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COMMERCIAL LAW IN KENYA

KENYA MAIZE MARKETING BOARDS

Dissertation submitted in partial fulfillment
of the Requirements for the LL. B. Degree, University of
NAIROBI

By

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Nairobi

April, 1979

P R E F A C E

In this paper we are going to look at the control of Maize Marketing in this country. We shall tress the history of control through the colonial era up to date. In a legal paper like this one we shall obviously be forced to look at the economic base of our society in order to ~~st~~ understand the role of one of its great superstructures: Law, it is only by looking at law as part of the whole, that is, part of the whole economic system that we can find out who benefits from this system of control. In prescribing remedies we shall not pretend to be exhaustive and indeed we shall not go into details as this will inevitably lead us into the province of economics to which we cannot do much justice in a paper of this kind.

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LLB III 3/5/1979

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CHAPTER I

COMMERCIAL LAWMAIZE MARKETING BOARDINTRODUCTION

Maize, it has been recognised, is the staple food of the majority of the people of Kenya. We cannot therefore, over-emphasise the fact that the price of maize affects substantially the standard of living of workers (who are mainly the consumers) and the peasants (who are mainly the producers and also consumers). It is a paradox, which I hope to demystify through out this paper, that the prices offered to the peasant producers and the worker consumers are highly unsatisfactory to both parties. To the peasant, this price is too low. To the consumer it is too high! Who benefits? This whole paper is an attempt to answer this question.

As early as 1922 the Colonial Government recognised the delicate nature of the maize industry in Kenya. However, (as we shall see in the second chapter, not surprisingly emphasis was laid on European grown maize rather than African grown maize though the latter accounted for over 90% of all the maize produced in the colony. This Colonial Policy should not surprise

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US IF we understand that the overwhelming aim of Europeans in seeking colonies abroad was the exploitation of the resources of colonies for benefit of the metropolitan countries! In line with their monopoly capitalism they had to suppress any kind of competition from Africans whose role was seen merely as that one of providing labour for European Plantation Agriculture. The labour laws that ~~were made~~ ^{were made} were aimed at facilitating this exploitation. It is therefore no wonder that no attempt was made to encourage maize production by Africans during this time and no wonder we have no data to assess the African peasant activities in this area of agriculture. At this time there was no organised internal market for European grown maize. Local prices were determined largely by the export market prices. From the Bowing Committee report we learn that the prices paid to European growers between 1930 and 1939 ranged from sh.3/50 to sh.7/50 per 200 lbs bag of maize. For reasons which I will examine in the next chapter European maize acreage continued to drop and by the outbreak of the second world war it had dropped to 93,500 from 120,000 acres in 1933/34. It is only after the policy of exploitation had succeeded in alienating sufficient numbers of Africans from their land² and the taxation policy had succeeded in making subsistence farming for African exceedingly difficult to meet his own requirements and pay his obligations to the government that the internal market

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became sufficiently lucrative for the Europeans to start selling their maize.

What we are dealing with here is the primitive kind of capitalism. This is a stage where, before the system can be self-perpetuating, labour has got to be forcefully wrenched from the land³. This was necessary for production. But production cannot continue under a capitalist system unless the capitalist realises surplus value which, to put it simply, is the difference between what ~~la~~ labourer gives to the capitalist and what the capitalist gives back to the labourer in return for his labour. It is this value, robbed from the labourer, that is the motivation of capitalist production. But the capitalist is not interested in the goods 'he' produces. In fact he produces for anonymous consumers. He is interested in the exchange value of the good, which when taken to the market it ceases to be a good and becomes a commodity.⁴ This commodity must of necessity have use value before the capitalist can realise his profits that is someone must want to buy the good. Therefore the more the labourer is exploited, the profit the capitalist will make. In this analysis we shall ignore the other two 'factors' of production viz. land and capital for in reality there is only one factor of production: labour; land is of no use to the capitalist until it has been worked by the labourer

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Capital⁶ (machinery) which at an advanced stage of capitalism, is considered as an important factor of production and separate from labour, by the capitalist is, in reality the crystallisation of the surplus value of labour into machinery.

Before the capitalist break through in development the first machine had to be made. This was result of pure labour since at this time there were no machines to make other machines. The making of this first machine is a form of investment: the labourer employed by a primitive capitalist makes a good. Because what a labourer is paid in return for this job is far less than what he produces, the capitalist sells the commodity on the market and realises a surplus value (profit). In this case the capitalist has contributed nothing to production. So what the capitalist needs for his own subsistence will have to come from these profits. But the capitalist will keep on accumulating these profits to a level which becomes higher than his own requirements for subsistence. These excess profits which the capitalist accumulated over and above his own consumption is what is invested into what is later on called capital.

From the foregoing analysis it is clear that market is very important to any level of capitalism whether primitive or advanced. It should not, therefore, surprise us that, after solving the first

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CAPITALIST farmers was marketing their maize. This is why the beginning of organised internal market in mid 1930s coincided with the first serious attemptsto to control the marketing of maize in Kenya in the interest of European settler farmers. Both the Agricultural Indebtedness Committee 1935 and the Economic Development Committe of the same year emphasised the importance of European maize Industry to the economic Welfare of the Country. It was during this time that the Country had started experiencing serious shortages in the staple food of the majority of Keryans - hence the introduction of Maize Control Bill 1935. It is necessary to emphasise here that the only reason why Maize Control was introduced in Kenya was to enable the European Maize Producers to market their maize both internally and if necessary externally in order to realise their surplus value for further development of the colonial economy. Under the Maize Control Act the Maize Control Board was brought into existence in 1942. This Board was given amonopoly over the purchase of maize in the country. This board was replaced in 1959 by the Maize Marketing Board and we shall see the functions of this latter board in the next chapter.

The above background is necessary in order to enable ustoto see the function of law in a society. We cannot understand the system of control that was instituted in the colonial era and which still continues up to this time without looking at the

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economic base of the society we are dealing with.⁷ Law as we know is a system of a juridical standards in the hands of the bourgeoisie (ruling class) for the exploitation of the peasants and the workers and is protected by the coercive power of the state.⁸ Commercial law, whose aim is to facilitate trade and therefore exploitation is no exception. This logically brings us to the Maize Control Act, the Maize Marketing Act and the various other legal instruments that were used to consolidate this position of the European capitalist farmer vis a vis the African peasants and the workers. The Maize Industry was only one 'straw' through which the Kenyan economy was 'sucked' by the capitalists from Europe. It is therefore imperative that, in order to understand fully all the fuss that was going on in the Maize Industry, we should look also at the relationship between the maize industry and the other industries in the colonial economy. Agriculture here becomes the most important area of Colonial Exploitation. And here we learn that the European settler could rely on the colonial government to give him subsidies and credit facilities. On the other hand the African peasant farmer had several limitations. Up to the time of the second Imperialist war the African peasant farmer was not given any credit facilities, leave alone subsidies and moreover they were expected to work on European farms for the bulk of the year.

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Most Africans were pushed out of their fertile land to give way to European farmers. In the reserves the amount of land was limited and shifting cultivation that had hitherto preserved the fertility of the land was no longer possible. Due to African kinship patterns and the inheritance laws the amount of land available to any one individual kept on diminishing and the peasant farmer hardly ever had land to grow enough maize to feed the family and because he could not get enough produce from his land to feed the family, he had nothing to spare which he could sell in order to buy fertilizer for the next crop. He was left in a vicious circle of poverty. The prices paid to farmers were also discriminative. The Bowring Committee report showed that though there was no data and statistics for maize produced by African peasant farmers and the prices paid to them between 1930 and 1939, whereas the price to European grown maize producers was between sh3/50 and sh.7/50 the prices to Africans were much lower.

In 1941/2 the Colonial Government's policy was to arrange Marketing of the 1942 crop so as to obtain for European farmers sh.9/= or sh.8/50 per 200 lbs bag. Despite this arrangements there was an acute shortage of maize in 1943 and as a result a commission of inquiry was appointed.¹⁰ It said: We recommend that for the period European grown maize is indispensable to the Colony's

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REQUIREMENTS; during the normal times the Government should enter into a contract, through the agency of K.F.A. to purchase 400,000 bags of European grown maize per annum at a price fixed after consulting consuming and producing interests." It is interesting to note that members of K.F.A. were exclusively European settlers from the former scheduled area. Though the African workers were by overwhelming majority the consumers there is no indication that they were consulted before prices were fixed. K.F.A. represented just about 5% of the producers. 95% of producers were African peasants. Though from the above quotation it is clear that a time may come when European grown maize will not be necessary to the colony very little was done to encourage Africans to increase their maize production.

After the second imperialist war there was different kind of problem. The Colonial economy almost came to a standstill. The white settlers found that there were too many labourers on their farms. The economy had been pushed into a straight jacket where the destiny of the country was in the hands of a few settlers. This situation could not continue indefinitely, soon the Government was being pressurised into dismantling the system of forced labour. Since the state machinery could no longer be used to

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maintain the servant-master relationship between the African labourer and the white settler the latter had to find some other means of retaining his labour requirements. Wages were therefore raised a little bit and resident labourers continued to receive small rations of posho. We should realise that this change was no novelty in the capitalist system. Nor should we think it was a gesture of goodwill towards the Africans. This was simply a classical stage in capitalist development. It was meant to prop the system rather than to dismantle it. The problem was still one of marketing the capitalist products. Increased wages would mean increased demand and therefore quick realisation of surplus value (profit). The nature of capitalism is such that free enterprise cannot be denied to the majority of the members of the society for ever.^{II} Moreover, the fact that at this time there were too many resident labourers on Europeans had a constant pool of labour upon whom they could rely at any time. This in return meant that the demand for labour could never outstrip the supply of labour and this was a check to any undesirable wage rises.

As far as African peasants were concerned there were piece-meal attempts to encourage them to produce more at this time

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time and their deliveries to the Board increased. This was because of the British Government's insistence that the colonies should produce enough grains to meet the requirements of the empire in time of emergency like the then on going imperialist war. Here again the peasants were exploited; their maize was bought at a cheaper price than that grown by the white settlers. This maize was then sold at high prices to the workers (local market). The proffits made here plus the difference in the prices offered to the African peasants and those offered to white settlers was used to subsidise white settlers maize exports.

At this stage the colonial Government could be said to have achieved quite a lot. They had succeeded in making a class of African workers who could be relied upon to provide cheap labour. There was peasantry class that could produce maize at very low costs to feed Her Majesty's forces that were defending the Empire and the Western civilization elsewhere in the world. What the peasantry produced at very low 'costs' could also be used to compensate the white settlers for their 'high costs' when export prices were low. Moreover the African workers and peasants were the local maize consumers and therefore formed a fairly secure internal market. The capitalist foundation had been laid and now other forms of capital could come into to share in the surplus values. Soon came the millers to ground the maize. These were to

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be registered with the Maize Marketing Board. Not after long monopolies like the Unga Ltd. were established. A.F.A. working in harmony with the other forms of capital was there to protect the interests of white maize farmers. African peasants had no such an institution. Not after long financial institutions were started ready to share in surplus value in the form of interests by selling their credit.¹²

However, despite this apparent tranquility, things did not continue so smoothly like that. The Mau Mau Liberation revolution shook the capitalist system in Kenya to the roots. Karl Marx predicted that the capitalist system would destroy itself eventually. Racism, as an ideology, had served its purpose by helping European imperialism establish itself in foreign lands whose inhabitants they considered to be lower beings. But racism and capitalism (once the latter has been established) have got inherent contradictions. The line between the exploiter and the exploited cannot depend on the colour of one's skin but on one's ability to exploit the labour of others and accumulating surplus value to the extent where he has enough to invest thereby continuing the system. Racism places a heavy burden on the capitalists; it means they have got to carry along those of their own race

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who are not capitalists themselves and give them all the protection of the system which only those who are "smart" deserve. This is a heavy "tax" upon the capitalists which they cannot bear for long. Not only that, but also by denying those of the "lower race" with "sufficient drive"¹³ and "ambition" the privilege of joining the class of exploiters it lays bare the inherent inhumanity and wickedness of the system. Racism in the exploiting minority and this might destroy the system.¹⁴ Those with "sufficient drive" and "ambition" in the exploited (lower) race become restless and frustrated by a system (capitalism) whose benefits they feel they are entitled to but which they are denied because of the colour of their skin. They therefore start hating even the system itself and this hatred is fused together with the hatred of the dominant race. In their view therefore the system and the dominant race become one; the overthrow of one means the overthrow of the other. It was not too late in the day for the colonial government and the enlightened settlers to see their folly.

As the Mau Mau liberation struggle advanced the white started a system of co-opting those with "sufficient drive" and "ambition" into the class of exploiters.¹⁵ This alliance between the exploiters from both races was necessary for the

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perpetuation of the system. It was a brain-washing exercise. Those blacks who were co-opted into the system would form a buffer zone between the African peasants and the white bourgeoisie.¹⁶ The African peasants and workers would be lulled for a time seeing those of their own black lot joining the class of exploiters and for a time they would be too busy struggling and hoping to join the class to pose any immediate threat to the system. And meanwhile the system would have gained momentum and strength so that by the time they regain their awareness the surface of attack will be wide and resistant. And at this juncture one might mention the Swynnerton Plan. This plan apart from providing the practical details and guidelines it also put a philosophical touch to the co-optation exercise. It was a plan with forward looking to the future rather than short-sightedness of the present. The style of exploitation had to change without any disruption in the system.¹⁷ Change from a primitive method of domination (colonialism) to a more advanced method of domination and more complete exploitation (neo-colonialism) was the motive. Land reform was the means.¹⁷ The Mau Mau diehards who wanted to fight to the finish were to be dispossessed of their land. Those were willing to collaborate were to be given the land. To win them completely on their side the land was to be consolidated, adjudicated, and

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registered to an individual title. Individual title meant that these co-opted group could now get credit facilities from colonial government. Indefeasibility of this first registration tied the security of these Africans to that of the white settlers in law. Threat to one meant threat to the other.¹⁷ Those who were landless and were willing to stop fighting were settled and given a few acres of land. The peasants were told their problem was not shortage of land but lack of knowledge on proper use of the land. With this the colonial government had succeeded in weakening and eventually killing Mau Mau before it could gain any ideological coherence.¹⁸ For Mau Mau was simply an amorphous group of Africans who were fighting for different reasons with different amount of bitterness.¹⁹ There were those who all they wanted was an assurance of a place in "the sun" and once this was guaranteed and they knew it was only a matter of time before they were secure in the saddle of the exploitation machinery they sat back and waited, may be, only "suffering without bitterness"²⁰ for now there was nothing to be bitter about. These are the ones who betrayed the course of the peasants of Kenya by guaranteeing economic dependence into the period of political independence. But there were those like Dedan Kimathi

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with enough bitterness who continued the struggle up to its bitter end - in the end they were physically defeated. And the system is apparently secure. The above is therefore the background to the kind of exploitation we find in the maize industry in the post independence Kenya.

Kenya plunged into independence with all the colonial super-structures²¹ intact. Only bourgeois geniuses like Swymerton and the rest who had spent ten years tying strings of capitalism securely could understand what they had done to the Kenyan economy and what this meant for the future of independent Kenya. It is doubtful whether even the petty-bourgeoisie²² who had capitalised on the Mau Mau revolution to get themselves large chunks of land and the compradors who were going to steer the ship of the independent state of Kenya could understand the magnitude of exploitation their collaboration was doing to the independent and yet dependent country!

Fundamentally, therefore the economic base of the independent Kenya remained the same capitalist one that the British Government and their colonial compatriots had spent over sixty years establishing in Kenya. It will not therefore be necessary to have a detailed study of the economic base in our discussion of

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PERPETUATION OF THE SYSTEM. What we shall do here is merely to look at how in the independent state the superstructures have been manipulated to serve new masters. Perhaps the best way to do this is to look at the whole thing with the comic eye and serious sarcasm of a dramatist, for example look at the way words like "ordinance" have changed to "Act", "Director of Agriculture" to "Minister of Agriculture", Governor to President and so on, while leaving the substance of the superstructure intact. The Maize Marketing Ordinance became the Maize Marketing Act after Independence. The Agriculture Ordinance 1956 became the Agriculture Act soon after independence. Maize Marketing Board was replaced in 1966 by the Maize and Produce Board which was established under the Marketing of Agricultural Produce Act which, as we shall see in the next chapter had substantially, if not entirely, the same functions as the one it was meant to replace. After discovering the above we do not need to restrain ourselves from coming to the inevitable and logical conclusion that all the other laws, Acts and institutions that were in anyway related to the maize industry remained substantially the same and aimed at the same goals and serving the same class of masters with the only difference (which should not be called a difference anyway) being that the

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members of the class keep on changing slightly as new members join it and a few whose "drive" falls short of being sufficient keep on being knocked off.²³ K.F.A. which initially represented only white farmers in the former scheduled areas has now been opened to represent the interests of the big African farmers as well. Apparently the membership is open to every farmer but in reality only the interests of the big African farmers are represented. For example, the produced prices of maize are fixed by the Minister for Agriculture after consultation with the Maize and Produce Board which consists of twelve members two of whom are appointed to represent the Government, six are selected by the Minister from panels of names submitted by producers and four are selected by the Minister for their ability, in commerce and finance. The above is done under powers conferred to the Minister by the Marketing of Agricultural Produce Act. It is obvious that the other interested bodies referred to above in fixing producer prices would not be peasant farmers or even the working consumers, most likely they are the big millers like Unga Ltd. the large Estate owners and so on. It is also unlikely that any of the six names selected by the Minister would be that of a peasant farmer. It is therefore clear that in fixing these prices the workers and peasants in Kenya are never represented.

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Kenya being a backyard of the Western capitalist system²⁴ it is not surprising that these institutions should be the way they are. Kenya is a neo-colonial state.²⁴ Here we do not intend to go into the details of Kenya's role in international capitalism as a neo-colonial state.²⁵ But it might be necessary to bear in mind that the comparatively higher standard of living of the working class in western Europe is a result of the exploitation of the peasants and workers of Third World Countries by the capitalists of Europe.²⁶ The capitalists in Western Europe control the Markets for raw materials and foods from thirthird world countries and by underpaying the peasants of Kenya they sell these commodities to the workers in Europe at a lower price .

Manufacturing industries in Europe by selling their commodities at extortionate prices and underpaying Kenyan workers who work in the subsidiaries manage to pay the workers in Metropolitan countries high salaries which make their standard of living tolerably high. This is how the revolution of the workers has been postponed in Europe. This is perhaps one factor which Karl Marx overlooked when he predicted that because of class struggle socialist revolutions would start in European industrialised countries. He did not fore-see that because of the acquisition of colonies the struggle would have to be transferred to the

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colonies where the exploitation of the peasants and the workers is necessarily more intense in order to satisfy the workers in metropolitan countries. This means that Karl Marx's order has been reversed: in order for the workers in Europe to be pushed to the "wall" that is to a point where they can be pushed no more and therefore ~~not~~ revolt against the capitalist system, the peasants in colonies and neo-colonies must fight the petty-bourgeoisie and compradors at home and therefore overthrow the capitalist system ~~at~~ first. When this happens the standard of living of the workers in Western capitalist states will fall and then~~ly~~ they will overthrow the capitalist system at home (Europe).

In Kenya we still have the system of control in the Maize industry and therefore the maize peasant farmers can never hope to reap the benefits of their labour. This is necessary in order to maintain the kind of economic system we have. As we shall see in the third chapter the main beneficiaries of this system of control are the millers, the big farmers who can sell their maize directly to the Maize and Produce Board and can manage to get facilities and subsidies and those with permits to

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~~to~~ transport maize from one distance to another and of course the international bourgeoisie who have finance. The peasant is exploited because he has got to pay for all the un-necessary costs of the maize and Produce Board. The workers (consumers of maize) are exploited because all the surplus values that are got by the various capitalists between them and the peasant farmers have got to be borne by them. As we shall see in the later chapter the large scale maize farming industry can be done away with by increasing peasant production by only 6%. The large scale maize industry is a big liability to the country and we shall give evidence to show that, just like in the colonial days, it is still being subsidised by the peasant maize farmers. Any increase in the price of maize given to small scale producers will affect the petty-bourgeoisie who run the manufacturing industry and the international bourgeoisie³⁰ who own them - this is because the standard of living of the members in these industries is tied to the maize meal so much that a small rise in the price of maize will raise the cost of living index very much there-by creating industrial unrest leading to demands for higher salaries. However, as we shall try to show the dismantling of the system of control, thereby instituting free enterprise might be in the best interest

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of the petty-bourgeoisie in this country. This is perhaps an area where the short term interests of the petty-bourgeoisie conflict with those of the metropolitan bourgeoisie. But in the long run these interests should be the same.

COMMERCIAL LAW

COLONIAL POLICY:

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CONTROL AND EXPLOITATION

The Colonial Government did not fail to appreciate the fact that maize was the main staple food of the "native population." In 1908 the Government started talking of "increased demand for maize meal" and a steady local market was established. The increased demand was due to the large numbers of resident labourers on the European farms. Soon the European farmers started displaying an interest in the production of maize and the policy of concentrating on the white variety of maize rather than the coloured African varieties followed on account of its (the farmer's) greater suitability for export.

At this time when the maize industry had become export oriented it is not surprising that emphasis was laid on European produced maize rather than African produced maize. Therefore as early as 1922 the Government started instituting certain measures to encourage settler maize production. The area under European maize production expanded rapidly until it reached a peak of 233,973 acres in 1929-30, after which it decreased. During this period (1929-30), according to the Bowring Committee Report European grown maize reached a record figure of 1.7 million bags.

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No statistics for African grown maize for that period are available. At this time maize was produced mainly to feed the resident labour on European farms and for the export market - African in the reserves produced their own subsistence requirements. In 1941/42 according to figures given by Agricultural Production Settlement Board the acreage under European maize had dropped to 63,100 acres only.

It is clear that at this time the European Maize Industry was so weak that it could have collapsed had it not been for various factors that I will have to examine shortly. The fact that the European maize industry would have collapsed at this time since it was unable to compete effectively with the African Maize Industry was recognised by the Food Shortage Commission of Inquiry 1943. In their report they said, "with free market and the predominant proportion of the supply coming from native sources the European growers were unable to peg prices at anything like the pre-1930 level. Hence European production dropped.

With regard to the native he was able during most years to find a ready market for his maize at a price which was profitable compared with that of other crops available to him and this is why native grown maize was increased considerably."

set up would undertake to buy maize through its agents at certain named centres at a price fixed from time to time. Its agents and other merchants should buy from the producers at prices based on the knowledge of the price obtainable at those places. All sales to local consumers would be at prices subject to maxima fixed by the central Board from time to time within the limits set by legislation and the Control Board from time to time and the Central Board should also determine the quantity of maize to be exported. Within the limits set by legislation the price fixed for local sales should vary with the quantity exported and the price obtainable on export so as to maintain an average price fair to all maize growers." The above quotation was a recommendation of the Report of the Economic Development Committee 1935, which position was also adopted by the Food Commission of Inquiry Report 1943. This shows the kind of debate that was going on at this time on the merits and demerits of controlling the maize industry. The problem was how to control native maize supply so that the European farmer could find it sufficiently economic to produce maize. A.F.A. which was an association of white farmers only went so far as to recommend quota production for the two producing groups that ^{is} ~~that~~ settlers and natives.

Control was therefore first instituted on 1st July, 1942.

The procedure prior to control was for the "native" producer

to take his maize to a district market or trading centre and there sell it to a licenced trader. In district market the licenced African traders usually resold the maize they had purchased to bigger traders at trading centres, who in turn resold it to wholesaler merchants. Some of these wholesale merchants were also millers operating in the larger towns, and having ground the maize into maize meal they sold the meal to consumers. The large consumers dealt directly with these wholesalers, whereas the smaller consumers obtained their requirements from retail merchants who had obtained their stocks from the wholesalers.

The desperate situation of the settler maize producers who were looking for an internal market is shown by the fact that prior to the war the K.F.A. decided to enter the native maize market as traders, and by purchasing native grown maize secure greater control over the maize supplies in the colony. This means the K.F.A. endeavoured to obtain a better internal maize price for the European producer.

The legal process of controlling the maize industry in Kenya started seriously in late 1930s. The appointment and powers of various controls in the colony flow from the provisions of the Imperial Emergency Powers (Defence) Acts,

1939 and 1940 as applied to Kenya by the Emergency Powers (Colonial Defence) Order-in-Council 1939 and the Emergency Powers (Colonial Defence) (Amendment) Order in Council 1940. With the promulgation of the Defence Regulations, 1939, the Kenya Supply Board was established ~~on the~~ 1st September, 1939 one of whose power was to establish controls by Defence Orders. Thus all the subsequent Kenya controls were established directly by Defence Regulations. This is how Regulation 2I of the Defence (control of Maize) Regulations 1942 came into being.

In order to understand the colonial policy of control of the maize industry we must look at the attitude of the white settlers, the colonial legislature, the colonial government and the various measures ~~that~~ were taken in order to tilt the balance of the internal market in favour of the European maize producers. It would therefore be appreciated to start by looking at the legislative Council ~~débates~~ 1935 on the Guaranteed Maize Export Price. First even the wording of the motion was intended to hide the fact that the guaranteed maize export price was intended to help the settler farmers only. The motion read: "Whereas it is desired in view of the depressed ~~condition~~ of the maize industry due to the large world crop of maize and the low price resulting there from

to assist the native and non-native maize growers in the Colony to secure a reasonable price for the present season's crop without unduly prejudicing the consuming interests; now therefore it is hereby resolved that a sum not exceeding £12,500 be made available from the revenues of the colony to guarantee, as far as possible, the force on rail export price." About the above motion the Hon. D.D. Furr (Indian elected member said)... "I feel it could have been much better if (in the fourth line) the words "native and non-native maize growers" were deleted and substituted by the words "European maize growers." Sir I will see and perhaps the Hon. Director of Agriculture will let us know to what extent, if any the natives will benefit by the distribution of this £12,500. I admit that some natives will benefit by the distribution of this £12,500. I admit that some natives who grow maize will benefit but who uses the remaining 1,200,000 bags which will be the balance after export? We are told that the European crop will be 1 million bags and native crop 900,000 bags out of which 700,000 bags will be exported. Who uses these 1,200,000 bags? None of the Europeans and none of the Indians. It will be the natives. So actually no native will benefit from the increase in price ... perhaps it was not known that even up to today 500 bags of maize go from Thika to Kitui where there is famine. Now those natives if they are even called upon to pay sh. 1/= extra what will they

It mean to people who live on very little, enough to keep themselves alive? It is a big disadvantage and even robbery Sir, when those natives will be called upon to pay the extra price!" The above quotation shows clearly to what extent the whites were willing to go to justify the kind of protection they were seeking for the settler maize industry. This guaranteed maize ~~an~~ export price not only created a situation of unfair competition between settler farmers and the African farmers but as is also clear from the above quotation (and the one that will follow below) African consumers and farmers were exploited both directly and indirectly through taxation and the settler maize industry was overprotected. The Hon. D.D. Furr continued, "In this connection I may mention that the Department of Agriculture in its circular B.A. 12 of 1933 circularised a resolution by the Tea Growers Association ^{Tea} Posho in effect forms part of the wages of 'natives'. Thus if the industry has got to pay more for their maize or posho, the effect of that will be so much less wages for the native" And the Hon A.E. Patel in the same debate referring to a memo submitted by Sir H. Humphrey Legget to the Joint Parliamentary Committee in 1931 said: In 1930 Kenya Government persuaded Railway Administration to grant real subsidy to the wheat and maize industries to the extend of £53,900, part refund of Railway export rates, and £15,500 of refund part storage charges, and the Government made a refund of

grading and conditioning charge of £12,155. Thus in 1930 these industries received a direct cash subsidy of over £80,000: Hon A.B. Patel continued 'That shows, Your excellency, that the maize industry has not only been spoon-fed but has been assisted to an extent which has really become a burden on the whole country!' There is no doubt that what the European members of the colonial Legislative Council who were white settlers, wanted was the exploitation of the internal market and African labour to the detriment and exclusion of African farmers. This is clear from the speech of Lt. Col. Hon. J.G. Kirkwood in the debate. He said, 'I also wish to criticise the Government on the fact that they encourage the natives through agricultural officers in the reserves to grow maize. I would also like to ask whether it is their policy to encourage natives to increase their crops in the future, and I think European producers should be warned in that direction by the Government!'

The increased Production Crops Ordinance 1942 will also help us further in understanding the scope of the struggle that was going on around this period to secure both the internal market and external markets under European monopoly to the exclusion of the Africans. 34 of that Ordinance provided for guaranteed minimum return to the farmer. The definition of a farmer under

this ordinance excludes Africans "Farmer means, any European or Indian or body corporate engaged in business of farming or who, though not engaged in the business of farming, is the registered owner or lessee of land granted or leased by the crown..." This minimum in respect of land planted or to be planted with maize was shs.35/= per acre. S5 provided ".... where the price actually realised by the farmer is less than the guaranteed price, the difference between such price and such guaranteed price shall be met from revenues of the colony". S11 provided for loans and grants to the farmers.

So under the maize control ordinance the maize control Board was brought into existence. This Board was given a monopoly over the purchase of maize in the colony. The Maize Control Board was replaced in 1959 by the Maize Marketing Board with similar powers over the disposal of maize in the country. It had exclusive power over the import and export of maize, the movement of maize between Districts in Kenya had to be authorised by the Board and all Maize millers had to be registered with it. In pursuance of its powers to regulate the movement of maize across the districts in Kenya a system of permits was introduced that anybody who wanted to transport maize from one district to another had to have a permit to do so beyond a certain quantity.

The fundamental question we should ask ourselves at this juncture is what was the effect of, first the maize control Ordinance and the powers given to the Maize control Board and then the Maize Marketing Ordinance and the powers given to the Maize Marketing Board? This question will now be easier to answer, I hope, after discussing the various measures that were taken by the colonial Government in order to prop an otherwise dying European Maize industry in the colony, various means used to secure the monopoly of the internal market - all these culminating in the control of all aspects of the maize industry. The first broad conclusion that one can draw from the foregoing analysis with much confidence is that the European Maize Industry was very much subsidised by the African maize industry. This was done in various ways: We have seen from the 1935 Legislative Council debates how the Government subsidised the European maize exports directly from taxes and of course it is common knowledge that it was the Africans who were paying taxes. It is also clear from the same debates that the effect of guaranteed minimum export prices was the subsidising of the European maize exporters through higher prices to the Kenyan African consumers for as one legislator put it rightly the consumers of the 1,200,000 bags of maize were not European nor Indians but Africans. All the

subsidies and loans which were being given to farmers (defined under the Guaranteed Minimum Return Ordinance 1942 to exclude Africans) by the Government were coming from the tax-payers' money and the tax-payers were of course African peasant farmers. African labourers (resident labourers) were affected no less drastically. As we have seen their food rations (posho) were considered as part of their wages so when the price of maize produced by Europeans went up on the domestic Market due to Guaranteed export prices the African wages in real terms also went down accordingly. However, one measure that had the most far reaching consequence on the African peasant maize producer in this country was the control of maize marketing in the colony.

First an African peasant farmer could not take advantage of maize shortages in other areas in a high demand districts as to do this he needed a permit. As a result most peasant farmers were now cut off from their traditional markets. This also caused artificial shortages because of bureaucratic limitations the maize marketing Board could not transport maize as quickly as necessary to those areas where there was a shortage in a particular season. Secondly the unfairness of the whole system can be seen from the fact that all resident natives were required to sell their maize to the European owner at sh. 4/90 per bag who would then sell it

to the Maize Marketing Board at the "prescribed price" which was obviously much higher. We have already seen the reason that were advanced for the introduction of a pooling system. Though in principle the prices paid to both Europeans and the African maize producers were the same in practice there were differences. The Ordinance provided that only a farmer who could raise a certain amount of maize could sell directly to the board. What happened therefore was that the African peasant farmer was forced to sell to a sub-agent, who would then sell to an agent who would eventually sell to the maize control. All these agents were paid from the price the farmer was supposed to be paid. In the end therefore the African farmer received much less for a bag of maize than his European counterpart. Another important fact is that the ordinance empowered the Maize Control Board to refuse to buy maize when they thought they had enough. This meant that African who had to go through a long process would not be able to sell their maize in time to the Board. Since there was also open encouragement to European maize producers, their maize in time of oversupply was always accepted while that of the African farmer was rejected. Africans who remained with their maize were unable to sell it anywhere else since even if there was a shortage in another area of the country only people with permits (Europeans and Indians) were allowed to sell there. Moreover the Board itself was the

only other agency that was allowed to sell maize in the internal market. Whichever way you look at it the African peasant farmer was always the loser. For example during the last years of the second World War production of maize in Kenya was good and the prices of maize abroad were also good. Under the increased Production of Crops Ordinance 1942 the white settlers had been given loans and subsidies and that is why they had been able to get a good crop. At this time the Government made a profit of £1,019,459 on export sales. This money was used for the establishment of a maize fund out of which losses on exports were going to be made good. We should realise that at this time of boom in the maize industry the African peasant farmer was still being paid the low price of the previous years when there was oversupply of maize. The Maize Fund which was going to be used to subsidise exports was not going to benefit the African peasant farmer in any way. There was also lack of storage on the side of the African peasant farmer. They were not provided with loans and subsidies like their white counterparts to build themselves storage facilities. So during the time when they could not sell their maize to the board most of it was lost due to lack of storage facilities. Storing maize therefore on the side of the peasant African farmer meant incurring exorbitant expenses since in the end the price would remain the same as at harvest time or during the next season when there is another opportunity to sell the maize to the board the price would be lower.

The result of all this was pockets of famine in the midst of plenty since there was no efficient movement of maize to an area of high demand. The long term effect of this was far reaching. The African faced with these unsurmountable problems was forced to reduce maize production for the market so that ~~he~~ he produced just what was enough for his immediate needs. This, as we shall see ~~at~~ towards the end of this chapter is what the colonial Government wanted. In order to exploit the internal market the African should be discouraged from producing enough to sell and even enough for their own subsistence so that they could buy from the Maize Board which took care of the European maize producers. The fund I talked ~~about~~ about was, for example used to subsidise maize exporters in 1954. Here there was glaring exploitation. In 1951 £875,000 was given in loans to white farmers in order to avoid land mining and help whites to switch over to mixed farming. Under the Agricultural Ordinance Land Preservation Loans were issued. 53% of these loans went to large scale maize farmers in Trans-Nzoia, Uasin Gishu and parts of Nakuru. In 1954/55

In 1951/57 purchases from European farmers increased from 38,000 bags to 1,202,000 bags in 1954/55 season. Purchases from African areas increased from 738,600 bags to 1,229,000 bags. These figures could be misleading because most of the maize produced on African peasant farms was consumed on those farms- but however,

they reflect how far market opportunities for Africans were limited.

The maize and sorghum (imposition of cess) Ordinance 1954 introduced a cess which ranged from sh.2/= to shs.6/= on every bag of maize sold in different places. Again though the Africans contributed cess to the fund they were meant to subsidise European exports. In 1956 prices paid to the European farmer were reduced from sh. 39/= per bag to 36/50. It was said, "The Government considers that it is in the general interest of the colony to continue to control the maize industry in order to ensure internal requirements by encouraging the delivery of a stated quantity of maize and to this end it is necessary to retain organised marketing for maize and to ensure that the maize grower (settler farmer) is paid a reasonable price." In 1958 cess in scheduled areas was 10/= and in non-scheduled areas it was 8/=. A Government paper at this time said, "The measures already adopted by the Government that is the reduction in prices for the 1958 export crop and the imposition of regional quotas on which the 1958 export cess will be based are the first steps towards relating production to local requirements. In order to ensure better implementation in future of the policy stated, further steps are necessary. The Government will therefore introduce legislation to set up a Maize

Board which will replace the Maize Control and will be a statutory body working withing the general policy of the Government."

The question one might ask himself at this stage is: Why did the colonial government neglect and even try to sabotage African efforts in the production of Maize? The reasons are to be found in the nature of the western capitalist society itself. To the the capitalist, ^{there are 3 factors of production. In order to "produce",} there must have access to and control over all the three factors: labour is a human resource. Before this human quality we call 'labour' can be harnessed into the production system it must acquire a new characteristic: It must have an exchange value. That is the labour must be available on the former 'market' where it can be freely exchanged for a monetary value called a wage. This is a stage at which labour, formerly a human being, becomes a mere commodity just like any other good to be bought and sold on the market.

In order to change an African into a mere labourer whose labour could be bought, it was therefore necessary that an African should be alienated from the land for as so long as an African still owned land and could actually get enough food from the land ^{he could not be expected to work for settlers. There were 3 methods:} The first was to physically remove the Africans from their land as was done in Laikipia and the former white Highlands.² This, coupled with the reserve policy ensured that there were people in the

reserves who were landless or had small plots of land, even if they did not want to go and work for the white settlers they were still obliged to pay taxes and there was no way they were going to pay these taxes unless they sold their labour to the settlers. Those who could hitherto till their small shambas and get enough food found that with the extra burden of paying taxes their land could not give them enough returns. They were therefore forced to sell their labour for their own survival.²⁸ On the European farm an African was faced with a different problem. The wages paid to him were so low that that he could not pay taxes and remain with enough to keep himself alive. Because of this the African was also unwilling to work for a white settler and even those who worked only did so to get enough to fulfil their obligations to the colonial government and then go back to the reserve. The 'Kipande' system was therefore introduced to strengthen the whole mechanism. Laws were introduced which forced an African to carry a 'Kipande'. The kipande showed the employment history of the labourer and all his engagements with his masters. These laws made any breach of the labour contract between an African and his master a criminal offence for which the African could be imprisoned.²⁷ With these the settler capitalist had succeeded in alienating the African from the land and changed him into a labourer whose labour was freely available on the market. However surprisingly they did not let the labour market be governed

by the laws of supply and demand but employers made sure that their meagre wages to the labourers were standardised so that an African labourer could not leave one master for another who might pay better wages.

After the above the settler was faced with a new set of problems. How was he going to get sufficient market to sell his maize? One solution to this problem was to export the maize they produced. But here the prices were so low on the international market that the maize could not be exported economically. To solve the problem of exports, the colonial government made sure that the cost of production was kept as low as possible by the low wages that were paid to the labourers, land was given to these settlers freely and where it was bought, the prices of the land were negligible. When this method failed and the Government was forced to continue subsidising the the exports of maize, the only alternative was to force Africans to pool their produce together with the settler farmers. To an extent this had the desired effects. Africans produced maize at "low" cost, the maize was bought from Africans at extremely low prices, due to this, profits that were made from the maize that was produced by Africans was used to compensate settlers for their losses on exports. But the capitalist farmers were not going to be satisfied by that They had an eye on the domestic market.

We have already examined

In time with monopoly capitalism they were determined to eliminate any kind of competition from the Africans on the local market. We have already examined one way of doing this: make as many Africans as possible workers on European farms and these will be a good market. As production fell in the African areas, population rose and the number of resident labourers increased so did the market for European maize farmers increase. From the foregoing it is clear that Kenya, though at this time it was still in a stage of primitive capitalism, was playing its role of supplying food and raw materials for the metropolitan country while at the same time providing market. We have already examined the role of Kenya in international capitalism and therefore I do not intend to repeat here.

POST INDEPENDENCE POLICY
BRUSHING AND POLISHING OF
THE SYSTEM OF EXPLOITATION
THROUGH CONTROL

Maize marketing Ordinance 1959 became the Maize Marketing Act cap. 338 laws of Kenya. S15 of the Act provided: "All maize grown in Kenya shall, subject to the provisions of this Act, be purchased by and sold to the Board and shall, without prejudice to the Board's liability for the price payable in accordance with S18, Vest in the Board as soon as it has been harvested." From this it is clear that the peasant farmer has completely no way of disposing of his maize except to the Maize marketing Board whether it is in his best interest to do so or not. The exceptions mentioned are at the discretion of the Board so that when the market is not good the board can refuse to buy the maize, other exceptions are for the benefit of the petty-bourgeoisie who can get permits to dispose of maize without going through the Board.

S18(2) says, "The Minister may in his discretion, after consultation with such bodies as appear to him to represent the interests of maize producers limit the quantity of maize which the Board shall purchase at any of the prices fixed in accordance with Ss (1) of this Section applying in different areas." As we said, only big farmers in the former scheduled areas are represented and moreover the

argument always is that the big farmers should always be allowed to sell to the Board first for they stand to lose more if they are not allowed to sell. Again the state will always protect the interests of finance bourgeoisie who advance loans to these big farmers. So the argument continues, that unless they can sell their maize they will default in their loan repayments. So the alliance of the petty-bourgeoisie farmers and the finance bourgeoisie continues and the exploitation of the peasant is complete.

S24 (1) talks of the Boards power to prohibit the movement of the maize subject to certain provisions. This way only those with permits benefit. Report of the select Committee on the Maize Industry 1966 said the following:- "In practice very different prices are available to different farmers. E.g. farmers in shortage districts get higher prices than farmers in areas of surplus; farmers with access to maize movement permits are also able to take advantage of higher prices by moving their maize across district boundaries into shortage areas, and large numbers of farmers are able to take advantage of black market and smuggling operations and their resultant higher prices... Figures of Sh. 60/- 80/- even 100/- per bag were quoted quite frequently in the evidence of privileged groups of farmers with special access to localised markets for maize.

336 (1) of the Act gives the Minister power to impose cess on maize sold to the Board. As we have seen in an earlier chapter the cess imposed is not progressive and does not reflect the relationship between the exorbitant benefits accruing to the large maize producer and the meagre benefits of the small farmer for example, access of 10/- in the former scheduled areas 8/- for small farmers is not progressive at all.

S4 (4) provides, "Where the Minister has exercised his powers under S18 (2) of this section, has applied a limit to an area, he may on the recommendation of any body which appears to him to represent the interests of maize producer, fix a secondary price or prices, at which the Board shall purchase maize delivered after the limit for the area or (as the case may be) the producer has been reached." S18(2) empowers the Minister to set a limit of the amount of maize that will be accepted by the Board from either a particular area or or particular producer. For reasons we saw earlier this section is unlikely to affect the big farmers; infact it is meant to help them by limiting maize supply. So what will happen is that the said farmer will have to sell his maize, which is refused by the Board at the general price, at a lower (secondary) price. S19 (2) "The Board shall from time to time prescribe the amounts which, in places where maize is not normally delivered by the producer at a railway loading point,

may be deducted from the price payable to the producer under S18 of this Act to cover the transport, administration, storage and handling expenses (including sub-agent's fee or commission) incurred by or on behalf of the Board in making the maize available in convenient form at the nearest railway loading point."

This is an unnecessary cost on the peasant farmer. As we said the peasant farmer is the one without any means of transport and therefore will have to face all those costs imposed on him which under a free market system should not have existed. This section will not therefore affect the big farmer who does not deal with sub-agents.

S20 allows the Board to direct that certain or all producers in a particular area shall sell their maize directly to anybody. Here the 'red-tape' has been avoided, costs considerably reduced and the beneficiary is the large scale maize farmer who has sufficient quantities to sell to big industries.

S26(2) Empowers the board either to export or to authorise exportation of maize. Those who can be authorized to export are either the large scale farmers or the commercial petty-bourgeois and when they lose on the exports S35 which prescribes that cess shall be applied inter alia, to compensate loss on exports, is there ready to protect them. Therefore directry out of the

cess paid by the peasants, they get their surplus value.

In short the function of the Maize Marketing Board as set out in the Maize Marketing Act (cap.338) cover the regulation, control and improvement of collection, storage, marketing, distribution and supply of maize and maize products; the purchase, storage, sale, import, export, acquisition and disposal of maize and maize products; and advice to the Minister on maize production needs, and the control of imports and exports. From the above it is clear that the board controls virtually all aspects of the maize industry.

Sl4(1) of the Act requires the Board to operate through agents. The agents have power to appoint such number of sub-agents as they deem necessary to act on their behalf. The sub-agents act more particularly in purchasing maize from producers of the numerous markets within the respective provinces of the appointing agents. We have already seen how the appointment of these sub-agents and agents affects the net income of the peasant farmers from their maize produce. It is interesting to look at the findings of the Kenya commission of inquiry 1966;

"In 1966 the price paid to the growers was sh.37/= when he delivered a bag of maize at the Board's store at the nearest rail-head. Maize marketing Board's store sold this maize to the millers at sh.49/= a bag. The explanation of the increase is that the Board's costs and expenses amount to sh.4/50 per bag. Of this sh.1/36 is commission to agents. 50 cents cover maize Marketing Board's losses through handling. Costs of finance for the purchase, storage and distribution of maize is 60 cents. General administration is 85 cents sh.8/= for a new gunny bag and sh.4/50 to cover losses of the importation of American maize." From this kind of breakdown one can see that some of this costs would not arise in a free market situation and others would infact become profits

for the peasant farmer - this would mean that the workers would realise a higher standard of living due to the elimination of certain costs and therefore lower price and the peasants would also gain tremendously due to the profit they would get per bag and the increased demand by workers (consumers) due to lower prices. Demand for maize is not yet price inelastic as some people think. It is common knowledge that there are many families who go without ugali in Kenya towns a few nights every week because they cannot afford flour.

Such people would demand more flour if the prices of maize and maize products went down. Therefore the elimination of control would lead to higher standard of living among the peasants and workers without a proportionate demand for higher wages which the bourgeoisie and their cronies fear. The commission also found out that millers made a profit of sh. 14/- per bag of sifted flour. They also found out that the retailer makes a profits of roughly sh.7/- "but minus packaging, losses in measuring this cannot be said to be excessive profits." But why should millers be allowed to make the fantastic profits of sh. 14/- per bag when the peasants are hardly making anything on their produce?

Though, as we have seen, the Marketing Board was replaced by the Maize and Produce Board on 5th March, 1966 there is not any substantial difference in the functions of the two bodies. The Maize and Produce Board (MPB) established under the Marketing of Agricultural Produce Act is empowered to specify the terms of delivery. Under this act, the risk up to the time of delivery is laid on the producer (or agent unless the M.P.B. with the concurrence of the Minister of Agriculture specifies a date after which the Board accepts liability for the crop and compensates the farmer for any loss or deterioration where the delay in the delivery is due primarily to the action or non-action of the Board. However, the M.P.B. "may

specify" but is not obliged to do so. To ensure the monopoly position of the M.P.B. for all surplus, movement controls are required by subsidiary legislation under S24 of the Maize Marketing (movement of maize and maize products order). According to this order, all movements of maize, with some exceptions, require a movement permit valid for only 24 hours which must be obtained from the M.P.B. or any other authorised person prior to the movement.

The other problem facing the ^{African} American peasant farmers is difficulties in obtaining inputs, high input prices and lack of machinery and problems in getting labour for weeding. This was reported by the select committee of the Maize industry in Kenya 1974. All these things make the difference between the large scale maize farmers and the peasants farmers who have no access to such facilities. The select committee also stressed the problem of credit to the peasants. They do not get any credit facilities and even those who manage to get credit, it is usually insufficient due to the inadequacy of their security. The report says "The committee was extremely concerned about the rapid increase in the price of fertilizer over the last two years. Between 1971 and 1973 the Mombasa prices of the common phosphates C and nitrogenous fertilizers has risen by 44 to 73 per cent. In addition the Government subsidy has been reduced by 40% raising fertilizer prices to farmers by the further 10%." The reason given by the Government for reducing the fertilizer subsidy was that "so much of the benefit was felt to be going to traders rather than farmers." The implications of these high prices for the workers and peasant farmers in Kenya are very great. It is said that over 50% of marketed maize in Kenya is consumed in the rural areas by the peasants despite the fact that these peasants produce over 90% of all the maize in the country. ³⁰

Therefore when the prices of maize products rise so high because the extra price of fertilizers has been passed on to consumers it is the peasants and the workers who suffer

The big farmers do not suffer because in the end, as we have seen, they get ready markets and better prices than the peasant farmers and can therefore manage to cover all their costs. Looking at it from an economic point of view it is the system of control that is the cause of this problem. Despite the high prices of fertilizers the peasant farmers would be able to cover the costs if it was in a free market situation where peasants are not forced to subsidise fertilizer prices for the large scale farmers. It is clear that without the system of control which is operated in such a way that it benefits only the large scale farmers this latter group of maize farmers would be unable to remain in production. The fact that they would not remain in production itself means there is misallocation of resources, ^{which in order to be used} more efficiently this group should be phased out of maize production. It is said that if peasant farmers can be helped to increase their production by a mere 6% then the country can do without this large scale group of exploiters who have been protected by ~~the~~ the law for ~~the~~ more than forty years and yet are not yet able to stand on their own.

CONCLUSION:

We have attempted to trace the growth of the Maize Industry in Kenya from the colonial era through post-independence era to this day. We have seen how in the classical tradition of capitalism the Colonial Government and settlers got hold of the means of production and later on through the policy of control they monopolised the local maize market. We have tried to explain this by a look at the capitalist system of production in the way marxist economists analysed it and ~~by~~ ^{by looking at} ~~imperialism~~ and the institutions that were designed to perpetuate the exploitation of the Kenyan masses. We have also seen how this colonial policy succeeded in producing a class of landless African workers who formed a pool of labour for whitesettler farmers. Perhaps the maize Industry contributed more than any other thing to the formation of this class of workers since maize was the staple food of Africans and if they could not produce it themselves it became necessary for them to go and work to buy it or else perish. The African peasant maize farmers had a double role. They were to produce maize cheaply for the empire and at the same time due to the organisation of the market they were also part of the consumers. Because they did not have storage facilities and because the prices remained the same throughout the year there was no incentive to store since costs incurred in storing would not be compensated for - because of all these the African peasants consumed all they could of their production and disposed of the rest ever more cheaply to the sub-agents of the Marketing boards. Because of all these the African peasants maize products were also consumers - double exploitation.

As we also saw during the internal period and even after the second Imperialist war European settler White Farmers were

unable to remain in production despite the heavy protection given to them by the law and guaranteed by the state.²⁷ At this stage finance capital came in. Settler Maize farmers like all other farmers started to mortgage their land in order to get capital for their land development.²⁹ It is important to realise that at this stage it would be wrong to call these whitefarmers bourgeois.³⁰ They were merely petty-bourgeoisie who depended on the metropolitan bourgeoisie. Credit facilities they got from the bank and other foreign finance institutions and even the British Government meant they were now agents of financial bourgeoisie. The financial bourgeoisie is a combination of industrial and bank capitals. Financial and ^{industrial} capitals in Western capitalist countries has almost completely phased out all the other forms of capital. Therefore all the agricultural industries in Kenya are owned by the financial bourgeoisie. It is precisely during this time that institutions like the Agriculture Bank, I.C.D.X. (I.D.C) and other financial institutions were established in this country. Also others like the Unga Ltd. Etc. appeared. All these are owned by finance bourgeoisie.³¹

This kind of situation continued up to the independent era. The large maize farmers have been protected to an extent where even bourgeois economists themselves have complained that it leads to mis-allocation of resources. The question that we are faced with now is what can be done to help the peasant African maize farmers. There are two ways of looking at this problem. One is to look at it and endeavour to solve it within the context of the kind of economic base (capitalist) we have at present. This is perhaps the kind of solution bourgeois economists who are concerned with misallocating of resources are looking for. Here we would have to leave the economic base intact but fiddle with the superstructure in order they have efficient use of resources and perpetuate the capitalist exploitation in this neo-colonial state. And all these economists

generally agree to some degree of decontrol of the maize industry and here there is "a moral": it is unfair in a society where somebody's survival depends on the "length of his nails" and the sharpness of his "teeth" to "tie" some people by controls and thereby denying them the use of their "teeth" and "nails". It is unfair in two ways: (i) by denying some people the use of these above two you are starving them to death. (ii) in such a "man eat man" society, by "tying" them with control you are making it easier for those who are easier for those who are free to eat those who are "tied". This is why state intervention in any aspect of the economy in a "man-eat-man" society is looked upon as "immoral" in itself, as it prevents the "eating of the weak" by the "strong" which is necessary for the continuity of that kind of society, unless the paramount aim of such intervention is to prevent that society from devouring itself out of existence.³⁴ An example of such "justified" intervention in the interest of the "society" as a "whole" is Minimum Wage legislations in capitalist system and Tax legislations under "Welfare" capitalist states.³²

In Kenya therefore the control of the Maize industry has brought the country to economic "bottleneck". It is viewed that if the industry is decontrolled the large scale petty-bourgeoisie maize farmers would have to change to other aspects or agricultural industry as it would be uneconomic to continue maize farming. The other marginal maize farming areas would have to turn to other areas of agriculture.³³ This would not lead to a shortage in the maize supply as it is feared by those who employ labour in manufacturing industries but it would encourage even more production since removal of agents who reap surplus value between the peasant producers and the consumers would mean accumulation of higher profits to peasant maize products due which would encourage them to produce more. This would lead to high demand as a result of the lowering of prices for food of maize and maize products due to elimination of unnecessary

costs incurred by the M.P.B. This should help the capitalist economy as a whole since the lowering of prices ~~of~~ food should lead to higher demand for other manufactured goods e.g. radio cars, etc. The multinationals like Unilever and Lonrho should be happy with this. The international ^{bourgeois} bourgeoisie in the metropolitan countries of Western Europe and Japan will be happy since higher demand in Kenya will mean improvement in the standard of living of their workers which will postpone the proletarian revolution in their own countries for a few moments. The petty-bourgeoisie seem to have realised this position for the Kenya Government. The Development Plan 1974-78 seems to have slightly moved a way from the position stated in the 1964-70 Government Development Plan. The 1964-70 Development Plan stated "In order to avoid the creating ~~of~~ a maize export surplus, however, it is the Government's policy to lower progressively the producer price for maize in order to balance the annual production against internal requirements, ^{leading} when the consumer Price ^{to} reaches exports ~~crop~~ ^{point}... The Government regards the continuance of the control ^{to} system of marketing through the maize marketing Board as essential to the stability of the industry." The 1970-78 Plan States.

"The 1970-74 Plan anticipated that major changes would be made to the system of maize marketing in Kenya, in particular that the internal maize market would be freed of all restrictions. These changes have not yet been made but will be introduced in the new plan period. Under the proposed marketing system maize millers will be free to purchase their requirements direct from farmers without going through the Maize and Produce Board. The Board will purchase any maize offered to it at a guaranteed floor price and will also be responsible for maintaining the strategic maize reserve and for all imports and exports." However it is clear from this that it is not intended that the maize market should be completely free. They still talk about "floor price" From an article by Guenter Schmidt called "Effectiveness of Maize Marketing Control in

Kenya" We learn that the effect of decontrol would be a saving of at least 18 million shillings by the peasant farmers and if they are encouraged to make their own storage facilities this figure should be much higher. From an article by J. Karani called Kenya's Maize Muddle we learn the following; "Economists such as W.P. Miracle and Y. Kyesimurha who have had a close look at the operations of maize control in Kenya may be right in suggesting that it has led to inefficiency in resources allocation especially as scarce resources such as capital and manpower are concerned. Subsidies given to large farmers, ~~au jave ja~~ Farmers may have had the effect of encouraging the sub-economic production of maize by the group. This suggestion is supported by the fact that even large plantations have been tempted to grow maize in areas where maize production would normally be uneconomic in order to feed their labourers" Karani continues, "In the African areas the opposite effect is frolikey to have occurred, county council cesses which have been deducted from each bagg of maize delivered to the Maize Board stores up to maximum of shs. 3/- may have had the effect of making production look relatively uneconomic.

Karani therefore recommends that the solution should be something between complete decontrol and they type of control we have at present. Government, according to him, should release stock when there is a shortage and to buy where there is a surplus. However, as I said earlier I do not see the necessity of this price stablisation within the kind of economic system we have in Kenya. Since maize takes a fairly short period to mature production should be left to adjust freely to demand. It is not like coffee which takes so long to mature that real adjustment is almost impossible.

The second way of looking at the problem is looking at it from the marxist point of view. The aim of this view. is not efficient allocation of resources withing the capitalist or ~~neo-colonial syst~~

neo-colonial system but to put an end to the exploitation of the peasants and workers involved in the maize industry in the country. However, we cannot do sufficient justice to this view in this paper as we lack both time and space. But it is clear that to put an end to this exploitation the workers and peasants in Kenya should own the means of production for as we have seen the capitalist has no rightful claim to the means of production ~~for as we have seen the capitalists has no rightful claim to the means of production.~~ We should get rid of the various capitals which help in this exploitation. The masses (workers and peasants) ~~in-Kenya-should-own-the-means-of-production~~ of this country should own the land upon which they work and the mills, banks and all other forms of capital which are created from the surplus value robbed from the masses in this country thrive. However we should appreciate the fact that we can not achieve these ~~se~~ without the kind of revolution that has led to the establishment of socialist systems all in various places of the world.

Footnotes

I W.K. Bitonye L.L.B.

"The Kenyan and Ghanaian Hire Purchase Legislations:

A comparative study of Roles and objectives." He says at

PI2: "Kenya and Ghana are ex-colonies of Britain. They were annexed by Britain at that stage of development in capitalism

called imperialism when capital burst open national boundaries in search for raw materials and a market for manufactured goods."

The same writer at PI3 says: "... the state (colonial) had also to ensure that there did not develop into the colonies an indigenous industrial base to rival that of the mother country. This ensured the creation of what has been called "export economies" in the colonies. The main export in the colonies were of course the raw materials and food stuffs which could not be so cheaply gotten in the mother country.

All the same page the same writer says: "The brushing of shoulders as it were, between an industrially advanced country and the basically rural economy begins the long process of underdevelopment and exploitation."

2 See Willy Mutunga's commercial law and Development in Kenya at PII. quoting Carl Marx he says, "The workers were to be free from the old relation of clientship, Villeinage or

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service but also free from all goods and chattles, from every real and objective form of existence, free from all property (land). Such a mass would be reduced to the sell of their labour power. History records the fact that it (was..... headed on the narrow path which led to the labour market by means of gallows, pillory and whip."

3 Read 2 (above)

4 W.K. Butonye in his paper (referred to in I above) says: The producer of commodities in the capitalist system does not produce the commodities for any personal use - value he expects from it. He has an exchange value in the commodity which is converted into use value by the purchaser.

5 Generally the works of Carl Marx.

6 Marx and Engels define capital as "That kind of property which exploits wage labour, and which cannot increase except upon condition of begetting a new supply of wage labour for fresh exploitation."

7 W.K. Bitonye (in his article referred to above says "Increasingly, since the cardinal studies of Marx and Engels in 19th century, there is a conscious effort by socialists and socialist learning scholars and junists to 'see the law as an integral part of the whole' and as Issa Shivji

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says: "the whole being social economic order in which it (the law) exists "..... As Selsan and H. Martel put it sanctily "Law must not only correspond to the general economic position and be its expression which is consistent in itself and which does not, owing to inner contradictions, look glaringly inconsistent." P1

In the same paper at P3 Bitonye says, "it is my view that, for a useful study of any subject in law, it must be seen as a product of the socio-economic system or organisation of that particular mode of production, in common Marxist parlance, the law is a superstructural feature whose growth is determined and shaped by the economic base.....!"

8 Read Bitonye's article (referred to) P3

Commercial and Development in Kenya by Mutunga 17

9 For a fuller discussion of African kinship patterns see generally Okoth Ogendo's (lecturer land law) lecture notes

10 Sessional paper No. 6 of 1957/58

The maize Industry,

11 "Democracy" by Mepherston.

12 "In commercial law and Development in Kenya" Mutunga says:

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Metropolitan finance capital is invested in the production of raw materials and food stuffs . That finance capital earns higher returns here. Metropolitan industrial capital (more correctly finance capital, because industrial capital cannot free itself from the farmer because it is part of the finance capital which is a merger of bank and industrial capital) is invested in the production of manufactured goods which find a ready market here. For the industrial capitalist to realise their surplus value (profits) these goods must reach their ultimate consumer. This process is facilitated by the role of commercial capital" What Mutunga says above applies also to what happened in the maize industry. Finance capital was invested in processing and distribution of maize products.

- 13 This a word commonly used in the United States where it is said that, "United states is a 'free' society where a man with sufficient drive and ambition can rise to the top"
- 14 This is shown clearly by what has happened in Rhodesia where because the minority regime has denied those of the black race "equality" the struggle for this equality has gained an ideological torch and is a threat to the capitalist system in that country.

Footnotes:

- 15 See Ghai and Macaustan "Public law and Political organ change" and Soreson for a detailed discussion of this.
- 16 In his note to the English edition of 18883 of the Communist Manifesto Engels defined bourgeoisie as follows:
"By bourgeoisie is meant the class of modern capitalists, owners of the means of social production and employers of wage labour."
- 17 Reform of the law to be useful must aim at the very mischief which authors the draconian effects from which the masses of our society suffer: the capitalist system, and not merely an attempt to mitigate the harshness of the law in order that the irrational capitalist system is proped and perpetuated; in otherwards the law should not be used to give respectability and sanciond capitalist system by demanding a code of ethics from the society's exploiters.
- 18 Read Franz Fanon.
- 19 This was the cause of the rift between Bildad Kagga and Jomo Kenyatta and also led to dissent in the ruling party K.A.N.U.
- 20 See the confessions in the book of this title by Jomo Kenyatta.
- 21 See "Commercial law and Development in Kenya" By Mutunga. He says at page 8:
"The class composition (of any society) ... determines the

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character of all the superstructural features. The superstructure embraces social views on politics, law, philosophy art, religion, music and so on and the political and legislative and judicial bodies and systems corresponding to these views.

- 23 For detailed discussion of how this happens read "The aims off bankruptcy law in Kenya: The separation of the wheat from the chaff " by Willy Mutunga.
- 24 Mutunga's "Commercial law and Development in Kenya" P9
- 25 These roles are clearly discussed in the above Mutunga's paper P1
- 26 "How Europe i underdeveloped Africa" by Walter Roadney.
- 27 In "Commercial law and Development in Kenya" Mutunga says: "Both state and law are to the Marxist, tools of exploitation in the hands of the most powerful and economically dominant class. Thus the state and law cannot be divorced from the socio-economic order of a society and its class struggle."
- 28 Read: "Joseph Stalin - H.G. Wells Marxism vs Liberalism" - An interview. New century Publishers. Here in answer to a question from Wells Stalin said: "..... we have the class of the poor, the exploited class, which owns neither factories no works, or banks, which is compelled to

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live by selling its labour power to the capitalists and which lacks the opportunity to satisfy its most elementary requirements.

29 Lenin at P43 of his "Questions of National Policy and Probl protection Internationalism" states, "... in a commodity pr producing society, no independent development or even develop- ment of any sort whatever is possible without capital. In Europe the dependent nations have both their own capital and easy access to ti it on a wide-range of arms. The colonies have no capital of their own, or none to speak of, and under finance capital no colony can obtain any except on terms of political submission.

Before that at P42 Lenin had said: "There was formerly an economic distination between the colonies and the European peoples at least the majority of the latter - the colonies having been drawn into commodity exchange but not into capitalist production. Imperialism changed this. Imperialism is among other things the export of capital. Capitalist pr production is being transplanted to the colonies at an i increasing rate. They cannot be extricated from dependence on European finance capital."

Footnotes:

30 In his "Notes on class formation in Kenya 1976, Mutunga says: "wacada Nabudere has correctly shown in his manuscript and more particularly in his artique of Issa Shivji's book entitled "Imperialism, state and Race", that under the dominance of finance capital it is impossible to develop in the neo-colonies national capital with its national bourgeoisie. Finance capital has even knocked down national capital where it has grown for example South Africa, and even in the Imperialist countries the national bourgeoisie have been knocked down giving rise to finance oligarchies."

31 To a similar view see Mutunga's notes on class formation in Kenya where he says: "One of the Imperialist roles which has been serving as an area for exported finance capital. This has been foreign investment and the main reason for this export of finance capital to Kenya has always been to fight the tendency of rate of profit to fall. I.C.D.C. is one of Kenyan corporations through which this imperialist role is performed."

32 All the words quoted in the above paragraph are to be found in the criticisms of the capitalist society by Radio Tanzania in Mazungumzo Baada ya Habari." They reflect their view

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of the capitalist society.

33 Report of "The Select Committee on the Maize Industry in Kenya 1972"

34 In "Commercial Law and Development," Mutunga says:
"The view is that the capitalist can protect his private property and while enjoying that right he can serve the general welfare such state intervention in the economy has only one acceptance explanation: to prop up and perpetuate the irrational capitalist economic system.....
The laissez-faire Policy which decreed the state's non-intervention in the economy was disapproved by crises - the first World War, the Great Depression other inter-war crises, inflation and so on."

35 In his "Notes on class formation in Kenya" Mutunga says:
Modern imperialism is characterised by the rise of a financial oligarchy with its finance capital, the dominant layer of the bourgeoisie which dominates and rules neo-colonies."

36 See the article by Guenter Schmidt (referred to above).

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20 Sessional Paper Number 6 of 1957/58.

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- 1 Maize Marketing Act Cap. 338.
- 2 Marketing of Agricultural Produce Act.
- 3 Marketing of Native Produce Ordinance 1935.
- 4 The Agricultural Act 1955.
- 5 The increased Production of Crops Ordinance 1942.

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- 19 Select Committee on the Maize Industry 1972.

cess paid by the peasants, they get their surplus value.

In short the function of the Maize Marketing Board as set out in the Maize Marketing Act (cap.338) cover the regulation, control and improvement of collection, storage, marketing, distribution and supply of maize and maize products; the purchase, storage, sale, import, export, acquisition and disposal of maize and maize products; and advice to the Minister on maize production needs, and the control of imports and exports. From the above it is clear that the board controls virtually all aspects of the maize industry.

814(1) of the Act requires the Board to operate through agents. The agents have power to appoint such number of sub-agents as they deem necessary to act on their behalf. The sub-agents act more particularly in purchasing maize from producers of the numerous markets within the respective provinces of the appointing agents. We have already seen how the appointment of these sub-agents and agents affects the net income of the peasant farmers from their maize produce. It is interesting to look at the findings of the Kenya commission of inquiry 1966;

"In 1966 the price paid to the growers was sh.37/= when he delivered a bag of maize at the Board's store at the nearest rail-head. Maize marketing Board's store sold this maize to the millers at sh.49/= a bag. The explanation of the increase is that the Board's costs and expenses amount to sh.4/50 per bag. Of this sh.1/30 is commission to agents. 50 cents cover Maize Marketing Board's losses through handling. Costs of finance for the purchase, storage and distribution of maize is 50 cents. General administration is 25 cents sh.3/= for a new gunny bag and sh.4/50 to cover losses of the importation of American maize." From this kind of breakdown one can see that some of this costs would not arise in a free market situation and others would infact because profits