one month later. This reply is copied to the MAA, whose records form the bulk of the files currently under examination; a question mark is written above the reference to Savingram no. 1677. It appears that any of the Secretary of State's direct communications with the Governor that were not copied to other departments are currently not available for investigation. See Governor to SoS, 25 October 1958, AA 57/21A Vol. I Box 164, f. 44.

<sup>74</sup> *ibid.*

<sup>75</sup> Detainees to SoS, 'Hue and Cry from Aguthi Detainees', 10 October 1958. AA 57/21A Vol. I Box 164, ff. 192-197.

<sup>76</sup> Governor to SoS, 5 November 1958, AA 57/21A Vol. I Box 164, f. 45. Again, the initial

79. The Attorney General, in concluding that “the medical evidence would clearly not sustain a prosecution for murder or manslaughter”, proposed instead to prosecute Githu for three counts of assault occasioning actual bodily harm involving Kabugi and two other prisoners.<sup>77</sup>

80. Githu's prosecution featured prominently in a Commons debate of 24 February 1959. Reginald Paget, MP, noted that:

'this is the sixth case of which I am aware where no murder charge has been brought ... each time one is told that it is very unfortunate and that a man did fire a revolver but, unfortunately, the damage done to the heart of the deceased was such that it was impossible for the doctor to say that the heart might not previously have had some natural defect from which the chap might have died, and that therefore a charge of murder cannot be brought and the Government are very reluctantly obliged to accept the plea of common assault'.<sup>78</sup>

81. Resident Magistrate O'Connor sat in judgement in April 1958. Githu pleaded not guilty, but in taking witness statements from many of the guards, prisoners and officers the Magistrate concluded that he was “satisfied that the story of the defence [was] a tissue of falsehoods deliberately told”. O'Connor found Githu guilty on all three counts, and sentenced him to two years' imprisonment on each count, to be served concurrently. In passing his sentence, the Magistrate noted that Githu “threatened [the prisoners] with burial alive and in fact had them partially buried ... His behaviour lacked any vestige of humanitarian feeling”, and that the case had only arisen due to the letters written by detainees; “it appears that otherwise it may never have seen the light of day”.<sup>79</sup>

82. Of particular note were the arguments raised as factors of mitigation following the conviction. Arnold John Foster, speaking on behalf of the Ministry of African Affairs, gave a character witness in which he stated

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communication (Savingram 1814 of 28 October) is missing from the file, a question mark written above the reference to it in the MAA's copy of the Governor's reply.

<sup>77</sup> AG to Governor, 'Death of Kabugi son of Njuma at Aguthi Camp', 8 January 1959, AA 57/21A Vol. I Box 164 ff.. 99-102.

<sup>78</sup> Parliamentary Debate, 'Prisons and Detention Camps, Kenya', Reginald Paget, MP, 24 February 1959, §§ 1025-1026.

<sup>79</sup> RM O'Connor, 'Judgment', AA 57/21A Vol. II Box 164, ff. 224-247; 245-246. The second page of this judgement is missing from the file.

that “I am instructed by the Minister to say that the services of such a man are very sorely needed by Government on account of his character and past work on behalf of Government”.<sup>80</sup> Githu's lawyer, O'Beirne, noted that despite a previous conviction for assault a year before, “[Githu's] service in Government continued. Government did not on that occasion consider the conviction in any way serious'. In the current case, O'Beirne asked 'that Court excludes from mind the matters such as carrying buckets of earth etc. The imposition of hard labour was authorised ... The lack of care given to Kabugi does not relate to the offence”, and that “here we are dealing with a person not a lawyer. He was aware he was permitted to use a certain amount of force ... It was job of accused to break hard core of Mau Mau”.<sup>81</sup>

### ***Reactions to Githu's conviction and the admission of institutionalised violence***

83. Throughout the hierarchy of Kenya's Colonial Administration it was felt that Githu's actions had been mild, that standard, approved practice in the camps entailed far harsher treatment, and that Githu had been the victim of political manoeuvring because the Secretary of State was under pressure in the House of Commons. In stating these views in statements and letters, Kenya's most senior officials threw light upon the character of 'compelling force' being deployed in the detention camps.

84. During the investigation of the case, the Senior Superintendent of Prisons Cowan and Assistant Commissioner of Prisons Campbell conducted a report on intake procedures at Aguthi. They witnessed conditions in the camp, and in their 'rather alarming report' condemned the slackness and weakness of the camp.<sup>82</sup> Cowan wrote that

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<sup>80</sup> *Ibid.* f. 244. The Governor later wrote to the Secretary of State to give details of this assault, 'in case it is suggested that the Kenya Government was at fault in continuing to employ him as a Rehabilitation Assistant after such a conviction', which had taken place on a villager in Fort Hall District who had been out after curfew. Gov to SoS, 25 April 1959, AA 57/21A Vol. II Box 164, ff. 34-36.

<sup>81</sup> RM O'Connor, 'Judgment', AA 57/21A Vol. II Box 164, ff. 224-247: 245-246.

<sup>82</sup> MD to MAA, 14 November 1958, AA 57/21A Vol. I, f. 154.

detainees who refused to confess were taken out of sight of the others and beaten with batons and buckets of earth. The inspectors held discussions with other officials “in which the merits of flogging were considered”. The fact that beatings took place within the sight of civilians was specifically condemned. In a final recommendation, Cowan stated that “a European Rehabilitation Officer, directly responsible to the Provincial Commissioner to avoid the possibility of squeamish superiors, should take over from the Senior African officer at present stationed at Aguthi”.<sup>83</sup>

85. Immediately following this report the decision was taken to enhance the harshness of the intake regime, and officially establish at Aguthi the 'Mwea Technique' devised by Cowan himself in collaboration with Terence Gavaghan.<sup>84</sup>

86. However, the Governor instructed that such a policy should only be instituted after the CID investigation, to be applied only if no court case emerged; 'if on other hand, it is necessary to reopen the inquest ... Then this procedure will have to be postponed for the time being and we may have to think of alternatives, i.e. the possibility of doing this exercise at Kandongu rather than at Aguthi'.<sup>85</sup>

87. Senior officials were concerned about the publicity the use of the “Mwea Technique” may attract as is clear from a note found among the Hanslope papers, this concerning a discussion between the Attorney General and the Baring:

“HE and I were both worried as to whether the geographical situation of Aguthi might not get undesirable publicity for the Mwea technique. As practised at the Mwea camps under Gavaghan's rigid control, we were fairly safe. Those camps were

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<sup>83</sup> SSP Cowan, 'Report on Aguthi Works Camp', 14 November 1958, AA 57/21A Vol. I, ff. 155-158. This statement may be of particular use in light of the standard defence that African guards committed abuses when they lacked European supervision (a comment frequently made with regards to Samuel Githu); Cowan suggests that appropriate European supervision would in fact be desirable to aid the commission of abuse.

<sup>84</sup> MD, 'Note for File', meeting between MAA, MD, USD, C/Prisons, AC Prisons, Cowan and Garland, 17 November 1958, AA 57/21A Vol. I, f. 150. On the development of the Mwea Technique, see Elkins, pp. 319-327.

<sup>85</sup> MAA to MD, 18 November 1958, AA 57/21A Vol. I, f. 149.

remote and, therefore, there was little danger of the technique coming to the knowledge of biased journalists and thus receiving adverse publicity ... We must be more than ever on our guard as to the possibility of adverse publicity being given to the Mwea technique".<sup>86</sup>

88. The consideration of officially applying the Mwea Technique to Aguthi was particularly relevant because of fears that Githu's lawyers might raise the Mwea Technique in making a case for appeal.<sup>87</sup> Solicitor General Diarmaid Conroy therefore met with Githu's Counsel, O'Beirne. Following that meeting Conroy minuted that:

"we agreed that if his client were convicted, he would not call evidence about the Mwea technique".<sup>88</sup>

89. In return, Conroy provided O'Beirne with a written opinion on the legal use of force that "will enable him to say in mitigation (if his client is convicted) that the dividing line between legally permissible force and illegal violence may be a little difficult for a good but simple chap like Githu to understand, and would the magistrate bind him over?"<sup>89</sup>

90. The Court is further referred to the changes that the Minister for African Affairs made to a draft of Githu's character reference, to be read out in court. The following adjustments in language are of considerable relevance:

Original: 'It will be readily appreciated that if such men on arrival at Aguthi are met with **a flabby and milksop** approach their will will never be **broken**'  
Amendment: 'It will be readily appreciated that if such men on arrival at Aguthi are met with **an apathetic** approach their will will never be **rehabilitated**'

Original: 'The Government **has always been under fire for having so many persons in detention. Can it be wondered that it** uses every legitimate method to **break** the Mau Mau dominated will...?'  
Amendment: 'The Government **therefore** uses every legitimate method to **influence** the Mau Mau dominated will'

Original: '**The better these conditions are fulfilled the less need there is of forceful compulsion. Where, however, an individual fails to swim with the tide he is compelled by all reasonable force to do so. The restrictions on this force**

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<sup>86</sup> AG to MAA, 21 November 1958, AA 57/21A Vol. I, f. 142

<sup>87</sup> Permanent Secretary to MAA, 11 April 1959, AA 57/21A Vol. II Box 164, f. 266

<sup>88</sup> SG to MAA, 18 April 1959, AA 57/21A Vol. II Box 164, f. 254

<sup>89</sup> *Ibid.* See also SG, 'Opinion on the Use of Force in Prisons and Detention Camps', 10 April 1959, AA 57/21A Vol. II Box 164, ff. 255-259

**are clearly laid down, and in general it is possible rapidly to determine the man who is putting up a token of resistance from the man who will not give up until broken, if then'**

Amendment: '[Cut entirely]'

Original: **'It will be appreciated that 'overpowering and/or compelling force' has sometimes to be used on disobedient detainees, and this is necessary to enforce discipline in compliance with lawful orders. I feel that if the incidents for which Samuel has been convicted are set against this background they will appear in their correct perspective'**

Amendment: '[Cut entirely]'.<sup>90</sup>

91. The efforts made to prevent the Mwea technique being discussed in court are significant because they involve the most senior members of the colonial administration. Among many more junior officials it was felt that:

"Githu has been thrown to the wolves ... That any rough stuff which occurred at Aguthi was mild compared to the reception treatment given to detainees in the Mwea with Government authority and that the AG's refusal to allow evidence to be given on the Mwea procedure has very seriously hampered the Defence".<sup>91</sup>

92. Gavaghan himself reported on the case, saying:

"my own experience in the Mwea Camps does not seem to differ widely ... At any time I could have been in exactly the same danger of prosecution as he has been. Government, I believe, chose both of us, among others, for a certain degree of ruthlessness. Certainly in the case of the Mwea Camps Senior Government Officers were well aware of the policy adopted and the method of putting it into effect".<sup>92</sup>

93. Provincial Commissioner Wilson was far fiercer in his condemnation of the Government's treatment of Githu. 'Unlike the Magistrate in this case,' noted PC Wilson:

"I have had the advantage of reading reports of the system generally adopted. It would be a fair thing to say that since we took on the task of attempting to rehabilitate the 'hard core' of Mau Mau, success was only achieved by the adoption of a technique of 'bustling' detainees out of the slough of despond into which they had allowed themselves to sink, and further that this technique inevitably entailed manhandling to a greater or lesser degree depending on the state of mind of the detainees concerned."<sup>93</sup>

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<sup>90</sup> Regarding the two alterations of 'broken' and 'break', it is important to reflect on the Solicitor General's legal opinion on the use of force provided to the defence, which specifies that an officer 'must never use force to break a prisoner's will to resist'. SG, 'Opinion on the Use of Force in Prisons and Detention Camps', 10 April 1959, AA 57/21A Vol. II Box 164, ff. 255-259.

<sup>91</sup> Permanent Secretary to MAA, 11 April 1959, AA 57/21A Vol. II Box 164, f. 266.

<sup>92</sup> Gavaghan to PC Nyeri, 27 April 1959, AA 57/21A Vol. II Box 164, ff. 220-221.

<sup>93</sup> PC Central to MAA, 1 May 1959, AA 57/21A Vol. II Box 164, ff. 209-216: 209. This lengthy letter, although extensively quoted here, is relevant in its entirety.

94. Wilson described the 'successful' use of the same intake procedure twice a week prior to the death of Kabugi, and in his specific case, noted that he and his fellow inmates:

“were stubborn and determined to resist authority. It can fairly be assumed that the camp staff were by then in no mood to be soft-hearted with them”.<sup>94</sup>

95. Wilson stated that 'Githu acted completely in accordance with normal practice at the camp,' which was notably cited as overly lax in the weeks following Kabugi's death, 'and by doing so caused no harm but achieved 80% success in the task which Government had given him'. With the six detainees, including Kabugi, still refusing to confess, 'the treatment then of necessity became less velvet-gloved'.<sup>95</sup>

96. Again emphasising that the Magistrate was not permitted to consider 'normal intake practice', Wilson crystallised the overwhelming impression which is derived from the Government's handling of the case discussed above: “I have reason to know that the Defence refrained from depicting the procedure too vividly in the belief that to do so might lead to embarrassment to Government”.<sup>96</sup>

97. In his conclusion, Wilson wrote:

“I am convinced that the Magistrate was totally unaware of the actual conditions pertaining to intakes ... Githu was doing his duty ... He had seen harsher treatment meted out in the Mwea, where he had been sent to study the form ... It would definitely be in Kenya's internal, as opposed to external political interest, not to commit him to prison for this offence. I know that in these views I have the support of hundreds of Europeans and Africans”.<sup>97</sup>

98. Finally, with direct significance to the events that followed the conviction, Wilson noted the potential for further prosecutions connected to the case:

“I feel obliged to sound a warning that this case is dynamite in the Province, and has already done serious harm ... Further prosecutions, however justified, would make the task of Government officers most difficult ... A further prosecution on the facts of the Githu case might well be disastrous .... This is no nebulous effusion of idealism.

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<sup>94</sup> *ibid.* f. 211.

<sup>95</sup> *ibid.* f. 213.

<sup>96</sup> *ibid.*

<sup>97</sup> *ibid.* f. 214-215.

It contains the elements over Government's support for its officers, of horror at the sentence meted out...and of great fear for the future. Actions and not words will alone restore confidence in Government. We are doing our best - a lot depends on the next moves in Nairobi".<sup>98</sup>

99. The possibility of further charges had first been mentioned in the Attorney General's draft report on the investigation in December 1958.<sup>99</sup> In his judgement, the Magistrate at Githu's trial noted that "charges could have been brought against more than the accused", that "Certainly it does not appear that accused superior officer looked with other than favour on the assaults', and roundly condemned Duffy's clear perjury when he gave his witness evidence in court: 'It is clear that Mr Duffy continually lied ... The accused is a glib liar. Mr Duffy is an inexperienced liar". In the House of Commons, these statements were specifically raised and the fate of Oakley and Duffy questioned.<sup>100</sup> But as Githu's appeal failed, no further prosecutions were pursued.<sup>101</sup>

100. Further violence and abuse in the Mwea camps over the years 1957 to 1959 brought these questions to a head several more times, each incident bringing further revelation about the institutionalised nature of abuse, beatings and tortures and the widespread condoning of such actions by senior officials. However, in the face of such revelations the authorities persisted with the implementation of the dilution technique and its expansion to other camps.

## **vi) New evidence from the International Committee of the Red Cross archives**

101. Recent research at the archives of the International Committee of the Red Cross, in Geneva, has revealed new documentary evidence relevant to the extent of knowledge and sanctioning of abuses by Kenya's Governor. Read in conjunction with the Hanslope Disclosure,

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<sup>98</sup> *Ibid.* A further letter of objection was sent by Humphrey Slade to the Governor's Private Secretary, 27 July 1959, AA 57/21A Vol. II Box 164, f. 78

<sup>99</sup> AG, Draft telegram to SoS (not sent), December 1958, AA 57/21A Vol. I Box 164, ff. 52-55

<sup>100</sup> Parliamentary Debate, 'Holla Detention Camp', Barbara Castle, MP, 16 June 1959, §§304-307

<sup>101</sup> Governor to Secretary of State, 14 July 1959, AA 57/21A Vol. II Box 164, f. 9

the ICRC papers shed further light on the actions of the senior members of Kenya's Colonial Administration. I wish now to briefly refer the Court to the relevant documents.

102. In the summer of 1957, the Colonial Administration and the Colonial Office started to consider seriously the problem of 'hard core' detainees. Much of the discussion considered methods of rehabilitation. A report by the Permanent Secretary for Community Development, dated 12 July 1957, included descriptions of beatings and water treatment, all of which was said to constitute a 'psychological shock'. The Report also noted that "were the methods employed to become public knowledge and, in view of the large numbers of people involved, it is surprising they are not more generally known already. Then the disgust expressed by the Judge in the Court will be mild in comparison".<sup>102</sup> A letter from Baring to Lennox-Boyd in June 1957, for example, noted how "[we] can probably go further with the more fanatical Mau Mau in the way of release than we had ever hoped eighteen months ago. But to do so there must with some be a phase of violent shock".<sup>103</sup>

103. Having considered the political issues that might arise from such treatment, Evelyn Baring, with the backing of the Attorney-General and the Secretary of State, wrote to Henri-Philippe Junod of the ICRC, a renowned international specialist in penology, to request his advice and assistance.<sup>104</sup> Junod was a personal friend of Baring, and had been part of the ICRC delegation that had visited Kenya earlier in 1957. In his letter, Baring confessed that:

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<sup>102</sup> See, for example, AA 57A Vol V, p. 84, Report by the Permanent Secretary for Community Development, 12 July 1957

<sup>103</sup> This letter was particularly concerned in providing legal cover for the 'dilution technique' developed by Gavaghan and his staff. Baring stressed that Gavaghan could only deal with the worst detainees 'if the hard cases are dealt with on their first arrival in a rough way'. AA 57A Vol V, p. 4, Baring to Lennox-Boyd, 25 June 1957

<sup>104</sup> ACICR B AG 225 108-001, Baring to H-P. Junod, 9 July 1957. (Copies in AA 57A Vol V Box 158, p. 87, and TNA CO 822/1251/1). AA 57A Vol V Box 158 pp.88, note by E.N.G-J, 5 July 1957

“It has been found that with these men – and their number varies with each batch from Manyani or Mageta Island – it is necessary to use a degree of force. We have done this with great care and in the open, using European officers only and with a medical examination before and after. But the force used is robust and not merely restraining.”<sup>105</sup>

104. On receipt of this letter, Junod forwarded a copy of the text to the ICRC asking for their opinion on a private visit.<sup>106</sup> The response was clear: in a telegram dated 9 August 1957, the ICRC informed Junod that such a mission was impossible. A letter that followed explained how:

*"Quoique votre correspondant ne donne pas de détails précis sur ces méthodes, le fait qu'elles soient qualifiées de "brutales" ("the force used is robust and not merely restraining"), le fait qu'un examen médical soit nécessaire avant et après le traitement, le fait enfin que le Gouverneur du Kenya semble éprouver certaines appréhensions au sujet de leur légitimité et de leurs conséquences politiques éventuelles, montre qu'il s'agit là de méthodes de violence physique présentant certains dangers pour l'individu qui y est soumis et que nous ne saurions, en aucun cas, les approuver ni les accepter. Les théories modernes du droit excluent les peines corporelles à l'égard des détenus et les Conventions de Genève les prohibent expressément en ce qui concerne les personnes qu'elles protègent. A supposer qu'un délégué du CICR, dans l'exercice de ses fonctions, eût à constater l'usage de semblables méthodes, il devrait sans aucun doute en demander la suppression."*<sup>107</sup>

105. In the view of the ICRC, the role of delegates was to guarantee the humane treatment of prisoners and detainees visited, not to advise on the methods of forcefully changing their attitudes, even if this was described as 'rehabilitation'.

106. Following the wishes of the ICRC, Junod dutifully relayed the message to Baring.<sup>108</sup> In a letter dated 19 August 1957, he wrote how it was “quite impossible for me to act in a personal capacity without this action being interpreted as “of the International Committee of the Red Cross”.<sup>109</sup> He commented specifically that the measures were in breach of the Geneva Conventions:

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<sup>105</sup> Baring to Henri-Philippe, 9 July 1957, Junod, AA 57A Vol V Box 158, p.87

<sup>106</sup> Henri-Philippe Junod to ICRC, Geneva, 29 July 1957, ACICR B AG 225 108-001, pp.24-5.

<sup>107</sup> Léopold Boissier to Henri-Philippe, Junod, 13 August 1957, ACICR B AG 225 108-001

<sup>108</sup> Henri-Philippe Junod to ICRC, Geneva, ACICR B AG 225 108-001, 29 July 1957 and Henri-Philippe Junod to ICRC, Geneva, 13 August 1957, B AG 225 108-001

<sup>109</sup> H-P Junod to Baring, 19 August 1957, ACICR B AG 225 108-001, p. 11

“modern theories of penal action exclude corporal punishment, which is expressly [sic.] prohibited by the International Conventions concerning detained persons. Should my presence have been possible, I would have been in the complete and clear obligation, not only as Delegate of the ICRC, but also as a man whose life has been largely devoted to penology and criminology, to ask for the abandonment of these measures, which I consider as generally harmful when applied to adult persons.”<sup>110</sup>

107. The extent of the abuse taking place in Kenya’s detention camps did not again become clear to the ICRC until the Hola incident in February 1959.<sup>111</sup> In the wake of public outcry over Hola, and particularly over the alleged cover-up, the British Government requested the publication of the ‘General Report on the Mission of the International Committee of the Red Cross to Kenya’ of 1957.<sup>112</sup> The ICRC requested authorisation for a second mission to Kenya, which was granted.<sup>113</sup>

108. The second ICRC mission, from June to July 1959, was led by J.M. Rubli and Henri-Philippe Junod. Over a period of two weeks, the delegates visited 8 camps and saw a total of 1,830 detainees. Highlighting the “serious uneasiness [that] prevails in most of the places of detention”, the delegates drew special attention to the question of corporal punishments:

“the ICRC, for its part, cannot but make the most express reservation as to the advisability of punishment of this kind for, in addition to the humiliation it causes, which is already regrettable, it may sometime give rise to serious abuse. This is what seems, unfortunately, to have happened in Kenya; the delegates heard many complaints of bad and even cruel treatment which the detainees asserted they had received from their guards of during questioning by the Special Branch of the police. Although the delegates realized that the complaints made by detained persons were sometimes exaggerated, nevertheless they noticed unmistakable traces of brutal treatment.”<sup>114</sup>

109. While the report did not explicitly implicate superior officers in the abuse of detainees, instead noting how “[abuses] of this kind were committed by persons at the lower level of the prison administration and are due to the lack of control on the part of the subordinate

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<sup>110</sup> H.P. Junod to Baring, 19 August 1957, ACICR B AG 225 108-001.

<sup>111</sup> ‘Note for the ICRC’ by G.C. Senn, 15 February 1959, ACICR B AG 225 108-001.

<sup>112</sup> Under-Secretary of State to Léopold Boissier, 2 March 1959, ACICR B AG 225 108-001.

<sup>113</sup> R. Gallopin to the Under-Secretary of State, 11 March 1959, ACICR B AG 225 108-001; W.L. Gorell Barnes, Colonial Office to R. Gallopin, 31 March 1959, ACICR B AG 225 108-001; Under-Secretary of State to R. Gallopin, 4 May 1959, ACICR B AG 225 108-001; ACICR A PV, Conseil de la Présidence, séance du 16 juillet 1959.

<sup>114</sup> ACICR B AG 225 108-001.

personnel”,<sup>115</sup> the ICRC were well aware of Baring’s candid admissions in his earlier correspondence with Henri-Philippe Junod.

## **Conclusion**

110. The Court will form its own appreciation of the factual evidence which I have presented in this statement and my previous two statements. As a historian I am of the view that the documentary evidence demonstrates that both the Colonial Administration sought to resist and thwart investigations and prosecutions into detainee abuse during the Kenya Emergency. It did so initially via the use of the 1955 Amnesty and, thereafter, the CCC used the mechanism of Preliminary Investigations to exclude the Police and CID from conducting independent investigations. The Colonial Office was aware of these practices and did not question them, even when faced with the detailed evidence of Arthur Young and MacPherson. As a result, the prosecutions and investigations which did take place were in the main compromised and ineffective.

111. Finally, with regard to the dilution technique, the Hanslope Disclosure reveals that both the Colonial Office and the Colonial Administration were aware of the serious risk of injury or death and yet persisted with its implementation in other camps, including via the Cowan plan. When prosecutions arose they pinned the blame on camp guards and studiously avoided reference to superior orders and the Mwea Technique in judicial proceedings.

112. Finally, I would comment that I have read the Defence which has been served in this case, which replicates the factual position advanced in the Defence’s skeleton argument. I reiterate the criticisms I made in my second statement with regard to the Defendant’s version of the relevant facts which I consider to be highly inaccurate. In my

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<sup>115</sup> See ACICR A PV, Conseil de la Présidence, séance du jeudi 16 juillet 1959, p. 2 and B AG 225 108-001, ‘Mission a Londres des Drs Junod et Rubli, 6-8 août 1959’; ACICR B AG 225 108-002, ‘Second Mission’, p. 4.

view, by reference to the vast quantity of documentary evidence (and the substantial witness evidence which is still available) the Court would be able to determine the relevant factual disputes in this case.

**STATEMENT OF TRUTH**

This statement is true to the best of my knowledge and belief and I am aware that it will be placed before the Court.



Signed .....

**DAVID ANDERSON**

Dated ...18 June 2011 .....

1. Party: Claimants
2. Witness Name: Huw Charles Bennett
3. Statement No.: 2
4. Exhibits: 1
5. Dated: 1 April 2011

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

**CLAIM NO: HQ09X02666**

**BETWEEN:**

**NDIKU MUTUA & OTHERS**

**Claimants**

**- v -**

**FOREIGN AND COMMONWEALTH OFFICE**

**Defendant**

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**WITNESS STATEMENT**  
**OF HUW CHARLES BENNETT**

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I, HUW CHARLES BENNETT, of the Joint Services Command and Staff College, Faringdon Road, Shrivenham, Swindon, SN6 8TS WILL SAY AS FOLLOWS:

1. I have reviewed the FCO's Skeleton Argument which has been served in this case. In particular, I have reviewed the factual assertions made and inferences drawn by the FCO with regard to the role of the British Army during the Kenya Emergency.

**The Hanslope Disclosure**

2. In addition, I have reviewed as many documents as possible from the Hanslope disclosure in the short time available. However, I have only been able to review a small proportion of that which has been disclosed. I have read Professor Anderson's supplementary statement and I agree that the content of these new

documents is remarkable and will significantly affect public understanding of the Kenya Emergency. The documents I have seen considerably strengthen the evidence of close collaboration of the British Army with Colonial Security Forces whom they knew were systematically abusing and torturing detainees in screening centres and detention camps throughout the Emergency. I will refer to specific examples of documents below by way of example, I refer those documents marked '**HCB 1**'. These are highly relevant to this case.

3. I have also read Prof Anderson's statement and I agree with his comments and his concerns as to the way in which the Hanslope documents were rapidly reviewed by those who have little understanding of the historical context. I am also of the view that it would take many months of work to fully review and analyse the volume of detailed documentation which has now been disclosed.

#### The Defendant's Skeleton Argument

4. At the outset I wish to state that I agree with Prof Anderson in that the historical analysis presented in the Defendant's skeleton argument is one sided and incomplete. Its authors appear to have reconstructed events on the basis of a selective and incomplete reading of the available documentation with little knowledge of historical context and without a full appreciation of the range of sources and evidence which are available, including surviving witnesses to the events themselves. I wish to deal with the key points raised in order.

#### The Structure of the British Army

5. The FCO argue at para 105. that the Kenya Regiment were a territorial force raised in the Colony of Kenya, and was subject at all times to Kenyan law. This is correct, however, it oversimplifies the position. All British soldiers have a regimental or corps affiliation, and the regiment or corps is in turn attached to a particular geographical area. However, all British soldiers remain at all times

subject to the jurisdiction of the common law.<sup>1</sup> At the same time, they were subject to the Army Act. Therefore, while it is correct to say that Kenya Regiment personnel were subject to Kenyan law, they were also subject to the Army Act and within the normal military chain of command. Importantly, both the Kenya Regiment and the King's African Rifles reported directly to the War Office, via the military chain of command, the Governor was not part of that chain of command and had no operational control over them.

6. In operational matters, the British Army had full command and control of Kenya Regiment activity. For example, the following minute of a War Council meeting states:

“The COMMANDER IN CHIEF said that preliminary arrangements had been made for the reorganisation of the Kenya Regiment. He hoped to find volunteers for duty as District Officers (Kikuyu Guard) by 1<sup>st</sup> November, and as Field Intelligence Officers and for Detention Camps by 1<sup>st</sup> December, although it might be necessary to direct men to Prisons service.”<sup>2</sup>

7. In disciplinary matters also, members of the KR and KAR were dealt with by Court Martial as were soldiers from the “regular forces”. The discussions surrounding the prosecution of Kenya Regiment member Sergeant Jeremy Allen reveals the thinking about jurisdiction. The War Office stated in a letter dated 12 September 1953 that:

“..a Court-Martial has jurisdiction to try such a case because Sergeant Allen was attached to a regular unit (K.A.R.), was subject to military law under the Army Act and at the relevant time the Forces in Kenya were on active service. I am told that, shortly after his arrival in Kenya, the Commander-in-Chief reached an agreement with the Attorney-General that in each case of serious misconduct by a member of the Security Forces which was triable under both civil law and by court-martial, they would discuss the case and decide by which method action should be taken. Normally if the case was one which reflected on the discipline of the Army (including the Kenya Regiment), then the policy would be to deal with it by Court-Martial.”<sup>3</sup>

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<sup>1</sup> Charles Townshend (1986) *Britain's Civil Wars: Counterinsurgency in the twentieth century*. London: Faber and Faber, p19.

<sup>2</sup> WAR C 14/1 Vol. II: Extract from Minutes of War Council Meeting, 15/10/54.

<sup>3</sup> CO 968/424: Letter from [illegible], War Office, to P. Rogers, Colonial Office, 12/9/53.

8. A telegram from the Governor's Deputy confirmed this policy.<sup>4</sup> The new archive evidence demonstrates that this policy was implemented in practice as explained further below.<sup>5</sup>

### Disciplinary Control

9. There is clear evidence that the military authorities exerted disciplinary control over the Kenya Regiment and the KAR. It appears to have been the modus operandi for both the Special Investigations Branch of the Royal Military Police and the Kenya Police CID to collate inquiry files in cases of military crimes, as in the case of a 3<sup>rd</sup> KAR shooting incident at Karatina in July 1954.<sup>6</sup> These files were sent to the Chief Secretary's Complaints Co-ordinating Committee for consideration. Importantly, the records of the Chief Secretary's Complaints Co-ordinating Committee show that all cases of crimes committed by the Security Forces were referred first of all to the Army Legal Services before proceedings were instituted in the civil courts.<sup>7</sup>
10. It should, at this juncture, be mentioned that there are a significant number of papers, including witness statements, relating to the inquiries made by the military police into an alleged murder committed by Sergeant Allen of the Kenya Regiment in 1953. These papers offer considerable insights into the understanding of operational law and the rules of engagement applied in the Special and Prohibited Areas. Their retention has considerably hindered the academic understanding of this very important issue in the history of the Emergency.<sup>8</sup> This is the only known case where a soldier was charged for violating the rules of engagement and thus the way it was handled is of exceptional importance.

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<sup>4</sup> CO 968/424: Telegram from Governor's Deputy to Secretary of State, 12/12/53.

<sup>5</sup> EMER 45/55/2A Vol. II: Letter from John Taylor, CID, to The Chief Secretary, The Secretariat, 5/5/54.

<sup>6</sup> CAB 19/4 Vol. I: Record of the Chief Secretary's Complaints Co-ordinating Committee, 12/7/54.

<sup>7</sup> CAB 19/4 Vol. I: Record of the Chief Secretary's Complaints Co-ordinating Committee, 31/5/54.

<sup>8</sup> CO 968/424: Summary of evidence concerning the Sergeant Allen case, 11/5/53 to 29/5/53.

11. The Army Legal Services and the Attorney General consulted on all cases before proceedings were instituted. For example, they agreed on an alleged rape by the Royal Engineers in September 1954 being tried under the Army Act.<sup>9</sup> However, there are also examples of the Army agreeing to personnel being tried before the civilian courts. For example, Fusilier Leo James Hoyle of the Royal Irish Fusiliers was alleged to have committed murder, and his case had been arranged to be heard in the civil courts.<sup>10</sup> It is currently impossible to evaluate the overall percentage of cases referred to the civilian courts as the released evidence is incomplete.
  
12. These examples show that British battalions, the King's African Rifles and the Kenya Regiment were regularly subjected to British military law in the form of the Army Act. This confirms my earlier view that for operational and disciplinary purposes all military forces in Kenya fell under British Army control. Thus the position, in short, was that in peacetime Colonial law applied to discipline to the KR and KAR but during the Kenyan Emergency this was displaced by the Army Act. So all disciplinary decisions rested with Erskine and his successors.

### Command Structure

13. The FCO claim in para. 206 that General Erskine was only responsible for “the conduct of all military measures”, therefore excluding detention camps, screening camps or other policy areas in the “civilian sphere.” This distinction between the civil and military spheres is based on a fundamental misunderstanding of the nature of counter-insurgency conflict, where the military are normally deeply involved in apparently civilian spheres, simply because the civilian agencies cannot function on their own. This was the case in Kenya, where General

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<sup>9</sup> CAB 19/4 Vol. I: Record of the Chief Secretary's Complaints Co-ordinating Committee, 20/9/54.

<sup>10</sup> CAB 19/4 Vol. I: Record of the Chief Secretary's Complaints Co-ordinating Committee, 8/8/55.

Erskine and his subordinates frequently exerted a decisive influence over civilian policy areas.

14. More specifically, the War Council, created in 1954, in which Erskine and his successors played a central role, approved military and civilian operations, including screening, interrogations, villagisation and detention policies in the knowledge that widespread abuses were ongoing. In addition, the Army played a central role in the Provincial and District Emergency Committees which I outline at para. 7 to 9 of my first statement. The records of the War Council, the Provincial and District Emergency Committees and the Intelligence Committees provide numerous examples to demonstrate significant military influence over civilian policy during the Emergency. Furthermore, military and civilian intelligence structures were intertwined to the point that Military Intelligence Officers were embedded in Police Special Branch but remained under the Military Chain of Command (a fact confirmed by Frank Kitson in his interview with the FCO's lawyers). I explain this in more detail below.
15. It is also of central importance to note that Erskine and his military successors retained full operational control over all Kenyan security forces, regardless of where they were operating, throughout the Emergency. This included both the Police Special Branch and the Home Guard, both of whom were known by the Army to abuse detainees during interrogations and screenings.
16. General Erskine influence spread to matters of discipline of the civilian forces, including Home Guard posts. For example, the Record of the Chief Secretary's Complaints Co-ordinating Committee of 15/11/54 states:

“The Deputy Public Prosecutor reported that in August the Attorney General had arranged with the Assistant Director of Army Legal Services for proceedings to be instituted by way of Court Martial against Corporal Hermitte who was in charge of the Kikuyu Guard Post at the time of the alleged killing [of Kimani s/o Wainaina, in Kiambu]. Subsequently, however, the Commander-in-Chief,

having been advised by the Army Legal Services that there was insufficiently clear evidence against the Corporal, directed that Court Martial proceedings were not to be taken. The matter was further considered by the Governor and the Commander-in-Chief, as a result of which the previous decision was confirmed.”<sup>11</sup>

17. Furthermore, in relation to the specific aspects of this case, the new evidence further demonstrates that the Army participated in screening and interrogation which were not simply ancillary to military operations. These points are addressed below.

#### Army participation in screening and interrogation

20. At para. 229 the FCO claim that there is no substantial evidence to show British Army involvement in screening “other than the most cursory inspection of passes and the like.” The FCO also claim at para. 230 that British Army personnel were never deployed into camps for screening purposes.

21. The evidence I have seen, including highly significant new documents from the Hanslope disclosure, do not support that assertion. In addition, the archival sources do not support the FCO’s proposition that there was a clear-cut distinction between interrogation and screening. In many cases in the documents, the terms are used interchangeably. More importantly, the inference that screening was solely an Administration policy directed at rehabilitation is incorrect. The new evidence further demonstrates that screening camps were exploited for operational intelligence which was used by the Army to launch offensive operations.

22. In my first statement at paragraphs 25 to 29 I explained that the Army played an important role in screening activities in the field. Although formally the Army were not meant to screen individuals themselves in practice they did so as is acknowledged in November 1952 by the General Officer Commanding noted that: “the Army had been used for carrying out certain functions that properly belonged

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<sup>11</sup> CAB 19/4 Vol. I: Record of the Chief Secretary’s Complaints Co-ordinating Committee, 15/11/54.

to the Police, e.g. searching of huts and screening of Africans.”<sup>12</sup> Furthermore, on these missions the Army briefed the screening teams as on the type of information they needed.<sup>13</sup> In addition, the military were sometimes in charge of screening operations, such as Operation Hoover in Kahawa in July 1954. I note that in the interview with Frank Kitson served by the FCO, he denies that he was involved in screening during that operation but the document clearly states on page 2:

“Screening Teams – Screening Teams (inclu WAKAMBA) will be org by MIO Cpt Kitson.”<sup>14</sup>

23. There is also evidence of Army officers being integrated into interrogation teams. For example, a Central Province planning document for late 1954/early 1955 stipulated that the screening of labour in the Nanyuki area required six officers: “Three have been obtained and MERU are prepared to loan two of the eight Kenya Regiment personnel allotted to them for Interrogation Teams.”<sup>15</sup> This suggests Army involvement in both screening and interrogation.
24. More generally, the Army worked closely with screening teams with regard to the intelligence they wanted, in the knowledge, as I have set out in my first statement, that the methods of abuse and torture were used by such teams. Intelligence produced by screening was passed on to Military Intelligence Officers, who set intelligence requirements for the screening teams to meet. For example, a document produced by the Rift Valley Province Special Branch set out 8 categories of information which could be obtained “in the course of the normal screening of KIKUYU”, such as names of gang leaders, routes used by gangs etc. These categories of information were to be passed from screening teams to the

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<sup>12</sup> CAB MM/5/1: ‘Note of a meeting held at Government House at 6.30 p.m. on Saturday, 1<sup>st</sup> November, 1952’.

<sup>13</sup> TNA: WO 276/404: Letter from Major J.T. Harington, PMIO RVP, to Special Branch Rift Valley Province Headquarters, 7/11/53.

<sup>14</sup> TNA: WO 276/437: 39 Infantry Brigade Jock Scott Operational Instruction No. 21, 30/7/54.

<sup>15</sup> EMER 45/69/2A: Central Province Emergency Committee, Post Phase II Operations, 15<sup>th</sup> October 1954 – April 1955. Appreciation and plan, p16.

District Military Intelligence Officers and Provincial Military Intelligence Officer via Special Branch in Nakuru.<sup>16</sup>

25. However, there is also evidence, contrary to the FCO's Skeleton Argument, that the Army was directly involved in screening and interrogation activities in screening centres and the detention camps. New evidence from the Hanslope documents is instructive. By way of example, I refer the following documents:

i) In August 1954, two Army Field Intelligence Assistants were sent temporarily to serve on the interrogation teams at Manyani screening camp. The FIAs would work as "Recorders" alongside six "crackers".<sup>17</sup> Another document explains what these terms mean. After preliminary sorting into Black, Grey and White categories by the Home Guard, short dossiers on suspects were compiled. A Mr. McLeod then "reduces these down to a workable percentage (about 2%) of customers likely to merit his attention. These are then handed over to the 'crackers' to prepare them for the Recorders who in turn record and pass the information so gleaned to Mr. McLeod to use and disseminate."<sup>18</sup>

ii) A Telegram to the Secretary of State from the Governor dated 17 January 1955, refers the policy of immunity from prosecution which will apply to:

"One Kenya Regiment Sergeant and one Field Intelligence Assistance, assault by beating up and burning of two Africans during screening operations on 19<sup>th</sup> September 1954."<sup>19</sup>

iii) War Council instructions for July 1954 indicate that Kenya Regiment personnel were allocated interrogation tasks. Eight members of the Regiment were sent to reinforce the Meru Interrogation Teams.<sup>20</sup> In my first statement I

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<sup>16</sup> SEC 5: 'Notes for Screening Teams', Special Branch Rift Valley Province, Nakuru, 23/10/53.

<sup>17</sup> AA 45/26/3/2A Vol. I: Letter from Secretary for Defence to Secretary for African Affairs, 30/8/54.

<sup>18</sup> AA 45/26/3/2A Vol. I: Letter from Col. T.H. Henfrey to Minister for African Affairs, 11/8/54.

<sup>19</sup> E 16/3/8A, 010774-101775. Telegram from Governor to SofS – 17/01/55

<sup>20</sup> AA 45/79/1A Vol. I: War Council Instruction No. 9, Appendix A, 19/7/54.

refer to the unlawful interrogation techniques employed by the Meru Interrogation Teams at para 31.

iv) In September 1954, Central Province called for surrendered Mau Mau in Fort Hall District to undergo “Interrogation, if possible at Divisional Centres by F.I.Os for longer term operational and political information.” [Emphasis added].<sup>21</sup>

v) Letter from Brigadier, Chief of Staff to GHQ East Africa, 26 Oct 1955. “Whenever possible, a trained interrogator such as an FIO or Special Branch Officer, should be obtained to conduct immediate interrogation of a terrorist unless delay in this connection is likely to prejudice operations.”<sup>22</sup>

vi) A “Top Secret” operation brief, dated 13 December 1953. “Lt Dowling A.M.I.O. will be responsible for collection and submission of all intelligence to Command Post. He will liaise closely with CI Fox in the screening and interrogation of all suspects.”<sup>23</sup>

26. These and other documents thus demonstrate direct military involvement in a systematic process designed at softening up suspects during interrogations. They are not referred to by the FCO in their Defence Skeleton.

### The Role of the Army

27. At para 220 the FCO assert that the British Army ceased to play any role after 17 November 1956. This is incorrect. Whilst military operations came to an end on

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<sup>21</sup> AA 45/48/1A Box 140: Letter from Provincial Commissioner, Central Province, to the Minister for African Affairs, 30/9/54.

<sup>22</sup> Box No. 140 AA 45/48/1A

<sup>23</sup> EM 6/2/2/1: Operation Brief - Ref. Sec/R/T/S/4/18/54

that date, the British Army continued to play a central role in the counter emergency throughout the emergency as follows:

- i) The British Army retained ultimate operational control over all security forces throughout the Emergency, even after the Police and Administration assumed responsibility for law and order in late 1956.<sup>24</sup>
- ii) The British Army continued to play a central role in the War Council and Provincial and District Emergency Committees and participated in all major decisions taken at each level.
- iii) The British Army military intelligence operation worked hand in glove with Kenyan Special Branch, including in screening and interrogations in centres and detention camps. The Army had ultimate responsibility for intelligence policy.<sup>25</sup>
- iv) The British Army worked with Kenyan special forces on counter insurgency operations involving “pseudo-gangs”.

28. The first point above is well established but I take points ii) to iv) above in turn:

29. Military intelligence structure - In my first statement I explain that under the early JAPOIT structure and that FIAs were to be deployed to liaise with Police Special Branch. In May 1953 the Kenya Intelligence Committee created Provincial and District Intelligence Officers (PMIO and DMIO) to replace the JAPOITs. The Intelligence Adviser reported on them in August 1953:

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<sup>24</sup> WO236/17, From: Gen. Lathbury – To: Chief of the Imperial Staff. 27 September 1956.

<sup>25</sup> WO236/20. The Kenya Emergency – May 1955 – November 1956. Para 27 – “At Provincial and District level Military Intelligence Officers were closely integrated with Special Branch of the Police. At Colony level however there was not a complete integration. The GSO I (Intelligence) worked at GHQ and reported to me: a Principal Military Intelligence officer worked alongside the Head of Special Branch, the Director of Intelligence and Security....During July 1955, with the complete agreement of the Commissioner of Police, I therefore brought this division of control to an end by placing my GSO I (Intelligence) and his staff who dealt with Emergency intelligence in Special Branch Headquarters under the direction of the Director of Intelligence and security, who reported to me. The GSO I (Intelligence) thereafter acted as the Director of Intelligence and Security’s subordinate in all operational intelligence matters with consequent overall improvement.”

“Provincial and District Military Intelligence Officers have been attached to Special Branches in operational areas, working under the supervision of the senior Special Branch officer. These P.M.I.O.s and D.M.I.O.s are served by Field Intelligence Assistants (F.I.A.s) who work in locations, contacting Police and Kikuyu Guard posts, chiefs, headmen and Security Force patrols, and ensuring that tactical intelligence is passed rapidly back for collation, assessment and dissemination. In this organisation, Kenya Regiment and K.P.R. personnel play a prominent part as they have the requisite local knowledge and language qualifications. A number of more senior and experienced Military Intelligence Officers are now being obtained for P.M.I.O. and D.M.I.O. posts.”<sup>26</sup>

30. This statement is important because it shows that the army and police maintained close intelligence co-operation, while retaining independent command. In his report, the Intelligence Adviser also stated that:

“During the present Emergency, co-operation between the Special Branch and Military Intelligence has been very close. Apart from the valuable assistance given by the Army in furnishing officers to fill the posts of P.M.I.O., D.M.I.O. and, in some cases, F.I.A.S, senior military officers are represented on intelligence committees at all levels. The Intelligence Adviser maintains frequent contact with the Commander-in-Chief and the P.A. to the Intelligence Adviser daily visits G.H.Q., East Africa, to ensure close liaison with army staff officers planning future operations. G.II(I), East Africa, is in almost daily contact with S.B.H.Q. and an officer of similar rank is now attached to S.B.H.Q. for dealing with operational intelligence.”<sup>27</sup>

31. MIOs and Special Branch – The British Army MIOs were part of the Emergency Committee structure and directly embedded within Police Special Branch but remained at all times under military command. Special Branch and MIOs worked together “hand in glove” and the “closest liaison possible” was maintained between the military and civilian branches. There is clear evidence of Special Branch operating in the camps and employing abusive interrogation techniques<sup>28</sup>.

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<sup>26</sup> DO 3/2: ‘Reorganisation of Intelligence in Kenya Colony. Progress Report August 1953 Part I,’ by the Intelligence Adviser, p6.

<sup>27</sup> DO 3/2: ‘Reorganisation of Intelligence in Kenya Colony. Progress Report August 1953 Part I,’ by the Intelligence Adviser, pp7-8.

<sup>28</sup> Eg. Box No.158. AA 57A Vol. V, Letter to the Senior Assistant Commissioner of Police and Mr. Grant from I.P. Kelloway, Officer in Charge Special Branch, Embu regarding Rehabilitation Methods at Mwea Camp, 28 Nov 1957.

32. For example, an undated note on screening in Nanyuki District advocated close Special Branch and Field Intelligence Officer (FIO – the revised title for FIA) involvement in screening:

“Since June this is being achieved by Special Branch officers visiting screening camps, taking copies of important statements made in screening camps, and providing Screening officers with potential targets for screening, as well as giving to Screening officers information which they have which is of value to them. Similarly the closest liaison possible must be maintained between F.I.O.s and Screening officers, as each can assist the other by providing prior information about labour on farms to the Screening officers, and operational information about remaining gangs to F.I.O.s.”<sup>29</sup>

33. A circular from Nyeri Area Provincial Police Headquarters explains the interrogation procedure for prisoners taken into police custody:

“It is the responsibility of the Police Station effecting the arrest, or receiving the prisoner, to make immediate interrogation. This is to be made as soon after capture as possible, in order to exploit the prisoners low morale. ...After immediate interrogation, prisoners will be sent direct to Interrogation Centres together with a completed Captured or Surrendered Details Form in respect of the prisoner. In normal circumstances they will be delivered within 24hrs. of capture. When a prisoner is used operationally, this period may be extended to 72 hrs. Prisoners on arrival at Interrogation Centres will undergo a Deliberate and Selective Interrogation under the direction and control of Special Branches. This interrogation will be done with the view to obtaining further operational intelligence, and will be carried out by personnel who have been provided by G.H.Q. for this particular purpose.”<sup>30</sup> [Emphasis added]

34. The above document is evidence of the control exercised by East Africa Command over interrogation policy. It also further shows that interrogations were conducted by personnel provided by the Army.

35. Pseudo-gangs - Further evidence has emerged of FIO participation in special forces and pseudo-gang teams, which used captured and surrendered Mau Mau members to conduct small patrols. There is reference to at least 100 serving with F.I.O. teams in May 1956, out of a total of 328.<sup>31</sup> These pseudo-gangs interrogated captured Mau Mau, turned them to work for the security forces, and

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<sup>29</sup> AA 45/26/2A Vol. II Box 135: ‘Screening method and policy Nanyuki District.’

<sup>30</sup> DO 3/2: Provincial Special Branch Circular No. 2, Operational Intelligence, 28/10/53.

<sup>31</sup> AA 45/48/1/1A: ‘Disposal of captured and surrendered terrorists employed by the security forces’, Memorandum by the Emergency Joint Staff, 19/5/56.

deployed them in small teams to capture or kill further Mau Mau members. FIOs involved in pseudo-gang work systematically interrogated those they captured.

36. Miscellaneous points re. MIOs. At para. 231 the FCO state the Field Intelligence Assistants were mainly drawn from the Kenya Regiment. This is broadly correct, however, it must be understood that FIAs/FIOs were given instructions by MIOs who were from “regular forces” and that the Military Intelligence operation as a whole was under the command and control of the British Army and the War Office in London. At no point did the Colonial Administration have command and control of MIOs.

37. At para. 231e the FCO assert that MIOs were not used for tasks other than the “generation and assessment of operational intelligence”. If the suggestion is that MIOs did not themselves interrogate or screen detainees then this is incorrect for the reasons I have outlined above.

#### MIO presence in Screening Centres and Detention Camps

38. At para 235 the FCO assert that there is no evidence that MIOs were attached to directly to camps. That is incorrect. I am aware of Professor Elkins research on this topic. In addition, I have identified the following relevant documents so far on a cursory search and there may be more:

- i) Sergeant J. Dykes of the Kenya Regiment was the JAPOIT representative at the Nyeri Interrogation Centre.<sup>32</sup>
- ii) Letter from DC, Meru to Mr. W.E.Taylor - MIO responsible for FIO in Miathini Screening camp, FIO lived in camp which was being used as a temporary screening camp, collected and collated intelligence from a variety of sources in the area.<sup>33</sup>

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<sup>32</sup> DO 3/2: ‘Location of KENYA Regt Intelligence Personnel under JAPOIT Re-organisation’, Appx A to EAC/62550/INT, 21/3/53.

<sup>33</sup> A 16/3/8A 010739 – 010740. Telegram from DC Meru to DO. 23/09/53

### Attempts to prevent abuses

39. The FCO claim at para. 268 that the colonial and the military authorities made every effort to curb indiscipline. There is indeed plenty of evidence in the historical record of orders and demands being issued calling for restraint and discipline. I attempted to assess this at length in my doctoral research, an endeavour considerably impeded by the retention of the documents which have been retained until now.
40. In relation to the Army, I concluded that General Erskine certainly imposed tighter discipline than achieved by his predecessors, but that discipline in Kenya was only ever partial, and negotiated. Because the main method of the campaign was to crush the rebellion by force, often with little effort to discriminate between insurgents and civilians, brutality was inevitable. Therefore, the Army was in no position to impose tight discipline because its own policies led to the very acts which soldiers might be tried for.
41. The McLean Inquiry is cited as an example of the Army's clean record. The publicly released report summarising the conclusions, relied upon by the FCO, is misleading. For a full understanding of the position in mid-1953, one must read the full transcript of the proceedings. These reveal a much greater degree of generalised brutality than mentioned in the report itself. They also show many soldiers arguing the need for a free hand to treat the population roughly. Perhaps more importantly, the Inquiry was deliberately prevented from investigating incidents prior to General Erskine's arrival, when widespread brutality was taking place.<sup>34</sup>

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<sup>34</sup> Huw Bennett (2006) 'The British Army and Controlling Barbarization during the Kenya Emergency', in George Kassimeris ed. *Warrior's Dishonour: Barbarity, Morality and Torture in Modern Warfare*. Aldershot: Ashgate, pp65-80.

42. The records of the Chief Secretary's Complaints Co-ordinating Committee, which have only emerged in the new disclosure, reveal a great deal about military justice during the Emergency. However, an unknown quantity of material is missing from these files: the minutes from the early meetings are certainly absent. I have had very limited time to read these files in the close detail required to form a firm interpretation, and the material is difficult to follow. However, it is my preliminary view that there is evidence that considerations of executive policy regularly interfered with decisions about justice. The Army also interfered in the rule of law, which I have already outlined in my first statement. However, additional material is contained in the new files. For example, on 11<sup>th</sup> June 1954, General Erskine stated in the War Council that he feared subjecting the Kikuyu Guard to criminal prosecutions for detainee abuse would damage morale.<sup>35</sup> If I had more time to study the voluminous records of the Chief Secretary's Complaints Co-ordinating Committee I am of the view that there would be many further examples of executive interference in the rule of law.

43. The FCO also fail to address the integrity and effectiveness of the prosecutions and investigations which took place during the Emergency. As a general point, the application of law to the security forces appears to have been profoundly politicised, for example by the fact that District Officers often held the position of local Magistrate, in addition to having responsibility for the Home Guard in their area. The executive was in essence investigating itself. This constituted a clear conflict of interest and undoubtedly influenced the quality of justice during the Emergency. The picture the FCO seek to paint that effective and robust investigations and prosecutions occurred after each incident of alleged abuse is very far from being the truth. The reality is that such investigations were, more often than not, compromised and decisions with regard to prosecutions were subject to political considerations and interference.

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<sup>35</sup> CAB 19/4 Vol. I: Extract from Minutes of War Council Meeting held on 11/6/54.

44. In short, the FCO's historical analysis is, in my view, one sided and inaccurate.

The historical gloss which is presented is not one which I agree with. By contrast, I have read the Claimants' particulars of claim and I agree with evidential basis of the claims which they assert and the inferences which they seek to draw from it. Without doubt, the British Army, were intimately involved with every aspect of the Colonial Administration's policies and practices in the knowledge that detainee abuse and torture was endemic.

**STATEMENT OF TRUTH**

This statement is true to the best of my knowledge and belief and I am aware that it will be placed before the Court.

Signed .....

**HUW CHARLES BENNETT**

Dated .....

1. Party: Claimants
2. Witness Name: Huw Charles Bennett
3. Statement No.: 3
4. Exhibits: 1
5. Dated: 25 May 2012

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO: HQ09X02666**

**QUEEN'S BENCH DIVISION**

**BETWEEN:**

**NDIKU MUTUA & OTHERS**

**Claimants**

**- v -**

**FOREIGN AND COMMONWEALTH OFFICE**

**Defendant**

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**WITNESS STATEMENT  
OF HUW CHARLES BENNETT**

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I, HUW CHARLES BENNETT, of the Joint Services Command and Staff College, Faringdon Road, Shrivenham, Swindon, SN6 8TS WILL SAY AS FOLLOWS:

**Introduction**

1. In my two earlier statements I described the British Army's involvement in events in Kenya during the Emergency, with reference to key archival documents and other sources. I have now had the opportunity to analyse the recently disclosed Hanslope files further, however I have confined my analysis to those files which I believe are most likely to contain material relating to Army operations and discipline. As a result, there may be additional material relating to the Army's role contained in further archival material.
2. In this third statement I will explain the significance of this documentation and how it relates to the pre-existing documentary evidence. Before I do this, I believe it would be beneficial to first explain the development of the accepted history of the British Army's

role in Kenya during the Emergency, so that the significance of the new documentation from the Hanslope files can be fully appreciated.

### **Studies on the British Army's role in the Emergency**<sup>1</sup>

3. Before 2006, the literature on the British Army's role in Kenya during the Emergency was very weak, only three studies directly concerning themselves with the subject.<sup>2</sup> At sixty-three pages, Anthony Clayton's *Counter-Insurgency in Kenya. A study of military operations against Mau Mau* is not only the longest, but also the most frequently cited. It is admirably concise, yet it was written by someone personally involved in the campaign with only twenty years perspective and without access to the archival records.
4. Allegations about the Army's behaviour in Kenya have been made since the early days of the Emergency, and the academic literature has engaged with these claims. However, due to the lack of archival sources, the dominant view until the new scholarship began to emerge in 2005 was, as Thomas Mockaitis put it in his highly influential study, *British Counterinsurgency, 1919-60*, "that relatively few cases of documented abuse occurred."<sup>3</sup>
5. Even at the time of writing his major study in 1990, Mockaitis acknowledged that many "sensitive" government files were still closed when he conducted his research.<sup>4</sup> This underscores the extent to which a more substantive understanding of the British Army's role has only been possible in more recent years. As a result of the British Government's retention of archival evidence, those who criticised the Army for brutality lacked credibility, unable to access the primary documentation needed to substantiate their claims. John Newsinger's *Minimum Force, British Counter-Insurgency and the Mau Mau Rebellion*, is a case in point. It repeatedly makes unsupported statements, his research relying entirely upon the secondary literature. One claim made without evidence

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<sup>1</sup> The evidence presented in this section is a summary of: Huw Bennett, 'The Mau Mau Emergency as part of the British Army's post-war counter-insurgency experience,' *Defense and Security Analysis* 23/2 (June 2007), pp143-163.

<sup>2</sup> John Newsinger (1992) 'Minimum Force, British Counter-Insurgency and the Mau Mau Rebellion' pp47-57 *Small Wars and Insurgencies* 3/1; Randall W. Heather (1993) 'Of Men and Plans: the Kenya Campaign as part of the British Counterinsurgency Experience' pp17-26 *Conflict Quarterly* XIII (1); Anthony Clayton (1976) *Counter-Insurgency in Kenya. A study of military operations against Mau Mau*. Nairobi: Transafrica Publishers.

<sup>3</sup> Thomas R. Mockaitis (1990) *British Counterinsurgency, 1919-60*. New York: St. Martin's Press, p37.

<sup>4</sup> Mockaitis, *British Counterinsurgency*, p43.

is that the “shooting of suspects... soon became commonplace.”<sup>5</sup> Newsinger's assertion that beatings, torture, mutilation and murdering prisoners were everyday occurrences relies upon a single memoir published nine years after the Emergency ended.<sup>6</sup>

6. In his 1992 article, Newsinger stated that British atrocities during the Emergency had been marginalized in three ways; as isolated, unofficial, and committed by local forces. He asserted that atrocities were too widespread to be unofficial (at least initially), that unofficial practices were in fact officially condoned and covered up, and that atrocities committed by local forces were crucial as they played a central role in the entire military campaign.<sup>7</sup> These claims were simply not credible until recently. As Mockaitis quite reasonably pointed out, Newsinger’s arguments lacked detailed, corroborated, empirical evidence.<sup>8</sup>
7. It was only with the publication of my own work on this subject from 2006 that this status quo began to be revised. My work was only made possible by the fact that archival documentation was available for study. Without this access I would have fallen foul of the same hurdles that hindered those who preceded me. I have also been helped greatly by the scholarship produced by Professor Anderson and Professor Elkins since 2005, which considerably revised the accepted understanding of the Emergency in Kenya.
8. My doctoral thesis on the British Army's role in the Emergency was examined in 2007 and since then I have conducted further research in Britain and Kenya. I have used this time to study the documentary evidence in further detail and have composed a book manuscript from this, which is presently in the process of publication. My book manuscript deals extensively with the Army's treatment of civilians during the Emergency and develops the issues raised in my PhD further.

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<sup>5</sup> John Newsinger (1981) ‘Revolt and Repression in Kenya: the “Mau Mau” rebellion, 1952-1960’, *Science and Society* 45/2, p171.

<sup>6</sup> John Newsinger (2002) *British Counterinsurgency: From Palestine to Northern Ireland*. Basingstoke: Palgrave, p77.

<sup>7</sup> Newsinger, ‘Minimum Force’, p50.

<sup>8</sup> Thomas R. Mockaitis (1992) ‘Minimum Force, British Counter-Insurgency and the Mau Mau Rebellion: A Reply’, *Small Wars and Insurgencies* 3/1, pp87-89.

9. Had anyone approached me prior to the publication of both Professor Anderson's and Professor Elkins' work in 2005, whilst I was still in the early stages of my own research, and asked me about the role the British Army during the Emergency, I would have told them the accepted history as I then understood it, as I have described it at paragraph 4 above.
  
10. Similarly, had somebody that had been detained and abused during the Emergency asked me specifically if the British Army had been responsible for what had happened to them, although I might have voiced my suspicions that the accepted history was not 100% accurate, I would have told them the accepted history as I understood it at that time. That being that the British Army's role in Kenya was largely without incident after General Erskine's arrival and that the Army would have had little to no involvement in the detention camps. Accordingly, I would have advised them that it was extremely unlikely that the British Army was responsible for what had happened to them, unless they had been directly abused by someone whom they knew to be a member of the British Army. At that time I simply would not have had either the understanding or the evidence to inform them as to the British Army's role in the Emergency as I now understand it.

*The Hanslope Files*

11. The Hanslope files have constituted a major addition to the documentary evidence base, providing categories of files which were previously un-available, or scarcely available in the public records. The primary categories these documents are:
  - i. District and Provincial Intelligence Committee reports and minutes – likewise, this category of documents has also been very important in understanding the involvement of British Army personnel in the development and implementation of Emergency policy at the micro level. It has also been the source for documenting a significant number of security force offences;
  - ii. Minutes of the Chief Secretary's Complaints Committee – this category of documents has been extremely important to understanding the extent of knowledge of both the Commander-in-Chief and the Secretary of State for the

Colonies of the extent of the security force abuses and their reaction to these abuses.

- iii. War Council Minutes and Memoranda – these have been extremely important in understanding the extent of the Commander-in-Chief's involvement in the development and implementation of Emergency policy, particularly in regards to the Commander-in-Chief's involvement in matters related to detention camps;
- iv. Papers from the African Affairs series – these cover a wide variety of subjects, but have provided important details on screening, detention camps, operational intelligence, and abuses;
- v. Emergency Committee Appreciation and Plans – accompanied with War Council Comments and Approvals – these have been extremely important in linking the implementation of War Council policy to acts on the ground, as well as understanding the extent of the British Army's involvement in developing and implementing Emergency policy at both the micro and macro level.

12. Broadly, the wider importance of the Hanslope files is that previously documentation was only available in a piecemeal fashion. The Hanslope files are much more coherent and extensive. This has allowed a level of understanding that was not previously available as it has provided a level of detail of events over a prolonged period of time which allows for a much more substantive analysis i.e. rather than relying on a handful of documented events, it has been possible to construct a more detailed understanding of reoccurring events over a prolonged period of time. As a result, historians can draw firm conclusions from the evidence which exists.

13. In summary, the Hanslope files allow for major additions to our understanding of the role played by the British Army in events in Kenya and are particularly revealing in relation to:

- i. The chain of command's extent of knowledge of repeated abuses by security forces, the British Army and prison guards in Kenya during the Emergency. Further, the nature of the disciplinary measures taken in response to those known abuses;

- ii. The participation of the British Army throughout the organisational structures of the Kenya colony during the Emergency and the intimate involvement of the military chain of command in questions of policy and practice, including detention, screening and interrogation, intelligence gathering, abuses by security forces, the desirability of investigations and prosecutions into those abuses.

### **Command and Control in the Kenya Emergency**

14. At paragraphs 6 – 9 of my first statement I explained that the command and control system that existed in Kenya during the Emergency. Broadly, this was that:

- i. In the early stages of the Emergency, the Governor exercised his formal powers as Commander-in-Chief in the colony through a system of committees.
- ii. In June 1953 this command structure was radically altered when General Erskine was appointed Commander in Chief of East Africa Command.
- iii. The military and civilian chain of command was divided and all Armed Forces (Army and Royal Air Force), the police and all Colonial Auxiliary and Security Forces were placed under General Erskine’s operational command.
- iv. As GHQ East Africa was an independent command, Erskine was directly under the War Office and directly responsible to the Secretary of State for War.<sup>9</sup>
- v. This continued to be the case when Lieutenant-General Lathbury replaced General Erskine in 1955 until the end of the Emergency.

15. The chain of command and control after General Erskine’s appointment is evidenced by Emergency Directive No. 7, which was issued shortly after his arrival on the 17 June 1953. It states:

“The C-in-C is responsible for the restoration of law and order. All Armed Forces (Army and Royal Air Force), the Police and all Colonial Auxiliary and Security Forces are under his command.”<sup>10</sup>

16. Similarly, the fact that General Erskine, as Commander-in-Chief of GHQ East Africa, was responsible directly to the War Office back in London is clear. For example, a War Office Draft Directive to the C-in-C East Africa states that “General Erskine will be C-in-

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<sup>9</sup> TNA: CO 822/457: Comm. From: SoS. – To: Governor. 29 May 1953. 29/05/1953.

<sup>10</sup> Kenya National Archives, Nairobi [hereafter KNA]: AH/9/40, 17 June 1953, Emergency Directive No. 7. Chain of Command, Emergency Committee

C East Africa responsible direct to the War Office”<sup>11</sup>. Furthermore a telegram from the Secretary of State for the Colonies to the Governor reports that:

“It has been decided that East Africa Command is now to be established as a separate Command with direct responsibility to the War Office... General Erskine is charged with the conduct of all military measures required to restore law and order in Kenya. For this purpose he will exercise full command over all Colonial, Auxiliary, Police and Security Forces in Kenya.”<sup>12</sup>

17. This position is evidence further by the fact General Erskine himself stated that he “was charged with the conduct of all military measures required to restore law and order in the Colony” and to this end “was given full operational command over all Colonial, Auxiliary, Police and Security Forces... East Africa became an independent Command” and “was, therefore, responsible direct to the Secretary of State for War.”<sup>13</sup>

18. The continuation of this arrangement upon the appointment of Lieutenant-General Lathbury in 1955 is illustrated by Lieutenant-General Lathbury’s own account :

“On 2 May, 1955 I arrived in Kenya and took over command from General Sir George W.E.J. Erskine, KCB, KBE, DSO, with the same status and powers as my predecessor. As Commander-in-Chief I assumed full operational command of all military measures required to restore law and order in the Colony. EAST AFRICA remained an independent Command and I was therefore directly responsible to the Secretary of State for War.”<sup>14</sup>

19. The proposition put forward by the Defence was that General Erskine and his successors were in an advisory role to the Governor through the War Council is not supported by the evidence. As I point out in my first statement, in fact it was the civilian government that was required to “advise” the military chain of command as to what methods were appropriate to restore law and order. Overall responsibility rested with General Erskine.<sup>15</sup> GHQ East Africa was an independent command and Erskine was directly under the War Office and directly responsible to the Secretary of State for War.<sup>16</sup> As a result, General Erskine and his successors operated within the existing committee system but reported directly to London.

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<sup>11</sup> The National Archives, Kew [hereafter TNA]: PREM 11/472, 27 May, War Office Draft – Directive to C-in-C East Africa

<sup>12</sup> TNA: CO 822/457, 29 May 1953, Telegram from Secretary of State to Governor.

<sup>13</sup> TNA: WO276/511, 25 April 1955, The Kenya Emergency July 1953 – May 1955 by General Erskine.

<sup>14</sup> TNA: WO 236/20, 14 December 1956, The Kenya Emergency May 1955 – November 1956 by General Lathbury.

<sup>15</sup> KNA: AH/9/40, 17 June 1953, Emergency Directive No. 7. Chain of Command, Emergency Committee.

<sup>16</sup> CO822/457: Comm. From: SoS. – To: Governor. 29 May 1953. 29 May 1953

20. I have read the Defendant's Defence and feel it necessary to comment on two issues of fact at this juncture. The first arises from the Defendant's account with regards to Major General Hinde and General Erskine at paragraphs 39 and 47(b) of the Defence. It must be made clear that that General Erskine did not replace Major General Hinde, who was at that time Director of Operations to the Governor. He in fact replaced Lieutenant General Cameron as the new commander of GHQ East Africa, but with enhanced powers and a direct reporting line to London, which did not exist beforehand. As such, when General Erskine assumed full operational command over all of the security forces, and was charged with the responsibility of restoring law and order to the colony, there was a movement of powers and responsibilities from the Colonial Administration to the British Army i.e. the status quo was not maintained.
21. The second is at paragraph 49 of the Defence, at which point the Defendant asserts that "Once law and order had been restored in a particular province, the operational control over all security forces within that province granted to General Erskine and then General Lathbury lapsed." The Defendant's asserts that this means that Lieutenant-General Lathbury no longer had operational control over any forces other than those military forces he would have had control over in his function as GOC after 17<sup>th</sup> November 1956.
22. The documentary evidence contradicts the Defendant's assertion on this point. For example, a directive from GHQ to all security forces in March 1955 explains the command position when districts were handed back to the civil powers:
- "On 12 February 1955 full responsibility for the maintenance of law and order in THIKA and FORT HALL districts reverted to the civil power. ...With effect from 10 March 1955 the civil power will assume full responsibility for the maintenance of law and order in the following additional districts in the operational area: - Southern Province - all districts. Rift Valley Province - all districts except LAIKIPIA and NAIVASHA. ...In spite of the fact that the army will no longer have direct operational duties in the districts named in paras 1 and 2, the responsibilities of the Commander-in-Chief are unchanged and he still remains charged with the overall operational command of all security forces taking part in the Emergency."<sup>17</sup>
23. This position is evidence further by a letter from Lieutenant-General Lathbury to General Sir Gerald Templer (Chief of the Imperial General Staff) dated 27 September 1956. In this letter Lieutenant-General Lathbury states:

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<sup>17</sup> Hanslope: EMER 45/69/3A, 'Operational Responsibility', signed Major-General Heyman, Chief of Staff, 5/3/55.

“I told you it was my intention to withdraw the Army from day to day operations against the Mau Mau in Kenya, and to, and to hand over responsibility for this to the Police between 1<sup>st</sup> October and the end of the year.

I shall continue myself to have a general responsibility for the direction of operations and the War Council will remain in being. The actual day to day control of operations will be in the hands of the Commissioner of Police under my general direction.”<sup>18</sup>

24. In addition, as set out at paragraph 27 of my first statement, the British Army continued to play a central role in the civilian institutions of the Colony throughout the Emergency, including the War Council and intelligence structures. Indeed, the Director of Intelligence and Security reported directly to Lieutenant-General Lathbury.<sup>19</sup> There is no evidence to suggest that this position altered until January 1960, when the State of Emergency was ended and law and order was formally re-established in Kenya.

### **Structure of the British Army and Disciplinary Control**

25. At paragraphs 11 – 14 of my first statement I explained the nature of the Commander-in-Chief’s command and disciplinary control over the King’s African Rifles (“KAR”) and the Kenya Regiment. Both of which were armed forces raised in East Africa but fell under the military chain of command. I expanded upon this further at paragraphs 5 and 6 of my second statement.
26. The Hanslope disclosure further confirms that the Army dominated the command and control of all security forces on active operations:

“So long as the Commander-in-Chief continues to be in operational command of all security forces, responsibility must rest with Brigade Commanders within their brigade boundaries. At lower levels an officer, either army in places where troops are stationed, or police where they are not, must similarly be in sole command and must be responsible to the Brigade Commander for carrying out operational policy. On the other hand, planning, as opposed to operational responsibility for execution of the plans, should invariably be joint at all levels.”<sup>20</sup>

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<sup>18</sup> TNA: WO236/17, Press conference notes for Commander-in Chief’s conference, 0501 C in C, 27/09/1956.

<sup>19</sup> TNA: WO236/20. The Kenya Emergency – May 1955 – November 1956. Para 27 – “At Provincial and District level Military Intelligence Officers were closely integrated with Special Branch of the Police. At Colony level however there was not a complete integration. The GSO I (Intelligence) worked at GHQ and reported to me: a Principal Military Intelligence officer worked alongside the Head of Special Branch, the Director of Intelligence and Security....During July 1955, with the complete agreement of the Commissioner of Police, I therefore brought this division of control to an end by placing my GSO I (Intelligence) and his staff who dealt with Emergency intelligence in Special Branch Headquarters under the direction of the Director of Intelligence and Security, who reported to me. The GSO I (Intelligence) thereafter acted as the Director of Intelligence and Security’s subordinate in all operational intelligence matters with consequent overall improvement.”

<sup>20</sup> Hanslope: AA 45/79/4A Box 148: 'Review of Plans', Annex to WAR/C.488, 11/2/55.

27. At paragraphs 7 – 12 of my second statement I also explained how the Commander-in-Chief's authority over the KAR and Kenya Regiment extended to disciplinary control. Importantly, this disciplinary control also encompassed the local security forces such as the Kenyan Police and Home Guards who could have been disciplined under the Army Act but it is clear that General Erskine decided not to do this. This is evidenced by correspondence from the Adjutant General of the War Office to the Commander-in-Chief. In this the Adjutant General advises the Commander-in-Chief that:
- “Since your forces are engaged in operations against an “enemy” and are therefore, de facto on active service, it does I think follow that the police (both regular police and thee Kenya police reserve) would be subject to military law under the Army Act, section 176 (10) when acting as “followers” i.e. when acting in close co-operation with, and when acting under the orders of the military authorities. Accordingly the police could be dealt with by under this Army Act for offences contrary to that act, committed whilst subject to military law.”<sup>21</sup>[Emphasis Added]
28. Although this does not make any direct reference to the Home Guard, like the Kenyan Police the Home Guard also fell under the Commander-in-Chief's operational command and co-operated closely with the military authorities. The Home Guard would also therefore have fallen under the “followers” category.
29. In any event, General Erskine and the British Army were closely involved in disciplinary decisions which concerned the security forces which I discuss further below.

### **The War Council**

30. The second significant change to the Emergency organisation after General Erskine's arrival was the replacement of the Governor's Emergency Committee and the establishment of the War Council. At paragraph 10 of my first statement I described the circumstances behind this change and that this reform was pushed through by London at the insistence of General Erskine. At paragraph 14 of my second statement I gave further detail as to the War Council's role during the Emergency and the central role played by General Erskine and his successors on it, approving military and civilian operations, including screening, interrogations, villagisation and detention policies. The Hanslope disclosure contains significant new evidence as to the work of the War Council and other institutions of the Colony and the British Army's participation in those institutions.

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<sup>21</sup> TNA: WO 32/15556: Legal position in Kenya: policy, Letter to C-in-C from Adjutant General, 27/08/1953.

31. General Erskine's desire to drive through changes to the Emergency organisation can be seen in his appreciation of the situation in Kenya to the Chief of the Imperial General Staff, Sir John Harding in January 1954. In this he stated that:

"In Kenya, military problems and political problems are so closely related that joint agreed direction is required by security forces and the machinery of Government alike, and at all levels... The operations recommended above are complicated, drastic, and large scale. They affect all branches of the Administration, Security forces, and the economic life of the Colony... They will fail in their object unless there is a clear and simple system of command capable of providing quick decisions... There is no permanent machinery for co-ordinating military and administrative action at the highest level... It is therefore recommended that a system of command on the following lines is required as a matter of extreme urgency... A small "Emergency cabinet" of not more than four or five members to give overall direction to the anti-Mau Mau effort."<sup>22</sup>

32. The War Council was created in March 1954 after General Erskine's request and sought to coordinate military and administrative action in the Kenya colony at the highest level. Its membership consisted of the Commander-in-Chief, the Governor and an Unofficial member (Michael Blundell who represented the settlers). The British Army, in the form of the Commander-in-Chief, participated in the War Council throughout its existence, first via General Erskine, then Lieutenant General Lathbury and finally Major General Tapp.<sup>23</sup>
33. The Council created, authorised and oversaw the implementation of Emergency policy during the Emergency, in addition to overseeing the counter insurgency. It was through its participation in the Council that the Army was able to implement policies such as large scale detention, rehabilitation, screening and interrogation and villagisation in addition. These were policies which the Army deemed important to the restoration of law and order in Kenya, and which formed part of the Army's overall strategy to this end. This fact is succinctly evidenced by a single document, Lieutenant-General Lathbury's appreciation of the situation in January 1956. In this he stated the following under the headings of Indirect Operation – Close Administration:

"The importance of close and strict control of the population in the reserves, of labour in the settled areas and of natives in the townships and in Nairobi cannot be over-emphasized. It has largely broken the contact between the terrorists and the population, thus greatly reducing the importance of the passive wing; it has forced the terrorists to collect their own food, thus splitting them up, scattering them and providing contacts with the security forces; it has removed the fear of the terrorists from the population and induced a greater

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<sup>22</sup> TNA: WO 216/863, 27 January 1954, Appreciation on Future Military Policy in Kenya 1954 by General Erskine.

<sup>23</sup> Hanslope: Chief Secretary, Vol. VII – 40A, 06 August 1957, War Council Two Hundredth and Sixteenth Meeting.

fear of government, thus lessening the whole influence of Mau Mau on the population and encouraging them to provide information.”<sup>24</sup>

34. The Hanslope disclosure has revealed that the War Council regularly concerned itself with the detail of the detention and rehabilitation of detainees and took an active role in managing the system of detention. Further, it took an active role with relation to the screening and interrogation of detainees to obtain operational intelligence and received regular intelligence reports from the GHQ and the Commissioner of Police. The Commander-in-Chief personally played an active role with regard to the development and implementation of these policies.
35. It has also emerged, via the Hanslope disclosure, that the Commander-in-Chief had extensive knowledge of the regular occurrence of abuses against detainees throughout the Emergency via the Chief Secretary’s Complaints Co-ordinating Committee (“CSC”). A military representative was provided with the minutes of the CSC and reported back to General Erskine. Further, General Erskine discussed what disciplinary measures should be taken with regard to each case with the Attorney General.<sup>25</sup> The Hanslope disclosure further reveals a pattern of executive interference in investigations and prosecutions during the Kenya Emergency which is discussed further below.
36. The day to day operations of the War Council and the extent to which it ran the Emergency can be taken from the mass of paperwork generated by the office, such as its directives, minutes, briefing papers and the like. As I explained above, some of these materials have been in the public records (particularly the National Archives in Kew and the Kenya National Archives in Nairobi), but the majority of it has only recently been made available in the Hanslope files. I go into the details of how the War Council conceived and implemented policy with regard to detention, screening and interrogation and villagisation in detail below. At this stage I outline some key points:
37. *Operation Anvil* - The first directive of the War Council (dated 3 July 1954), entitled ‘Emergency Policy’ and signed by both General Erskine and the Governor, outlined a

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<sup>24</sup> Hanslope: EMER 45/69/4A: Emergency policy in Kenya, with an appreciation by the Commander-in-Chief East Africa of the situation: Appreciation by the Commander-in-Chief East Africa. January 1956.

<sup>25</sup> TNA: WO 32/15556, C-in-C to AG, 27/08/1953.

joint operation between the Civil Administration and the Security Forces, Operation Anvil. Operation Anvil was a large scale screening operation to purge Nairobi of ‘Mau Mau’ and reflects General Erskine’s plans to ‘cleanse’ Nairobi in his appreciation to the Chief of the Imperial General Staff.<sup>26</sup> General Erskine’s involvement in the conception of Operation Anvil was known of prior to Hanslope.

38. *Screening and interrogation* – The War Council was involved in the detail of screening and interrogation policy and practice. War Council Directive No. 9 (27 March 1956) demonstrates that this continued under Lieutenant-General Lathbury. It is entitled ‘Emergency Policy’ and is signed by both the Governor and the Commander-in-Chief. Under the heading of “Special Forces” it reports that “Every possible effort will be made to exploit to the full and to expand the successful technique of extending captures under the direction of Field Intelligence Officers”. Under the heading of “Detainees and Convicts” it states that:

“The Administration and Special Branch by screening and re-classification, and the Prisons and Rehabilitation Departments by segregation and rehabilitation, will endeavour to increase the rate at which convicts and detainees can be released without prejudice to screening.”<sup>27</sup>

39. *Approval of Regional committee plans* - The detailed plans passed up from the regional committees to the War Council for authorisation illustrate the extent to which the War Council not only set overall Emergency policy decisions, but also oversaw their implementation. For example, a plan by the Central Province Emergency Committee includes plans relating to the deployment of M.I.Os, F.I.Os and Special Branch Officers; the release of detainees; the denial of food and follow-ups to screening. From these plans it is clear that the Commander-in-Chief’s policies were detailed, covered all aspects of the Emergency and left little room for interpretation:

“The Commander-in-Chief’s detailed and clear appreciation which covers all aspects of the Emergency leaves little to consider, except how best to implement the War Council Directive based on the appreciation.”<sup>28</sup>

40. An example of the War Council’s response to such plans is War Council Instruction No. 4 (29 May 1954) which approves plans relating to works and transit camps; screening and

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<sup>26</sup> TNA: WO 276/90, 03 July 1954, War Council Directive No. 1.

<sup>27</sup> TNA: WO 276/90, 27 March 1956, War Council Directive No. 9.

<sup>28</sup> Hanslope: Box No. 147. AA 45/79/1A Vol. II, 09 March 1956, Central Province Emergency Committee Appreciation and Plan for period post April ’56.

the build-up of the Home Guard.<sup>29</sup> Another example is War Council Instruction No. 13 (09 March 1955) which approves plans to implement the policy of closer administration; the maintenance of the Wakamba investigation organisation, later to become the Mau Mau Investigation Centre; and the maintenance of the Pipe Line, this being the system by which detainees were continuously screened and graded and then transferred to a detention camp which correlated to their grade.<sup>30</sup>

41. *Dilution technique* - Of the War Council Minutes which I have reviewed, minutes 1998 and 2005 are particularly important as they show the degree to which the War Council oversaw detention camp policy; including the implementation of the Dilution Technique before it had been officially authorised by the Secretary of State.

42. Minute 1998 reports:

“The GOVERNOR said that good progress was being made in rehabilitating ex-Manyani detainees in the Mwea Camps by placing small numbers of them amongst ‘Y’ detainees who had responded to rehabilitation.”<sup>31</sup>

43. Minute 2005 reports that the War Council:

“invited the Minister for Defence to submit reports at regular intervals on the progress being made with the ex-Manyani detainees at both the Mwea Camps and the District Camps, showing under each head (a) the number of detainees who were working, and (b) the number who were co-operating with the rehabilitation staff, and who had confessed;”<sup>32</sup>

44. Although no direct reference to the Dilution Technique is made in these minutes, the description given as to how a small number of detainees would be mixed with ‘rehabilitated’ detainees is clearly reference to the Dilution Technique described by the Minister for Legal Affairs in his memo entitled *Dilution Detention Camps Use of Force in Enforcing Discipline*, which was enclosed and sent to the Secretary of State for the Colonies in June 1957.

45. I have attached at Annex 1 a small sample of what the minutes record, the titles of which demonstrate that the War Council regularly considered matters related to screening, interrogation, villagisation and detention camps throughout the Emergency. The contents of these minutes is considered further below.

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<sup>29</sup> Hanslope: Box No. 68. EMER 45/23/5A, 29 May 1954, War Council Instruction No. 4.

<sup>30</sup> Hanslope: Box No. 148. AA 45/79/4A, 09 March 1955, War Council Instruction No. 13..

<sup>31</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 15 January 1957, One Hundredth and Ninety-Eighth Meeting.

<sup>32</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 22 January 1957, One Hundredth and Ninety-Ninth Meeting.

## Regional Emergency Committees

46. At paragraphs 7 and 8 of my first witness statement, I outlined the central role which the Army played in the Provincial, District and Divisional Emergency Committees. The committees at all levels consisted of both military and civilian personnel and Senior Army officers sat on the committees throughout the Emergency.
47. As noted above, the regional Emergency Committee papers sent to the War Council for approval. However, the Army also participated in policy decisions and the management of operations by these committees. I have attached at Annex 2, a small sample of what the minutes to the Committee meetings record, the titles to the minutes demonstrate that the committees made decisions related to screening, interrogation, villagisation and detention camps. The examples I attach show that the committees oversaw in detail the work of specific screening camps as well as overall screening and “rehabilitation” policy.
48. Interrogation, screening and detention camps were discussed in detail by the committees, including measures to put relatives of suspects under “maximum pressure and persuasion”. For example, Central Province Emergency Committee Minutes 3469 and 3470 reports that:
- “The Assistant Commissioner of Police recommended that terrorist activities, terrorist shambas and the position of relatives should be plotted in detail, which would then indicate which villages were white and which were black. Black villages could then be subjected to intensive investigation, and if necessary increased sanctions could be imposed upon them. The Chairman said that these principles had been in practice now for considerable time.”<sup>33</sup>
49. Minute 3470 continues on the same matter and reports the committee’s intention:
- “To put the maximum pressure and persuasion on to relatives to disclose the whereabouts of terrorists known to them.”<sup>34</sup>
50. Southern Province Emergency Committee Minute 18/56 is also revealing as it reports that:
- “It was agreed that in view of the doubtful character of this village of Ndeiya aliens, further re-screening would be arranged and the results submitted, if possible, for consideration at the next meeting.”<sup>35</sup>

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<sup>33</sup> Hanslope: AA 45/23/1/3A Vol. III, 03 August 1956, Central Province emergency committee meetings.

<sup>34</sup> Hanslope: AA 45/23/1/3A Vol. III, 03 August 1956, Central Province emergency committee meetings.

<sup>35</sup> Hanslope: AA 45/23/1/6A, 20 March 1956, Meetings of the Southern Province emergency committee.

## Villagisation

51. One of the central measures implemented to persuade the population to drop their support for Mau Mau was villagisation who drew inspiration from the British Army's experience in Malaya.<sup>36</sup> By the end of 1955 over 1 million Kikuyu were removed from their homesteads and moved into 804 guarded villages. Villagisation existed alongside other social measures such as food control, oath-cleansing ceremonies and land consolidation.<sup>37</sup> Another policy, forced labour, was utilised in the construction of the new villages.<sup>38</sup> Professor Elkins described the villages as "detention camps in all but name."<sup>39</sup>
52. The Army advocated the policy and in June 1954 the War Council endorsed the policy and began extending its implementation across all the Emergency areas. The policy proved highly effective in denying Mau Mau access to food supplies and their passive wing support base, restricting re-supply, communications and recruitment.<sup>40</sup> While Operation ANVIL wrested control of Nairobi away from Mau Mau, villagisation would win the campaign in the Reserves by punishing the population and driving the gangs into the forests.<sup>41</sup> This allowed Army forces to be deployed in the Reserves on a reduced level, freeing personnel for increasing offensives against the Mau Mau in the forests.<sup>42</sup>
53. General Erskine's personal support for the policy of villagisation is evidenced by the fact that he repeatedly advocated it, and even called for a more drastic implementation of it. For example, General Erskine pushed for villagisation in Kiambu District in July 1954<sup>43</sup> and thought that the policy was effective "as a punitive measure" which produced "valuable results".<sup>44</sup>

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<sup>36</sup> A.P. Castro and K. Ettenger, 'Counterinsurgency and socioeconomic change: the Mau Mau War in Kirinyaga, Kenya', *Research in Economic Anthropology*, 15 (1994), p82.

<sup>37</sup> Ibid, p88; D. Branch, D. 'Loyalism during the Mau Mau rebellion in Kenya, 1952-60' (D.Phil. dissertation, University of Oxford, 2005), p15; M.P.K. Sorrenson, Land Reform in the Kikuyu Country: A Study in Government Policy (Oxford University Press, 1967), pvii, p107.

<sup>38</sup> Castro and Ettenger, 'Counterinsurgency and socioeconomic change', pp78-79.

<sup>39</sup> Branch, 'Loyalism during the Mau Mau rebellion', p6; Elkins, *Britain's Gulag*, pxii.

<sup>40</sup> Castro and Ettenger, 'Counterinsurgency and socioeconomic change', p81, p88; R.W. Heather, 'Counterinsurgency and Intelligence in Kenya: 1952-56' (Ph.D. dissertation, Cambridge University, 1993), p209.

<sup>41</sup> Ibid, p110.

<sup>42</sup> Ibid, p179.

<sup>43</sup> Hanslope: Chief Secretary, Vol I - 40A, War Council minutes, 2/7/54, WAR/C/MIN.28.

<sup>44</sup> Hanslope: Chief Secretary, Vol II - 40A, War Council minutes, 10/9/54, WAR/C/MIN.45.

54. Lieutenant-General Lathbury's support for the policy is evidenced by the fact that in June 1955 he declared the "most important Emergency winning factor" to be "Closer administration based on a policy of putting ALL K.E.M.<sup>45</sup> into villages" and he aimed to achieve complete villagisation by 31 August 1955.<sup>46</sup> In Lieutenant-General Lathbury's final assessment, he declared that the scheme proved "highly successful from the security point of view."<sup>47</sup>
55. It is important to note that the Army had a robust view with regard to collective punishment of populations who harboured insurgents. A particularly informative document which provides insight as to how General Erskine saw "the passive wing" is a November 1954 confidential correspondence from General Erskine to Major-General Hinde. In this he states:
- "I have found considerable reluctance on the part of the Administration to inflict severe punishments on the population for these offences and I regard them as offences of harbouring gangsters... I spoke to H.E. on the subject on the 4<sup>th</sup> of November and told him that I did not think that we were being sufficiently tough and I was convinced that unless we were much more tough we should not break the passive wing. I found H.E. quite sympathetic and ready to lower his standards on collective punishment..."<sup>48</sup>
56. The Army also considered the passive wing to be an important source of intelligence and pushed for the intensification of the questioning of families. A minute of the War Council dated 31 July 1956 reports that:
- "The COMMANDER-IN-CHIEF said that he had recently discussed this subject [Mathira Division] with the Provincial Commissioner, Central Province. He was satisfied that during recent months the local population in Mathira had been producing a reasonable amount of useful information concerning the terrorists (about 40) still in the neighbourhood. Active measures must still be pursued, however, and he suggested that questioning of terrorists' relations should be intensified."<sup>49</sup>
57. The role of the Army in the intelligence system is explained more fully below.

### **Army Involvement in the Intelligence System**

58. At paragraphs 22 – 23 of my first statement and paragraphs 29 – 34 of my second statement I addressed the involvement of the Army in the intelligence system in Kenya during the Emergency, particularly the great importance placed upon it as a source of

<sup>45</sup> KEM is an abbreviation which was used to refer collectively refer to the Kikuyu, Embu and Meru tribes.

<sup>46</sup> Hanslope: Chief Secretary, Vol VII - 40B, 'Appreciation by the Commander-in-Chief of the Operational Situation in Kenya in June, 1955', Annex to WAR/C.634.

<sup>47</sup> TNA: WO 236/20: Lathbury's final report, 14/12/56, para. 5.

<sup>48</sup> Private Hinde Collection: Erksine to Hinde, November 1958.

<sup>49</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 31 July 1956, Hundred and Seventy-Ninth Meeting

operational intelligence by both General Erskine and Lieutenant-General Lathbury. This led to the significant growth of the intelligence system in Kenya, which was accompanied by the development of the “hand in glove” relationship between Special Branch and military intelligence. In summary:

- i. Soldiers served as Provincial and District Military Intelligence Officers (MIO’s) within the Special Branch itself, aided by Field Intelligence Assistants (later re-named Field Intelligence Officers);
- ii. The Army had ultimate responsibility for intelligence policy. Post July 1955, the Director of Intelligence and Security reported directly to the Commander-in-Chief.<sup>50</sup>
- iii. MIOs directly briefed the intelligence and the emergency committees and co-ordinated all intelligence activity in their areas;
- iv. The intelligence and emergency committees and the War Council reviewed the quality of intelligence and had overall control over screening and interrogation policy;
- v. Special Branch visited screening centres and detentions camps and liaised closely with screening officers. The Special Branch conducting screening and interrogation operations themselves in screening centres and detention camps. Kenya Regiment members were integrated as FIOs within Special Branch and conducted interrogations;
- vi. At all times MIOs and FIOs remained under military command.

59. The Hanslope disclosure provides further evidence with respect to all of the above. A confidential memo from the Hanslope files by the Director of Intelligence and Security in October 1953 is instructive on the principal sources of intelligence. It reports that:

- “Circumstances vary in every district, but as a general guide the main sources of intelligence are:
- a. Prisoners,
  - b. Surrendered gangsters,
  - c. Chiefs and Headmen,

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<sup>50</sup> TNA: WO236/20. The Kenya Emergency – May 1955 – November 1956. Para 27 – “At Provincial and District level Military Intelligence Officers were closely integrated with Special Branch of the Police. At Colony level however there was not a complete integration. The GSO I (Intelligence) worked at GHQ and reported to me: a Principal Military Intelligence officer worked alongside the Head of Special Branch, the Director of Intelligence and Security....During July 1955, with the complete agreement of the Commissioner of Police, I therefore brought this division of control to an end by placing my GSO I (Intelligence) and his staff who dealt with Emergency intelligence in Special Branch Headquarters under the direction of the Director of Intelligence and Security, who reported to me. The GSO I (Intelligence) thereafter acted as the Director of Intelligence and Security’s subordinate in all operational intelligence matters with consequent overall improvement.” [Emphasis added]

- d. Home Guard (Kikuyu Guard, etc.),
- e. Self-confessed adherents to Mau Mau.”<sup>51</sup>

60. This list is also accompanied by a diagram which illustrates whom the information would be collected from, whom by and who it would be passed on to. This diagram shows that Operational Intelligence collected from every source would be forwarded to the Army for operational exploitation.

61. Additional documentation from the Hanslope files further elucidates the intelligence system in Kenya during the Emergency and how information from “Confession Teams” was forwarded to Special Branch or the Security Forces. In March 1955 the War Council received a detailed memorandum explaining how "Confession teams" operated in Kiambu District:

"Confession teams are now operating in every location in this district and also in the Kiambu and Limuru settled areas. There is also a team at Kiambu boma which has so far dealt with over 800 Government and District Council employees. ...Once a man has confessed to the team he is taken before the African Court together with his confession (which is filled in on a printed form and signed by him) and with one or more of the Confession team as witnesses. ...Once a team has started operating in any area the amount of information rapidly snowballs, and while many people come in voluntarily to confess, it is also possible to call in others who are obviously heavily implicated and to confront them with witnesses who have already testified against them. In such cases those called usually confess also...Any operational information obtained from confessions is passed to the Special Branch or to the Unit of the Security Forces concerned, so that any action required can be taken immediately. ."<sup>52</sup>

62. By the end of January 1955, the War Council were planning to expand the Operational Intelligence Organisation, from 52 Field Intelligence Officers (comprising 7 District Intelligence Officers, 36 FIOs and 9 interrogators) and 12 Military Intelligence Officers for the Colony as at 1/1/55, to 73 FIOs (comprising 5 DIOs, 53 FIOs, and 15 interrogators) and 15 MIOs for the Colony.<sup>53</sup>

63. Close co-operation between the police, the Administration and the Army was integral to intelligence operations, intelligence was expected to work “hand in glove with Special Branch” as a report on intelligence gathering in Nairobi makes clear:

"(a) If domestics are 'known' to be active supporters of Mau Mau, evidence must be hand to that effect and the compilation of dossiers ensues leading ultimately to D.D.O.s. (b) M.M.I.C. pass all the information gleaned in their 'snowball' process of interrogation and documentation to Special Branch. (c) D.M.I. work hand in glove with Special Branch. (d) A weekly meeting is held at which Special Branch, M.M.I.C., D.M.I.O. and D.O. Closer Administration consolidate their information. (e) Representatives of

<sup>51</sup> Hanslope: DO 3/2: Organisation of intelligence services: The Routing of Intelligence, 29/10/53.

<sup>52</sup> Hanslope: Chief Secretary, Vol VI - 40B, 'Confessions in the Kiambu District', Letter from F.A. Loyd, District Commissioner Kiambu, to Secretary for African Affairs, 7/3/55, Annex to WAR/C.539.

<sup>53</sup> Hanslope: Chief Secretary, Vol V - 40B, 'Comparison of present and proposed revised establishments', Appendix 'A' to WAR/C.470 of 28/1/55.

all branches attend a daily meeting in the area Operations Room where items of operational intelligence of immediate value are presented. (f) All branches use the M.M.I.C. library for reference and research."<sup>54</sup>

64. Emergency Directive 14 (06/12/1954) – *Operations After Hammer* succinctly demonstrates the importance in the growth of the intelligence system to operations, and the central role played by military intelligence officers within it:

“The development of the intelligence machine in KENYA is resulting in a marked increase in the provision of “hot” operational information. This information is normally of a nature which requires immediate action by small parties of selected men. Targets are either individuals or small numbers of terrorists hiding up in the Reserves or in the labour lines in the Settled Areas. In nearly every case the operation will be carried out on the information and in the company of an FIO or MIO.”<sup>55</sup> [Emphasis added]

65. The fact that intelligence continued to be important to the Army as the Emergency developed is evidenced by Lieutenant General Lathbury’s appreciation of the situation in Kenya in January 1956. In this he stated that:

“The importance of intelligence is in no way diminished by reduction in terrorist strength and activity. In providing information both of terrorists and also of what is going on among detainees and the native population, the task of the intelligence organisation is, if anything, of even greater importance than ever before.”<sup>56</sup>

66. I have also found additional evidence in the Hanslope files that demonstrates the significant role played by military personnel as Military Intelligence Officers on the regional Emergency committees in the minutes to the meetings. The following is by no means an exhaustive list of what the records contain, but a sample to illustrate the attendance of Military Intelligence Officers upon the regional Emergency committees during the Emergency period:

- i. 02 October 1953 – Major Harrington (PMIO) attends the Rift Valley Provincial Emergency Committee meeting.<sup>57</sup>
- ii. 31 December 1953 – Captain D. Stuart (A.PMIO) attends the Rift Valley Provincial Emergency Committee meeting.<sup>58</sup>

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<sup>54</sup> Hanslope: Chief Secretary, Vol VI - 40B, 'Security of Nairobi. Selective Pick-up of K.E.M. Domestic. Report by the Nairobi Extra-Provincial District Emergency Committee', Appendix 'A' to WAR/C.561, 6/4/55.

<sup>55</sup> Hanslope: EMER 45/69/3A: Plans for security force operations against terrorists – January – March 1955: Emergency Directive 14 – Operations After Hammer, 06/12/1954.

<sup>56</sup> Hanslope: EMER 45/69/4A: Emergency policy in Kenya, with an appreciation by the Commander-in-Chief East Africa of the situation: Appreciation by the Commander-in-Chief East Africa. January 1956.

<sup>57</sup> Hanslope: EMER 45/23/1/2A Vol. I: Minutes of Provincial Emergency Committee Meeting Held in Nakuru on Friday 2<sup>nd</sup> October 1953

<sup>58</sup> Hanslope: EMER 45/23/1/2A Vol. I: Minutes of Provincial Emergency Committee Meeting Held in Nakuru on Thursday 31<sup>st</sup> December 1953

- iii. 29 March 1956 – Major C. J. Young (PMIO) attends the Central Province Emergency Committee meeting.<sup>59</sup>
- iv. 13 April 1956 – Major J. Hickson (PMIO) attends the Central Province Emergency Committee meeting.<sup>60</sup>
- v. 20 July 1956 – Major J. Hickson (PMIO) attends the Central Province Emergency Committee meeting.<sup>61</sup>
- vi. 03 August 1956 – Major J. Hickson (PMIO) attends the Central Province Emergency Committee meeting.<sup>62</sup>
- vii. 02 November 1956 – Major J. Hickson (PMIO) attends the Central Province Emergency Committee meeting.<sup>63</sup>
- viii. 01 February 1957 – Major J. Hickson (PMIO) attends the Central Province Emergency Committee meeting.<sup>64</sup>
- ix. 03 May 1957 – Major J. Hickson (PMIO) attends the Central Province Emergency Committee meeting.<sup>65</sup>

67. Attendance of these meetings by MIOs also illustrates that military personnel not only played a role in the policies and operations authorised by these committees, but also had a role in collecting and reporting the intelligence upon which these were based.

68. I have also identified additional evidence in the Hanslope files that illustrates the significant role played by military personnel as Field Intelligence Assistants/Officers during the Emergency. I have attached these at Annex 3. They include evidence regarding the number of FIA/FIOs operating during the Emergency; and there are multiple examples which demonstrate that the members of the Kenya Regiment that were

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<sup>59</sup> Hanslope: AA 45/23/1/3A Vol. III: Minutes of Central Province Emergency Committee Meeting Held on 29<sup>th</sup> March 1956

<sup>60</sup> Hanslope: AA 45/23/1/3A Vol. III: Minutes of Central Province Emergency Committee Meeting Held on 13<sup>th</sup> April 1956

<sup>61</sup> Hanslope: AA 45/23/1/3A Vol. III: Minutes of Central Province Emergency Committee Meeting Held on 20<sup>th</sup> July 1956

<sup>62</sup> Hanslope: AA 45/23/1/3A Vol. III: Minutes of Central Province Emergency Committee Meeting Held on 3<sup>rd</sup> August 1956

<sup>63</sup> Hanslope: AA 45/23/1/3A Vol. III: Minutes of Central Province Emergency Committee Meeting Held on Friday, 2<sup>nd</sup> November 1956

<sup>64</sup> Hanslope: AA 45/23/1/3A Vol. III: Minutes of Central Province Emergency Committee Meeting Held on Friday, 1<sup>st</sup> February 1957

<sup>65</sup> Hanslope: AA 45/23/1/3A Vol. III: Minutes of Central Province Emergency Committee Meeting Held on Friday, 3<sup>rd</sup> May 1957

serving as FIA/FIOs operated as members of the interrogation teams. The following are a small sample of what I have found:

- i. After an Administration request for the Kenya Regiment to assist the interrogation teams in Meru, the army agreed to let 2 FIAs already in the District help with interrogations.<sup>66</sup>
- ii. In July 1954 the War Council agreed to provide "8 more Europeans for interrogation teams" from the Kenya Regiment.<sup>67</sup>
- iii. By October 1954, the Kenya Regiment supplied 3 Other Ranks to "Interrogation Teams", and 7 officers and 39 Other Ranks as Field Intelligence Officers.<sup>68</sup>

69. A circular from Nyeri Area Provincial Police Headquarters explains the interrogation procedure for prisoners taken into police custody:

"It is the responsibility of the Police Station effecting the arrest, or receiving the prisoner, to make immediate interrogation. This is to be made as soon after capture as possible, in order to exploit the prisoners low morale. ...After immediate interrogation, prisoners will be sent direct to Interrogation Centres together with a completed Captured or Surrendered Details Form in respect of the prisoner. In normal circumstances they will be delivered within 24hrs. of capture. When a prisoner is used operationally, this period may be extended to 72 hrs. Prisoners on arrival at Interrogation Centres will undergo a Deliberate and Selective Interrogation under the direction and control of Special Branches. This interrogation will be done with the view to obtaining further operational intelligence, and will be carried out by personnel who have been provided by G.H.Q. for this particular purpose."<sup>69</sup>

### **The Army's Role in Detention Camps and Rehabilitation**

70. Although detention and works camps were formally the responsibility of the Minister for Internal Security and Defence, the detention of suspect Kikuyu, Embu and Meru on a mass scale was considered to be a vital part of the military campaign.<sup>70</sup> This is hardly surprising given that the initial policy deployed by the Colonial Administration was modelled on the Army's strategy against communist terrorists in Malaya. There are numerous references to the methods employed in Malaya, including the operation of interrogation teams in camps and screening centres, as inspiration for the policies deployed in Kenya throughout the records, one such document says that:

"Mr Askwith visited Malaya last year to study the methods successfully adopted in the campaign against Communist terrorists. Many of the principles accepted there can, it is believed, be successfully applied in

<sup>66</sup> Hanslope: CAB 28/1 Vol. I: 'Meru Interrogation Teams', E.J.S. 45, 15/9/54.

<sup>67</sup> Hanslope: Chief Secretary, Vol II - 40A, War Council minutes, 16/7/54, WAR/C/MIN.31.

<sup>68</sup> Hanslope: CAB 28/1 Vol. I: 'Re-organisation of the Kenya Regiment', 2/10/54.

<sup>69</sup> DO 3/2: Provincial Special Branch Circular No. 2, Operational Intelligence, 28/10/53.

<sup>70</sup> Hanslope: Chief Secretary, Vol I - 40A, War Council minutes, 1/6/54, WAR/C/MIN.19.

Kenya... Interrogation Teams will be formed as in Malaya, and will operate in Prisons, Work Camps and Detention Camps.<sup>71</sup>

71. A closer inspection of the War Council Minutes and papers demonstrates the nature of the military's interest and influence over detention policy. General Erskine's own interest in the detention camps is succinctly evidenced by the fact that the War Council regularly received and discussed progress reports on detention camps, an idea proposed by General Erskine.<sup>72</sup>
72. I have also identified further evidence in the Hanslope files which illustrate the Army's support for the system of detention camps. I have listed these at Annex 4. These include incidents of General Erskine requesting that accommodation in detention camps and prisons be expanded; the Commander-in-Chief authorising the use of military personnel, (such as the Kenya Regiment and East Africa Pioneer Corps) as detention camp and prison service personnel; and the Commander-in-Chief's involvement in matters of related policy such as health, security and training.

*Presence of MIOs and Special Branch in Screening Centres and Detention Camps*

73. The fact that Special Branch was active in the detention camps is clear from the papers of the Emergency Joint Staff as well as oral testimony collected by Professor Elkins. At a meeting of the Staff, the Deputy Director of Intelligence and Security stated that: "...after discussing the role of the Special Branch detachments at Mackinnon Road and Manyani, [he] said that he would have his officers at these two places by 28th February." At the meeting it was also decided to send Special Branch to Langata Camp. These personnel were to check the re-classifications proposed by the Rehabilitation Staff.<sup>73</sup> As outlined in my first statement at paragraph 9 and restated at paragraphs 14–16 above, the Special Branch were under the Commander-in-Chief's operational control.
74. The Hanslope files also reveal that Special Branch officers worked in Manyani Detention Camp, assisting District Officers in selecting those to be sent to the Reserves.<sup>74</sup> There is

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<sup>71</sup> Hanslope: AA 45/22/2, undated, Government's Policy for Rehabilitating Mau Mau.

<sup>72</sup> Hanslope: Chief Secretary, Vol I - 40A, War Council minutes, 28/5/54, WAR/C/MIN.18.

<sup>73</sup> Hanslope: CAB 28/2 Vol. I: Minutes of the Emergency Joint Staff, 23/2/55.

<sup>74</sup> Hanslope: War Council Volume 10: 'Rehabilitation Progress Report 1955', WAR/C.840, 13/1/56.

further evidence that Special Branch were still operating in Manyani Detention camp, working with Rehabilitation teams to grade detainees for the Works and Pipe-line camps, in January 1956.<sup>75</sup> I also refer the Court to paragraph 38 of my second statement which places MIOs at Nyeri Interrogation Centre and Miathini Screening camp. This is significant because of the close integration between the Special Branch and military intelligence, as set out in my first statement at paragraph 23 and my second statement at paragraphs 29 – 32. In addition, Special Branch maintained a detainee records section and so intelligence and detention were intimately connected.<sup>76</sup>

### **The Army's Role in Screening, Screening Centres and Interrogation**

75. I refer the Court to my first witness statement paragraphs 25 to 31 and to my second witness statement, paragraphs 20 to 26. In essence the position is as follows:

- i. The Army and police screened in joint operations in the field;
- ii. The Army was often integrated into interrogation teams, in particular Kenya Regiment personnel were often integrated into interrogation teams (this has become apparent through the Hanslope disclosure);
- iii. The Army was directly involved in screening and interrogation activities in detention camps and screening centres (this has become apparent through the Hanslope disclosure).
- iv. The Army worked closely with screening teams with regard to their intelligence requirements and intelligence was then passed onto MIOs.

76. There is extensive further evidence in the Hanslope files that the Army, through the War Council, sought to exercise control over screening and was involved in screening operations. I have listed at Annex 5 some of the examples of the new evidence I have identified that evidences the Army's control over screening policy. These illustrate how the Army sought to determine how screening operations were conducted; with General Erskine urging screening operations to be launched as soon as possible, urging existing

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<sup>75</sup> Hanslope: CM 458 Vol XIV Box 37: Council of Ministers memoranda: Rehabilitation Progress Report, 27/01/1956.

<sup>76</sup> Hanslope: CAB 28/2 Vol. I: Minutes of the Emergency Joint Staff, 28/7/55.

screening operations to be expedited and persuading the War Council to agree to expand detention camp accommodation so that a greater number of detainees could be screened.

77. Detention and screening policy was carefully controlled by the War Council. For example a Directive (16/9/54) is signed by Erskine, Baring and Blundell, and provides for detailed instructions with regard to screening: "The importance of ensuring that the machinery for screening and categorising detainees and passing them from the reception centres to constructive labour in Works Camps runs smoothly and quickly must be kept in mind by all those concerned."<sup>77</sup> The close control of screening policy continued under Lathbury. For example in August 1955, he asked for "a report to include concrete proposals for improved screening and rehabilitation designed to run down the present detainee population..."<sup>78</sup>
78. It is also worth restating that much of the conduct of the Emergency was delegated to the Provincial and District Emergency Committees, in order to allow adaptation of broad plans to local circumstances. This principle also applied to screening. But, as explained above, lower-level plans had to be approved by the War Council. For example, the Rift Valley Province Emergency Committee submitted plans to the War Council for April to August 1955, asking for permission to retain four screening teams in the Province.<sup>79</sup>
79. In addition to the evidence on an overarching policy control exercised by the Army with regard to screening and interrogation, the Hanslope files evidence frequent Army engagement in screening operations in the field. There are numerous new examples and I have included a selection of what I have found at Annex 6. These examples supplement previous understanding and evidence the fact that the Army regularly conducted joint screening operation with the Kenyan Police and Special Branch; and the scale of these operations.

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<sup>77</sup> Hanslope: War Council Memorandum Vol. III: 'War Council Directive No. 2', 16/9/54.

<sup>78</sup> Hanslope: Chief Secretary, Vol VIII - 40B, 'Releases from works camps. Note by the Commander-in-Chief', Annex to WAR/C.695, 2/8/55.

<sup>79</sup> Hanslope: AA 45/79/4A Box 148: 'Review of Plans Submitted by Provincial Emergency Committees in Response to War Council Directive No. 3', Report by the Emergency Joint Staff, WAR/C.488, 11/2/55.

80. Information has also emerged as to the interrogation facilities run by Special Branch. These appear to have operated in addition to Special Branch officers going into regular detention camps and screening centres.
- i. A Kamba Interrogation Centre was opened in 1955.<sup>80</sup>
  - ii. Another Centre was run in Mombasa. An intelligence summary from March 1956 noted how: "845 K.E.M. have now been passed through the Mombasa Investigation Centre. Of this number approximately half have either confessed freely to complicity with Mau Mau or were exposed as oath takers in the course of interrogation."<sup>81</sup>
  - iii. The Mau Mau Interrogation Centre (MMIC) was controlled by Special Branch. By September 1956, there was one District Military Intelligence Officer and 5 FIOs serving the Central Province (South) area. Two of these FIOs were in the MMIC.<sup>82</sup>
  - iv. A memo from September 1956 noted how a camp was created within the MMIC: "...a Special Holding Camp, under Special Branch control and administration was opened at the M.M.I.C., Embakasi, on July 16th 1956 with the arrival of the first 30 of these ex-terrorists who had previously been disposed of to South Yatta Works Camp." By this date, the Camp had received 136 people, and sent 59 back to the Districts. The Camp held 77 people. Whilst at the Camp people were documented and screened.<sup>83</sup>

### **Knowledge of Abuses**

81. The Hanslope files show that the military authorities were aware that serious allegations of abuses were being levelled against the security forces, including the Army, from at least November 1952.<sup>84</sup> I have listed at Annex 7 some of the examples of the new evidence I have identified that evidences that the military were aware that serious allegations of abuses were being levelled against the security forces.

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<sup>80</sup> Hanslope: INT 10/4/2/3/7A Vol. I: Mombasa District Intelligence Committee, Summary No. 4/55, 25/3/55.

<sup>81</sup> Hanslope: INT 10/4/2/3/7A Vol. II: Mombasa District Intelligence Committee Summary, 27/3/56.

<sup>82</sup> Hanslope: AA 45/79/7A Box 148: Summary of Central Province Emergency Committee (South) Plan in response to War Council Directive No. 10, 10/9/56.

<sup>83</sup> Hanslope: CAB 28/1 Vol. III: 'Disposal of ex-Mau Mau who have assisted the Security Forces', Memorandum by Asst. Commissioner of Police (B), 12/9/56.

<sup>84</sup> Hanslope: ADM 35/2/11/2A Vol. II: North Nyanza District: Secret Intelligence Report for the Month of November, 1952, 29/11/52.

82. General Erskine's own knowledge as to the existence and extent of the abuses which preceded his arrival is evidenced by his letter to the Secretary of State for War in December 1953. I described this letter in my first witness statement at paragraph 15, but for ease of reference I will set out the key extracts from it again below:

"There is no doubt that in the early days, i.e. from Oct 1952 until last June there was a great deal of indiscriminate shooting by Army and Police. I am quite certain prisoners were beaten to extract information. It is a short step from beating to torture and I am now sure, although it has taken me some time to realise it, that torture was a feature of many police posts. I do not believe the regular police were heavily involved although some of them may have been. The real trouble came from the Kenya settler dressed as KPR or in the Kenya Regt....

You ought to know about "screening teams". They work under the Administration and their object is to comb through labour and distinguish Mau Mau from the rest and the degree of Mau Mau. Some of these screening teams have used methods of torture."<sup>85</sup>

83. In December 1953, a colony-level summary noted that: "Local church leaders have made a joint demand for an investigation of the alleged irregular conduct and brutality of members of the security forces, particularly the police. The Secretary of State for War has set up a military court of enquiry to investigate allegations against the Army and it is proposed to establish a Watch Committee to ensure that complaints against the police are promptly and thoroughly investigated."<sup>86</sup> This Watch Committee is what later became known as the Chief Secretary's Complaints Co-ordination Committee.

#### *Chief Secretary's Complaints Co-ordination Committee*

84. Many of the minutes from the meetings of the Chief Secretary's Complaints Co-ordination Committee are included in the Hanslope file. The available committee records show that soldiers continued to commit offences after General Erskine's orders and record multiple additional offences by members of the police, Administration and Home Guard. It should be noted that the minutes of these meetings were sent, inter alia, to the Military Assistant to the Commander-in-Chief. From 20 December 1954 the minutes were also sent to Lieutenant-Colonel E.R. Lewis, the Assistant Adjutant General at GHQ East Africa.<sup>87</sup>

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<sup>85</sup> TNA: WO 32/15834: Letter from Erskine to Secretary of State for War, 10/12/53.

<sup>86</sup> Hanslope: CO 968/266: Colonial Political Intelligence Summary No. 12, December 1953.

<sup>87</sup> TNA: WO 32/15556, C-in-C to AG, 27/08/1953.

85. I refer the Court to my second witness statement, paragraphs 9 to 12 which demonstrate that the Army were intimately involved in disciplinary decisions. In essence:

- i. All cases of crimes committed by the Security Forces were referred first of all to the Army Legal Services before proceedings were instituted in the civil courts.<sup>88</sup>
- ii. The Army Legal Services and the Attorney General consulted on all cases before proceedings were instituted;
- iii. In peacetime Colonial law applied to discipline to the KR and KAR but during the Kenyan Emergency this was displaced by the Army Act;
- iv. Each case of alleged abuse was discussed between the Commander in Chief and the Attorney General so that the Commander in Chief may “have a say as to what happens to the offender....” In a letter from General Erskine to General Sir John Crocker (Adjutant General to the Forces) dated 27/08/1953 he said the following with regard to detainee abuse:

“I do not feel so strongly about Police or Home Guard offences because this reflects more on the Colony than on the Army. Each case is, however, discussed with the Attorney General so that I may have a say as to what happens to the offender....My predicament is that the application of the law to the obedience to an unlawful order will not be understood by the African Askari. I may have to condone this attitude because failure to do so would, or might, have very serious repercussions on the K.A.R.”<sup>89</sup> [Emphasis added]

86. In addition, General Erskine would have been aware of the repeated public allegations of abuse and torture by the security forces throughout the Kenya Emergency which are referred to in Professor Elkins’ first statement.

### **The Commander-in-Chiefs’ attitude towards the rule of law**

87. As I stated at paragraph 16 of my first statement, shortly after his arrival in Kenya General Erskine issued a Directive to the Army and Police on the 23 June 1953 in which he stated “I strongly disapprove of ‘beating up’ the inhabitants of this country just because they are the inhabitants...” and made it plain that any complaints would be investigated. This is an important point because this and other directives and orders issued by General Erskine on conduct have led scholars to conclude that he was

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<sup>88</sup> HANSLOPE: CAB 19/4 Vol. I: Record of the Chief Secretary’s Complaints Co-ordinating Committee, 31/5/54.

<sup>89</sup> TNA: WO 32/15556, C-in-C to AG, 27/08/1953.

“...committed to the investigation of all allegations of brutality by the Security Forces”, while any failings of punishment were the fault of the courts.<sup>90</sup>

88. However, the documentary evidence from the period reveals that in fact General Erskine did not consider it desirable to investigate and prosecute local security forces. A letter dated 27 August 1953 from General Erskine to the War Office shows that General Erskine’s attitude to the prosecution of criminal offences against the security forces had changed barely two months after his earlier directive. In this letter, on the issue of detainee abuse, he states:

“I do not feel so strongly about Police or Home Guard offences because this reflects more on the Colony than on the Army. Each case is, however, discussed with the Attorney General so that I may have a say as to what happens to the offender... My predicament is that the application of the law to the obedience to an unlawful order will not be understood by the African Askari. I may have to condone this attitude because failure to so would, or might, have very serious repercussions on the K.A.R.”<sup>91</sup> [Emphasis added]

89. Thereafter, General Erskine repeatedly continued to argue against the investigations and prosecutions into abuses by the security forces. On 10 December 1953, Erskine wrote to the Secretary of State (the letter was released in 2005) stating that:

“There is no doubt that in the early days, i.e. from Oct 1952 until last June there was a great deal of indiscriminate shooting by Army and Police. I am quite certain prisoners were beaten to extract information. It is a short step from beating to torture and I am now sure, although it has taken me some time to realise it, that torture was a feature of many police posts. I do not believe the regular police were heavily involved although some of them may have been. The real trouble came from the Kenya settler dressed as KPR or in the Kenya Regt....

You ought to know about “screening teams”. They work under the Administration and their object is to comb through labour and distinguish Mau Mau from the rest and the degree of Mau Mau. Some of these screening teams have used methods of torture....

I very much hope it will not be necessary for HMG to send out an independent inquiry. If they did they would have to investigate everything from the beginning of the Emergency and I think the revelation would be shattering.”<sup>92</sup>

90. At paragraph 14 of my second statement I explained how the Mclean Inquiry was deliberately prevented from investigating incidents of Army abuses prior to General Erskine’s arrival. General Erskine’s own role in limiting the scope of the enquiry is evidenced by communication 88911 from General Erskine to the Adjutant General on the 10 December 1953. In this General Erskine states his position as:

“I strongly recommend McLean and any others should enquire on the terms of reference already signalled by me, if an enquiry on such wide terms of ref as you suggest is made it would give a completely distorted picture unless all security forces were included. It would be almost certain to lead to enquiries concerning

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<sup>90</sup> Heather, *Counterinsurgency and intelligence*, p139.

<sup>91</sup> TNA: WO 32/15556. C-in-C to WO, 27/08/1953.

<sup>92</sup> TNA: WO 32/15834: Letter from Erskine to Secretary of State for War, 10/12/53.

police since many members of Army mostly Kenya Regt served with police. You realise it would bring before the court the Governor who was prior to my arrival the Commander-in-Chief not only in name by in fact. I recommend a Court of Enquiry on terms already signalled as a first step and a full enquiry if HMG wish as a second step. The first by its terms will not clash with the second. HMG should consider very carefully whether the second step may not do more harm than good.”<sup>93</sup>

91. Following this intervention, the Prime Minister agreed to limit the scope of the McLean Enquiry.

92. On 9 June 1954, General Erskine explained his view on investigations into abuses by the Home Guard to the War Council, after learning of plans to prosecute several Home Guard members for murder:

“The Kikuyu Guard are not a disciplined force – their European supervision is inadequate – their standards are not the standards of regular disciplined troops or police. They are not paid – they are not clothed – they are inadequately fed. They do a very good job because they do it from the heart and with faith in the Kenya Government. I have always warned the Government that by accepting the Kikuyu Guard and arming them the Government were accepting the aid of irregular auxiliaries who were not under my disciplinary control and that they must not expect the disciplinary standards which I should require from regular troops and police. As I understand it the Government have accepted this risk because of the obvious advantages to be derived from a loyal local force. I am convinced they are an essential part of the campaign. ...But it now appears to me that the Government are proposing to try for murder some of these men because they do not come up to the standard of conduct they would expect from their regular forces. It is important that the whole case should be studied before a decision is taken. ...I must warn the War Council that my opinion is that if these men are tried for murder they may be faced with a deterioration in morale and perhaps some desertion from the Kikuyu Guard.”<sup>94</sup> [Emphasis added]

93. Two days later General Erskine re-enforced his position upon the War Council, as the minutes record:

“The COMMANDER-IN-CHIEF said that he feared that if the full severity of the law were exerted against members of the Kikuyu Guard there might well be disaffection amongst them... the Kikuyu Guard, who were not a disciplined force in the normal sense of the term, should not be expected to come up to the same standard of conduct which was demanded from Regular Forces... He thought that where members of the Kikuyu Guard were proved to be in sympathy or league with Mau Mau, than extreme penalties were justifiable; but where breaches of discipline by the Kikuyu Guard were committed in good faith, the penalty might be dismissal.”<sup>95</sup> [Emphasis added]

94. I have found evidence in the Hanslope files that demonstrate that by December 1954 General Erskine was actively seeking to prevent prosecutions of criminal offences against the security forces. At a meeting of the War Council on 14 December 1954 General Erskine proposed that “it would be reasonable to consider criminal charges

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<sup>93</sup> TNA: WO32/15834, War Council Extract, 09/06/1954.

<sup>94</sup> TNA: WO 276/474: ‘Kikuyu Guard. Note by the Commander-in-Chief’. WAR/C.114, 9/6/54.

<sup>95</sup> Hanslope: CAB 19/4 Vol. I Charges against members of security forces: Extract from Minutes of War Council Meeting held on 11 June 1954.

against the members of anti-Mau Mau forces during discussions on amnesty and surrenders”, the War Council approved this suggestion.<sup>96</sup>

95. In a communication to the War Office dated 6<sup>th</sup> January 1955 General Erskine states:

“CID undoubtedly have genuine cases of brutality against home guard and evidence of obstruction by administration in their investigations. Am told nineteen cases are under investigation including four chiefs and four headmen one or two European district officers and remainder home guard, final list may prove much longer.”<sup>97</sup>

### *1955 Amnesty*

96. In a further communication to the War Office dated 09<sup>th</sup> January 1955 General Erskine was arguing that there should be no prosecutions:

“I do not like arrangement by which loyalists charged and arrested at present will have their cases proceeded with. This places them in a more unfavourable position than Mau Mau and does not relieve to the extent that I wish the damage to loyalist morale that has already occurred. In my opinion after 14 Jan no (rpt no) cases against loyalists which were on the books before 14 Jan should proceed whatever their stage”<sup>98</sup> [Emphasis added]

97. In response, the Secretary of State for War wrote to General Erskine, reporting that both he and the Colonial Secretary agreed with General Erskine’s proposal:

“I saw the Colonial Secretary today and put to him the rather unfortunate impression that might be created on the loyalists if they felt in any way that their treatment was less favourable than that of the terrorists. I advanced the general arguments put forward in your signal 12972/C in C OTP of 9 Jan to CIGS and he fully understood and indeed seemed to agree with the point of view you put forward. He is signalling to Baring today and is including a paragraph in which will stress the importance of avoiding the bad effect you foresee. I think he will suggest that the slate should be washed clean for all before Jan 17 or that if some action must be taken against loyalists already apprehended then something equivalent must be done with regard to the terrorists.”<sup>99</sup>

98. This led to the passing of the Amnesty on the 18<sup>th</sup> January 1955.<sup>100</sup>

99. The categories of cases which were included in the Amnesty included cases of torture. For example, a series of documents have been released from the Hanslope files which concern the beating to death of a woman on 06 December 1954 whilst being interrogated by two Tribal Policemen, one Kenya Police Reserve Policemen and a Headman at the

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<sup>96</sup> Hanslope: CAB 19/4 Vol. I Charges against members of security forces: Extract from Minutes of War Council Meeting held on 14 December 1954.

<sup>97</sup> TNA: WO 216/879, C-in-C to WO, 07/01/1955

<sup>98</sup> TNA: WO 216/879, C-in-C to WO, 09.01.1955

<sup>99</sup> TNA: WO 216/879, SoS to C-in-C, 10.01.1955

<sup>100</sup> Prof David Anderson, *Histories of the Hanged, Britain’s Dirty War in Kenya and the end of Empire*, Weidenfeld & Nicolson, 2005, pg392.

order of a local Chief. Strikingly the cause of this woman's death was not in doubt as the inquest into the death found that:

"It is clear that the woman KAMWELE W/O MINYALA died from the effects of beating on her arms and legs, being of the age of sixty. This beating appears to have been administered to her whilst she was being interrogated ..."<sup>101</sup>

100. Correspondence from the Senior Superintendent of Police (Southern Province) and the Assistant Commissioner of Police (Crime) dated 12 February 1955 reports that:

"There is no doubt that Chief Patrisse acted in what he considered to be the interests of law and order when he ordered the two Tribal Policemen and his escort constable to beat Kamwele, the men who administered the beating did so on the Chief's instructions (though the latter will not now admit to this)

Although it is clear from the evidence that the deceased screamed a lot and the beating was carried out over a period of several hours the post mortem examination revealed only bruises and one small laceration on her forearm. It seems probable that these injuries would not have caused death in a younger and more robust person but the shock was too much for the deceased who was elderly.

In my opinion this case is one to which the terms of the amnesty can very fairly be applied."<sup>102</sup> [Emphasis added]

101. Unfortunately the Assistant Commissioner of Police's response is not included in the Hanslope files. But in an earlier Secret letter dated 24 January 1955 the author reports that:

"I have discussed the Patrisse case with Carter and he has confirmed that Macpherson who is in charge of the C.I.D. has agreed that no charge should be preferred against Chief Patrisse and the others concerned in the case and he will endorse the case file accordingly. In these circumstances I suggest that the matter be regarded as closed insofar as the Police and the Administration are concerned..."<sup>103</sup> [Emphasis added]

102. A second example of the application of the amnesty comes from the Minutes of the Chief Secretary's Complaints Co-ordinating Committee. In December 1954 the Committee heard that a complaint about beatings of labour by the security forces in October had resulted in a charge of assault causing actual bodily harm being brought in the civil courts against Sergeant Mervil<sup>104</sup> of the Kenya Regiment.<sup>105</sup> However, in January 1954 the Committee recorded how "As the trial of Sgt. Merrill and R.P.O. Swann set down for hearing on the 7th January had been postponed the Deputy Public Prosecutor intimated

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<sup>101</sup> Hanslope: EM 6/2/1/2, File Description Mau Mau activities in Machakos district: Inquest into the death of Kamwele W/O Minyola, 06 January 1955

<sup>102</sup> Hanslope: EM 6/2/1/2, File Description Mau Mau activities in Machakos district: Correspondence from the Senior Superintendent of Police (Southern Province) and the Assistant Commissioner of Police Crime dated 12 February 1955

<sup>103</sup> Hanslope: EM 6/2/1/2, File Description Mau Mau activities in Machakos district: Secret letter by E. A. Sweatman, 14/01/1955

<sup>104</sup> Whose name was later corrected to Sergeant Merrill.

<sup>105</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 20/12/54.

that he did not now intend to proceed with this case in view of the amnesty for offences committed by members of the Security Forces."<sup>106</sup>

### *The Sergeant Allen Case*

103. Closed documentary evidence from the TNA<sup>107</sup> and the Minutes to the Chief Secretary's Complaints Co-ordinating Committee from the Hanslope files also provide evidence that the Army interfered with the application of rule of law.

104. The evidence from the TNA concerns the enquiries which arose after allegations of murder were made against Sergeant Jeremy Allen of the Kenya Regiment. Sgt Allen was accused of murdering two Kikuyu men whom he had taken into his custody to interrogate. He was at that time seconded to the 23<sup>rd</sup> KAR and running his own Kikuyu informer network.<sup>108</sup>

105. The allegations arose as a third man (Mwangi) who had also been taken into custody by Sgt Allen claimed that he had witnessed the shooting of the two men. Investigations were then undertaken by Mr Peter Evans, an English barrister who had defended Jomo Kenyatta at his trial, who collected witness testimony before passing it on to the local police forces. After consideration of the evidence at an Inquest held in late August 1953, it was decided by the Magistrate that Sgt Allen and two Askaris under his command be charged with murder.<sup>109</sup>

106. General Erskine reported the case to General Sir John Crocker (Adjutant General to the Forces) on 02 September 1953. He stated that:

"I think you should know that I have on my hands an extremely difficult legal case. It will certainly receive a great deal of publicity in Kenya and that may extend to U.K.

Very briefly the case is as follows. A certain Sgt. Allen of the Kenya Regt, attached to a K.A.R. Bn, is to be charged with murder. This is the result of an Inquest here by a Magistrate for a death which occurred in April... The case against Sgt. Allen is that he murdered in cold blood two people who had been his captives for over 12 hours. I was told nothing about this case until two weeks ago. But now the Government and the Attorney General have got cold feet and are clamouring for me to take over the case... If I accept the Attorney General has virtually surrendered his "constitutional position" and cannot

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<sup>106</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 24/1/55.

<sup>107</sup> Which remains closed to the public until 2029.

<sup>108</sup> Sergeant Allen Summary, Exhibit D.

<sup>109</sup> TNA: CO 968/424: Court Martials Kenya: Curtis to Rogers, 12/09/1953.

claim the right to trial of military offenders. If I refuse I would seriously prejudice my claim to try any of my own people by C.M. on a civil charge.”<sup>110</sup>

107. General Erskine agreed to this and subsequently arranged for a Summary of Evidence to be taken by an Assistant Director of Army Legal Services.<sup>111</sup> There is substantial evidence that the Summary of Evidence Hearing was flawed. Critical evidence against Allen was missed by the investigation. Statements were never taken from the remaining Askaris accompanying Allen, a passing Indian lorry driver, and a passing government Veterinary officer. At the Summary hearing itself nine persons who had given witness statements against Allen were not permitted to give oral evidence.

108. On the 21 September 1953 General Erskine sent a priority message to the Vice Adjutant General, informing him that the “Summary of evidence has shown clear attempt to “frame” Sgt Allen. I have issued instructions to unit to dismiss charge.”<sup>112</sup>

109. The conduct of this hearing and General Erskine’s role in it raises important concerns as to the rule of law in Kenya, even with regard to Army abuses. These questions were not lost on Kenya’s Attorney General, John Whyatt, as evidenced by a communication from the Deputy Governor to the Secretary of State for the Colonies on 02/12/1953, which reported that:

“In his talk with the C.-in-C. yesterday morning, Whyatt pointed out that the general public was utterly amazed at Griffiths’ acquittal and that many people felt serious doubt as to the adequacy and reliability of Courts Martial in Kenya. This view was reinforced by the dismissal of a similar charge of murder against Sergeant Allen of the Kenya Regiment in September, after the conclusion of summary evidence of proceedings.”<sup>113</sup>

110. Similarly, a minute at the front of the closed TNA file provides insight as to how an unknown member of the Colonial Office regarded the case. It states:

“I have read through this summary of evidence and, whatever the true facts may be, the whole background I find extremely irregular. One can only hope that steps have been taken to tighten up on the procedure to be followed in regard to interrogation of suspects and witnesses. The two passages I have sidelined on page 32 and page 36 seem particularly naïve. One can hardly take seriously the suggestion that by taking persons in custody into a special area you acquire greater rights to shoot to kill them if they seek to escape.”<sup>114</sup>

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<sup>110</sup> TNA: WO32/15556: Legal position in Kenya: policy: C-in-C to AGF, 02/09/1959.

<sup>111</sup> TNA: CO 968/424: Court Martials Kenya: Curtis to Rogers, 12/09/1953.

<sup>112</sup> TNA: CO 968/424: Court Martials Kenya: Erskine to VAG, 21/09/1953.

<sup>113</sup> TNA: CO 968/424: Court Martials Kenya: Deputy Governor to SoS Colonies, 02/12/1953.

<sup>114</sup> TNA: CO 968/424: Court Martials Kenya: Minute date 10.11.53.

*Chief Secretary's Complaints Co-ordinating Committee*

111. The available evidence from the Chief Secretary's Complaints Co-ordinating Committee demonstrates that the failings in the Sgt Allen case were not an isolated incident and that derisory sentences were often handed down by courts when faced with serious charges of manslaughter.
112. Further examples of the application of military justice also arise in the Committee Minutes. For example on 20 December 1954 the Committee received "a preliminary report from the C.I.D. to the effect that Fusilier Stafford of the Royal Northumberland Fusiliers while staying as a guest on Thomsons Farm Nanyuki was playing with his rifle and pointing it at an African herdsman Mgrita s/o/ Uimuru when it went off and fatally injured the herdsman."<sup>115</sup> Subject to approval by the Commander-in-Chief, it was proposed to try Stafford for manslaughter by court martial.<sup>116</sup> He was convicted by court martial of manslaughter and, subject to confirmation, sentenced to only 84 days detention.<sup>117</sup>
113. On the 07 March 1955 the Committee was informed that Sergeant Murray of the Kenya Regiment had been investigated by the C.I.D. for allegedly shooting an African under interrogation in Muthambe, Meru District in February 1955. The Deputy Public Prosecutor reported that inquiries suggested the shooting "was accidental but that there appeared to be an element of negligence and he had arranged with the military authorities to take action on this aspect."<sup>118</sup> [Emphasis added] However, he was eventually sentenced at court martial to nine months imprisonment, subject to confirmation by the Commander-in-Chief and the Governor.
114. On the same day, the Committee also heard that the C.I.D. had investigated Driver Ronald Yates for the alleged shooting and wounding of two farm labourers on Embori Farm at Timau. What is striking is that the Deputy Public Prosecutor again reported that "inquiries into this case indicated that the shooting and wounding... was accidental, but there appeared to be an element of negligence and he had arranged with the military

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<sup>115</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 20/12/54.

<sup>116</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 10/1/55.

<sup>117</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 7/2/55.

<sup>118</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 7/3/55.

authorities to deal with this aspect.”<sup>119</sup> [Emphasis added] Driver Yates was convicted by court martial and sentenced on 15 April 1955 to six months detention.<sup>120</sup>

115. The Minutes to the Chief Secretary’s Complaints Co-ordinating Committee also serve to evidence the wider point that despite General Erskine’s orders to the contrary, abuses were still being committed by the security forces, including the Army, throughout the Emergency. I understand that Professor Anderson will address the records of the Chief Secretary’s Complaints Co-ordination Committee in great detail. It will therefore suffice for me to provide a brief overview of the records to demonstrate how they evidence continuing army abuses by soldiers during the Emergency. I have identified 30 complaints in total which were made between May 1954 and January 1957; these are attached at Annex 8 and 9. Seven of the thirty resulted in convictions, the remaining 23 did not.

#### *Shot Attempting to Escape*

116. Another important source of evidence from the Hanslope files are the documents that relate to the incidents of detainees and civilians being shot attempting to escape. Like General Erskine’s instructions with regard to civilian abuses, when he first arrived in Kenya General Erskine initially resolved to stop the indiscriminate shooting that was going on.<sup>121</sup> However, the Hanslope files provide significant evidence that the indiscriminate shootings continued. I have included a list of some of the examples I have found at Annex 10. These examples show that after General Erskine’s arrival civilians and detainees would regularly be ‘shot attempting to escape’. The number of these incidents is striking; the list constitutes 85 incidents resulting in 173 people being shot, the significant majority of which were killed. What is equally striking is the fact that complaints against security personnel for unlawfully shooting civilians and detainees in this context are notably absent from the Chief Secretary’s Complaints Co-ordinating Committee.

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<sup>119</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 7/3/55.

<sup>120</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 2/5/55.

<sup>121</sup>TNA: WO32/15834 - In a letter to the Secretary of State for War from General Erskine (dated 10/12/1953), he reported that “There is no doubt that in the early days, i.e. from Oct 1952 until last June there was a great deal of indiscriminate shooting by Army and Police.

117. Although this issue is not directly related to the use of torture, it is important because the extent of to which the shootings continued, despite General Erskine's order, is indicative of the broader environment and the adherence to and application of the rule of law in Kenya.

### *Interpretation of the Evidence*

118. The extensive evidence I have considered, some of which is illustrated here, provides clear evidence in my view that General Erskine's strategy was to defeat the rebellion by repressing those elements of the Kikuyu population perceived to be disloyal. Policies such as collective punishment, villagisation, mass detention, and interrogations were considered strategically vital to this end. The Court will form its own appreciation of this detailed factual evidence but as a historian of the period it is my opinion that the documents demonstrate that General Erskine was concerned that if he rigorously cracked down on the abuses which were being committed during the implementation of these policies, the resulting investigations and attention would have brought these policies, which formed the core of his strategy to defeat Mau Mau, into question.

119. I have not found direct evidence that the Commanders-and-Chiefs issued direct orders for mass atrocities, but by deliberately failing to implement the law in its full force, they created a permissive environment which allowed the abuses to continue. The Court will draw its own conclusions from the evidence, but as a military historian I believe that clear cut conclusions can be drawn from the vast amount of existing documentary evidence. In short, despite being faced with evidence that violence was inherent to the detention and intelligence system, the military and civilian authorities decided that the operational advantages of maintaining the system outweighed both its moral and human costs.

### **The Commander-in-Chief's Powers to Halt Abuses**

120. There are several points to be made about the Army's formal powers to halt abuses. Firstly, the King's Regulations dictated that: "An officer is at all times responsible for ensuring that good order and the rules and discipline of the service are maintained; he will afford the utmost aid and support to the C.O. It is his duty to notice, repress, and

instantly report, any negligence or impropriety of conduct on the part of warrant officers, N.C.Os. and private soldiers, whether on or off duty, and whether the offenders do or do not belong to his own unit."<sup>122</sup> Thus all army officers were under a legal duty to halt and report all criminal acts by their subordinates.

121. Secondly, as I explained at paragraphs 25 – 28 above, the Commander-in-Chief had disciplinary control over all of the military personnel serving in Kenya under the Army Act, and operational control of all Kenyan security forces. As a result, he was intimately involved in all disciplinary decisions relating to abuses. As I described at paragraph 7 of my second statement, the “Commander-in-Chief reached an agreement with the Attorney-General that in each case of serious misconduct by a member of the Security Forces which was triable under both civil law and by court-martial, they would discuss the case and decide by which method action should be taken.”<sup>123</sup> The Commander-in-Chief thus had the opportunity to intervene and apply this control had he chosen to.

122. Thirdly, as outlined in my earlier statements, when East Africa Command was given enhanced powers under General Erskine in 1953, he was empowered to report directly to the Secretary of State for War if there were any clashes with the Governor on policy or operations. Therefore, General Erskine could have asked for practical assistance in implementing tighter discipline, for example by asking for military police and Army Legal Services reinforcements.

123. Fourthly, General Erskine was empowered to declare martial law in the Colony or parts of the Colony at any time. This would be done if, in his view, the civil authorities were incapable of discharging their duties.

124. Beyond the Commander-in-Chief’s formal powers, the Army could have arguably intervened in a number of other ways. For example the Army could have made its assistance conditional upon measures being taken to halt the abuses. Alternatively, the Commander-in-Chief could have called for an investigation, either led by the army or

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<sup>122</sup> War Office, *King’s Regulations for the Army. Reprint incorporating Amendments (Nos. 1 to 44)*, 208. This section went unchanged in the 1955 version.

<sup>123</sup> TNA: CO 968/424: Letter from [illegible], War Office, to P. Rogers, Colonial Office, 12/9/53.

independent. But none of these options were pursued, rather Erskine commented to the Secretary of State for War that:

“I hope very much that it will not be necessary for HMG to send out any independent inquiry. If they did they would have to investigate everything from the beginning of the Emergency and I think the revelation would be shattering.”<sup>124</sup>

### **Redactions/Missing Documents**

125. The following items are listed on the National Archives catalogue and are likely to be pertinent to the case:

- I. WO 163/618: Papers, reports and minutes of meetings of the Executive Committee of the Army Council, January to December 1955. Retained by Department under Section 3.4.
- II. WO 163/615: Army Council appeals: notes of meetings of Army Councillors, February 1954 to March 1964. Closed.
- III. WO 32/16103/1: Closed extracts: pages 59-65 and 103-106, of Mau Mau operations: summary of evidence in a case involving trial of ten Somali soldiers, 1953-55. Closed.
- IV. WO 276/518: Closed extracts: five pages, of Operations Blue Doctor and Silver Doctor: operational reports and plans, 1956. Closed.
- V. WO 276/430: Closed extract: report dated November 1955 on Mau Mau: handling of surrendered terrorists. Closed.
- VI. CAB 21/3865/1: Miscellaneous briefs prepared for the Prime Minister, retained extract: Minute of 23/3/53. Retained by Department under Section 3.4.
- VII. CAB 21/3927/1: Prime Minister's minutes and telegrams, closed extract: Minute dated 25/10/1956. Closed.
- VIII. CO 968/421: Untitled file in the same file sequence as the Sgt Allen file. Closed.
- IX. CO 968/425: Untitled file in the same file sequence as the Sgt Allen file. Closed.
- X. CO 968/426: Untitled file in the same file sequence as the Sgt Allen file. Closed.

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<sup>124</sup> TNA: WO 32/15834: Letter from Erskine to Secretary of State for War, 10/12/53.

- XI. CO 968/427: Untitled file in the same file sequence as the Sgt Allen file.  
Closed.
- XII. CO 968/428: Untitled file in the same file sequence as the Sgt Allen file.  
Closed.
- XIII. CO 968/429: Untitled file in the same file sequence as the Sgt Allen file.  
Closed.
- XIV. CO 968/432: Untitled file in the same file sequence as the Sgt Allen file.  
Closed.
- XV. CO 968/434: Untitled file in the same file sequence as the Sgt Allen file.  
Closed.
- XVI. CO 968/435: Untitled file in the same file sequence as the Sgt Allen file.  
Closed.

126. I also believe that it is highly likely that there is further relevant documentation held by the Ministry of Defence in its retained archives, which are neither available to the public or listed on the TNA catalogues. My reasoning for this is that there are categories of documents which I know must have existed as there is evidence for them in the available documentation, but which are absent from the TNA catalogues. This includes the papers of the Adjutant General, Vice-Adjutant General, Chief of the Imperial General Staff, Vice-Chief of the Imperial General Staff, Army Legal Service and the Special Investigation Branch of the Royal Military Police.

127. Lastly, at paragraph 6 of my second statement I addressed the issues raised by the historical analysis presented by the Defendant in their Skeleton. I have since read the Defendant's Defence, which substantially duplicates the same historical account, and as such my criticism of the Defendant's Skeleton continues to stand against the Defendant's Defence. In fact the strength of my comments have only been increased by the documentation in the Hanslope files which I have since read.

**STATEMENT OF TRUTH**

This statement is true to the best of my knowledge and belief and I am aware that it will be placed before the Court.

Signed 

**HUW CHARLES BENNETT**

Dated ...25/05/2012.....



**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO. HQ09X02666**

**QUEENS BENCH DIVISION**

**BETWEEN:-**

**NDIKU MUTUA & 4 OTHERS**

**Claimants**

**-AND-**

**THE FOREIGN AND COMMONWEALTH OFFICE**

**Defendant**

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**EXHIBIT HB1**

**ANNEXES TO WITNESS STATEMENT OF HUW CHARLES BENNETT**

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## Annex 1

1. The following is a list of War Council Minute titles which demonstrate that the War Council regularly considered matters related to screening, interrogation, villagisation and detention camps throughout the Emergency period.

- I. War Council Minute 245 – 25 May 1954 – Accommodation in Detention Camps.<sup>125</sup>
- II. War Council Minute 311 – 08 June 1954 – Security of Detention Camps.<sup>126</sup>
- III. War Council Minute 361 – 25 June 1954 – Detention Camps - Staff.<sup>127</sup>
- IV. War Council Minute 375 – 02 July 1954 – Construction of villages – Meru, Embu, Nyeri and Fort Hall Districts .<sup>128</sup>
- V. War Council Minute 380 – 02 July 1954 – Detention Camps – Progress Report No. 3.<sup>129</sup>
- VI. War Council Minute 388 – 05 July 1954 – Screening of Government servants.<sup>130</sup>
- VII. War Council Minute 395 – 09 July 1954 – Rehabilitation.<sup>131</sup>
- VIII. War Council Minute 409 – 09 July 1954 - The construction of villages – Kiambu District.<sup>132</sup>
- IX. War Council Minute 584 – 17 September 1954 – Establishment of a K.E.M. labour transit camp in Nairobi.<sup>133</sup>
- X. War Council Minute 590 – 21 September 1954 – Health in Detention Camps - Manyani.<sup>134</sup>
- XI. War Council Minute 714 – 02 November 1954 – Security of prisons.<sup>135</sup>
- XII. War Council Minute 790 – 30 November 1954 – Disposal of surrendered terrorists.<sup>136</sup>
- XIII. War Council Minute 845 – 21 December 1954 – Disposal of detainees.<sup>137</sup>
- XIV. War Council Minute 900 – 19 January 1955 – Disposal of surrendered terrorists.<sup>138</sup>
- XV. War Council Minute 921 – 25 January 1955 – Rehabilitation teams from Athi River Detention Camp.<sup>139</sup>

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<sup>125</sup> Hanslope: Chief Secretary, Vol. I – 40A, 25 May 1954, War Council Seventeenth Meeting

<sup>126</sup> Hanslope: Chief Secretary, Vol. I – 40A, 08 June 1954, War Council Twenty-First Meeting

<sup>127</sup> Hanslope: Chief Secretary, Vol. I – 40A, 25 June 1954, War Council Twenty-Sixth Meeting

<sup>128</sup> Hanslope: Chief Secretary, Vol. I – 40A, 02 July 1954, War Council Twenty-Eighth Meeting

<sup>129</sup> Hanslope: Chief Secretary, Vol. I – 40A, 02 July 1954, War Council Twenty-Eighth Meeting

<sup>130</sup> Hanslope: Chief Secretary, Vol. I – 40A, 05 July 1954, War Council Twenty-Ninth Meeting

<sup>131</sup> Hanslope: Chief Secretary, Vol. I – 40A, 09 July 1954, War Council Thirtieth Meeting

<sup>132</sup> Hanslope: Chief Secretary, Vol. I – 40A, 09 July 1954, War Council Thirtieth Meeting

<sup>133</sup> Hanslope: Chief Secretary, Vol. II – 40A, 17 September 1954, Forty-Seventh Meeting

<sup>134</sup> Hanslope: Chief Secretary, Vol. II – 40A, 21 September 1954, Forty-Eighth Meeting

<sup>135</sup> Hanslope: Chief Secretary, Vol. III – 40A, 02 November 1954, Sixtieth Meeting

<sup>136</sup> Hanslope: Chief Secretary, Vol. III – 40A, 30 November 1954, Sixty-Seventh Meeting

<sup>137</sup> Hanslope: Chief Secretary, Vol. III – 40A, 21 December 1954, Seventy-Third Meeting

<sup>138</sup> Hanslope: Chief Secretary, Vol. III – 40A, 19 January 1955, Seventy-Eighth Meeting

- XVI. War Council Minute 928 – 01 February 1955 – Disposal of surrendered terrorists.<sup>140</sup>
- XVII. War Council Minute 945 – 08 February 1955 - Disposal of surrendered terrorists.<sup>141</sup>
- XVIII. War Council Minute 985 – 01 March 1955 – Disposal of surrendered terrorists.<sup>142</sup>
- XIX. War Council Minute 1473 – 08 November 1955 – Captured and surrendered terrorists.<sup>143</sup>
- XX. War Council Minute 1499 – 22 November 1955 – Treatment of surrendered terrorists.<sup>144</sup>
- XXI. War Council Minute 1577 – 10 January 1956 – Progress Report on Detention Camps.<sup>145</sup>
- XXII. War Council Minute 1578 – 10 January 1956 – Release of Detainees from Makutano Works Camp.<sup>146</sup>
- XXIII. War Council Minute 1630 – 14 February 1956 – Athi River Detention Camp.<sup>147</sup>
- XXIV. War Council Minute 1649 – 28 February 1956 – Detention Camps Progress Report No. 25 – Rehabilitation of Convicts.<sup>148</sup>
- XXV. War Council Minute 1682 – 21 March 1956 – Release of Detainees<sup>149</sup>
- XXVI. War Council Minute 1696 – 05 April 1956 – Detention Camp Progress Report No.26.<sup>150</sup>
- XXVII. War Council Minute 1760 – 29 May 1956 – Treatment of ‘Z.1’ Detainees.<sup>151</sup>
- XXVIII. War Council Minute 1792 – 26 June 1956 – Rehabilitation in Prisons (Nairobi Area).<sup>152</sup>
- XXIX. War Council Minute 1803 – 03 July 1956 – Access of Screening Officers to Ex-Terrorists.<sup>153</sup>
- XXX. War Council Minute 1865 – 23 August 1956 – Detention Camps. Progress Report No.30.<sup>154</sup>
- XXXI. War Council Minute 1925 – 06 November 1956 – Disposal of Detainees at Manyani<sup>155</sup>

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<sup>139</sup> Hanslope: Chief Secretary, Vol. III – 40A, 25 January 1955, Eightieth Meeting

<sup>140</sup> Hanslope: Chief Secretary, Vol. III – 40A, 01 February 1955, Eighty-First Meeting

<sup>141</sup> Hanslope: Chief Secretary, Vol. IV – 40A, 08 February 1955, Eighty-Third Meeting

<sup>142</sup> Hanslope: Chief Secretary, Vol. IV – 40A, 01 March 1955, Eighty-Seventh Meeting

<sup>143</sup> Hanslope: Chief Secretary, Vol. V – 40A, 08 November 1955, Hundred and Forty-Second Meeting

<sup>144</sup> Hanslope: Chief Secretary, Vol. V – 40A, 22 November 1955, Hundred and Forty-Fourth Meeting

<sup>145</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 10 January 1956, Hundred and Fifty-First Meeting

<sup>146</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 10 January 1956, Hundred and Fifty-First Meeting

<sup>147</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 14 February 1956, Hundred and Fifty-Sixth Meeting

<sup>148</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 28 February 1956, Hundred and Fifty-Eighth Meeting

<sup>149</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 21 March 1956, Hundred and Fifty-Eighth Meeting

<sup>150</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 05 April 1956, Hundred and Sixty-Third Meeting

<sup>151</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 29 May 1956, Hundred and Seventieth Meeting

<sup>152</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 26 June 1956, Hundred and Seventy-Fourth Meeting

<sup>153</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 03 July 1956, Hundred and Seventy-Fifth Meeting

<sup>154</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 23 August 1956, Hundred and Eighty-Second Meeting

<sup>155</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 06 November 1956, Hundred and Ninetieth Meeting

- XXXII. War Council Minute 1975 – 18 December 1956 – Akamba Detainees at Athi River Detention Camp.<sup>156</sup>
- XXXIII. War Council Minute 1977 – 18 December 1956 – Detention Camps Progress Report No.37.<sup>157</sup>
- XXXIV. War Council Minute 2023 – 26 February 1957 – Detention Camps – Mageta and Saiyusi.<sup>158</sup>
- XXXV. War Council Minute 2039 – 12 March 1957 - Akamba Detainees at Athi River.<sup>159</sup>
- XXXVI. War Council Minute 2080 – 24 April 1957 – Detention Camps: Progress Report No.38.<sup>160</sup>
- XXXVII. War Council Minute 2101 – 28 May 1957 – Detention Camps: Progress Report No.39.<sup>161</sup>
- XXXVIII. War Council Minute 2118 – 25 June 1957 - Detention Camps: Progress Report No.40.<sup>162</sup>

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<sup>156</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 18 December 1956, Hundred and Ninety-Sixth Meeting

<sup>157</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 18 December 1956, Hundred and Ninety-Sixth Meeting

<sup>158</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 26 February 1957, Two Hundredth and Second Meeting

<sup>159</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 12 March 1957, Two Hundredth and Fourth Meeting

<sup>160</sup> Hanslope: Chief Secretary, Vol. VI – 40A, 24 April 1957, Two Hundredth and Eighth Meeting

<sup>161</sup> Hanslope: Chief Secretary, Vol. VII – 40A, 28 May 1957, Two Hundredth and Eleventh Meeting

<sup>162</sup> Hanslope: Chief Secretary, Vol. VII – 40A, 25 June 1957, Two Hundredth and Thirteenth Meeting

## Annex 2

1. The following is a list is a small sample of what the minutes to the regional Emergency Committee meetings record, the titles to the minutes demonstrate that the committees made decisions related to screening, interrogation, villagisation and detention camps whilst Army personnel were present.
  - I. Rift Valley Provincial Emergency Committee Minute 251 – 12 June 1953 – Nakuru Transit Camp – Lieutenant Stone (I.O. 39 Infantry Brigade) in attendance.<sup>163</sup>
  - II. Rift Valley Provincial Emergency Committee Minute 664 – 02 October 1953 – Rehabilitation – Brigadier G.Taylor DSO (O.C. Tps. R.V.P) and Major Harrington (PMIO) in attendance.<sup>164</sup>
  - III. Rift Valley Provincial Emergency Committee Minute 673 – 02 October 1953 – Nakuru Transit Camp – Brigadier G.Taylor DSO (O.C. Tps. R.V.P) and Major Harrington (PMIO) in attendance.<sup>165</sup>
  - IV. Rift Valley Provincial Emergency Committee Minute 961 – 31 December 1953 – Screening in Rift Valley Province – Lieutenant-Colonel G.T.H. Campbell MC (O.C.Tps) and Captain D. Stuart (A/PMIO) in attendance.<sup>166</sup>
  - V. Rift Valley Provincial Emergency Committee Minute 964 – 31 December 1953 – Screening Teams – Lieutenant-Colonel G.T.H. Campbell MC (O.C.Tps) and Captain D. Stuart (A/PMIO) in attendance.<sup>167</sup>
  - VI. Rift Valley Provincial Emergency Committee Minute 974 – 31 December 1953 – Screening Camps – Lieutenant-Colonel G.T.H. Campbell MC (O.C.Tps) and Captain D. Stuart (A/PMIO) in attendance.<sup>168</sup>
  - VII. Southern Province Emergency Committee Minute 52/55(b) – 27 June 1955 – Embakasi Screening Camp – Lieutenant-Colonel H.A. Hope, M.C., O.B.E. (GHQ) in attendance.<sup>169</sup>

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<sup>163</sup> Hanslope: EMER 45/23/1/2A Vol. I, 12 June 1953, Minutes of meetings of the Rift Valley provincial emergency committee.

<sup>164</sup> Hanslope: EMER 45/23/1/2A Vol. I, 02 October 1953, Minutes of meetings of the Rift Valley provincial emergency committee.

<sup>165</sup> Hanslope: EMER 45/23/1/2A Vol. I, 02 October 1953, Minutes of meetings of the Rift Valley provincial emergency committee.

<sup>166</sup> Hanslope: EMER 45/23/1/2A Vol. I, 31 December 1953, Minutes of meetings of the Rift Valley provincial emergency committee.

<sup>167</sup> Hanslope: EMER 45/23/1/2A Vol. I, 31 December 1953, Minutes of meetings of the Rift Valley provincial emergency committee.

<sup>168</sup> Hanslope: EMER 45/23/1/2A Vol. I, 31 December 1953, Minutes of meetings of the Rift Valley provincial emergency committee.

- VIII. Southern Province Emergency Committee Minute 99/55 – 15 December 1955 – Detention Policy – Lieutenant-Colonel H.A. Hope, M.C., O.B.E. (GHQ) in attendance.<sup>170</sup>
- IX. Southern Province Emergency Committee Minute 18/56 – 20 March 1956 – Kibako Village – Lieutenant-Colonel H.A. Hope, M.C., O.B.E. (GHQ) in attendance.<sup>171</sup>
- X. Central Province Emergency Committee Minute 3452 – 20 July 1956 – Screening Policy Nanyuki – Brigadier T.H. Birkbeck DSO (Command 70 Brigade) in attendance.<sup>172</sup>
- XI. Central Province Emergency Committee Minute 3469 – 03 August 1956 – Control of Villages – Brigadier T.H. Birkbeck DSO (Command 70 Brigade) in attendance.<sup>173</sup>
- XII. Central Province Emergency Committee Minute 3524 – 02 November 1956 – Meru Village – Major A.D. Rouse (B.M. 70 Brigade) in attendance.<sup>174</sup>
- XIII. Central Province Emergency Committee Minute 3527 – 02 November 1956 – Manyani Works Camp – Major A.D. Rouse (B.M. 70 Brigade) in attendance.<sup>175</sup>
- XIV. Central Province Emergency Committee Minute 3618 – 12 April 1957 – Security of Camps in the Mwea – Lieutenant-Colonel J.B. Brierley, M.B.E., M.C. (A.g. Command 70 Brigade) in attendance.<sup>176</sup>
- XV. Central Province Emergency Committee Minute 3618 – 03 May 1957 – Village Policy – Major A.D. Rouse (B.M. 70 Brigade) in attendance.<sup>177</sup>

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<sup>169</sup> Hanslope: AA 45/23/1/6A, 27 June 1955, Meetings of the Southern Province emergency committee.

<sup>170</sup> Hanslope: AA 45/23/1/6A, 15 December 1955, Meetings of the Southern Province emergency committee.

<sup>171</sup> Hanslope: AA 45/23/1/6A, 20 March 1956, Meetings of the Southern Province emergency committee.

<sup>172</sup> Hanslope: AA 45/23/1/3A Vol. III, 20 July 1956, Central Province emergency committee meetings.

<sup>173</sup> Hanslope: AA 45/23/1/3A Vol. III, 03 August 1956, Central Province emergency committee meetings.

<sup>174</sup> Hanslope: AA 45/23/1/3A Vol. III, 02 November 1956, Central Province emergency committee meetings.

<sup>175</sup> Hanslope: AA 45/23/1/3A Vol. III, 02 November 1956, Central Province emergency committee meetings.

<sup>176</sup> Hanslope: AA 45/23/1/3A Vol. III, 12 April 1957, Central Province emergency committee meetings.

<sup>177</sup> Hanslope: AA 45/23/1/3A Vol. III, 03 May 1957, Central Province emergency committee meetings.

### Annex 3

1. The following is a small sample of the additional evidence I have found in the Hanslope files that illustrates the significant role played by military personnel as Field Intelligence Assistants/Officers during the Emergency. They include evidence regarding the number of FIA/FIOs operating during the Emergency; and there are multiple examples which demonstrate that the members of the Kenya Regiment that were serving as FIA/FIOs operated as members of the interrogation teams.
  - I. In Meru in May 1954, there is reference to "field interrogation teams", working in areas such as Upper Abothoguchi, Igoji and Nkuene.<sup>178</sup>
  - II. After an Administration request for the Kenya Regiment to assist the interrogation teams in Meru, the army agreed to let 2 FIAs already in the District help with interrogations.<sup>179</sup>
  - III. In September 1954 the War Council approved an establishment of 52 Field Intelligence Officers, and Erskine said they were "doing a very good job, which was a high priority."<sup>180</sup>
  - IV. By October 1954, the Kenya Regiment supplied 3 Other Ranks to "Interrogation Teams", and 7 officers and 39 Other Ranks as Field Intelligence Officers.<sup>181</sup>
  - V. By July 1955, there were 75 Kenya national servicemen serving as FIOs.<sup>182</sup>
  - VI. The War Council exercised ultimate control over the numbers of FIOs. In January 1956 there were 63, and Lieutenant-General Lathbury planned to have 53 by April 1956, and 45 by July 1956.<sup>183</sup>
  - VII. Surrendered or captured Mau Mau (or suspects) were sometimes handled by special forces and FIO personnel. These people were effectively excluded from any judicial or legal oversight. An April 1956 letter noted how: "It is understood that these are the following surrendered terrorists in employ at present:-" [Special Forces (70 male, 18 female; 88 total); FIOs in Central Province (120 male, 0

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<sup>178</sup> Hanslope: INT 10/4/2/4/5A Vol. I: Meru District Intelligence Committee Summary, 20/5/54.

<sup>179</sup> Hanslope: CAB 28/1 Vol. I: 'Meru Interrogation Teams', E.J.S. 45, 15/9/54.

<sup>180</sup> Hanslope: Chief Secretary, Vol II - 40A, War Council minutes, 24/9/54, WAR/C/MIN.49.

<sup>181</sup> Hanslope: CAB 28/1 Vol. I: 'Re-organisation of the Kenya Regiment', 2/10/54.

<sup>182</sup> Hanslope: CAB 28/1 Vol. II: 'Allocation of Kenya National Service Men', Memorandum by the Emergency Joint Staff, 15/7/55.

<sup>183</sup> Hanslope: War Council Volume 10: 'Appreciation of the situation by the Commander-in-Chief East Africa', WAR/C.843, 23/1/56.

female, total 120); FIOs in RVP (120 male; 120 total); with KSLI (17 male, 17 total). Grand total of 335.] ... "It has been the practice in some cases of a surrendered terrorist being returned to his District of origin where his fate is decided. It is felt that this will lead to inequitable decisions as between Districts and that a more satisfactory procedure would be to dispose of all surrendered terrorists to any one camp which should be confined to that class of terrorist only."<sup>184</sup>

- VIII. The authorities faced difficulties in determining what to do with these people, as an Emergency Joint Staff paper recorded: "Difficulties over the eventual re-settlement of ex Mau Mau who had assisted Government operationally or as informers or screeners have been foreseen for some time." There are three categories: "(a) Ex gangsters who have worked with Special Force teams on combat duties armed and enlisted as Special Police Officers [75 people] ...(b) Ex gangsters who have served as trackers with military units unarmed and enlisted as Special Police Officers [40 people] ...(c) Those who have worked in pseudo-gangs under Special Branch on intelligence and combat duties without Police status [220 people]".<sup>185</sup>

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<sup>184</sup> Hanslope: CAB 28/1 Vol. III: 'Disposal of surrendered terrorists employed by security forces', letter from N.F.E. Chaplin, Executive Officer of Central Province Emergency Committee, to The Secretary, The War Council, 27/4/56.

<sup>185</sup> Hanslope: CAB 28/1 Vol. III: 'Disposal of captured and surrendered terrorists employed by the security forces', Draft Memorandum by the E.J.S., 12/5/56.

#### Annex 4

128. The following is a small sample of the additional evidence I have identified in the Hanslope files which illustrates the Army's support for the system of detention camps. These include incidents of General Erskine requesting that accommodation in detention camps and prisons be expanded; the Commander-in-Chief authorising the use of military personnel, (such as the Kenya Regiment and East Africa Pioneer Corps) as detention camp and prison service personnel; and the Commander-in-Chief's involvement in matters of related policy such as health, security and training.

- I. In May 1954 General Erskine asked for accommodation for detainees at Manyani camp to be increased above 17,500, and for screening there not to be accelerated so that guilty men were released by mistake. He reported having visited Mackinnon Road and Manyani camps on 5 May 1954, where he noticed: "improvements were necessary in the administrative and security measures at Manyani Camp. The staff of that Camp was under great strain during the present large intake of detainees but early action was necessary to ensure that the Camp was secure and that the administrative arrangements were sound. He proposed to strengthen the garrison at both Camps and to appoint a Field Officer in command of it. He would be stationed at Manyani."<sup>186</sup>
- II. After pressure from General Erskine, the Minister for Internal Security and Defence agreed in May 1954 to convert Thika prison into a larger detention camp, for 3,000 prisoners. This would allow the Commander-in-Chief "to proceed with further military operations."<sup>187</sup>
- III. Erskine intervened in detention policy again later in the same month: "The COMMANDER-IN-CHIEF said that, as circumstances were now making it necessary to regard Langata Camp more as a holding camp than as a transit camp, perhaps the organisation and methods of control should be reviewed."<sup>188</sup> A review was ordered as a result.
- IV. Discussing conditions in Mackinnon Road and Manyani camps, the War Council heard from the Chief of Staff (Erskine's representative) that "he had received a

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<sup>186</sup> Hanslope: Chief Secretary, Vol I - 40A, War Council minutes, 7/5/54, WAR/C/MIN.12.

<sup>187</sup> Hanslope: Chief Secretary, Vol I - 40A, War Council minutes, 11/5/54, WAR/C/MIN.13.

<sup>188</sup> Hanslope: Chief Secretary, Vol I - 40A, War Council minutes, 18/5/54, WAR/C/MIN.15.

somewhat alarming report on health and hygiene from the civil and military medical authorities."<sup>189</sup>

- V. In expanding Thika prison into a camp, there were problems in finding people to act as guards. General Erskine secured agreement from the Middle East Air Forces to loan a detachment of the R.A.F. Regiment until the end of July 1954 "to provide European staff for the Thika Detention Camp". The Commandant and Medical Officer could not be provided by the air force.<sup>190</sup> Erskine pressed for the construction of the camp, and offered to make 39 Engineer Regiment available to assist in the task.<sup>191</sup>
- VI. In June 1954, the Colony began to draw on men from the East African Pioneer Corps to alleviate the manpower problem in the detention system. 150 Pioneers were provided by East Africa Command "for duty as warders at the Mackinnon Road Camp until they were required for the Thika Detention Camp early in July."<sup>192</sup>
- VII. War Council minutes from late June 1954 record the Chief of Staff stating that the Assistant Quarter-Master General would visit Manyani camp to "investigate the amenities provided for Military staff."<sup>193</sup>
- VIII. General Erskine took an interest in detention camps: "The COMMANDER in CHIEF said that he understood that the Commandant of the Athi River Detention Camp was anxious to move about 100 incorrigible detainees from the camp because they were impeding the work of rehabilitation. THE WAR COUNCIL invited the Minister for Defence to examine this with a view to arranging for their early removal; and to report."<sup>194</sup>
- IX. Men from the Kenya Regiment were also seconded to the detention system: "The COMMANDER IN CHIEF said that he agreed to the provision of 43 men for the duties suggested by the Emergency Joint Staff, provided that the essential proportion of leaders in the Kenya Regiment was not thereby reduced. THE WAR COUNCIL (1) approved the recommendation by the Emergency Joint Staff that the whole of the July and August intake from the compulsory National Service callup be allotted to the Prisons Department and the K.P.R., subject to the Minister for

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<sup>189</sup> Hanslope: Chief Secretary, Vol I - 40A, War Council minutes, 21/5/54, WAR/C/MIN.16.

<sup>190</sup> Hanslope: Chief Secretary, Vol I - 40A, War Council minutes, 25/5/54, WAR/C/MIN.17.

<sup>191</sup> Hanslope: Chief Secretary, Vol I - 40A, War Council minutes, 4/6/54, WAR/C/MIN.20

<sup>192</sup> Hanslope: Chief Secretary, Vol I - 40A, War Council minutes, 15/6/54, WAR/C/MIN.23.

<sup>193</sup> Hanslope: Chief Secretary, Vol I - 40A, War Council minutes, 25/6/54, WAR/C/MIN.26.

<sup>194</sup> Hanslope: Chief Secretary, Vol I - 40A, War Council minutes, 9/7/54, WAR/C/MIN.30.

Defence assuring himself that approved demands for District Officers would be met. (2) approved the provision by the Kenya Regiment of 43 men for the duties listed in paragraph 5 of War/C.175, provided that this did not reduce the essential proportion of leaders in the Regiment. "<sup>195</sup>

- X. In July 1954 General Erskine expressed concerns about the security of Manyani camp, and recommended a perimeter fence to prevent further escapes. Erskine hoped to reduce the external military guard at Langata camp from company to platoon size as soon as possible.<sup>196</sup> He was reluctant to tie down combat troops in these external guard duties, but it was essential as a stop-gap measure until reinforcements arrived from Britain. War Council minutes make reference to military officers commanding the Pioneer troops in the detention camps.<sup>197</sup> East Africa Command agreed to make the Pioneer soldiers available until the end of September 1954, but expected to withdraw their officers before this point.<sup>198</sup>
- XI. The Governor became concerned about the external defences of prisons and camps in June 1954, after the influx in prisoners from Operation Anvil. The Commander-in-Chief agreed to second Major Lucas to "make recommendations on standard defensive measures for prison camps, and could also consider the geographical location of prison camps from the point of view of external defence. If his recommendations showed that the Army could give valuable help in training prison staff, he would consider whether he could make this help available."<sup>199</sup> By January 1955 Major Lucas, the "Military Adviser", had inspected every prison and camp in the Central Province apart from Meru District, and all those in the Kisumu, Lamu and Machakos Districts too. He gave "instructions on the spot, and written copies in confirmation of these orders."<sup>200</sup> The terminology used here suggests the army were able to instruct the Prisons Department staff on their duties.
- XII. The War Council were informed about the poor sanitary conditions in the camps. For example, a serious typhoid outbreak in Manyani camp killed 64 inmates between 28 August and 6 October 1954; by 8 October 516 inmates were in

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<sup>195</sup> Hanslope: Chief Secretary, Vol I - 40A, War Council minutes, 9/7/54, WAR/C/MIN.30.

<sup>196</sup> Hanslope: Chief Secretary, Vol II - 40A, War Council minutes, 16/7/54, WAR/C/MIN.31.

<sup>197</sup> Hanslope: Chief Secretary, Vol II - 40A, War Council minutes, 30/7/54, WAR/C/MIN.35.

<sup>198</sup> Hanslope: Chief Secretary, Vol II - 40A, War Council minutes, 6/8/54, WAR/C/MIN.36.

<sup>199</sup> Hanslope: Chief Secretary, Vol II - 40A, War Council minutes, 21/9/54, WAR/C/MIN.48.

<sup>200</sup> Hanslope: Chief Secretary, Vol V - 40B, 'Detention Camps. Progress Report No. 12. Memorandum by the Minister for Defence', 3/1/55, WAR/C.427.

isolation and another 293 in hospital. Nonetheless, General Erskine thought the greatest problem to be "the stoppage of the flow of detainees to works camps".<sup>201</sup>

- XIII. In October 1954 General Erskine intervened on detention policy, arguing for smaller camps to be constructed in the operational area. He offered to provide training for European prison officers at the Kenya Regiment Training Centre, and for African warders at the East Africa Training Centre in Nakuru.<sup>202</sup> 27 men were transferred from the Kenya Regiment to the Prisons Department. The Commissioner of Prisons planned to select 20 of them to run 20 training teams, with 60 African Instructors, "to visit prisons and prison camps to assist European officers with their external defences and to train African warders in the use of their weapons."<sup>203</sup> Therefore, military manpower played a significant role in the expansion and running of the large detention system.
- XIV. At a meeting of the Emergency Joint Staff in November 1954, it was stated that: "...the M.A. to the C-in-C undertook to investigate the possibility of providing an additional 13 men from the Kenya Regiment for prisons, who are already receiving 27 of the Kenya Regiment men."<sup>204</sup>
- XV. In December 1954 General Erskine told the War Council he thought Mau Mau activity in prisons and detention camps meant the authorities should consider holding more prisoners in captivity for longer.<sup>205</sup>
- XVI. The Army's ability to direct practices in the detention system is illustrated by a War Council memorandum issued by the Commander-in-Chief, now Lieutenant-General Lathbury, in August 1955. It called for a report "on the subject of releases, screening and rehabilitation. It would seem to me that African Affairs, Defence and Community Development are all concerned and must be consulted. I would like this report to include concrete proposals for improved screening and rehabilitation designed to run down the present detainee population as rapidly as possible, but without taking unnecessary security risks."<sup>206</sup>
- XVII. In May 1956 the problem of manpower shortages in prison and camp staffs surfaced again. Lieutenant-General Lathbury made arrangements for the Minister

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<sup>201</sup> Hanslope: Chief Secretary, Vol III - 40A, War Council minutes, 8/10/54, WAR/C/MIN.53.

<sup>202</sup> Hanslope: Chief Secretary, Vol III - 40A, War Council minutes, 22/10/54, WAR/C/MIN.57.

<sup>203</sup> Hanslope: Chief Secretary, Vol III - 40A, War Council minutes, 26/10/54, WAR/C/MIN.58.

<sup>204</sup> Hanslope: Aug 54 Jan 55 (Box 205): Minutes of the Emergency Joint Staff, 4/11/54.

<sup>205</sup> Hanslope: Chief Secretary, Vol III - 40A, War Council minutes, 21/12/54, WAR/C/MIN.73.

<sup>206</sup> Hanslope: Chief Secretary, Vol VIII - 40B, 'Releases from works camps. Note by the Commander-in-Chief', Annex to WAR/C.695, 2/8/55.

for Defence to recruit volunteers from the Kenya Regiment for service as Assistant Prison Officers.<sup>207</sup> The Minister for Defence and the Officer Commanding the Kenya Regiment visited Nakuru to recruit men after General Headquarters approved the terms of service.<sup>208</sup>

XVIII. The War Council discussed the processing of ex-terrorists who had served with the security forces, probably as pseudo-gang members. Lathbury wanted these men to be saved from lengthy detention as they had proved their loyalty by their actions on operations. He hoped their cases would be dealt with expeditiously by the police. These people were to go through a "sorting process" at the Mau Mau Interrogation Centre. Lathbury feared "the whole future of the Special Forces and pseudo-gangs might be prejudiced if ex terrorists were mis-handled at the holding camp. It was most important that the Officer-in-Charge should be of high quality and that he should handle the ex terrorists firmly but sympathetically." The desire to protect pseudo-gang members from the miseries suffered by others in the detention system is further seen in Lathbury's opposition to a proposal by the Emergency Joint Staff to send them to Manyani camp. He preferred them to be sent either to a "settlement" or to Yatta camp.<sup>209</sup>

XIX. Further interventions were made by Lieutenant-General Lathbury or his Chief of Staff on detention policy at the War Council in 1956. Lathbury argued for changes to the statistical methods for recording prisoner numbers, and commented on the numbers of escapes.<sup>210</sup> The Chief of Staff observed release rates were behind schedule and asked for an investigation into why so many non-Mau Mau prisoners were in detention.<sup>211</sup> Following a visit to Manyani camp, Lathbury requested speedier "segregation and disposal of hard-core Mau Mau".<sup>212</sup>

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<sup>207</sup> Hanslope: Chief Secretary, Vol VI - 40A, War Council minutes, 1/5/56, WAR/C/MIN.166.

<sup>208</sup> Hanslope: Chief Secretary, Vol VI - 40A, War Council minutes, 8/5/56, WAR/C/MIN.167.

<sup>209</sup> Hanslope: Chief Secretary, Vol VI - 40A, War Council minutes, 23/5/56, WAR/C/MIN.169.

<sup>210</sup> Hanslope: Chief Secretary, Vol VI - 40A, War Council minutes, 24/7/56, WAR/C/MIN.178.

<sup>211</sup> Hanslope: Chief Secretary, Vol VI - 40A, War Council minutes, 23/8/56, WAR/C/MIN.182.

<sup>212</sup> Hanslope: Chief Secretary, Vol VI - 40A, War Council minutes, 6/9/56, WAR/C/MIN.183.

## Annex 5

1. The following are some of the examples of the new evidence I have identified in the Hanslope files that evidences the Army's control over screening policy. These illustrate how the Army sought to determine how screening operations were conducted; with General Erskine urging screening operations to be launched as soon as possible, urging existing screening operations to be expedited and persuading the War Council to agree to expand detention camp accommodation so that a greater number of detainees could be screened.

- I. The Army sought to determine how screening operations were conducted, as shown in a minute from February 1954: "1. The C-in-C told me to investigate VAN FEY's suggestion that in any large pick-up only certain younger age groups should be detained. 2. The factors are that:- (a) the younger age groups from 17-30 man the militant wing. (b) the age groups from 30-45 provide many important organisers, who although not themselves participating in violence, approve of it and by their organisation make it possible. Such people are probably a minority of the population of the 30-45. (c) It is most noticeable that membership of NAIROBI gangs is largely confined to those coming from bad locations of the reserve. Thus one FORT HALL gang consists of men from the RUATHIA area of location 12; a number of SOUTH NYERI gangs, of men from KIRIMIKUYU and MAGUTU locations. It is possible to identify these bad locations and also to identify individuals with their locations. ...[Recommendation:] A 100% pick-up of all male Kikuyu between 17 and 45 belonging to bad locations in the reserves. Those between 17-30 would probably all remain in detention. Those between 30 and 45 would be gradually screened and as proved unimportant might be returned to the reserve."<sup>213</sup>
- II. A letter from the Acting Provincial Commissioner for the Rift Valley mentioned General Hinde had received a deputation on screening, "including one of our best screening officers".<sup>214</sup>

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<sup>213</sup> Hanslope: AA 45/63A: Loose Minute from Major, GSO2(Int) to GSO 1 (Ops & Int), 'Detention of Kikuyu', 4/2/54.

<sup>214</sup> Hanslope: AA 45/63A: Letter from Acting Provincial Commissioner, Rift Valley Province, to Chief Native Commissioner, 'Removal of Kikuyu from Molo', 25/2/54.

- III. In May 1954 General Erskine urged screening operations to be launched as soon as possible. He persuaded the War Council to agree to expand Langata camp to hold 13,500 people so that "far greater numbers could be detained for screening".<sup>215</sup>
- IV. A June 1954 paper noted how: "The War Council receive a fortnightly report by the Minister for Defence on the progress made in documentation and screening at all Camps and on the state of security and hygiene, and will continue to keep this important question under review."<sup>216</sup>
- V. General Erskine argued for the Administration to expedite the screening of African government servants by creating a special screening team for the purpose.<sup>217</sup>
- VI. In July 1954 the War Council agreed to provide "8 more Europeans for interrogation teams" from the Kenya Regiment.<sup>218</sup>
- VII. In April 1956 Lieutenant-General Lathbury stated in the War Council that there "might be a case for the permanent retention of screening and interrogation centres" in the Rift Valley Province.<sup>219</sup>
- VIII. War Council papers demonstrate the Commander-in-Chief's control of screening policy. For example, during a visit to Nanyuki District in June 1956, he was asked to consider aspects of screening policy by local officials.<sup>220</sup>

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<sup>215</sup> Hanslope: Chief Secretary, Vol I - 40A, War Council minutes, 4/5/54, WAR/C/MIN.11.

<sup>216</sup> Hanslope: War Council Memoranda Vol. II: 'Council of Ministers 16th June, 1954. Note on War Council business since 12th May, 1954', WAR/C.1/25.

<sup>217</sup> Hanslope: Chief Secretary, Vol I - 40A, War Council minutes, 5/7/54, WAR/C/MIN.29.

<sup>218</sup> Hanslope: Chief Secretary, Vol II - 40A, War Council minutes, 16/7/54, WAR/C/MIN.31.

<sup>219</sup> Hanslope: Chief Secretary, Vol VI - 40A, War Council minutes, 5/4/56.

<sup>220</sup> Hanslope: War Council Volume 10: 'Access of Screening Officers to Ex-terrorists', Note by the Secretary of the War Council, WAR/C.947, 30/6/56.

## Annex 6

1. The following are example of the additional evidence I have found in the Hanslope files of the overarching policy control exercised by the Army with regard to screening and interrogation. These examples evidence the fact that the Army regularly conducted joint screening operation with the Kenyan Police and Special Branch; and the scale of these operations.
  - I. In Embu on 31st March 1953 a "Combined Police, K.P.R. and Army raid on Embu Mkt. 464 males screened, 4 picked out by informers and arrested as being assistants at M.M. oathings in Nairobi."<sup>221</sup>
  - II. In Sagana on 12th April 1953: "100 men arrested in sweep. 40 detained for questioning."<sup>222</sup>
  - III. The police and army conducted joint screening on the night of 2/3rd May 1953 in the Tinganga and Ikuna areas, screening 151 people.<sup>223</sup>
  - IV. In South West Kireri on 6th May 1953: "2 of gang of 5 shot by Pol/Mlty. 40 screened."<sup>224</sup>
  - V. "Military and Police carried out a sweep in the Githerere area on the 19th, May, 1953, twenty suspects were arrested after screening."<sup>225</sup>
  - VI. In the Chania River area on 31st May 1953: "KAR/KG killed 5 arrt 375, 60 for screening 385 women held for confessions."<sup>226</sup>
  - VII. The political intelligence summary for May 1953 noted that: "Governors Detention Orders totalled 1,112; and the total arrested for questionings, screening and trial by the end of April was 90,067."<sup>227</sup>
  - VIII. In Nyeri town on 1st June 1953: "Milty & Poll [sic] screened all afr. in Nyi area 300 questioned, 50 detained. 1 man with spear shot running away."<sup>228</sup>

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<sup>221</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 23rd April to 7th May 1953.

<sup>222</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 8th to 23rd April 1953.

<sup>223</sup> Hanslope: INT 10/4/2/4/6A Vol. I: Kiambu District Intelligence Committee Summary, 9/5/53.

<sup>224</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 7th May to 21st May 1953.

<sup>225</sup> Hanslope: INT 10/4/2/4/2A Vol. I: Nyeri District Intelligence Committee Minutes, 22/5/53.

<sup>226</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province, no date.

<sup>227</sup> Hanslope: CO 968/266: Colonial Political Intelligence Summary No. 5, May 1953.

- IX. In Wakangu on 3rd June 1953: "KAR & SB screened passengers on Nbi train 22 men detained 1 phosphorous gren 237 rds asst ammo recovered & med supplies."<sup>229</sup>
- X. In Mungaria on 6th June 1953: "Sweep carried out by Police, Milty [sic] and Kikuyu Guard. 200 detained for screening. 5 wanted terrorists arrested."<sup>230</sup>
- XI. In Gitumbi on 11th June 1953: "KAR patrol detained 3 men for screening."<sup>231</sup>
- XII. A Meru District summary for July 1953 noted how: "To date the number of persons arrested by the screening team is 375 all of whom have been sent back to Meru. Of these, 23 are being put up for conviction as important leaders of Mau Mau. The rest are being returned to their Chiefs after making full confessions."<sup>232</sup>
- XIII. The political intelligence summary for August 1953 observed that: "Some 34,000 Africans were screened in the City [Nairobi] recently and 200 held."<sup>233</sup>
- XIV. A Rift Valley intelligence report noted how: "There are five official screening teams in the Nakuru District, based at Bahati, Dundori, Subukia, Elburgon and Londiani. European led, the Bahati team being recruited from the reserve and the other four being locally recruited. It is estimated that 12,200 male Kikuyu remain to be screened."<sup>234</sup>
- XV. Screening teams were active in Meru District in September 1953: "A police screening team is also operating from MUTHARA in the UPPER TIGANIA area, and military patrols have been active in the MERU native forest."<sup>235</sup>
- XVI. By November 1953, it was recorded that arrests were being made on a vast scale: "Statistics of the Emergency to date show:- Casualties to Mau Mau, killed 2,599; captured, some wounded 845; arrested 147,830."<sup>236</sup> An official urged caution in viewing these figures: "In giving statistics of the Kenya Emergency it is stated that 147,830 people have been arrested, but I do not think this gives a true picture unless it is also stated what numbers of these have been immediately released or

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<sup>228</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province, no date.

<sup>229</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province, no date.

<sup>230</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight ending 23rd June 1953.

<sup>231</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight ending 23rd June 1953.

<sup>232</sup> Hanslope: INT 10/4/2/4/5A Vol. I: Meru District Intelligence Committee Summary, 23/7/53.

<sup>233</sup> Hanslope: CO 968/266: Colonial Political Intelligence Summary No. 8, August 1953.

<sup>234</sup> Hanslope: INT 10/4/2/2A Vol. I: Rift Valley Provincial Intelligence Summary, 15/9/53.

<sup>235</sup> Hanslope: INT 10/4/2/4/5A Vol. I: Meru District Intelligence Committee Summary, 24/9/53.

<sup>236</sup> Hanslope: CO 968/266: Colonial Political Intelligence Summary No. 11, November 1953.

released after preliminary questioning. In fact this includes the very large number of persons who have been screened from time to time."<sup>237</sup>

- XVII. Screening proceeded in Kiambu in June 1954: "A sweep was carried out on the Kahawa area by Police and Military. Some 2,000 persons were arrested of which 59 were held for further questioning."<sup>238</sup>
- XVIII. Joint army-police patrols could also occur on a much smaller scale. On 11th July 1954 "Combined Military and Police patrols swept Kiambu and Kahawa Forest. 4 men held for questioning."<sup>239</sup>
- XIX. A Railway Screening Team operated in 1954.<sup>240</sup> Where the manpower came from for the team and who exercised immediate control is unclear.
- XX. In the Northern Province, a force organised by a Game Ranger operated from June 1954, called "Adamson Force". In June 1954 the Force began "Working in close co-operation with Police and Administration. Commences patrolling with Game Scouts and starts screening camp."<sup>241</sup>
- XXI. There were six screening teams working in Kiambu, screening all labour, from September to December 1955. Another four teams were working in Thika.<sup>242</sup>

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<sup>237</sup> Hanslope: CO 968/266: Civil servant's minute, signature illegible, 15/12/53.

<sup>238</sup> Hanslope: INT 10/4/2/4/6A Vol. II: Kiambu District Intelligence Summary, 19/6/54.

<sup>239</sup> Hanslope: INT 10/4/2/4/6A Vol. II: Kiambu District Intelligence Summary, 17/7/54.

<sup>240</sup> Hanslope: INT 10/4/2/3/7A Vol. I: Mombasa District Intelligence Committee, Summary No. 22/54, 5/11/54.

<sup>241</sup> Hanslope: AA 45/79/5A Box 148: 'Notes re: G.A.G. Adamson, M.B.E.', 21/11/55.

<sup>242</sup> Hanslope: AA 45/79/7A Box 148: Central Province Emergency Committee (South) Appreciation and Plan. The period 1st September - 31st December 1955.

## Annex 7

1. The following are some of the examples of the new evidence I have identified in the Hanslope files that evidences that the Army were aware that serious allegations of abuses were being levelled against the security forces from at least November 1952. They include reports of allegations of rape, beatings and murder.
  - I. An Intelligence report from North Nyanza expressed concern at what was happening in the District: "On November 13th W.W.W. Awori brought KINGSLEY MARTIN, Editor of the New Statesman and Nation, to see the District Commissioner. The Editor expressed his disgust of the Nyeri 'Black and Tanneries' as he called it, and said that officers of the Lancashire Fusiliers had told him they had been physically sick at the brutalities perpetuated against the Kikuyu."<sup>243</sup>
  - II. An intelligence summary for Nairobi District in November noted: "...there has been a big influx of Kikuyu women, particularly from the Fort Hall area, some of whom are spreading stories of rape by Police and Military askaris, and giving this as the reason for the influx."<sup>244</sup> There was no comment on the veracity of the claims, or any disciplinary action taken to halt abuses.
  - III. By March 1953, an intelligence report for Laikipia recorded abuses by police and army forces: "The Chiefs stated that it was obvious that there had been a certain amount of beating up by the Police and K.P.R., and that a certain amount of inevitable pilfering and molesting of women had been carried out by the Police and Army."<sup>245</sup> The view that these acts were inevitable says a great deal about official attitudes: these things were to be expected, and could not really be stopped.
  - IV. In April 1953 doubts began to emerge about the conduct of the Home Guard. A Nairobi intelligence summary stated that: "In discussion with several fairly well educated Kikuyu as to why professedly pro-Government supporters are reluctant to come forward [sic] openly and give information, they produced the following explanation: they believe that many members of the Home Guard are taking advantage of their position to even individual 'fetina' by accusing their enemies of

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<sup>243</sup> Hanslope: ADM 35/2/11/2A Vol. II: North Nyanza District: Secret Intelligence Report for the Month of November, 1952, 29/11/52.

<sup>244</sup> Hanslope: ADM 35/2/11/1/5A: Political Intelligence Report - November 1952. Nairobi District, 4/12/52.

<sup>245</sup> Hanslope: ADM 35/2/11/3/1A: Laikipia Special Intelligence Report, 15/3/53.

being members of Mau Mau, having them arrested and stealing their possessions. They maintain that it is useless to appeal to Government, as the Home Guard can do no wrong. They blame Mr. Mathu for not ensuring that all members were properly screened before enrolment."<sup>246</sup> The sense that the Home Guard was untouchable and beyond control was thus emerging from an early stage.

- V. Other reports simply passed up the chain of command information about Home Guard misconduct, without commenting on its truthfulness: "There is a tendency amongst the Meru Guard in Meru to become thoroughly undisciplined, and there have been frequent complaints of beatings of members of the public, attempts at extortion, etc."<sup>247</sup>
- VI. A report from Kiambu in April 1954 recorded several incidents in the area: "It is most unfortunate that several Europeans decided to take the Law into their own hands. Erik Mehlson, the manager of St. Benoist's Estate and W.Y. Penny, who lives with him, accompanied by F/Sgt. Chennell, proceeded to beat up the labour on Chalmers Estate, several of whom were later admitted to hospital, including the man who actually arrested the murderer. The next day (sunday) F/sgt. Chennell proceeded to saturate the area with Sten gun ammunition, firing 56 rounds in all. It was extremely lucky for this man that he did not hit anybody and his boorish conduct led to a report to his commanding officer."<sup>248</sup>

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<sup>246</sup> Hanslope: INT 10/4/2/6A Vol. I: Nairobi City District Intelligence Committee Summary, 3/4/53.

<sup>247</sup> Hanslope: INT 10/4/2/4/5A Vol. I: Meru District Intelligence Committee Summary, 4/6/53.

<sup>248</sup> Hanslope: INT 10/4/2/4/6A Vol. II: Kiambu District Intelligence Summary, 9/4/54.

## Annex 8

1. The following is a sample of the complaints which were made against soldiers to the Chief Secretary's Complaints Co-ordinating Committee during the Emergency in which convictions were brought.
  - I. After a preliminary inquiry, the Public Prosecutor planned to charge Kiptano s/o Kaptinge with manslaughter: "As the accused was in the Army Mr. Webber [Crown Counsel representing the Deputy Public Prosecutor] was asked to confirm with the Army Legal Service that there was no objection to the case being dealt with in the civil courts."<sup>249</sup> The Army Legal Service agreed to this in May 1954, and the case was to be heard before the Supreme Court Sessions at Embu.<sup>250</sup> In June the Secretary reported that "Private Kitpano s/o Katpinge [sic] had been acquitted of the charge of manslaughter, but had been convicted of assault causing actual bodily harm under Section 246 of the Penal Code and bound over in a bond of Sh.500/-. The Committee agreed that no further action was required in this case."<sup>251</sup>
  - II. In May 1954 the Crown Counsel reported how "subject to the confirmation of the Commander in Chief in the case of a R.A.F. Sergeant involved, it was proposed to charge three Europeans and two Africans each on 13 [later corrected to 3 each] counts of assaulting the African Labour on the Chalmers farm, Kiambu, on the 3rd April 1954."<sup>252</sup> The Commander-in-Chief gave permission for the Sergeant to be prosecuted in the civil courts.<sup>253</sup> The Sergeant was convicted on three counts of assault and fined Sh.300/-.<sup>254</sup>
  - III. "The Secretary reported that [NAME WITHHELD BY DR. BENNETT] of Nyeri had made a complaint alleging she had been raped by 22549770 Sapper J. Keohoe, 22538160 Sapper J. Richardson, and 22229135 Sgt. L. Cooke. The case was under investigation by the C.I.D. and S.I.B."<sup>255</sup> The Attorney General agreed to these

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<sup>249</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 10/5/54.

<sup>250</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 31/5/54.

<sup>251</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 28/6/54.

<sup>252</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 31/5/54.

<sup>253</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 14/6/54.

<sup>254</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 12/7/54.

<sup>255</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 6/9/54.

soldiers being tried under the Army Act.<sup>256</sup> Court martial proceedings were entered on 20 September 1954, following the completion of C.I.D. and S.I.B. investigations on 8 September.<sup>257</sup> Judgement was given on 6 November 1954: subject to confirmation, each of the accused were sentenced to six years imprisonment.<sup>258</sup>

- IV. In December 1954 the Committee received "a preliminary report from the C.I.D. to the effect that Fusilier Stafford of the Royal Northumberland Fusiliers while staying as a guest on Thomsons Farm Nanyuki was playing with his rifle and pointing it at an African herdsman Mgrita s/o/ Uimuru when it went off and fatally injured the herdsman."<sup>259</sup> Subject to approval by the C-in-C, it was proposed to try Stafford for manslaughter by court martial.<sup>260</sup> He was convicted by court martial of manslaughter and, subject to confirmation, sentenced to 84 days detention.<sup>261</sup>
- V. A Sergeant Murray, No. 4692, in the Kenya Regiment, was investigated by the C.I.D. for allegedly shooting an African under interrogation in Muthambe, Meru District in February 1955. The Deputy Public Prosecutor reported that inquiries suggested the shooting "was accidental but that there appeared to be an element of negligence and he had arranged with the military authorities to take action on this aspect."<sup>262</sup> However, he was eventually sentenced at court martial to nine months imprisonment, subject to confirmation by the Commander-in-Chief and the Governor.<sup>263</sup>
- VI. The C.I.D. investigated Driver Ronald Yates, T/22520923, for the alleged shooting and wounding of two farm labourers on Embori Farm at Timau. The Deputy Public Prosecutor thought the incident was an accident, but as there appeared to be an element of negligence he asked the military authorities to explore the matter.<sup>264</sup> Driver Yates was convicted by court martial and sentenced on 15 April 1955 to six months detention.<sup>265</sup>

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<sup>256</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 20/9/54.

<sup>257</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 15/11/54.

<sup>258</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 6/12/54.

<sup>259</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 20/12/54.

<sup>260</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 10/1/55.

<sup>261</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 7/2/55.

<sup>262</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 7/3/55.

<sup>263</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 6/6/55.

<sup>264</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 7/3/55.

<sup>265</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 2/5/55.

VII. In July 1955 the Committee heard how "investigations into a complaint of indecent assault by Sgt. Whyatt [Kenya Regiment] at Meru on the 4th June had been completed and arrangements made for proceedings to be taken against Sgt. Whyatt by way of Court Martial."<sup>266</sup> On 2 August Sergeant Whyatt was sentenced to six months detention by a District Court Martial and discharged from the service with ignominy.<sup>267</sup>

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<sup>266</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 11/7/55.

<sup>267</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 8/8/55.

## Annex 9

1. The following is a sample of the complaints which were made against soldiers to the Chief Secretary's Complaints Co-ordinating Committee during the Emergency in which there was no convictions, or an unknown outcome.
  - I. Corporal Watende Mukoli was due to be tried in Nakuru on 3 May 1954 for fabricating evidence.<sup>268</sup> This could refer to false evidence given to try and convict an innocent person of Mau Mau offences.
  - II. Anonymous "Military Askaris" were under investigation for the alleged rape of a (named) woman at Embu. The reference to an "Inquiry File" suggests a military Court of Inquiry was held into the incident.<sup>269</sup> Having received the Special Investigation Branch report on the case, the Crown Counsel thought "it did not appear that any proceedings could be instituted", although "he wished to await the C.I.D. file before giving his final opinion."<sup>270</sup> The Acting Deputy Public Prosecutor eventually decided not to institute proceedings, "owing to the failure in identification".<sup>271</sup>
  - III. A person was allegedly "assaulted and robbed of Shs. 305/- by three military askaris in Embu District." The Committee awaited a report from the Deputy Public Prosecutor on the matter.<sup>272</sup> After an identity parade produced a negative result, the proceedings were dropped.<sup>273</sup>
  - IV. The police were investigating a complaint brought by an official of the Nightwatchmen, Clerks and Shopworkers' Union. He was shot by either a police or military officer on 24 April 1954 when the offices of the Kenya Federation of Registered Trade Unions in Nairobi were raided during Operation Anvil.<sup>274</sup> The Acting Deputy Public Prosecutor reported that "the Attorney General had personally perused the Police Inquiry File into this case and had advised that this was not a case in which he was prepared to institute a criminal prosecution."<sup>275</sup>

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<sup>268</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 26/4/54.

<sup>269</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 26/4/54.

<sup>270</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 31/5/54.

<sup>271</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 28/6/54.

<sup>272</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 26/4/54.

<sup>273</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 26/7/54.

<sup>274</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 10/5/54.

<sup>275</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 28/6/54.

- V. The committee minutes record that the Secretary "had received a preliminary report from the C.I.D. of a complaint that Sgt. Kenrey was alleged to have beaten an African in the Nyeri District."<sup>276</sup> A later minute corrected the Sergeant's name to Robertson, stating that he had "admitted to slapping the complainant but gave as his excuse that the African was truculent under interrogation and it appeared he endeavoured to strike him."<sup>277</sup> The Commander-in-Chief gave permission for him to be tried before the civilian courts.<sup>278</sup> In July 1954 the court hearing was postponed because he was on operational duty with his unit.<sup>279</sup> Eventually the charge against Robertson was dropped "at the request of the complainant since the accused had already been charged with the same offence in orderly room proceedings and reduced to the rank of private."<sup>280</sup>
- VI. In July 1954 the Committee "noted the receipt of the preliminary report alleging that [NAME WITHHELD BY DR. BENNETT] had been raped by askaris of the 3rd Bn. K.A.R. at Gaikuyu and directed the Secretary to obtain the inquiry file as soon as this was completed."<sup>281</sup> The Deputy Public Prosecutor later decided "the evidence was such that it would not be possible to institute proceedings against any person."<sup>282</sup>
- VII. The Committee noted how "the C.I.D. and S.I.B. were jointly investigating the death of Kimani s/o Wairaina, which occurred at Kingaro Guard Post, Kiambu, on the 13th June, 1954. Allegations had been made that the deceased had been assaulted on the day before his death by three European members of the Kenya Regiment and by members of the Kikuyu Guard."<sup>283</sup> In August the Deputy Public Prosecutor warned the investigation into the case might take some time, as 47 witnesses were involved.<sup>284</sup> The Attorney General and the Assistant Director of Army Legal Services agreed to institute court martial proceedings against L/Cpl. Hermitte, who was in charge of the post at the time.<sup>285</sup> In November, the Committee heard how "the Commander-in-Chief, having been advised by the

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<sup>276</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 10/5/54.

<sup>277</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 31/5/54.

<sup>278</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 14/6/54.

<sup>279</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 26/7/54.

<sup>280</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 20/9/54.

<sup>281</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 12/7/54.

<sup>282</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 10/8/54.

<sup>283</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 26/7/54.

<sup>284</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 10/8/54.

<sup>285</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 23/8/54.

Army Legal Services that there was insufficiently clear evidence against the Corporal, directed that Court Martial proceedings were not to be taken. The matter was further considered by the Governor and the Commander-in-Chief, as a result of which the previous decision was confirmed. In the circumstances, therefore, no proceedings could be taken against the African members of the Guard Post."<sup>286</sup>

- VIII. A preliminary report was received alleging that a woman "had been raped by members of D. Company the 23rd Bn. K.A.R."<sup>287</sup> After reviewing the C.I.D. inquiry file, the Deputy Public Prosecutor thought there would be insufficient evidence for a prosecution, but wanted to await the S.I.B. report before making a final decision.<sup>288</sup> Later he stated that "while he had still not received the S.I.B. inquiry file he had been advised by the Assistant Director of Army Legal Services that it was unlikely to contain any cogent evidence and in view of a similar insufficiency of evidence in the C.I.D. file he did not propose to institute proceedings against any persons."<sup>289</sup>
- IX. An August 1954 meeting heard from the Deputy Public Prosecutor that "after careful consideration of the C.I.D. and S.I.B. files he was of the opinion that the shooting of Daniel Mwarano s/o Kanyi a member of the Kikuyu Guard was in no way deliberate and that no blame attached to any of the military personnel concerned. It was clear from the evidence that a gang of 200 terrorists, some of whom were known to be dressed as Kikuyu guard and Police were in the neighbourhood at the time and the deceased by his own actions was shot by one of the military party in the bona fide belief that he was a member of the gang. With regard to the two other persons alleged to have been shot, Macharia s/o Gichege was undoubtedly killed by a stray bullet and Mwangi s/o Karuga was seen acting as a scout for the terrorists. In view of this report the Committee agreed that no further action was required in this case."<sup>290</sup>
- X. In August 1954 the Committee received complaints about a military intelligence officer attached to Special Branch operating in Nairobi, who had allegedly "instructed one of his subordinates officers to beat an African suspect with the

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<sup>286</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 15/11/54.

<sup>287</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 26/7/54.

<sup>288</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 6/9/54.

<sup>289</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 15/11/54.

<sup>290</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 23/8/54.

object of obtaining information from him."<sup>291</sup> After receiving the C.I.D. report, the Deputy Public Prosecutor decided "it was apparent that the amount of violence used during this operation had been very considerably exaggerated by the complainant and he did not consider that the circumstances revealed in the inquiry warranted the prosecution of any person." The Committee recommended the Commissioner of Police be invited to "advise" the Kenya Police Reserve Officer who raised the complaint.<sup>292</sup>

XI. "The Secretary reported that [NAME WITHHELD BY DR. BENNETT] had complained of being raped by 4 askaris of the 5 Bn. K.A.R. at Iheruru. The case was under investigation by the C.I.D. and S.I.B."<sup>293</sup> In November 1954 the Deputy Public Prosecutor informed the Committee that "he had received and studied the inquiry file into this case and was of the opinion that insufficient evidence had been adduced to institute proceedings against any person. The Committee therefore agreed that no further action was required."<sup>294</sup>

XII. In October 1954 the Committee received information about a complaint from a woman alleging maltreatment by members of the Kenya Regiment.<sup>295</sup> It was decided to hear the case under the Army Act.<sup>296</sup> The Committee heard that court martial proceedings were entered on 1 November 1954, but that "owing to the large number of cases pending trial by Court Martial it was unlikely that the results of these two cases [R.E. rape and this case] would be known before the beginning of December."<sup>297</sup> A Private Hughes was acquitted of all charges concerning ill-treatment.<sup>298</sup>

XIII. In December 1954 the Committee heard how a complaint about beatings of labour by the security forces at the Ontilili Saw Mills in October had resulted in a charge of assault causing actual bodily harm being brought in the civil courts against Sergeant Mervil of the Kenya Regiment.<sup>299</sup> His name was later corrected to Sergeant Merrill.<sup>300</sup> In January 1954 the Committee recorded how "As the trial of

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<sup>291</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 23/8/54.

<sup>292</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 6/9/54.

<sup>293</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 6/9/54.

<sup>294</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 1/11/54.

<sup>295</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 4/10/54.

<sup>296</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 1/11/54.

<sup>297</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 15/11/54.

<sup>298</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 6/12/54.

<sup>299</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 20/12/54.

<sup>300</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 10/1/55.

Sgt. Merrill and R.P.O. Swann set down for hearing on the 7th January had been postponed the Deputy Public Prosecutor intimated that he did not now intend to proceed with this case in view of the amnesty for offences committed by members of the Security Forces."<sup>301</sup>

- XIV. The Committee reported in June 1955 that "the military authorities were investigating a complaint by Mr. C.T. Platt that on the 7th May at his farm in Nanyuki one of his labourers, Solia Arap Toyet had been murdered by Sgt. [A.E.] Pimblett of the Rifle Brigade."<sup>302</sup> In August the Committee noted that "there was a second accused in this case: Rifleman Swain had been discharged after the hearing of a Summary of Evidence, but had been re-arrested, and together with Sgt. Pimblett was being handed over to the civil authorities for trial in a civil court."<sup>303</sup>
- XV. In May 1955 a Kikuyu child alleged that Sergeant R. Noble, 21023668, REME, had committed an indecent assault upon her, which the police and military police jointly investigated.<sup>304</sup> On 26 July "the Attorney General together with the Army Legal Branch [sic] had agreed that there was insufficient evidence to proceed with the case and had directed that No Further Action be taken."<sup>305</sup>
- XVI. The C.I.D. and S.I.B. conducted a joint investigation into the murder of Wangechi w/o Kuria at Naivasha on 2 July 1955 by Fusilier Leo James Hoyle of the Royal Irish Fusiliers.<sup>306</sup> It was agreed for the case to be tried before the civil courts.<sup>307</sup>
- XVII. J Sgt. Pimblett and Rifleman Swann were committed for trial by the Supreme Court on charges of murder on 2 September 1955.<sup>308</sup> At the conclusion of their trials they were found not guilty.<sup>309</sup>
- XVIII. Fusilier Leo James Hoyle was committed for trial before the Supreme Court, for murder, to take place on 7 November 1955.<sup>310</sup> In December, "The Committee noted that the verdict of a supreme court jury which had found Fusilier Leo James Hoyle guilty of the murder of a Kikuyu woman at Naivasha had been set aside on 30th November 1955 by the Court of Appeal for Eastern Africa. The Appeal Court

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<sup>301</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 24/1/55.

<sup>302</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 6/6/55.

<sup>303</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 8/8/55.

<sup>304</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 6/6/55.

<sup>305</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 8/8/55.

<sup>306</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 11/7/55.

<sup>307</sup> Hanslope: CAB 19/4 Vol I, CSCCC minutes, 8/8/55.

<sup>308</sup> Hanslope: CAB 19/4 Vol. II: CSCCC Minutes, 5/9/55.

<sup>309</sup> Hanslope: CAB 19/4 Vol. II: CSCCC Minutes, 3/10/55.

<sup>310</sup> Hanslope: CAB 19/4 Vol. II: CSCCC Minutes, 3/10/55.

had directed that the verdict be replaced by the special finding that Hoyle, although guilty of the act charged had been insane at the time. It was further noted that the case had been remitted to the Supreme Court which had prepared a report for the consideration of the Governor. In the meantime Hoyle was being kept in custody at Nairobi Prison as a criminal lunatic."<sup>311</sup>

XIX. In November 1955 the Governor informed London that so far in the year the military were under investigation for 8 "irregularities", including 2 rapes, from a total of 55 irregularities for the security forces as a whole.<sup>312</sup>

XX. Sgt. Verlaque, No. 4515, Kenya Regiment, was under investigation by the CID for "Suspected Murder of African woman", who "after being arrested and screened was found dead on a road at Ndoru in the Limuru district on the 14th February 1955."<sup>313</sup> The minutes later recorded that "...the C.I.D. inquiry file into this case had shown that insufficient evidence had been adduced to institute proceedings against any person. The Committee therefore agreed that no further action was required."<sup>314</sup>

XXI. "Three privates of the K.S.L.I. from Muthaiga Camp were concerned. They are alleged to have hired a taxi, assaulted the driver, and to have driven off in the taxi which they later abandoned on the Naivasha escarpment. The Attorney General had directed prosecutions on charges of Assault and of taking a vehicle without the owners consent. Date of offence 21.5.56."<sup>315</sup>

XXII. "It is alleged that Police Inspector Barrow, Corporal Bell, K.S.L.I. (both now in the United Kingdom) and Police Inspector Morrison assaulted the three complainants [three men] whilst they were in custody at Kirawara Police Station on 6th December 1956. The Attorney General ruled on 6th February 1957 that there was insufficient evidence against Corporal Bell and Barrow's return under the Fugitive Offenders Act was not justified. No action to be taken against Morrison."<sup>316</sup>

XXIII. "Alleged that on leaving the K.A.R. camp at Langata, she [NAME WITHELD BY DR BENNETT] was raped by Private Ochieng Ayandiko, 23rd K.A.R. The case file was sent to the Attorney General on 30th January 1957."<sup>317</sup> In April it was

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<sup>311</sup> Hanslope: CAB 19/4 Vol. II: CSCCC Minutes, 12/12/55.

<sup>312</sup> Hanslope: CAB 19/4 Vol. II: Decode of telegram to Secretary of State from Governor, 7/11/55.

<sup>313</sup> Hanslope: CAB 19/4 Vol. II: CSCCC Minutes, 7/11/55.

<sup>314</sup> Hanslope: CAB 19/4 Vol. II: CSCCC Minutes, 9/1/56.

<sup>315</sup> Hanslope: CAB 19/4 Vol. II: CSCCC Minutes, 18/7/56.

<sup>316</sup> Hanslope: CAB 19/4 Vol. II: CSCCC Minutes, 12/2/57.

<sup>317</sup> Hanslope: CAB 19/4 Vol. II: CSCCC Minutes, 12/2/57.

reported that "The accused, Pte. Ochieng, was convicted of attempted rape and sentenced to 12 months imprisonment by the special Magistrate Nairobi on 20th February 1957."<sup>318</sup>

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<sup>318</sup> Hanslope: CAB 19/4 Vol. II: CSCCC Minutes, 18/4/57.

## Annex 10

1. I have found significant evidence in the Hanslope files that show that after General Erskine's arrival civilians and detainees would regularly be 'shot attempting to escape'. The following is a sample of what I have found, it constitutes 85 incidents resulting in 173 people being shot, the significant majority of which were killed.
  - I. "The General Officer Commanding stated that situation and press reports frequently referred to patrols making contact with Kikuyu gangs which then apparently made off unharmed. He instanced a recent report of a KAR patrol 'chasing' a gang for 2 1/2 miles, and questioned whether present tactics for dealing with these gangs were in fact correct. ...The Deputy Commissioner of Police emphasised that the nature of the country was generally such that made escape easy and tracking difficult. While, in Prohibited and Special Areas, patrols were not hindered by the need to challenge required by law, he believed that in Prohibited Areas more use could be made of sten and bren guns. It was agreed that the Commander, Northern Brigade, should issue orders accordingly."<sup>319</sup>
  - II. "On the 12th February in the LARIAK Forest area, a gang of Kikuyu was tracked and run to earth. Whilst trying to escape six were shot dead."<sup>320</sup>
  - III. In the Ol Joro Orok Ward, two men were shot dead whilst breaking curfew and refusing to stop on the night of 15/2/53.<sup>321</sup>
  - IV. In Fort Hall on 17/3/53: "During combined raid Police and military 1 African ran away and was shot dead."<sup>322</sup>
  - V. In Fort Hall on 17/3/53: "Home Guard shot a man who ran away."<sup>323</sup>
  - VI. In Giakanja on 17/3/53: "Mau Mau treasurer being arrested attempted to escape and was shot dead."<sup>324</sup>

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<sup>319</sup> Hanslope: EM COM 4 Vol. I: 'Record of a meeting of the Governor's Emergency Committee held at Government House on the 20th January, 1953.'

<sup>320</sup> Hanslope: ADM 35/2/11/3/1A: Intelligence Summary, signed Captain Ragg, Int. Section, Thomson's Falls, 18/2/53.

<sup>321</sup> Hanslope: ADM 35/2/11/3/1A: Intelligence Summary, signed Captain Ragg, Int. Section, Thomson's Falls, 18/2/53.

<sup>322</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 23rd April to 7th May 1953.

<sup>323</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 23rd April to 7th May 1953.

<sup>324</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 23rd April to 7th May 1953.

- VII. In Thegenge on 22/3/53: "2 Kikuyu shot dead by military after failing to halt."<sup>325</sup>
- VIII. In Karibu on 22/3/53: "Military patrol shot one man [wounded] attempting to escape arrest."<sup>326</sup>
- IX. In Kinugia Valley on 22/3/53: Home Guard shot dead a man who failed to stop."<sup>327</sup>
- X. In Fort Hall on 23/3/53: "Police patrol arrested 4 people acting suspiciously by a hut. 2 shot dead attempting to escape."<sup>328</sup>
- XI. In Nuralandia on 24/3/53: "Tribal forces shot dead 1 African who refused to halt."<sup>329</sup>
- XII. In Tetu location on 25/3/53: "Home Guards ambushed a man leaving the forest. He resisted arrest and was shot dead."<sup>330</sup>
- XIII. In Minns' Farm on 31/3/53: "K.P.R. challenged two men who failed to halt - one shot dead."<sup>331</sup>
- XIV. "At Tiekunu, four prisoners who, on the pretext of showing Dedan Kamathi's [sic] hide-out, attempted to escape, were shot on the 31st [March 1953]."<sup>332</sup>
- XV. A schedule of incidents in Nairobi records that in Mbari Yakihira on 29/3/53, a "Combined Police Military patrol shot prisoners whilst they attempted escape", noting both were killed. Also on 29/3/53, "23rd K.A.R. patrol shot when men refused to halt" in Katamayu Area, killing 7. Also on 29/3/53, "23rd K.A.R. patrol shot when men refused to halt" in Kiambu Forest, killing 2. On 31/3/53, an oath administrator was killed in Kiambu because he failed to halt. Also on 31/3/53, 4 people were killed in Kiambu "Shot whilst attempting to escape." On 1/4/53 in Kambara, "African Home Guard retaliated for Uplands massacre", killing 11 people. On 3/4/53 in Kiambu, "H/M Charles shot man for failing to halt", killing 1. On 3/4/53 in Uplands Kerita, "23 KAR shot men for failing to halt", killing 4. On 4/4/53 in Githiga, "Home Guard slashed by MM; patrol arrested 11 & shot 2

<sup>325</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 23rd April to 7th May 1953.

<sup>326</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 23rd April to 7th May 1953.

<sup>327</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 23rd April to 7th May 1953.

<sup>328</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 23rd April to 7th May 1953.

<sup>329</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 23rd April to 7th May 1953.

<sup>330</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 23rd April to 7th May 1953.

<sup>331</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province, no date.

<sup>332</sup> Hanslope:INT 10/4/2/4/8A: Central Province (South) Provincial Intelligence Committee Summary, 15/4/53.

whilst escaping", wounding 2. On 7/4/53 in Kiambu, "Police patrol contacted gang who refused to halt. Some believed wounded", killing 6. On 6/4/53 in Kiambu, "K.A.R. patrol shot men who refused to halt", killing 2. On 6/4/53 in Kiambu, "K.A.R. surprised a gang who refused to halt", killing 5. On 7/4/53 in Kiambu, "K.A.R. surprised meeting in a hut. Men refused to halt. One was an oath administrator and another a treasurer", killing 5. On 10/4/53 in Kiambaa, "Raid on location. one man shot refused to halt", killing 1.<sup>333</sup>

- XVI. In Gethy on 1/4/53: "K.A.R. patrol shot and wounded an African who failed to halt."<sup>334</sup>
- XVII. A KAR patrol shot and wounded an African who failed to halt on 1/4/53 in Oathy.<sup>335</sup>
- XVIII. On Bastard's farm on 3/4/53: "Member of Gang who killed Turkana woman ...shot dead by Police when resisting arrest."<sup>336</sup>
- XIX. A military patrol killed an oath administrator who tried to escape in the Nyeri Reserve on 6/4/53.<sup>337</sup>
- XX. In Nyeri Native Location on 6/4/53: "Oath administrator tried to escape from Military." [Killed].<sup>338</sup>
- XXI. "The same day [7/4/53] at Kagwe, five out of seven men surprised in a hut who had refused to halt, when attempting to escape, were shot, including an oath-administrator and treasurer."<sup>339</sup>
- XXII. Near Nanyuki on 11/4/53: "Suspect gang feeder shot dead when failed to halt."<sup>340</sup>
- XXIII. In Kiamatuga on 12/4/53: "Man, Twega Bushembi, wearing blue raincoat was wounded when he failed to stop when challenged."<sup>341</sup>
- XXIV. In Chieni Forest on 17/4/53: "Police shot a gang member when he attempted to escape."<sup>342</sup>

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<sup>333</sup> Hanslope: INT 10/4/2/4/8A: 'Schedule of incidents and operations connected with the Emergency in Nairobi area during the period 30.3.53 - 12.4.53.'

<sup>334</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province, no date.

<sup>335</sup> Hanslope: INT 10/4/2/4/2A Vol. I: Nyeri District Intelligence Committee Minutes, 4/4/53.

<sup>336</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province, no date.

<sup>337</sup> Hanslope: INT 10/4/2/4/2A Vol. I: Nyeri District Intelligence Committee Minutes, 10/4/53.

<sup>338</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province, no date.

<sup>339</sup> Hanslope: INT 10/4/2/4/8A: Central Province (South) Provincial Intelligence Committee Summary, 15/4/53.

<sup>340</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 8th to 23rd April 1953.

<sup>341</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 8th to 23rd April 1953.

- XXV. On 17/4/53, the police shot a gang member when he attempted to escape in the Chieni Forest.<sup>343</sup>
- XXVI. On Oulton Farm on 28/4/53: "Patrol followed up incident 84 found tracks lead to hut in which there was fresh sheep meat. 3 men arrested. 1 taken aside for questioning bolted and was shot dead."<sup>344</sup>
- XXVII. In Kianyaga on 6/5/53: "Police Ptl. raided scene of alleged M.M. ceremony. One woman shot [wounded] while running away."<sup>345</sup>
- XXVIII. In Mwea on 13/5/53: "KAR & POL. patrol arrested 5 M.M. administrators, 2 were women, 1 man shot & wounded when trying to escape."<sup>346</sup>
- XXIX. In Embu/Sagana Road on 19/5/53: "African shot & wounded after disobeying orders to halt."<sup>347</sup>
- XXX. In Githere on 19/5/53: "Milty & Police carried out sweep, 20 arrested after screening. 2 killed attempting to escape."<sup>348</sup>
- XXXI. In Gura on 21/5/53: "Sweep carried out by milty & pol 2 killed attempting to escape."<sup>349</sup>
- XXXII. During a sweep in Githerere, the military and police forces involved killed two people attempting to escape.<sup>350</sup>
- XXXIII. During a sweep carried out by military and police in Gura on 21/5/53, two people were killed attempting to escape. On 24/5/53, a military sweep in Gura killed two men when escaping.<sup>351</sup>
- XXXIV. In Gura Rv. area on 24/5/53: "Milty sweep carried out, 2 men shot while escaping."<sup>352</sup>

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<sup>342</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 8th to 23rd April 1953.

<sup>343</sup> Hanslope: INT 10/4/2/4/2A Vol. I: Nyeri District Intelligence Committee Minutes, 24/4/53.

<sup>344</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 23rd April to 7th May 1953.

<sup>345</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 23rd April to 7th May 1953.

<sup>346</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 7th May to 21st May 1953.

<sup>347</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 7th May to 21st May 1953.

<sup>348</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 7th May to 21st May 1953.

<sup>349</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province, no date.

<sup>350</sup> Hanslope: INT 10/4/2/4/2A Vol. I: Nyeri District Intelligence Committee Minutes, 22/5/53.

<sup>351</sup> Hanslope: INT 10/4/2/4/2A Vol. I: Nyeri District Intelligence Committee Minutes, 29/5/53.

<sup>352</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province, no date.

- XXXV. In Kanyanyeni on 31/5/53: "KR shot 1 [dead] trying to escape."<sup>353</sup>
- XXXVI. A.C. Randall on 2/6/53: "Arrested employee shot dead att to escp."<sup>354</sup>
- XXXVII. In Embu on 5/6/53: "Prisoner shot [dead] attempting escape."<sup>355</sup>
- XXXVIII. In Ichiechi on 8/6/53: "Milty. captured 1 terrorist who tried to escape and was killed."<sup>356</sup>
- XXXIX. In Ruguti on 18/6/53: "11 prisoners who tried to escape from KAR shot dead."<sup>357</sup>
- XL. In Kehome Rd. on 20/6/53: "K.G. found dug out with 5 MM 1 shot and 3 shot trying to escape."<sup>358</sup>
- XLI. In Kianyaga on 24/6/53: "KAR killed 1 suspect after failing to halt when challenged."<sup>359</sup>
- XLII. In Githumi on 27/6/53: "Two challenged at night refused to halt. Police shot one [dead] wounded 1."<sup>360</sup>
- XLIII. In Mathari Mission on 1/7/53: "1 K.G. flushed 3 gangsters. Shot 2 other led him to H/out containing 9 others, when escaping was shot dead. 9 escaped."<sup>361</sup>
- XLIV. In Naivasha, a terrorist arrested on Van Deventer's Farm was later killed when attempting to escape from leading a patrol to a hideout on the Karati River.<sup>362</sup>
- XLV. On 20/1/54: "A large crowd was seen gathered at Limuru Market ...Striking Force moved in and the crowd scattered. The call to halt was ignored and as a result one person was killed and two were wounded."<sup>363</sup>
- XLVI. "On the 22nd January, an Aberdeen Patrol operating near Langata Prison, fired on 7 Africans who refused to halt when challenged. One African was shot and wounded, the other 6 made good their escape. ...On the 23rd January, during a

<sup>353</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province, no date.

<sup>354</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province, no date.

<sup>355</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight ending 23rd June 1953.

<sup>356</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight ending 23rd June 1953.

<sup>357</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 19/6/53 to 2/7/53.

<sup>358</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 19/6/53 to 2/7/53.

<sup>359</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 19/6/53 to 2/7/53.

<sup>360</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 19/6/53 to 2/7/53.

<sup>361</sup> Hanslope: INT 10/4/2/4A Vol. I: Schedule of incidents and operations connected with the Emergency in Central Province for the fortnight 19/6/53 to 2/7/53.

<sup>362</sup> Hanslope: INT 10/4/2/2A Vol. I: Rift Valley Provincial Intelligence Summary, 29/9/53.

<sup>363</sup> Hanslope: INT 10/4/2/4/6A Vol. II: Kiambu District Intelligence Summary, 23/1/54.

Military operation, one African was shot dead having failed to halt when challenged. Examination of his papers stated him to be a Masai, but there is reason to believe he was either a Kikuyu or an Embu. ...During a combined Police and Military operation on the 24th January, in Kibera, an African who failed to halt when challenged was shot and wounded. On arrest he stated that he was a prison warden from Langata Prison Camp and did not halt because he thought he was being chased by members of Mau Mau. ...During a Kenya Regt. operation in the Athi River Road, an African was shot dead having refused to halt when challenged."<sup>364</sup>

XLVII. "At about 1430 hours on 13.2.54 a Meru Guard patrol operating in IGOJI Location (HZS 110880) killed one terrorist who failed to obey an order to halt when challenged."<sup>365</sup>

XLVIII. "On 8.3.54 a self-confessed Mau Mau was shot and killed by G.S.U. whilst attempting to escape from custody at WERU (HZS 230600) in Karingani Location."<sup>366</sup>

XLIX. "On 19.3.54 a G.S.U. patrol, acting on information that the Chief's camp at MIATHENE (HAD 3216) was to be attacked, challenged two men found hiding behind a bush at HAD 298180 in KIANJAI Location. Both men attempted to run away and one was shot and killed and the other captured."<sup>367</sup>

L. On 31/3/54, "an Aberdeen patrol, near Parliament Buildings, shot at an African who refused to halt when challenged. The African, a Maragoli, dropped dead."<sup>368</sup>

LI. On 18/4/54 in Kiambu area: "A large sweep was carried out in the area HZJ 150578/HZJ 175565. Two men were shot dead for failing to halt."<sup>369</sup>

LII. In the Chura Division: "During the sweep on 18th/19th, six Africans were shot by Security Forces having failed to halt when called upon to do so."<sup>370</sup>

LIII. In the Kiambu area on 19/4/54: "...three Africans were shot dead for failing to halt." On 20th, "...a Kikuyu Guard prisoner who had tried to escape was shot and killed."<sup>371</sup>

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<sup>364</sup> Hanslope: INT 10/4/2/6A Vol. II: Nairobi City District Intelligence Committee Summary, 29/1/54.

<sup>365</sup> Hanslope: INT 10/4/2/4/5A Vol. I: Meru District Intelligence Committee Summary, 18/2/54.

<sup>366</sup> Hanslope: INT 10/4/2/4/5A Vol. I: Meru District Intelligence Committee Summary, 11/3/54.

<sup>367</sup> Hanslope: INT 10/4/2/4/5A Vol. I: Meru District Intelligence Committee Summary, 25/3/54.

<sup>368</sup> Hanslope: INT 10/4/2/6A Vol. II: Nairobi City District Intelligence Committee Summary, 2/4/54.

<sup>369</sup> Hanslope: INT 10/4/2/4/6A Vol. II: Kiambu District Intelligence Summary, 24/4/54.

<sup>370</sup> Hanslope: INT 10/4/2/4/6A Vol. II: Kiambu District Intelligence Summary, 24/4/54.

<sup>371</sup> Hanslope: INT 10/4/2/4/6A Vol. II: Kiambu District Intelligence Summary, 24/4/54.

- LIV. On 1/5/54: "A patrol of Kikuyu Guard challenged an African at Nyamangara. ...He refused to halt when challenged and was shot dead." On 3/5/54: "...a Police patrol opened fire when an African failed to halt when challenged. He was shot dead." On 6/5/54: "At Tigoni ...an African who refused to halt was shot and wounded by Police personnel and subsequently died of his wounds."<sup>372</sup>
- LV. "...on 2.5.54 Kikuyu Guard near Nyamangara surprised a wanted terrorist named MWHIA NJOROGE who was hiding in the scrub. This man, who was wanted for oath administering offences, failed to halt when called upon to do so and was shot dead."<sup>373</sup>
- LVI. "On 5.5.54 a captured terrorist led a Police patrol to a vacated hide-out in CHUKA Location (HZS 29646). He then attempted to escape and was shot and killed."<sup>374</sup>
- LVII. "On 8.5.54 a combined G.S.U. and Meru Guard patrol acting on information went to arrest five suspected terrorists. One man was shot and killed while attempting to escape and 3 others were captured."<sup>375</sup>
- LVIII. On 11/5/54: "...a Kikuyu was shot dead whilst attempting to escape. He was going to show the patrol where a pistol was hidden."<sup>376</sup>
- LIX. On 7/6/54: "...during a combined Police and Military sweep an African was shot and wounded when he failed to halt when challenged."<sup>377</sup>
- LX. "On 14th June, Kenya Regiment and Kikuyu Guard at Waithaka contacted two men who attempted to flee. One was shot dead and a home-made pistol was recovered."<sup>378</sup>
- LXI. A GSU patrol in the Nyambene Forest killed a terrorist seen running away on 1/7/54.<sup>379</sup>
- LXII. "During the night of 11/12.7.54. a captured terrorist leading a BLACK WATCH patrol to an alleged hide-out tried to escape but was shot and killed."<sup>380</sup>
- LXIII. A Black Watch patrol in Magumoni Location killed a female scout when she attempted to evade capture on 16/6/54.<sup>381</sup>

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<sup>372</sup> Hanslope: INT 10/4/2/4/6A Vol. II: Kiambu District Intelligence Summary, 7/5/54.

<sup>373</sup> Hanslope: INT 10/4/2/4/6A Vol. II: Kiambu District Intelligence Summary, 7/5/54.

<sup>374</sup> Hanslope: INT 10/4/2/4/5A Vol. I: Meru District Intelligence Committee Summary, 13/5/54.

<sup>375</sup> Hanslope: INT 10/4/2/4/5A Vol. I: Meru District Intelligence Committee Summary, 13/5/54.

<sup>376</sup> Hanslope: INT 10/4/2/4/6A Vol. II: Kiambu District Intelligence Summary, 14/5/54.

<sup>377</sup> Hanslope: INT 10/4/2/4/6A Vol. II: Kiambu District Intelligence Summary, 12/6/54.

<sup>378</sup> Hanslope: INT 10/4/2/4/6A Vol. II: Kiambu District Intelligence Summary, 19/6/54.

<sup>379</sup> Hanslope: INT 10/4/2/4/5A Vol. I: Meru District Intelligence Committee Summary, 8/7/54.

<sup>380</sup> Hanslope: INT 10/4/2/4/5A Vol. I: Meru District Intelligence Committee Summary, 15/7/54.

<sup>381</sup> Hanslope: INT 10/4/2/4/5A Vol. I: Meru District Intelligence Committee Summary, 24/6/54.

LXIV. A Jalu was shot dead resisting arrest by Tribal Policemen in July 1954.<sup>382</sup>

LXV. An African was shot dead on 31/10/55 by Asian Home Guard in Grogan Road, Nairobi: "The African was unable to produce any identity documents, resisted arrest, and was shot when trying to run away."<sup>383</sup>

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<sup>382</sup> Hanslope: INT 10/4/2/1/4A Vol. II: District Intelligence Committee Summary, Kisumu No. 14/54, 31/7/54.

<sup>383</sup> Hanslope: INT 10/4/2/6A Vol. II: Nairobi City District Intelligence Committee Summary, 4/11/55.