

LEGAL ORGANISATION OF COERCION

IN INDEPENDENT KENYA

A study in the continuity of Colonial Institutions

by

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PREFACE

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Needless to add, none of the above persons is responsible for what follows. The use of the words "we" and "our" are only an indication of my writing style and should not be interpreted as connoting any association with anyone else.

GITOBU
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<u>Chapter</u>	<u>Contents</u>	<u>Page</u>
	Preface	(i)
	Table of Contents	(ii)
	Abbreviation	(iii)
	Table of Cases	(iv)
	Table of Statutes and Subsidiary Legislation	(v)
	Table of Appendices	(vi)
1	<u>Introduction</u>	1
2	<u>Conceptual Framework</u>	5
3	<u>Establishment</u>	15
4	<u>Legal Machinery Facilitating Coercion</u>	23
	The Constitution	23
	The Preservation of Public Security Act	29
	The Penal Code	37
5	<u>Application</u>	38
	The Case of the Kenya Peoples Union	38
	The Case of Dissident KANU MPs	41
	The Case of the University Students	44
6	<u>Control and Regulation</u>	51
	The National Assembly	51
	The Judiciary	57
7	<u>Conclusion</u>	61
	Appendices	63
	<u>Footnotes</u>	69
	Chapter 1	69
	Chapter 2	69
	Chapter 3	72
	Chapter 4	74
	Chapter 5	76
	Chapter 6	79
	Chapter 7	81
	Bibliography	82
	Books	82
	Papers	83
	Unpublished Papers	84

ABBREVIATIONS

Cap	Chapter
EALB	East African Literature Bureau
EALJ	East African Law Journal
EAPH	East African Publishing House
Ed.	Editor
G.N.	Gazette Notice
G.S.U.	General Service Unit
KANU	Kenya African National Union
KPU	Kenya Peoples Union
L.N.	Legal Notice
M.P.	Member of Parliament
MPs	Members of Parliament
p.	Page
pp.	Pages
S.	Section.

Table of Cases

	Page
Kaggia and Another <u>versus</u> The Republic	76
Kanyike <u>versus</u> Attorney General of Uganda	72
P. Ooko <u>versus</u> The Republic	3, 57.

<u>Table of Statutes and Subsidiary Legislation</u>	<u>Page</u>
Armed Forces Act	15, 16, 17
Constitution of the Republic of Kenya	21, 23, 26, 28, 30, 49.
Constitutional (Amendment) (No.3) Act. 1969	39
Criminal Procedure Code	18, 25, 26, 38.
Foreign Jurisdiction Act (U.K.)	15
Kenya Military Forces Act	16
National Assembly (Powers and Privileges) Act	42
Penal Code	18, 23, 47
Police Act	21, 23, 24.
Preservation of Public Security Act.	23, 29, 30, 38,
Public Order Act	23, 26, 40
Societies Act	23, 41.

Subsidiary Legislation

Public Security (Amendment and Revocation) Regulations
 Public Security (Armed Forces) Regulations
 Public Security (Control and Movement) Regulations
 Public Security (Detained and Restricted Persons) Regulations
 Public Security (Restriction) Regulations
 Public Security (Specified Districts) Regulations.

(vi)

	<u>APPENDICES</u>	<u>PAGE</u>
I	Kenya Army Units at Independence	63
II	The Principal Coercive Legislation	65
III	"Dangerous" Societies	66
IV	Prohibited Publications	67
V	Copy of a Page from the "J.M. Report"	
VI	Copy of a Page from the "J.M. Report"	
VII	Newspaper Announcement on the Formation of the "J.M. Select Committee"	
VIII	Persons Against Whom Detention Orders were Issued 1963-1973	68

I N T R O D U C T I O N

"Sometimes I get hot because the hon-members talk about detention and restriction without trial while they know very little about /it/ I must make clear /that/ if they think the African Government must let loose all the trouble makers we cannot do that ..."

Mzee Jomo Kenyatta, Prime Minister
Hansard 27th June 1963

This dissertation sets out to examine the legal organisation of coercion within the framework ^{of} class structure in Kenya. In the context of class structure and class struggle coercion is taken to include all the legal means by which the ruling class perpetuates its dominion over the dominated classes. These means include the actual organisation and control of the armed bodies of men like the armed forces and the police and the legislation and rules through which coercion is given its practical effect.

In the first chapter an examination of the role and function of the state as an instrument of class domination is made and within this is fitted the Kenya situation as it evolved during the colonial and post colonial period. It is argued that the introduction of the capitalist mode of production with its emphasis on private ownership of property necessitated the existence of a class of workers and a class of property owners. The propertied class being the dominant class imposed its ideas and institutions on the working class and the legal regime reflected these ideas and institutions and to ensure maximum exploitation

of surplus capital, an efficient coercive machinery was necessary not only for the enforcement of the ideas, institutions etc., but also as a warning of what would result from failure to conform with the expectations of the ruling class.

The development of class structure is indicated and it is shown that at independence there was no change in the socio-economic structure. Capitalist mode of production was preferred by the "nascent national bourgeoisie" and because this was a betrayal of the ideas that inspired the nationalist movement, the "national bourgeoisie" finds that it has to rely on colonial coercive machinery which it now consolidated and reorganised.

With this background chapter two traces the origins and establishment of the police and armed forces as a means of showing how colonial institutions were used to lay down the foundations of continuity. The functions of these institutions and their formal organisation is indicated to show how they can, in the case of the police, be used for coercing those not conforming ^{with} the ^{ideas of the} ruling ^{class} ideas.

This leads to chapter three where various legal enactments facilitating coercion are examined. Particular emphasis is laid on the Kenya Constitution, Preservation of Public Security Act, the Police Act, the Public Order Act, the Societies Act and the Penal Code with a view to showing in the following chapter, how these can be given their practical effect.

In chapter four three illustrations of non-conformists and how the coercive machinery is utilised is shown. These illustrations are the now defunct Kenya Peoples Union, University Students and members of parliament whose views do not conform with the ruling ideas.

In chapter five, the role of parliament and judiciary - said to exist to balance and check the excesses of the controllers of the coercive machinery - is examined. It is shown that the nature of their composition and the powers available to them for control are incapable of checking or reviewing the excesses of the controllers of the coercive machinery. The "J.M. Report" and the case of the Ooko v. Republic are given as illustrations of this.

The last chapter contains some conclusions drawn from the preceding chapters.

It should be noted at the outset that the dissertation is mainly a formal and theoretical analysis of an aspect of the institution of coercion: it seeks to examine the extent, if any, in which the application of the state's coercive machinery has changed since independence and further the efficacy of chapter five of the Kenya Constitution in the light of other enactments that provide for the practical application of the state's coercive resources.

Certain difficulties encountered during the research for the information contained herein need be noted. 'Coercion' is not a word government officials - and here one has in mind the politicians and the law enforcement agencies -

would like to be associated with. Data therefore as to the number of people in detention or the criteria used before the decision to give practical effect to the coercive machinery is made was not as expected, available.

The writer has had in the circumstances been forced to rely mainly on statutory data which gives only the minimum information necessary. To supplement this heavy reliance has been made on both official and non-official statements from which logical and contextual inferences have had to be made. Because of this the dissertation is longer and bulkier than it would otherwise have been. Inferences that would appear at first sight to be far-fetched are supported by appendices at the end of the paper. These appendices are reproduced fully in some cases because of their political 'sensitivity'.

Despite these anticipated difficulties the choice of the subject as a subject for research was deliberate. The writer is of the view that intellectual commitment does not preclude social commitment. Social commitment requires students as intellectual aspirants to be part and parcel of those who expose the social and economic realities of society in the hope that such exposition would lead to reforms.

In this writer's view, J. Aloo Boma Ojwang's, observation that "a committed social commentator needs a clear and unambiguous ideological framework in which to set his ideas"¹ is as true ⁱⁿ legal research as it ^{is} in literature.

2. CONCEPTUAL FRAMEWORK

There is general agreement that modern societies are organised into geographical entities known as states. There is disagreement, however, as to the nature, purpose and function of a state. Under the "liberal democracies" the state is seen as the image and reality of reason by some and as an accident in the historical evolution of man by others. It is conceived as an unempirical phenomenon vis-a-vis the classes in society whose historical role has been the protection of the citizens against external aggression and the maintenance of peace and order which is necessary if the individual is to realise himself fully in a material and spiritual sense. This concept of the state is inadequate because, inter alia, "it fails to indicate the origin of a state or to explain the discrepancies between one state and another."¹

In the context of colonial background in which state organisation in Kenya must be seen, a more relevant and adequate conception of the state is the marxian one. This concept recognises that the state is not a de'us ex machina. It arises out of society. According to this theory it is the state of the productive forces that determines the character of men's production relations i.e. the economic structure of society. This economic structure "in its turn constitutes the basis, the foundation on which there arise many kinds of social relations, ideas and institutions."² These ideas, institutions etc. are the constituents of the super-structure of society. The

superstructure itself consists, as Engels pointed out, of "the political forms of the class struggle and its results to wit: constitutional forms, juridical forms and the reflexes of these actual struggles in the brains of the participants (i.e. the political, juristic, philosophical and religious views) and their further development into a system of dogmas ..."³

It is the theory of basis and superstructure which in the final analysis explains how the mode of production determines all aspects of social life. This theory further enables one to visualise the link between the socio-economic relations and all other relations of a given society. Thus in a capitalist society the economic structure is based on the private ownership of the means of production. This form of ownership determines the social division of such society and its class composition for, as the editors of Fundamentals of Marxism-Leninism have observed:

The social division of society, its class composition, depends on the dominant form of ownership, and this class composition in turn determines the character of society's political institutions and legal standards. A monarchy is inconceivable under socialism, and universal suffrage would be impossible in a slave owning society.⁴

This means that all superstructural features, and law is one of them, are determined by the class composition. Law, like the state originated in private property.⁵ And since as we have noted above there is a dialectical relationship between the basis and the superstructure, every change of basis entails a change of the superstructure.

The superstructure in its turn exercises an influence on the production relations and can either delay or accelerate their replacement. It is therefore as Ringera notes,⁶ axiomatic that, for instance, the political institutions of any society, "its law and ideology play an important part in the preservation of capitalist ownership or socialist ownership as the case may be." Every society is therefore a socio-economic formation. It is this doctrine of socio-economic formations which (to use a common and an apt phrase) "tears the mystical veils from the history of humanity and makes it comprehensible and knowable."

The significance of this discussion is that it helps us to understand the superstructural forms of colonial Kenya in their socio-economic context. As Mutunga points out,⁷ an analysis of the basic stages of the "progressive development of human society needs an analysis of the development of law as an important feature of the superstructure."⁸ And because, as Engels noted, the state arose from the need to hold class antagonism in check, the birth of the state also meant the birth of law as "a system of juridical standards and prescriptions expressing the will of the ruling class and protected by the coercive power of the state."⁹ In the context of colonialism Lenin rightly observed that the essence of the state was to provide an instrument for oppression of the colonised people. And as his editors noted later:

A striking illustration of this theory can be found by examining the colonial state. The

fundamental reason for its existence was the contradiction between the capitalist owning class in the metropole and the mass of the people in the colony ... state power existed in order to guarantee and facilitate the exploitation of the colony and its people.^{9a} An irreconcilable conflict existed between the economic interests of the colonisers and the colonised and therefore police, prisons, and a standing army were called into being by the colonisers to maintain the supremacy of their interests.¹⁰

There is a great deal of literature showing how law was used as an instrument of oppression.¹¹ The colonial state in itself was an epitome of authoritarianism. Its administration was military in conception and organisation and the chain of authority from the top to the bottom was, as is so ably demonstrated by Ruth First,¹² untouched by any principle of representation or consultation. Not only was the state similar to the army in its pramilitary formations and ethos, it was often the tool of military men. And as Robert Martin points out¹³ it was characterised by authoritarianism, arrogance towards the public, and a reliance on form often to the point of ignoring content. In the context of colonialism, this was as it should be: had the state been representative, fair and obliging, "the ends of colonialism - the exploitation of the people and resources of the colony - would have been thwarted."¹⁴ Indeed it would not have been a colonial state. The question that arises out of this is to what extent was this system transformed or eliminated during the period leading to independence? It is true that the early freedom fighters thought in terms of total and complete

liberation i.e. the total transformation of the colonial economic structure.¹⁵

The colonial administration realising this altered their colonial policy after the 2nd World War and began a process of co-opting Africans into its administration with the view of creating a class with the same interests and values as ^{the} ruling colonial class. The Mau Mau outbreak in the early 1950's forced the colonial administration to accelerate the implementation of the new policy. It was a mark of the success of this new policy that the Lancaster House Kenya Constitutional Conference¹⁶ resulted in a Constitutional document that preserved the status quo. All inequalities and socio-economic imbalances of the colonial era were constitutionally preserved. This was a betrayal of the purpose and function of the independence movement.¹⁷ The era of neo-colonialism had began. The essential features of the state remained as they had always been: the same chain of command structure was there, the same unresponsiveness to the wishes of the masses and the same offices and rank remained. The same classes remained and class-struggle took a different dimension.^{17(a)}

Because colonialism left a "highly visible framework for a neo-colonial pattern of growth,¹⁸ the post-independence economic policies had as their central features the need to preserve a hospitable climate for foreign finance capital and

continuing with the consequences of its presence such as a fairly influential expatriate business community protectively associated with the government

and with individual local leaders the creation of an auxiliary business class, the formation of a salariat with incomes related to those in developed countries and high levels of profit which foreign firms expect etc. etc.¹⁹

Accompanied with this was the progressive emergence of the class contradictions associated with the capitalistic pattern of growth "as the peasantry were gradually crowded off the land by encroaching capitalist farming and population pressure."²⁰ As the class contradictions became more conspicuous, so the need to entrench the ruling class more firmly in power became more urgent.

And because the new "ruling" elite preferred a capitalist mode of production it is inevitable that a class struggle between the propertied ruling class and the exploited working classes should continue. The ruling class will increasingly rely on mystification and strong-arm methods to maintain their position.²¹ This is manifested in its off-repeated call for "stability" as a pre-condition for "development," and the maintenance of "law and order." Its affection for "law and order" implies that law is organised in a manner that suits its interest - hence our attempt in chapter two to trace the origins of two arms of the institution of coercive machinery.

We have already noted that the colonial administration emphasised form rather than the content of the law. Its reliance on form rather than content was a trick to mask the actual realities. Hence when a person was arrested or when a society or a publication was banned, the

administration could always claim that legal requirements and procedures were followed. This continued after independence and is clearly manifested by the existence of comprehensive enactments and rules that purport to regulate the coercive machinery of the state.

In chapters two and three we only touch upon some of these and in varying degrees of depth. No criteria is used to determine the extent to which any of the various enactments is examined and at the outset it must be stated that both the limit and content of what follows in the following chapters was arbitrarily decided.

The legal organisation of coercion in Kenya must therefore be seen in its proper historical context. It is true that the Constitution of Kenya contains on paper many safeguards against authoritarianism. It must however be realised that the whole idea of a constitution was "largely alien to the history of government in Kenya and, even more significantly, it was at variance with the authoritarian structure of the administrative set-up which was left virtually unspoiled by the process of democratisation that had been the political pre-occupation since 1954".²² In the same chapter we also examine the provisions of some other legislation which preceded and now co-exist with the Constitution. The importance of this is apt to be misconceived. By providing constitutional provisions that prima facie seem to limit the degree and extent of coercion while in the same vein preserving legislation that facilitate coercion, the "national bourgeoisie" is able to mask its real intentions. Our attempt in

presenting in some depth the other coercive legislation is to lay bare the reality of the situation.

On occasions the leftist elements of the "national bourgeoisie" have tried to challenge the "ruling" elite. In chapter four we have cited some of these elements: the K.P.U., dissident M.P.'s and University Students.

Various mentions of the term "national bourgeoisie" have been made above and we must now explain the context in which it is used.^{22A} Kenyan class structure owes its existence to colonial and pre-colonial Kenyan history. The various traditional (peasant) modes of production characterized chiefly by the possessions of land and/or livestock were greatly modified by the introduction of foreign capital which however, did not abolish the traditional modes of production. There was an "intimate link" between the newly introduced capitalist mode of production and the various 'peasant' modes of production:

Most of the wage-earners in the towns and many on estates and large farms, lived away from their nuclear families during most of the time they were at work, returning home (i.e. to the family homestead) for holidays, or for longer spells between jobs. Even the urban labour force (amounting to between a quarter and a third of the total) was thus also 'involved' in peasant production; although when at work they would frequently be members of a very differently composed urban household too (generally including other male wage-workers, besides wives and children on shorter or longer visits), most of their immediate relatives - particularly parents, wives and children - lived on and cultivated land or tended cattle somewhere in the countryside".²³

The link between the two modes of productions became more slanted as the traditional mode of production gradually changed and became an aspect of the capitalist mode of

production: "land could now be bought and sold, and people who in earlier years had had rights to it would find these eroded and increasingly extinguished."²⁴ More and more small-holders were attracted into wage-labour "often to offset the loss of family labour due to members of the family being engaged in wage labour in the capitalist mode of production."²⁵

While this was going on, the traditional mode of production was also at the same time expected to absorb the "continually increasing proportion of the adult population, and to continue to make available cheap labour and cheap produce."²⁶ The capitalist mode of production was controlled in the early stages by the large land-owners, banks and the colonial bureaucracy both in Kenya and in England. In time these were joined by the local Asian businessmen. Although, due to the apartheid nature of Kenya colonial politics, there was no contact between the Europeans and the Asians, "the two groups had finally come to participate in the same sectors of the economy, particularly in manufacture."²⁷ The traditional mode of production was in the hands of Africans.

Because as we have noted above, it was the Africans who were used to provide a cheap source of labour, the administrative and legal structure that facilitated this also accelerated the birth of an African propertied class. There developed therefore a three-faceted class of local

exploiters in the form of the Europeans (who were supported by multinational corporations, the imperial government and the colonial administration) Asians and Africans.^{27A} This class of local exploiters was the class that managed the capitalist mode of production. This was the class that "bargained" for independence during the Lancaster House Constitutional Conferences.

As Colin Ley's rightly observes and as we have already noted, this class is heavily dependent on international capital for its economic existence. Politically it is not dependent on popular mass support because it has been unable to transform the "ruling party" into a mass movement. The question that arises (to use Colin Ley's formulation) is "What kind of politics could be founded on an economic and social system" of the kind obtaining in Kenya.²⁸

The harmony of interest between foreign capital the local auxiliary bourgeoisie and the various politically powerful petty-bourgeois strata was a real one, yet their interests also conflicted, and a government based on an alliance between them had to be capable of arbitrating between them. It also had to be strong enough to master the tensions and conflicts generated among the mass of the people by the process of underdevelopment, including those which were expressed in regional or tribal terms. But being strong in this sense meant that the government was heavily dependent on the civil service, police and armed forces and on the personal popularity of the President.²⁹

The significance of our discussion so far is to provide the necessary background for following chapters. It is intended further to show that the ruling class has at its disposal the relevant legal machinery to cater for its continued existence - however short the duration of that existence may be.

3. ESTABLISHMENT

Kenya's coercive apparatus is a wholesale importation from the colonial era. The main reason for its establishment is said to be the maintenance of law and order. The phrase "law and order" however, must be understood in its proper context. In the colonial times maintenance of law and order meant the pacification of the nationalists by all means available. These included physical harassment, ^{unlawful} unlawful arrests, false imprisonment, detention and indiscriminate killing of "terrorists." With the attainment of independence, law and order has come to mean the maintenance of political stability." The maintenance of this stability entails the wiping out of what politicians refer to as "agitators, disgruntled elements and other malcontents." - *servants of foreign masters.*

Like all other colonial institutions the legal origins of coercive resources must be traced to the 1897 East Africa Order in Council¹ promulgated under the Foreign Jurisdiction Act. This Order "established the beginnings of the administrative machinery for the region"² and under it the commissioner for the region was empowered to legislate "Queen Regulations" for among other things, the establishment of a constabulary or other force to be employed in the defence of the protectorate. Under that Order the Commissioner established, by Regulation 29 of 1902, the Kings African Rifles, the forerunner of our present Armed Forces Act (Cap. 199). The principal purpose of the armed forces is the defence of the state.^{2A}

The utilisation of the armed forces in the North-Eastern Province and some part of Eastern Province is specifically excluded from our examination because their utilisation has been necessitated by a combination of both internal and external factors.

The Kenya armed forces consist of the Kenya Army which has its origins in the Kings African Rifles established by Regulation 29 aforesaid, the Kenya Air Force which was raised on 1st June 1964³ and the Kenya Navy which was raised on 12th December 1964.⁴

These three forces comprise the Kenya Military Forces. Their structural organisation is contained in the Armed Forces Act (Cap. 199) which was enacted "to provide for the establishment, government and discipline of the Kenya Army, the Kenya Air Force and the Kenya Navy and their Reserves."⁵ Prior to the enactment of the Armed Forces Act, the Armed Forces were organised under the Kenya Military Forces Act (Cap. 198) which was repealed by S. 234 of the Armed Forces Act.

Under the Kenya Military Forces Act all units of the pre-independence Kings African Rifles became units of the Kenya Military Forces on 12th December 1963.

The Act further created a Military Council which was charged with the duty of command, discipline and administration of the Kenya Military Forces. The council was under the over-riding responsibility of the Prime Minister and after December 12, 1964 of the President who became President and Commander-in-Chief of the Armed Forces of the Republic of Kenya.

The immediate command of the forces was entrusted to a military officer styled Commander of the Kenya Military Forces. Under changes brought about by the Armed Forces Act of 1968 the Military Council became the Defence Council which under section 5 thereof "shall consist of -

- (a) the Minister, who shall be Chairman
- (b) the Assistant Minister who shall be Vice-Chairman
- (c) the Chief of Defence Staff
- (d) the Commander of each Service of the armed forces
- (e) the Permanent Secretary of the Ministry and the Chairman of the Council may appoint a person to be secretary of the council."

The Chief of Defence Staff and the Commander of each of the services of the armed forces are appointed by the President on the advice of the Defence Council".⁶

From the above provisions, it is quite clear that the Defence Council, save for its secretary, is wholly appointed by the President for the Minister, his Assistant and Permanent Secretaries are also Presidential appointees. The duties of the Defence Council are, "subject to the powers of command of the President as Commander-in-Chief"⁷, the control and direction of the armed forces.⁸

At independence Kenya had thirty three units⁹ of which the major ones were the three battalions¹⁰ which consisted mainly of infantrymen. It is the battalions that comprise the core of the armed men and as ~~an~~ a coercive resource, they are the most formidable. There

are no provisions in the Act preventing their use for purposes other than the defence of the state. In fact the transport battalion of the army has been used to clear the congested port of Kilindini at Mombasa.

The army has also been used to take relief food to flood victims and the air force has been used as a means of communication with the North Eastern Province. The Navy has been used for rescue operations at sea.

There is no instance when the armed forces have been used for military coercive purposes but its potential as a coercive resource is the greatest. It is therefore to the Police Force that we must turn for actual application of coercive power.

The history of the Kenya police can be traced back to 1889.¹¹ However, it was not until 1896 that any kind of a real police force was constituted at Mombasa.¹² Recruitment for this force was done mainly from the local Indians.¹³

To regulate and provide the legal machinery within which the force was to function, the first related laws were borrowed from British India. These were the Police Act the Penal Code and the Criminal Procedure Code. The decision by the Imperial British East Africa Company to undertake the building of the Uganda Railway necessitated the recruitment of more police officers and "the early police were Indian either recruited in British India or hired from the Punjabi community resident at the coast."¹⁴

Originally the main function of the police force was to maintain order in the camps of the railway workers and to put "down opposition from African peoples along the routes and for establishing posts at the new towns springing up beside the railway."¹⁵

The 'Civil' police originally established only at Mombasa was amalgamated with the Railway Police at the turn of this century and the whole police force was now put under the charge of a single Inspector-General. That remained the basic organisation of the police force until the early 1950's when a Royal Commission was appointed "to make recommendation for the future organisation and administration of the force and the reserves therefor (regard being had to existing form of the Kenya Police Reserve)".¹⁶

Among the subjects of reference were recruitment, training and more importantly for our purpose, legislation covering the establishment and employment of the force.

By this time the task of the police had been widely extended owing to the acceptance by the colonial government in 1943, "of a recommendation by the provincial commissioners' conference that the police should gradually take over from the Administration the enforcement of the law within the native reserves."¹⁷

Most of the recommendations of the commission were accepted by the government.¹⁸

Among the specialised sections of the Police Force are the Special Branch, the Criminal Investigation Department,

the Administration Police (previously known as the Tribal Police), the Mounted Branch (formed in 1945 to patrol rural areas on mules and subsequently camels), the Dog section and the General Service Unit.

It is generally accepted that the work of the police is to maintain order and to do so under the rule of law. Hence ideally the police should not¹⁹ be associated with the idea of coercion. Yet as far as the Kenya Police is concerned, it has not been free from accusations of excessive use of violence mainly for coercive purposes. Some of the reasons for this are historical. During the colonial period and especially during the Emergency period, the police, as were all the armed forces, were associated with repression. With the attainment of independence the same police officers who were associated with repression continued in their jobs.²⁰ The other reason for the continued association of the police with repression is its composition. Whereas the Criminal Investigation Department of the police has continued to fulfill its functions generally within the ambit of the law as existing, the section known as the General Service Unit has established a reputation for brutality and ruthlessness that raises main question as to the purpose for the existence of this unit. It is of course not possible to ascertain the functions of the Special Branch of the force because its activities are secret. The 1953 Police Report recommended that "the deployment of the branch must depend on the nature and direction of the threats of the subversive movements."²¹

For the purposes of this dissertation our attention is directed mainly to the General Service Unit. Originally named the Emergency Force, it was formed in March 1948 as a "regular first-line reserve for immediate use on the outbreak of a disturbance."²²

It was re-designed the General Service Unit in September 1953 and expanded to an establishment of 47 European Officers^{and} 1050 "African ranks".²³ Obviously the size and composition of the Unit has undergone major changes and for our purposes it is only necessary to note that it is organized into a national headquarter in Nairobi with provincial companies each comprising of platoon which is fully mobile and self-supporting. Each platoon is supported by motor-transport, wireless, tentage and emergency rations.²⁴

The immediate command of the unit is entrusted on the Commandant, General Service Unit who is himself under the command of the Commissioner, Kenya Police. All the various sections of the police force are under the overall command of the Commissioner. The office of the Commissioner of Police was established by the Constitution section 108(1) of which stipulates that "the power to appoint a person to hold or act in the office of commissioner of police shall rest in the President".

Enacted to "provide for the functions organisation and discipline of the Kenya Police Force and the Kenya Police Reserve"²⁵ the Police Act (cap. 84) simply provides that the Force "shall consist of such maximum number of officers as shall be determined by the President,"²⁶ and

its functions are the "maintenance of law and order, the preservation of peace, and the protection of life and property, the prevention and detection of crime, the apprehension of offenders and the enforcement of all laws and regulations with which it is charged."²⁷

4. LEGAL MACHINERY FACILITATING COERCION

In the preceding chapter we touched on the major bodies of persons who can be utilised for coercive purposes. In this chapter we examine some of the various legislation facilitating their application. There exists in our statute books a wide range of enactments through which coercive practices are given their legality.¹

For purposes of this dissertation examination is limited to six enactments of ~~of~~ ^{of} especial importance. These are the Constitution (Act No. 5 of 1969), the Preservation of Public Security Act (Cap. 57), the Public Order Act (Cap. 56) the Penal Code (Cap. 63) the Police Act (Cap. 84) and the Societies Act (No. of 1968).

The Constitution

The constitutional provisions pertaining to coercion are contained in Chapter Five which is headed "Protection of Fundamental Rights and Freedoms of the Individual." It is significant to note that where the Constitution allows for the application of coercive power, it is only as a proviso to the major provision. Hence the major proviso to Chapter V states that:

the provisions of this chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.²

In the section dealing with protection of right to life³ there is the proviso that

Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use of force to such extent as is reasonably justifiable in the circumstances of the case-

- (a) for the defence of any person from violence or the defence of property;
 - (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - (c) for the purpose of suppressing a riot; insurrection or mutiny; or
 - (d) in order to prevent the commission by that person of a criminal offence,
- or if he dies as the result of a lawful act of war.

These provisions must be read "without prejudice to any liability for a contravention of any other law with respect to the use of force"⁴ They must therefore be read subject to such provisions as section 28 of the Police Act which provides for the use of arms by a police officer against:

- (a) any person in lawful custody and charged with or convicted of a felony, when such person is escaping or attempting to escape;
- (b) any person who by force rescues or attempts to rescue another from lawful custody;
- (c) any person who by force prevents or attempts to prevent the lawful arrest of himself or any other person;

"Provided that arms shall not be used"⁵

(i) as authorised in paragraph (a) of this section, unless the officer has reasonable ground to believe that he cannot otherwise prevent the escape, and unless he gives warning to such person that he is about to use arms against him and the warning is unheeded;

(ii) as authorised in paragraph (b) or paragraph (c) of this section, unless the officer has reasonable ground to believe that he or any other person is in danger of grievous bodily harm or that he cannot otherwise prevent the rescue or, as the case may be, effect the arrest.

Sections 21, 24 and 35 of the Criminal Procedure Code are also relevant here and the constitutional provisions quoted above must be read subject to them. S. 21 provides that:

- (1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.
- (2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.
- (3) Nothing in this section contained shall be deemed to justify the use of greater force than was reasonable in the particular circumstances in which it was

employed or was necessary for the apprehension of the offender.

The Criminal Procedure Code further provides under section 24 that

the person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Section 72(1) of the Constitution then lists ten instances under which deprivation of a person's liberty is lawful. For the purposes of this dissertation the relevant provision under this section is sub-section (i) which authorises the deprivation of a person's liberty:

to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Kenya or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Kenya in which, in consequence of any such order, his presence would otherwise be unlawful.

This provision provides the constitutional legality for the Public Order Act which purports to "make provision for the maintenance of public order."⁶

Under this Act, the Commissioner of Police or a Provincial Commissioner may "if he considers it necessary in the public interests of public order" issue curfew orders directing that

during such hours as may be specified in the curfew order, every person, or as the case may be, every member of any class of persons specified in the curfew order shall except under and in accordance

with the terms and conditions of a written permit granted by an authority or person specified in the curfew order, remain indoors in the premises at which he normally resides or at such other premises as may be authorised by or under the curfew order.⁷

The Act further empowers a provincial police officer or a divisional police officer "if he considers it necessary in the interests of public order" within his area to issue a curfew restriction order prohibiting:

during such hours as may be specified in the curfew restriction order, from entering, being or remaining, except under and in accordance with the terms and conditions of a written permit granted by an authority or person specified in the curfew restriction order.⁸

In so far as the use of force is concerned, the Act provides that whenever it is provided in the Act that force may be used:

The degree of force which may be used shall not be greater than is reasonably necessary for that purpose; whenever the circumstances so permit without gravely jeopardizing the safety of persons and without grave risk of uncontrollable disorder, firearms shall not be used unless weapons less likely to cause death have previously been used without achieving the purpose aforesaid; and firearms and other weapons likely to cause death or serious body injury shall if used, be used with all due caution and deliberation, and without recklessness or negligence.⁹

The Act emphasises that "for the avoidance of doubt"

(emphasis added):

it is hereby declared that the burden of proving lawful or reasonable excuse or lawful authority shall be upon the person alleging the same and accordingly in any proceedings for an offence under this Act or any regulations made thereunder it shall not be incumbent on the prosecution to prove the lack of any such excuse or authority.¹⁰

If the general tone of the Public Order Act is contrary to the general democratic principles of freedom of assembly¹¹ and associations, this particular provision shifting the burden of proof to the accused is a serious breach of the principle of nulla poena sine lege which is regarded as the fundamental basis of criminal laws.

Five more Constitutional provisions are relevant for our purposes. The first of these is section 74(1) which provides that "No person shall be subject to torture or to inhuman or degrading punishment or other treatment."

The relevance of this provision will be seen when we examine the actual application of coercive practices.¹²

In providing that no property of any description shall be compulsorily acquired except under very stringent circumstances, the Constitution¹³ guarantees the perpetuation of the economic and political imbalances that existed prior to independence. For as John Rawls has so ably demonstrated in his Theory of Justice,¹⁴ the social conditions of a society might be such that the basic liberties cannot be effectively exercised, as for example where people are so poor that liberty to hold property is meaningless. In such situations the 'basic' liberty of protection from deprivation of property should be limited to the extent that it is necessary to raise the level of development to the point where the freedom can be enjoyed by all.¹⁵

Sections 80, 81 and 83 are respectively referred to

as "protection of freedom of assembly and association," "protection of freedom of movement" and "derogation from fundamental rights and freedoms." The cumulative effect of these provisions is to make it illegal to hinder, save with his consent, any person's freedom of assembly and association and freedom of movement except where the hindrance is shown to be "reasonably justifiable in a democratic society." Further to these provisions there is the express preservation of the Preservation of Public Security Act by section 83(1) which inter alia states that:

nothing contained in or done under the authority of any provision of Part III of the Preservation of Public Security Act shall be held to be inconsistent with or in contravention of those sections of this Constitution when and in so far as the provision is in operation by virtue of an order made under section 85 of this Constitution.

Section 85 simply provides for the publication in the Kenya Gazette of any order bringing into operation "generally or in any part of Kenya of Part III of the Preservation of Public Security Act or any of the provisions of that part of that Act"

The Preservation of Public Security Act

Enacted to "make provision for the preservation of public Security", the Act came into operation on 11th January, 1960. It is divided into three parts. Under Part I definition¹⁶ of "preservation of public security" is given to include the defence of Kenya,¹⁷ the securing of fundamental rights and freedoms of the individual,¹⁸

the securing of the safety of persons and property,¹⁹ the prevention and suppression of rebellion, mutiny, violence, intimidation, disorder and crime, and unlawful attempts and conspiracies to overthrow the Government or the Constitution,²⁰ the maintenance of the administration of justice²¹ the provision of a sufficiency of the supplies and services essential to the life and well-being of the community, their equitable distribution and availability at fair prices,²² and the provision of administrative and remedial measures during periods of actual or apprehensible national danger or calamity or in consequence of any disaster or destruction arising from natural causes.²³

Since it is Part II²⁴ which has so far been applied, a further examination of that part is made. Under S.3(1) of Part II the President may "at any time" it appears to him necessary for the preservation of public security to do so: "... by notice published in the Gazette declare that this part shall come into operation in Kenya or any part thereof." By an order published as Kenya Gazette supplement No 78 of 6th September 1966, President Kenyatta simply stated that "in exercise of the powers conferred by S.3 of the Preservation of Public Security Act, the President hereby declares that the provisions of Part II of the Act shall come into operation." The order having been published, the Act further empowers the making of regulations for any of the following matters:

- (a) the detention of persons;
- (b) the registration, restriction of movement (into, out of or within Kenya), and compulsory movement of persons, including the imposition of curfew;
- (c) the control of aliens, including the removal of diplomatic privileges;
- (d) the censorship, control or prohibition of the communication of any information, or of any means of communicating or of recording ideas or information including any publication or document, and the prevention of the dissemination of false reports;
- (e) the control or prohibition of any procession assembly, meeting, association or society;
- (f) the control or prohibition of the acquisition, possession, disposition or use of any movable or immovable property or undertaking;
- (g) the compulsory acquisition, requisition, requisitioning, control or disposition of any movable or immovable property or any undertaking;
- (h) requiring persons to do work or render services, including the direction of labour and supplies, the conscription of persons into any of the disciplined forces (including the National Youth Service) and the billeting of persons;
- (i) the control and regulation of harbours, ports and the movement of vessels;
- (j) the control and regulation of transport by land, air or water;

- (k) the control of trading and of the prices of goods and services, including the regulation of the exportation, importation, production, manufacture or use of any property or thing;
- (l) amending, applying with or without modification or suspending of any law other than the Act itself or the Constitution;
- (m) any matter not being a matter specified in any of the foregoing paragraphs for which provision is necessary or expedient for the preservation of public security.²⁵

Three sets of regulations have been enacted under the powers conferred under this part. These are the Public Security (Control of movement) Regulations, 1967; The Public Security (Detained and Restricted Persons) Regulations; and the Public Security (Specified Districts) Regulations, 1965. However under the Public Security (Amendment and Revocation) Regulations 1966²⁶ the Public Security Regulations, the Public Security (Specified Districts) Regulations and the Public Security (Restriction) Regulations were revoked. This means that there now exists only two sets of Regulations made under the Preservation of Public Security Act namely the Public Security (Detained and Restricted persons) Regulation 1966, (hereinafter called the 1966 Regulations), and the Public Security (control of movement) Regulations 1967 (hereinafter called the 1967 Regulations). These have been periodically ammended but their substance remains unaltered. Under

the 1966 Regulations the minister may if he is satisfied

that it is necessary for the preservation of public security to exercise control over the residence and movement of any person he may order that such person shall reside in the area therein specified, or in any place to which he may be ordered by a removal order to remove or be removed.²⁷

The Minister is further empowered if he is satisfied that it is necessary for the preservation of public security to exercise control beyond that afforded by a restriction order, "order that that person shall be detained."²⁸

Under sub-section 2 of regulation 6 "where a detention order has been made in respect of any person, that person shall be detained in a place of detention ... for as long as the detention order is in force, and while so detained, shall be deemed to be in lawful custody."

Under Legal Notice 155 of 1966 of 4th June 1966, the following prisons were declared to be "places of detention": Garissa, Wajir, Isiolo, Marsabit, Galole, Lamu and Garissa Detention Camp.

The 1966 Regulations have been modified to allow the Minister to, if it is in his opinion, "desirable for the preservation of public security" order that "every member of military, air and naval forces of Kenya, while he is in a specified area, have all the powers protections and privileges of a police officer."²⁹

This Regulation is applicable to the members of the armed forces while in the North Eastern Province,

Isiolo, Marsabit and Meru Districts; Tana River and Lamu Districts and so much of the Coast Province as lies north of the Galani/Sabaki Rivers; Samburu and Laikipia Districts; and the territorial waters exclusive of inland waters.³⁰

~~X~~While detained, a person is under the "general control and administration" of the commissioner of Prisons.³¹ Every place of detention is under the immediate responsibility of an officer in charge who is required inter alia, to, at least twice a week, visit every part of the place of detention at some hour of *the night between the hours of 11 p.m. and 5 a.m.* "and to record the visit in his journal and the hour thereof and the conditions of the place of detention."³² He is also enjoined "to attend every infliction of corporal punishment in the place of detention, to ensure that such punishment has been awarded and is administered in accordance with the law and to record the same and any special circumstances connected with it in his journal."³³

Although under S.10 of the 1966 Regulations it is a legal requirement to deliver a detention order and a statement of grounds thereof to the detainee within five days of his detention this requirement is substantially watered down by sub-section 2 thereof which provides that

Nothing in this regulation shall be construed as requiring the security officer or any other public officer, unless thereunto authorised or directed by the minister, to disclose any fact, information

or document the disclosure of which, in the opinion of the security officer or as the case may be, of such other public officer would be likely to prejudice the preservation of public security or would otherwise be contrary to the public interest.

While in detention, detainees may be required to do such work as the officer in charge of the place of detention considers necessary "for the purpose of keeping their accommodation, furniture and utensils clean and of maintaining the place of detention in good order and in clean condition."³⁴ Apart from visits by ministers of religion and police officer,³⁵ "no person shall be permitted to enter or be within the limits of any place of detention except detained persons, detention officers and those persons ... who have been authorised in writing by the commissioner or by the officer in charge to enter." Unless otherwise allowed in writing by the officer in charge, every visitor to a detainee, must be during the whole of his visit be kept within the sight and hearing of the officer in charge or detention officer appointed by him for the purpose, and where such officer does not understand the language spoken, of an interpreter.³⁶

Regulation 23 of the 1966 Regulations empowers a detention officer to use "any weapons which have been issued to him including firearms" against a detainee if the detainee is escaping or attempting to escape, breaking or attempting to break out or where a detainee is engaged in a "riotous behaviour" or endangering the life of, or is likely to inflict grave injury to the detention officer. The Regulation concludes by providing that "the use of

weapons under this rule shall as far as possible be to disable and not to kill."

As regards to control of movement the 1967 Regulations empowers the Minister to, "if he considers it expedient for the preservation of public security so to do," direct that "all members of one or more of the specified tribes living in any particular area" do all or any of the following things:

- (a) to move from one area in which they are living to another within a specified period;
- (b) to remain within the limits of such area as may be specified;
- (c) to live in such parts of a residential part of a specified area and remain in such part during specified hours.³⁷ *R3.*

Where such a movement control order has been applied to any person, it is deemed to apply also""to his family residing with him unless the order otherwise expressly provides"³⁸ *R5*

The specified tribes mentioned in Regulation 3 above are:

- | | | |
|--------------|-------------------|--------------|
| 1. Gurreh | 7. Sheikal | 13. Degodai |
| 2. Murulle | 8. Shermoge | 14. Ogaden |
| 3. Degodia | 9. Warabeya | 15. Rendille |
| 4. Leisan | 10. Gurabeya | 16. Gabra |
| 5. Ashraf | 11. Gurreh Murreh | 17. Boran |
| 6. Shebolleh | 12. Adjuran | 18. Burji |

- | | | |
|-------------|-------------|-------------|
| 19. Kouso | 20. Sakuya | 21. Isaak |
| 22. Itesti | 23. Aulihan | 24. Adb Wak |
| 25. Abdulla | | |

They all live in the Eastern or North Eastern Provinces of Kenya.

The Penal Code

One further provision of the Penal Code is relevant for our purposes. This is section 52 which empowers the minister for Home Affairs to prohibit any publication in the interests of public order, health or morals, the security of Kenya, the administration of justice or the maintenance of the authority and impartiality of the judiciary. The Minister may under this section

by order published in the Gazette, and subject to such exceptions and conditions, if any as may be specified in the order, prohibit the importation of any publication or, in the case of a periodical publication, any or all past or future issues thereof, or any or all past or future publications of any person specified in the order.³⁹

A further provision in this section stipulates that

If it appears to the Minister to be reasonably required in the interests of defence, public safety, public order, public morality or public health and to be reasonably justifiable in a democratic society, the Minister may, by order in the Gazette, and subject to such exceptions and conditions, if any, as may be specified in the order, declare any publication to be prohibited publication, or in the case of a periodical publication, declare any or all past or future issues thereof to be prohibited publications and may declare to be prohibited publications any or all past or future publications of any person specified in the order not being a person who ordinarily carries on for profit or reward the trade or business of a publisher and whose principal activities consist of the carrying on of such trade or business.⁴⁰

5. APPLICATION

LIBRARY

It was noted in the preceding chapters that there vests in the government extensive powers of coercion. In this chapter we examine some of the ways in which this power is coercively exercised. Although the members of the armed forces are empowered to exercise the functions of the police while in certain areas and in respect of certain offences,¹ the bulk of the powers vested in the government are exercised by the police. Our attention in this chapter is therefore directed mainly to the police.

Police powers of arrest are extensive and since they are based on a policeman's "reasonable suspicions" they are subject to abuse.² Coercion in the form of arrest may be inflicted upon any person against whom a warrant of arrest has been issued or against any person suspected "upon reasonable grounds" of having committed any of the offences stipulated by the Criminal Procedure Code.³

In the light of the above background and what was said earlier about the Preservation of Public Security Act an examination will now be made of three case studies pertaining to the manner and form of application of the state's coercive resources.

The Case of the Kenya Peoples Union

In order to appreciate fully how the legal machinery of coercion was utilised in this case, it is important to note the political background in which it was exercised. Following personal rivalries and policy differences among

the leaders of the ruling party KANU the former Vice-President of Kenya and of KANU broke out of the fold and formed an opposition party, the Kenya Peoples Union. This was on the 26th April, 1966.

Following this, and in keeping with the trend of using the Constitution to solve political differences⁴, the government introduced a Constitutional Amendment Act⁵ which required members of parliament who resigned from a parliamentary political party to vacate their parliamentary seats and seek fresh electoral mandate. Twenty eight K.P.U. members were affected by this amendment and it followed that twenty eight seats were to be contested by both KANU and KPU candidates in the ensuing by-election now generally known as the "Little General Election" of 1966.⁶

While inaugurating the electioneering campaign on May Day 1966, President Kenyatta declared that: "I have done my part in removing these false prophets from parliament and it is up to you to ensure that they are not returned to public life."⁷ As far as KANU leaders were concerned KPU was a communist party that was receiving foreign funds for subversive activities. Everything was therefore done to see that the KPU did not return any members into parliament. KPU leaders were denied licences to hold public meetings until the nomination day. The activities of its leaders were kept under strict scrutiny. When for example, the Vice-President of the KPU while on a holiday in Nyanza province

was invited by a local KPU branch to a ceremony marking the opening of a sub-branch office, the said vice-president, Bildad Kaggia, was arrested and charged and convicted of holding a public meeting without a licence contrary to section 5(11) (a) (ii) of the Public Order Act.⁸

Despite the difficulties and the administrative obstacles KPU managed to return nine of their candidates in parliament. On plurality ^{popularity?} KPU defeated KANU because out of the total number of people who voted 78,287 voted KPU as against KANU's 61,698 for the Senate and 86,334 votes as against KANU's 72,584 votes for the House of Representatives.⁹

It was clear that popular vote did not lead to the extinction of the KPU from "public life" as the President had wished. Constitutional methods were therefore resorted to. They had been successfully used before to do away with the restrictions and checks introduced by the original Constitution.¹⁰ The recently widened and amended Preservation of Public Security Act was applied and in August 1969 the Daily Nation reported that "two well-known left-wing trade union bosses, and four senior members of the opposition Kenya Peoples Union hierarchy have been detained by Kenya Police in a surprise security swoop. They are being held under the new public security laws."¹¹ On October 27 of the same year, it was further reported that six more KPU members - this time all were MP's - had been detained.¹² This was confirmed the following day after a cabinet meeting at Gatundu.¹³

The October detentions followed a civil disturbance at Kisumu where President Kenyatta was opening a new hospital. The Kisumu incident is significant in two important respects: it clearly shows how the threat of use of force can easily be practically given effect¹⁴ and, secondly and in retrospect the incident would seem to confirm the theory that the Kisumu incident "was a deliberately created incident to justify the banning of the KPU."¹⁵ These inferences are drawn from the fact that during the incident Police opened fire and several people, including women and children were shot dead and many injured and further, the fact that two days after this incident all the KPU leaders were placed in detention and the party declared "a society dangerous to the good government of the Republic" under section 4(1)(ii) of the Societies Act.

The Case of the Dissident KANU MP's

Even after the banning of the Kenya Peoples Union and the detention of its leaders there remained a group of vocal MP's within KANU who succeeded, through their populist utterances, in giving the impression that they were the representatives of the peasants. Such were Hon. Martin Shikuku who referred to himself as the "president of the poor" and the late J.M. Kariuki.¹⁶ Also ^{Peoples WATUMMI} in the same group but representing a more sophisticated and comprehensive critic was Hon. J.M. Seroney.¹⁷

Following the mysterious disappearance and subsequent murder of Mr. J.M. Kariuki on 2nd March, 1975, parliament

set up a Select Committee under s.9 of the National Assembly (Powers and Privileges) Act to probe the murder.¹⁸ The findings and the events subsequent to the findings of the Select Committee led to the detention of both Shikuku and Seroney.¹⁹

Both the murder of the late J.M. Kariuki and the subsequent detention of the two MP's is significant. The findings of the Select Committee clearly indicate that the police and especially the General Service Unit were implicated. The two MP's detained were members of the Select Committee and they were instrumental in persuading the National Assembly to adopt the Report of the Select Committee. Their detention is therefore significant in that it shows the limits of toleration of criticism by the government.²⁰ The actual murder is significant in that the findings of the Select Committee implicated the General Service Unit of the Police. It is therefore useful to examine in greater detail the function of this Unit.

Since the Unit is a constituent part of the police force, it is perhaps reasonable to assume that its activities and functions are those stipulated in the Police Act. In the light of the practical realities, however, such an assumption would not be warranted. There is no doubt that the General Service Unit is a paramilitary unit - this is reflected both in its uniform and its operations²¹. The government has insisted that the

members of the General Service Unit "are just like ordinary police officers; they have got the usual police powers, and wherever they are, they work under a very senior officer."²²

As early as 1953 however, it had been admitted that "the duties at present carried out by the General Service Unit are not those normally associated with the police force except in times of civil disturbance."²³ This view was echoed by several members of parliament during the debate on the Armed Forces Bill. Contributing to the debate, one MP stated that he "was very surprised and the Minister [of Defence] should tell this House the reason why the other branches of our armed forces has been included in [the Bill]; that Mr. Speaker is the General Service Unit. Mr. Speaker, it is known that the General Service Unit is a branch of our armed forces."²⁴

On another occasion²⁵ while debating a motion on "Police Operations to Removal of Former Squatters on Usher Jones Farm" where 20,000 people were alleged to have been involved, another MP is on record as saying:²⁶ "the other point Mr. Speaker is the question of the General Service Unit who were sent there to standby. Mr. Speaker, the General Service Unit is a very ruthless department of the police and in a country like this one where there is peace I do not see why the government found it necessary to send the General Service Unit there". There have been many other complaints in respect of the General Service Unit.²⁷ What emerges from an

examination of these complaints and incidents in which the Unit has been utilised is that the Unit functions in consonance with the expectations of the people who established it during the colonial era.²⁸

The Case of the University Students

The history of police and student clashes at the University of Nairobi is not a short one.²⁹ In this case study, however, our discussion is limited to the May 1975 crisis because chronologically this is closely connected with what has been stated above in respect of the events relating to the murder of the late J.M. Kariuki. Writing on "The Beginning of Student Unrest in Zambia",³⁰ Donald Rothchild has written that

If student activists at Western Universities can sometimes compel the authorities to re-think policies and programs, their African counterparts can challenge the political order itself. Student power in Africa is a force for government officials to reckon with. In the modernist sector, the civilian leader of a one-party (or a one-party dominant) African system inevitably negotiates directly between such powerful interest groups as trade unions business management, party leadership, the police and army, bureaucracy, University and University students and so forth ... In this environment, the University student input can be critical. More a prospective than a participation elite, university students feel detached from the immediate cares of policy making and free to sit in judgement upon the decision of their elders.³¹

There was a time when University of Nairobi students in fact did fit in within a set up as the one described above.³² This led to the banning of the students Union and the demise of the student newspaper, The University Platform.³³ Henceforth most of the crises that developed

in the University were a result of internal and mainly petty and sectional differences. The May 1975 Crisis was precipitated by student opposition to the formation by a group of other students, of a tribal "cultural association." A meeting organised to denounce the new "association" was marred by the discovery of two-plain-clothes policemen who were searched by some of the students and one of their certificates of appointment confiscated. One of the policemen managed to escape and within a few minutes a riot-squad truncheon-welding, tear-gas-firing policemen arrive at the Central Catering Unit where the student meeting was being held and fighting ensued between the two groups as the policemen tried to disperse the meeting. Several students were arrested but were later released, except two, who were remanded in police custody purportedly to "help police with investigations."

The second phase in that unusual police student confrontation was the agreement between the two sides that a meeting should be held at the Great Court on May 26, 1975 to exchange the two students "helping police with investigations" with the police certificate of appointment confiscated by the students.

The meeting was duly convened but instead of releasing the two students, a police riot squad stormed into the campus³⁴ and there ensued one of the fiercest police - student clashes in the history of the stormy relationship between the two groups. The confrontation lasted several

hours and it did not end until a contingent of armed General Service Unit members entered the campus at about 5.30 p.m. The G.S.U. contingent surrounded the main campus and inflicted thorough beating on all those they encountered - students and non-students alike. Over 100 of the people surrounded were arrested and after a screening at the Central Police Station, 94 of these people were found to be students and were charged with the offence of rioting after a proclamation. After several days of detention these students were "pardoned" by a presidential decree and released.³⁵

The ruthlessness and brutality that accompanied the G.S.U. behaviour at the campus was heavily criticised by members of parliament some of whom also alleged that their daughters were "raped" by the members of the General Service Unit.^{35A} The above illustrations are a few among many others.^{35B}

These experiences necessarily raise the important question of the role of police. Jerome H. Skolnick³⁶ has observed that

the police in democratic society are required to maintain order and to do so under the rule of law. As functionaries charged with maintaining order they are part of the bureaucracy.

Noting that the "ideology of democratic bureaucracy emphasises initiative rather than disciplined adherence to rules and regulations," Skolnick concludes that it is this tension between "the operational consequences of ideas of order, efficacy and initiative on the one hand, and legality on the other" that constitute the principal

problem of "police as a democratic legal organisation." He continues to elaborate on the dichotomy of the substantive part of the criminal law which comprises of the elements of crime, the principles under which the accused is to be held responsible for alleged crime, the principles justifying the enactment of specific prohibitions, the crimes themselves and the procedures of criminal law which deal with such matters as the law of search, the law of arrest, the element and degree of proof, the right to counsel, the nature of a lawful accusation of crime, and the fairness of trial.³⁷

"This dichotomy," he adds, suggests that the common juxtaposition of "law and order is an oversimplification. Law is not merely an instrument of order, but may frequently be its adversary." In the Kenya Situation this is clearly borne out by the methods under which the General Service Unit functions. Our examination of the various legal provisions has also clearly indicated how law can be utilised for coercive purposes. As Skolnick further notes:

There are communities that appear disorderly to some ... but which nevertheless maintain a substantial degree of legality. The contrary may also be found: a situation where order is well maintained, but where the policy and practice of legality is not evident. The totalitarian social system, whether in a nation or an institution, is a situation of order. Without the rule of law such a situation is probably best illustrated by martial rule, where military authority may claim and exercise the power of amnesty and detention without warrant. If, in addition, the unit of habeas corpus, the right to inquire into these acts, is suspended, as it typically is under martial rule, the executive can exercise arbitrary powers. Such a system of social control is efficient, but does

not conform to generally held notions of rule of law.³⁸

For the 'rule of law' implies the maintenance of the principle of legality; nulla poena sine lege, which imposes certain restraints upon the definition of criminal conduct. The principle requires that

standards of conduct must meet stringent tests of specificity and clarity, may act only prospectively, and must be strictly construed in favour of the accused. Further the definition of criminal conduct has largely come to be regarded as a legislative function, thereby precluding the judiciary from devising new crimes.³⁹

Order under law does not mean the achievement of social control through threat or coercion. It implies the achievement of regularised social activity within a society of equal opportunities and equality before the law. Applied in any other manner law would cease to be a means of regularised social activity and would become an instrument of oppression. In our context the constitutional guarantees to liberty, freedom of movement, and freedom of speech become meaningless when those freedoms the Constitution purports to guarantee are taken away by the provisions of the Preservation of Public Security Act under which people who show open opposition to government via the established machinery of showing such opposition are detained. It is of course not possible to directly associate the detention of the leaders of the prescribed Kenya Peoples Union with the fact of their forming an opposition party. This is because it is impossible to ascertain what the government considers to

be in the "interests of national security". When the Minister for Home Affairs was asked a question on

what decision has the government taken in respect of the leader of and deputy leader of the opposition and why?⁴⁰

The Vice-President and Minister for Home Affairs simply answered that the

Government has decided to detain the leader and deputy leader of KPU in the interest of national unity.⁴¹

During his introduction of a parliamentary motion on "Decline of Democracy in Kenya" a member of parliament stated that

Detention without trial is contrary to all democratic principles: and ... removal from parliament of those members of parliament who being dissatisfied with the government's non-socialistic practices left the governing party and joined the opposition, the way they were treated is very strange in the whole of the Commonwealth.⁴²

This member of parliament was subsequently detained along with several others.^{42A}

On the legality of keeping people under police custody for more than forty eight hours, the Attorney-General remarked in parliament that

there is no doubt, and there was no doubt then, and there is no doubt now that these three men had committed a criminal offence.⁴³

It is unlikely that the Attorney General was not aware of the provisions of section 77 of the Kenya Constitution which are headed "Provisions to secure protection of law" one of which stipulates that

Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty.⁴⁴

It is more likely that the Attorney General was showing an obvious disregard for the rule of law for when the Speaker of the National Assembly reminded him that "the question is the legality of detention, which cannot depend on an unproved crime," the Attorney General retorted that he was "satisfied that there was a prima facie case, and therefore it follows that the arrest was justified."⁴⁵

6. CONTROL AND REGULATION

In this chapter an attempt will be made to ascertain the role of the National Assembly and the Judiciary in the regulation and control of the application of coercive power in Kenya.

The National Assembly

As an instrument of regulation and control of coercion, parliaments in the Third World ~~World~~, and particularly in Africa, are ill-suited. This has been attributed to the roots of "the kinds of political systems which exist today."¹ The rewards of the political power it has been observed "are too great for any group of people to contemplate losing them."² Whether it is the rewards of political power or fear of executive power that is responsible for the ineffectual character of parliaments as a means of control of executive coercion would tend to depend on the country one has in mind. In Kenya it would seem to be a mixture of the two. That Kenyan members of parliament are relatively wealthier than the ordinary Kenyans is beyond doubt. The assets of the abortive parliamentary select committee to probe corruption in Kenya are illustrative of this.³ The Chairman of the said committee (now in detention) was able to acquire a house at Nyali in Mombasa at a cost of shs. 165,000/= in 1973, owned 100 acres of land, and was a co-proprietor of a printing firm in Nairobi.⁴ Another member owned

inter alia "two separate farms with a total acreage of about 2,200"⁵ while another was an absolute proprietor of a shs. 60,000 investment.⁶ The type of cars driven by this thirteen member group of Kenya parliamentarians included Mercedes 200, Volvo 144s, Citroen GS, Mercedes Benz 220s, and Peugeot 504.

The inability of African parliaments to exercise any control over the executive is only logical in terms of their socio-economic function in neo-colonialism. This becomes clear when viewed in historical perspective. Robert Martin has observed that:⁷

Legislatures in Commonwealth Africa were initially organs of the colonial state. The purpose of the colonial state was the exploitation of the wealth of a particular colony. A capitalist mode of production was introduced and a state machinery was created to manage the economic infrastructure so established. Thus the colonial state superstructure existed to guarantee and facilitate the systematic plundering of the surplus created by the labour of the colony's people ...

At independence there were two broad choices open and "whichever policy was chosen would effect the future of legislature", and the choice taken would indicate the class inclinations of those in power. Choice one was simply to maintain the existing colonial economic infrastructure "although making some attempts to raise, through foreign aid and so on, the level of development of the forces of production." This was the neo-colonialist path under which a "nascent national bourgeoisie would gradually come to occupy the class position formerly held by the colonialists".⁸ This choice results in the legislatures being given a very restricted role to play

for they must give their active support to policies necessary to achieve the goals of the "national bourgeoisie" for:

To the extent that the legislature is willing to do this, it must enact the necessary legislation and refrain from criticism. If the legislature tends to represent only or mainly the national bourgeoisie, this is not difficult. The neo-colonialist approach has, however, nothing to do with development. And in fact, national bourgeoisie seem to have largely given up on the various half-hearted approaches to the development which they attempted in the early years of independence. As the mass of the people began to see that expectations they had at independence were not being fulfilled, contradictions began to develop between them and the national bourgeoisie. The government, in order to maintain itself in power, was forced to rely more and more on dishonesty and force. The legislature had no alternative but acquiescence ...⁹

As to what happens when parliamentarians fail to support government policies, the government applies its coercive power upon the parliamentarians concerned or simply ignores to implement parliamentary resolutions. Thus when the Kenya National Assembly established a select committee on March 14, 1975 to conduct an investigation on the circumstances of the disappearance and murder of the late M.P. for Nyandarua North (Mr. J.M. Kariuki) and

to report to the house its findings with a view to securing and preserving evidence relevant to bringing to justice those concerned,^{9A}

the said committee came with findings that directly or indirectly implicated several senior police officers, including the Commissioner of Police and the Commandant of the G.S.U. and several politicians. At the time of

the presentation of the Report, the members of the Select Committee first went to present the Report to the President at State House, Nairobi, and it was not until five o'clock that the members arrived at parliament to table the Report. Even then some front-benchers tried to postpone the debate. The following day when the debate got under way,

the Vice-President startled MPs when he claimed that some MPs were in possession of two different versions of the report: "Which one shall we be expected to refer to, the one I am holding in my right hand or left hand?"¹⁰

Mr. Moi's question was never answered but it would appear that his attention was directed to the two names erased in one report.¹¹ During the debate it became clear that the government had no intention of adopting the Report or even of allowing the MPs to pass the resolution accepting it. Two government ministers tabled amendments which were roundly defeated and when the time came to vote on whether to accept the Report, the resolution urging the government to accept the Report, was passed with a majority of three votes. Among those who voted for the resolution were three ministers who were subsequently dismissed from their ministerial posts.¹² Later on while opening the Agricultural Society of Kenya Show at Nakuru President Kenyatta said "that he had dismissed some ministers who had tried to show that they were stronger than the popularly elected Government."¹³ The President added that

there were certain people in parliament who thought that they were angels, adding that by people electing

him, they were given him the strength to deal with destructive elements, and he was determined to accomplish the task before him, as long as he was alive and as long as he was elected leader of the country.¹⁴

For our purposes, it is important to note that despite the unanimous adopting of the Report, the Government never acted upon it. Instead the Attorney General castigated the Report as

a biased and prejudicial document couched in hyperbole, largely conjectured, and which admits in effect that the investigation got nowhere, and seeks therefore to hand the blame for its shortcomings on to certain members of the police, and by innuendo, to the executive and the Government.¹⁵

Those not supporting the Government's views in respect of the Report must have been aware of what type of reception to expect when one of them asked the Government to be told why members of the Special Branch "have to follow us wherever we go within Parliament Buildings even in the toilets."¹⁶ During a debate on a motion recommending action against an M.P. who had called the select committee "a bunch of rogues" an M.P. (Mr. Martin Shikuku) who had been an outspoken critic of the government during the debate on the Report stated that

We all honourable members in this house, Mr. Deputy Speaker /who at this time was Mr. M.J. Seroney/ and, this parliament is the only institution in which the public have faith ... the only thing left for Wananchi in Kenya is Parliament and they believe in it. And anyone who tries to lower the dignity of Parliament is trying to kill Parliament the way KANU has been killed ...¹⁷

At this juncture an Assistant Minister, on a point of order called for substantiation that "KANU has been killed." The Deputy Speaker ruled that according to parliamentary procedures, "there is no need to substantiate what is obvious."¹⁸

The Vice President on another point of order stated that "it would perhaps be better to qualify this matter because if we say KANU is dead we will be annoying many MPs and people throughout the country."¹⁹ The Deputy Speaker stood by his ruling. It turned out that what the Vice-President meant by annoyance would take the form of detention, for on the Wednesday of the week-ending October 20, 1975 "both Seroney and Shikuku were picked up from parliament by plain clothes policemen at the end of the day's proceedings."²⁰

The arrest of the MPs, from and, for views expressed in Parliament is clearly unlawful.²¹ But since they were detained under the Preservation of Public Security Act, the question of the unlawfulness of their arrest is ineffectual. For our purposes, what is important to note is that it clearly supports the earlier assertion²² that as a body of checking executive acts of coercion, parliament is powerless.

From our above discussion, it is also clear that police powers of coercion despite their statutory limitations²³ are frequently abused. There are many instances in which police have shot down suspects instead of arresting them.²⁴ Their frequent "swoops" in which they arrest

large numbers of people and lock them up in police cells in days before charging them has been the subject of debate in parliament on many occasions.²⁵

The Judiciary

Having noted the ineffectiveness of the National Assembly as a means of control of executive coercion, we now turn on to the judiciary. As an institution of control, the judiciary is particularly ill-suited. To begin with, the courts have no powers to initiate inquests into acts of coercion. Even if it has such powers, the judicial requirements as to proof and admissibility of evidence further restrict their ability to control acts of coercion.

In those situations where the courts have played any role, they have tended to lean on the side of the side exerting coercion. Take the case for example, of P. OKOO vs. The Republic.²⁶ Under a detention order issued on 30th July 1966 and signed by the minister for Home Affairs, the plaintiff was detained on 4th August, 1966. The detention order did not refer the plaintiff by his "proper or real name and in fact referred to him by a name which was not his name" although, as the court found out there was "no doubt ... that he was in fact the person that the detention order was intended to apply to." In this respect the court stated that

inasmuch as the Minister must be satisfied that the detention is necessary for the preservation of public security a partial mistake in naming

the person to be detained should not necessarily have the effect that that person should be released from detention where he is the person intended to be detained and there is in fact no confusion as to the real identity of that person.

In respect of the statement of reasons for detention required by the Constitution,²⁷ the court ruled that the following statement served on the plaintiff was not "sufficient in detail" to "satisfy the requirement of the Constitution":

As a leading member of the trade union movement you have consistently pursued the role of an agitator and have sabotaged not only good relations in the labour field but also on the labour policy of the Government by threatening illegal strikes in essential services thus adversely affecting the economy of the country and thereby the security of the Republic.

The plaintiff had argued that this lack of sufficient details rendered his detention unlawful. The court ruled that "there could well be a great deal of substance in such a submission" if no written statement was ever served on the plaintiff. "In this case," the Court continued, "there was a statement of grounds though not in sufficient detail." The plaintiff's remedy was therefore to apply to the court "and this court on such an application can order further and better particulars of the grounds for the detention." The court further added that it was "not bound to order that the detained person be released from detention." Further details were furnished within the time stipulated by the court and on the basis of that the court ruled that the grounds as stated "if true could legally justify his detention".

The court did not consider the truth of the grounds but what is important to note for our purposes was the observation that

The truth of these grounds and the question of necessity or otherwise for his continued detention are matters for the Tribunal and ultimately for the Minister rather than for this court.

As to whether the courts are themselves subject to the coercive power of the state, it is not easy to ascertain. Most members of the judiciary have stressed that they are "completely independent."²⁸ However as regards bail application, it has observed that

An accused person may appeal against the refusal of bail by a magistrate to a judge of the High court. In the past a number of judges of the high court were prone to allow such appeals and release persons on bail. This situation was not acceptable to the Attorney-General and he made his opposition to the granting of bail very clear to the Chief Justice. The response of the Chief Justice, then Sir James Wicks, was to order that all bail appeals would go to him personally to be dealt with in chambers. The obvious purpose of this ruling was to ensure that no mistakes would be made, and that prior to hearing bail applications the Chief Justice could consult with the Attorney General to receive his instructions.²⁹

The general practice of the magistrate courts is to refuse bail whenever the state prosecutor states that he is "under instructions to oppose bail." The state has in fact on numerous occasions invoked the instrumentality of the judiciary to give an air of legality on what are obvious acts of coercion.³⁰

Our discussion this far clearly indicates that the regulation and control of coercion rests, as it does

its application, almost entirely upon the executive. The form and manner of its application is determined by the executive whose powers in this respect are not challengeable.

7. CONCLUSION

Most of the conclusions that arise from our analysis of the legal organisation of coercion in the preceding chapters are self-evident in those chapters. What is done in this concluding chapter is therefore to outline some major observations.

Maintenance of "law and order" or "political stability" are noble ideals. "Law and Order" and "political stability" however are high prices to pay if their maintenance entails the perpetuation of savage regimes like the one existing in South Africa. No comparison, of course, is being drawn or indeed possible between Kenya and South Africa. This is merely being stated to underline the significance of law as a possible instrument of exploitation and oppression.

During the colonial era in Kenya law existed to serve the interests of a minority class. Colonial evolution as a stage in the process of imperialism gave way to neo-colonialism and instead of one imperial nation exercising exclusive rights of exploitation, exploitation became multi-nationalised and the local white settlers together with the so-called "labour aristocracy"¹ became agents and tools for exploitation. Throughout this period public law and especially the law of public order becomes a very effective means of coercion. Parliamentary privileges of freedom of speech are eroded to the extent that even the National Christian Council of Kenya expresses fear that it will become "difficult

to discuss important issues and make constructive criticism of government policy."² What this analysis set out to do was merely to show how this was done. In the beginning chapters of the dissertation an attempt was made to show the main instruments of coercion and the legal machinery setting and facilitating their maintenance and application. In the following chapters actual instances ~~of~~ are given of actual application of coercion. Chapter six examined the manner of regulation and control of coercion.

What emerges most clearly from our analysis is that coercion is exercised primarily for the purpose of protecting class interests. As to whose class interests are protected, it is obvious from the appendices that follow that it is the interests of the classes that favour our continued exploitation that are protected.

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APPENDIX I

KENYA ARMY UNITS AT INDEPENDENCE:

1. Headquarters, Kenya Army
2. Headquarters, 1 Infantry Brigade
3. I Signal Squadron
4. 3 Battalion Kenya Rifles
5. Training Company, 3 Battalion, Kenya Rifles
6. Medical Reception Station, 3 Battalion, Kenya Rifles
7. 5 Battalion, Kenya Rifles
8. Training Company 5 Kenya Rifles
9. Medical Reception Station, 5 Kenya Rifles
10. 11 Battalion, Kenya Rifles
11. Training Company, 11 Battalion, Kenya Rifles
12. Medical Reception station, 11 Battalion Kenya Rifles
13. Chaplin's Department
14. Headquarters 91 General Transport Company
15. 1 Independent Transport Platoon
16. 1 Driver Training School
17. 92 Car Company
18. 1 Transport Company
19. 67 Animal Transport
20. 1 Medical Company
21. 1 General Workshop Stores Section
22. 1 General Workshop Store
23. 1 Infantry Brigade Light Aid Detachment
24. 92 Car Company Light Aid Detachment
25. 1 Transport Company Light Aid Detachment
26. Electrical and Mechanical Engineering Training Team

27. Counter Intelligence Unit
28. Military Training School
29. Kenya Military Band
30. Military Education Department
31. Combined Pay and Records Office Kenya Military Forces
32. Civilian Administrative Staff, Kahawa
33. Civilian Administrative Staff, Nanyuki

APPENDIX II
THE PRINCIPAL COERCIVE LEGISLATION

	<u>CAP.</u>	<u>YEAR</u>
1. Administration Police Act	85	1968
2. Armed Forces Act	199	1970
3. Chiefs Authority Act	128	1970
4. Detention Camps Act	91	1961
5. Penal Code Act	63	1970
6. Police Act	84	1970
7. Preservation of Public Security Act	57	1967
8. Prisons Act	90	1967
9. Public Order Act	56	1962
10. Societies Act		1968
11. Trade Unions Act	233	1970
12. Vagrancy Act	58	1970

APPENDIX III

SOCIETIES DECLARED DANGEROUS TO THE GOODGOVERNMENT OF KENYA*

1. "Dini ya Msambwa" declared "dangerous to the good Government of the Republic" by Legal Notice No. 327 of 1968.
 2. "Students Union, University College Nairobi" (Sunu) Declared "dangerous to the good government of the Republic by Legal Notice No. 207 of 1972 of 19th October 1972.
 3. "Association of Jehovah's Witnesses in East Africa"
 4. "Watch Tower Bible and Tract Society"
 5. "International Bible Students Association"
 6. "Zion Watch Tower Tract Society"
 7. "Millennial Dawnists"
 8. "Russellites"
 9. "Standfasters"
- (Nos 3 to 9 above were declared "dangerous to the good government of the Republic" by Legal Notice No. 71 of 1973 which was revoked by L.N. No. 163 of 1973 of 20th August 1973 and "deemed to have come into operation on 27th April 1973)
10. Asso - Giritu Fish Breeding and Trading Company declared "dangerous to the good government of the Republic" by Legal Notice No. 83 of 1973 of 29th March 1973.

* Declared dangerous by the order of the Attorney General under section 4(i)(ii) of the Societies Act 1968.

11. Tent of the Living God
12- SONUGI

APPENDIX IV
PROHIBITED PUBLICATION

PUBLICATION	DATE OF PROHIBITION
1. "Revolution in Africa	3rd April 1965
2. "U.S. News and World Report" 1	15th Feb. 1966
3. "Africa and the World"	9th Feb. 1966
4. "Sauti ya Urafiki"	1st Feb. 1967
5. "News" (Monthly illustrated from the German Democratic Republic	1st Feb. 1967
6. "Who Rules Kenya?"	29th April 1967
7. "The Reds and the Blacks, A Personal Adventure	24th May 1967
8. "Cheche Moja Yaweza Kuanzisha Moto Mbugani" - Mao Tse Tung"	6th June 1967
9. "Quatations from Mao Tse Tung"	26th July 1967
10. All Publications of the Foreign Languages Press, Peking	12th October 1967
11. "The Nationalist" (Former Tanzania Daily)	31st January 1969
12. "World Revolution"	5th Feb. 1969
13. "Sauti Ya Wananchi"	19th Dec. 1969
14. "Africa and the World"	7th Jan. 1970
15. "The African Communist"	22nd April 1968
16. "Playboy" 2	11th April 1965
17. "Adam"	11th April, 1968
18. "Cavalier"	11th April, 1968
19. "Men Only"	11th April, 1968
20. "The Uganda Crisis 1968: Two Years After the Battle of Mengo Hill"	13th June, 1968

1. This Prohibition Order was revoked by Legal Notice No. 91 of 1969 of 25th March 1969.
2. Revoked by Legal Notice No. 178 of 1968 of 17th June, 1968.

APPENDIX V

PERSONS AGAINST WHOM DETENTION ORDERS UNDER THE PRESERVATION OF PUBLIC SECURITY ACT HAVE BEEN ISSUED DURING THE "TEN GREAT" YEARS OF INDEPENDENCE

1. Achieng Oneko
2. Oginga Odinga
3. Luke Obok
4. Ondiek Chillo
5. Odero Sar
6. Tom Okelo Odongo
7. Okuto Bala
8. Wasonga Sijeyo*
9. Ocholo Mak'Anyengo *late*
10. Patrick Ooko
11. Oluaende Oduol
12. J.M. Oyanji
13. Omolo Rading
14. Onyango Arigi
15. Munga Mukoli Katama
16. Frederick Colman Omondi s/o Enos Oyoo

18. Mafisi
 19. Rubis
 20. Khamin
 20. Paul
 21. Githobu
 22. Mohd

For Nos. 1 to 3 inclusive see special Edition of Daily Nation of October 27, 1969.

For Nos. 5 to 8 inclusive see Daily Nation, October 28, 1966

For Nos. 9 to 14 inclusive see Daily Nation, October 10, 1966

For No. 15 see the Notification of Detention Notice Gazette Notice 363 of 7/2/72.

For No. 16 see Gazette Notice 2007 of 7th July, 1972.

* As far as records show this is the only person detained in this period who remains in detention.

APPENDIX V

Biketi JS

In accordance with evidence received, the Committee considers that the following persons' movements and activities require further investigation:

* Hon. Mbiyu Koinange, E.G.H., M.P., Minister of State in the Office of the President

Mayor of Nakuru, Councillor Silas Wburu (Gichua

Councillor of Ol Kejuado County Council (from Ngong Area), John Mutung'u

Mr. Stanley Thuo, District Commissioner, Nyandarua

Senior Superintendent of Police, Arthur Wanyoike Thungu

Deputy Director of the National Youth Service, Waruhiu Itote (General China)

Mr. Evans Ngugi

Mr. Karanja (bodyguard of the Hon. Mbiyu Koinange).

6. The overall conclusion of the Committee is that although a very large number of witnesses were located and interviewed, its inability to place a more conclusive report before Parliament is largely due to the refusal of the heads of police to render any assistance even by disclosing the names of witnesses who might have been of value to the Committee, and consequently the Committee can only conclude that the police investigators do not wish the Committee to make any progress towards the bringing to justice of Mr. Kariuki's murderers.

APPENDIX VI

In accordance with evidence received, the Committee considers that the following persons' movements and activities require further investigation:

Mayor of Nakuru, Councillor Silas Mburu Gichua

Councillor of Ol Kejuado County Council (from Ng'ng' Area),
John Mwang'u

Mr. Stanley Thuo, District Commissioner, Nyandarua

Deputy Director of the National Youth Service,
Waruhiu Itote (General China)

Mr. Evans Ngugi

Mr. Karanja (bodyguard of the Hon. Mbiyu Koinange).

5.6.

The overall conclusion of the Committee is that although a very large number of witnesses were located and interviewed, its inability to place a more conclusive report before Parliament is largely due to the refusal of the heads of police to render any assistance even by disclosing the names of witnesses who might have been of value to the Committee, and consequently the Committee can only conclude that the police investigators do not wish the Committee to make any progress towards the bringing to justice of Mr. Kariuki's murderers.

Nairobi,
June 5, 1975

Signed: _____

HON. E. W. MWANGI, M.P.

APPENDIX VII

On Friday March 14, 1975, Parliament passed the following resolution:—

THAT this House being extremely disturbed by the manner of the disappearance and murder of our late colleague, the Member for Nyandarua North, Mr. J.M. Kariuki, resolves to appoint a Select Committee to conduct an investigation on the circumstances of the said disappearance and murder and to report to the House its findings with a view to securing and preserving evidence relevant to bringing to justice those concerned before such evidence is destroyed and that the said Select Committee be conferred with powers under Section (9) of the National Assembly (Powers and Privileges) Act, and that the following Members should be the Members of the said Committee:—

Hon. E. W. Mwangale, M.P., (Chairman)
Hon. Mrs. G. Onyango, M.P.
Hon. J. M. Shikuku, M.P.
Hon. J. K. Mulwa, M.P.
Hon. H. C. Wariithi, M.P.
Hon. M. J. Seroney, M.P.
Hon. B. Nabwera, M.P.
Hon. C. W. Rubia, M.P.
Hon. K. S. Mwavumo, M.P.
Hon. M. W. Mwithaga, M.P.
Hon. Dr. J. Muriuki, M.P.
Hon. J. M. Gachago, M.P.
Hon. D. M. Amin, M.P.
Hon. Dr. J. Kitonga, M.P.
Hon. J. Nyamweya, M.P.

People wishing to give evidence to the Committee are requested to contact the Clerk of the National Assembly at P.O. Box 41842, or Telephone 21291, as early as possible.

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Footnote Chapter 1

1. J.B. Ojwang, Letter to the Editor, The Weekly Review, Nairobi, December 15, 1975.

Footnotes: Chapter 2

1. Ringera A.G: "Essential Superstructural Features of the Colonial State in Commonwealth Africa and the Extent of their Transformation or Elimination During the Process of Constitutional Development Preceding Independence". Unpublished Essay, 1975.
2. Fundamentals of Marxism - Leninism, 1963 p. 123.
3. Engels, Letter to J. Bloch, September 21, 1890.
4. Fundamentals of Marxism - Leninism, Moscow, 1963.
5. For a general discussion as to the nature of the origins see Marx, A Contribution to the Critique of the Political Economy, Progress Publishers, Moscow, 1970; Mutunga W., "Demystification of the Kenya Law of Hire Purchase," 1975 EALJ forthcoming.
6. Ringera, A.G. op. cit.
7. Mutunga W. op. cit.
8. Ibid.
9. Clomens Duff, Ed. Fundamentals of Marxism - Leninism, 2nd Ed. Moscow 1968 p. 127 quoted in Mutunga op. cit.
10. Lenin, Selected Works, Moscow vol. 2 p. 283.
11. The most authoritative is Robert B. Seidman's "The Reception of English Law in Colonial Africa Revisited /1969/ Eastern Africa Law Review", p. 147.
12. Ruth First: The Barrel of a Gun, Political Power in Africa and the Coup d'Etat, Penguin, 1970.
13. Robert Martin, "Legislatures and Socio-Economic Development in Commonwealth Africa" Discussion Paper Conference on Legislatures in Contemporary Societies, Albany, N.Y. Jan. 20-24, 1975.
14. Ringera, A.G. op. cit.
15. Carl G. Rosberg Jnr. and John Nottingham in The Myth of 'Mau Mau' Nationalism in Kenya, EAPH, Nairobi, 1966 at pp. XV ff have written: "At first African sought to obtain redress for the grievances within the framework of the settler-oriented colonial

state, following the Second World War, however, many came to challenge its very legitimacy."

- 15A. This was not a process merely of "transfer of formal political authority to indigenous rulers. It also represented the adaptive, looptive pre-emptive process of integrating a potentially disruptive nationalist party into the structures and requisites of the colonial political economy"
- Gary Wasserman: Continuity and Counter-Insurgency: the Role of Land Reform in Decolonizing Kenya, 1962-70" Mimeo.
16. The first Lancaster House Constitutional Conference was held early in 1960 and the basic questions discussed at this meeting was the composition of the Legislative Council, the franchise; the character of the executive; and the question of safeguards, both electoral and property. The Second Conference was held in 1962 where the outlines of the Independence Constitution were drawn up and it was as a result this conference that Kenya was granted internal self-government on June 1, 1963. The final conference was held in 1963. For an historical analysis of these conferences see Y.P. Ghai and J.P.W.B. McAuslan Public Law and Political Change in Kenya, pp. 74, 177 and 207.
17. See generally Oginga Odinga, Not Yet Uhuru, London, Heinemann, 1967.
18. Colin Leys "Politics in Kenya: The Development of Peasant Society" University of Nairobi Institute for Development Studies Discussion Paper No. 102 of 1970.
19. Ibid.
20. Ibid.
21. Robert Martin observes that "States will continue to exist while class struggle exists and the degree of freedom permitted by the ruling class of any particular state will depend largely on how intensely the class struggle threatens the position of that ruling class. Where the ruling class represents interests opposed to the mass of the people it will fall back increasingly on naked oppression as in the case today in most of the capitalist world" Personal Freedom and the Law in Tanzania, Oxford University Press, Nairobi, 1974, p. 19.
22. H.W.O. Okoth-Ogendo "The Politics of Constitutional Change in Kenya since Independence" African Affairs Vol. 71, No. 282 1972.

- 22A. There is an on-going debate as to whether there is in fact national capital with its own national bourgeoisie in Kenya. The term "national bourgeoisie" is therefore used only as a convenient term. No attempt is made here to enter the debate on which literature is rapidly growing, see, for example,
- (i) Colin Leys': Underdevelopment in Kenya (1975) op. cit.
 - (ii) Brett's Colonialism and Underdevelopment in East Africa H.E.B. London, (1973).
 - (iii) Mutiso's Kenya: Politics Policy and Society Nairobi, (1975).
 - (iv) van Zwanenberg's "Neo-Colonialism and the Origin of the National Bourgeoisie in Kenya between 1940 and 1973" Journal of Eastern African Research and Development, vol. 4 No.2, 1974,
 - (v) Nikola Swainson's "Against the Notion of a 'comprador class': Two Kenyan case Studies" Mimeo, Lagos, 1976.
 - (vi) Willy Mutunga's Kenya: The Rent Acts and the Exploitation of the Tenant, Dar es Salaam, Thesis, 1973.

Against these can be compared

- (i) Shivji's Work: Class Struggles in Tanzania: Tanzania Publishing House, Dar es Salam, London, H.E.B., 1973
 - (ii) Mamdani: Politics and Class Formation in Uganda London, 1976.
23. Colin Leys, Underdevelopment in Kenya: The political Economy of Neo-Colonialism, H.E.B., London, 1975, p. 170.
24. Ibid.
25. Ibid. p. 173
26. Ibid. p. 174
27. Ibid. p. 205
28. Ibid. op. cit.
29. Ibid.

Footnotes chapter 3

1. S.R.O. 575.
 2. Ghai & McAuslan op. cit p. 37
 - 2A. ^{The High} Court of Uganda in Kanyike v. Attorney General of Uganda ^{observed} that "The duty of the army in any civilised society governed by the rule of law is clear. It is to fight external foes and internally to put down insurrections and similar disturbances but always in obedience of the civil authorities, who in a democratic society ought to be their masters."
- Quoted from E. Veitch East African Cases on the Law of Tort, Sweet and Maxwell, London, 1973.
3. L.N. 205 of 1964.
 4. L.N. 89 of 1965.
 5. Preamble to cap. 199.
 6. S.6 Armed Forces Act, Cap. 199 aforesaid.
 7. Ibid.
 8. Ibid.
 9. See Appendix I
 10. 1st Kenya Rifles, 3rd Kenya Rifles and 5th Kenya Rifles.
 11. F.W. Foram The Kenya Police 1887-1960.
 12. Ibid. p. 6.
 13. J.B. Wolf "Asian and African Recruitment in the Kenya Police 1920-1950." Discussion paper at 15th Annual Meeting of the African Studies Association, Philadelphia, Nov. 8-11, 1972.
 14. Ibid., p. 4
 15. Ibid.
 16. See Report of the Kenya Police Commission, 1953.
 17. Ibid. para. 8
 18. Sessional Paper No. 24, 1954.
 19. See Chapter four of this dissertation.

20. It was not until 1964 that the killer of Dedan Kimathi, Henderson was deported.
21. Report of the Kenya Police, op. cit., para 108.
22. Ibid., para, 163.
23. F.W. Foram op. cit. p. 190.
24. Ibid.
25. Preamble to the Police Act, Cap. 84.
26. Ibid. s.3(1).
27. Ibid. s.14(1).

Footnotes chapter 4

1. For a list of the major ones see Appendix
2. S. 70.
3. S.71(1).
4. S.71(2).
5. Emphasis added.
6. Preamble to Public Order Act (cap. 56).
7. S.8(1) of Public Order Act op. cit.
8. Ibid. s.8(2).
9. Ibid., S.14(1).
10. Ibid. s.20(1).
11. Under s.5(2) "No public meeting or public processions shall take place save under and in accordance with the terms and conditions of a licence in that behalf issued under this section."
12. Chapter 5 of this dissertation.
13. Section 75(1).
14. Clarendon Press, Oxford 1972.
15. Ibid. pp. 150 ff.

See also Peter Stein, John Shand Legal Values in Western Society, Edinburgh, 1974 pp. 72-73.
16. See S.2.
17. S.2(a).
18. S.2(b).
19. S.2(c).
20. S.2(d).
21. S.2(e).
22. S.2(f).
23. S.2(g).
24. See Legal Notice No. 263 of 1966.

25. S.4(2) as made under s.3(3).
26. L.N. 323 of 1966.
27. Regulation 3(1).
28. Regulation 6(1).
29. Public Security (Armed Forces) Regulations, L.N. 265 of 1966 regulation 2(1).
30. L.N. 266 of 1966.
31. Regulation 3(3) of the 1966 Regulations.
32. Regulation 5(f) of the 1966 Regulations.
33. Regulation 5(q) of the 1966 Regulations.
34. Regulations 7(1) Ibid.
35. Allowed under Regulations 9 and 10 Ibid.
36. Regulation
37. Regulation 3.
38. Regulation 5.
39. Section 52(1).
40. Section 52(2).

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Footnotes chapter 5

1. S.81 of the Penal Code and s.2(1) of Public Security (Armed Forces) Regulations L.N. 265 of 1966.
2. See the observations of the High Court of Uganda in Bukeny Attorney General [1972] E.A. 326 at 329 per Russell Ag.J.
3. See section 29 of the Criminal Procedure Code.
4. H.W.O. Okoth-Ogendo: "Politics of Constitutional Change" op. cit.
5. Constitution (Amendment Act) (No. 3) 1969.
6. For a detailed discussion of the "Little General Election" see David Koff "Kenya's Little General Election" Africa Report, October 1966.
7. Africa Report, October 1966 quoted in Kibaki J.B., TransTribal Politics in Kenya, 1966, p. 37.
8. Kaggia and Another v. Republic [1969] E.A. 451.
9. Kibaki J.B. op. cit. p. 43.
10. See generally C. Gertzel, M. Goldsmidt, D. Rothchild: Government and Politics in Kenya, East African Publishing House, Nairobi, 1969.
12. Daily Nation, October 28, 1966.
13. Ibid.
14. During the public meeting that resulted in the Kisumu incident for example, President Kenyatta is reported as 'stating thus:' "If it was not for my respect for you Odinga, I would put in prison now and see who has the power in this country." See Jeremy Murray Brown Kenyatta, Fontana, London, 1974 p. 319.
15. See a letter from an "Eye-Witness" in The Observer, London, 23rd November, 1969.
16. For a journalist's analysis see The Weekly Review, Nairobi, October 20, 1975.
17. Together with Seroney should be associated Mark Mwithaga, former member of Parliament for Nakuru who was charged and convicted of an offence alleged to have been committed almost two years earlier! Weekly Review, Nov. 1, 1976. Miss Chelagat Mutai who was charged and convicted of inciting her own constituents to violence. She was a representative of the youthful leaders who understand the politics of neo-colonialism.

18. For a fuller analysis of this see the next chapter.
19. Ibid.
20. See President Kenyatta's observations in this respect at the Nakuru Agricultural Show as reported in The Standard. See footnote 14 of chapter 6.
21. Hence in his "Teaching of Law in Kenya" paper Robert Martin observes that: "The G.S.U. uniform, different from that of the rest of the police, is military in character, reflecting the nature of the duties of the G.S.U. We watched a group of thirty G.S.U members, presumably a platoon, form up in three ranks outside the Central Police Station. Unlike the riot police who were very poorly equipped, each G.S.U. member carried a respirator, a steel helmet with chin strap, a metal-tipped club, tear gas grenades, and either a rifle or a pistol."
22. Kenya House of Representatives Official Report 28th April, 1965 Col. 1633.
23. The Implementation of the Recommendations of the Kenya Police Commission, 1953,
24. Kenya House of Representatives, Official Reports Vol. 16 Part I. Col. 267.
25. 12th September, 1968.
26. Official Reports Vol. 16 Part I op. cit. Col. 1502.
27. See for example the incidents cited by MPs in ibid Col. 1548 and Official Reports op. cit. of 28th April, 1965 Col. 1627.
28. See chapter 3 above.
29. Police clashes with students were witnessed as early as 1969, 1973, and 1974 but to mention some of the more recent ones.
30. Transition Issue No. 40 of December 1971.
31. Ibid. p. 67.
32. These were the times of the leaderships of Orenge Ombaka and Oluoch Obura. - Head English Dept, Moi University
33. The Union was banned by a Legal Notice made under the Societies Act. See Appendix IV.
34. For newspaper accounts see the Daily Nation and The Standard (both of Nairobi) of June 4, 1975.

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- former M.P.

35. The expression "pardoned" which was used by the mass media is as inaccurate as it is misleading for the students never pleaded guilty nor were they tried.
- 35A. See Weekly Review June 2, 1975.
- 35B. See the Daily Nation of May 29, 1970 for an example of the use of GSU to evict squatters. See also an account of GSU harassment of innocent people reported in the March 1977 issue of the women's monthly VIVA.
36. In Justice Without Trial: Law Enforcement in Democratic Society p. 7.
37. Ibid p. 7.
38. Ibid.
39. Sanford Kadish, "Legal Norm and Discretion in the Police and Sentencing Process" in 75 Harvard Law Review 904-905.
40. Official Reports, op. cit. 5th Nov. 1968 Col. 1492.
41. Ibid. 14th June 1968 Col. 1003.
42. This was with regard to the detention for more than 48 hours of three opposition party members.
- 42A. See Appendix V.
43. Official Reports, op. cit. 26th March, 1968 Col. 1142.
44. S.77 (2)(a).
45. Official Reports op. cit. 26th March 1968 Col. 1142.

Footnotes: chapter 6

1. Robert Martin: "Legislatures and Socio-Economic Development in Commonwealth Africa", A paper prepared for discussion at the Conference on Legislatures in Contemporary Societies, Albany, New York, Jan. 20-24, 1975 p. 18.
2. Ibid., p. 18.
3. The Weekly Review Nairobi May 26, 1973 p. 5.
4. Ibid. 1.
5. Ibid., p. 10.
6. Ibid.
7. Robert Martin: Legislatures op. cit.
8. Ibid. p. 37.
9. Ibid.
10. The Weekly Review, Nairobi, May 26,
11. For a comparison of the two reports see appendices V and VI.
12. These were Mr. Masinde Muliro, a Minister and Messrs Peter Kibisu and John Keen, Assistant Ministers.
13. The Standard, Nairobi, June 14, 1975.
14. Ibid. (front page).
15. Daily Nation, Nairobi, Wednesday, June 11, 1975.
16. Ibid.
17. The Weekly Review, Nairobi, October 20, 1975 p. 4.
18. Ibid. p. 4.
19. Ibid.
20. The Weekly Review, October 20, 1975 p. 9.
21. The National Assembly (Power & Privileges) Act.
22. J.B. Ojwang has remarked that "parliament in Kenya today is hardly an effective control on executive power. The rhetoric which makes pretension to parliamentary supremacy, it appears is often but illusory" p. 162 of Executive Power in Kenya's Constitutional Context, unpublished LL.M. Thesis. 1976

23. Infra, p. 24
24. For examples see Daily Nation, Nairobi, May 13, 1976
November 26, 1975.
25. See for example, 'the case in which more than 1,000
Mombasa residents were "netted" and forced to spend
three days "in the rain" before being charged in
a court of law: Daily Nation, Nairobi, Friday July
2, 1976. There is also on record the case of a
former police officer, David John Muniu, who was
held illegally for one year and 16 days!: Daily
Nation, Nairobi, January 9, 1976 p. 5.
26. Civil Case No. 1159 of 1966 unreported.
27. Infra pp.
28. See J.N. Namasake and J.B. Ojwang: "The Independence
of Magistrates" a paper presented for discussion to
the Kenya Magistrates Association Seminar 1976.
29. Robert Martin: Personal Footnote op. cit. p. 14.
30. See for example the statement by the Vice-President
when answering a question in parliament in respect
of the arrest of students at the University of
Nairobi that: "The court ordered that the students
be remanded, and I cannot go beyond the ruling."
Reported in the Daily Nation, Thursday May 29, 1975.

Footnotes chapter 7

1. The expression "labour aristocracy" as used by Giovanni Arrighi and John S. Saul in their essay "Nationalism and Revolution in Sub-Saharan Africa" in Essays on The Political Economy of Africa op. cit. p. 89.
2. See the statement by the National Christian Council of Kenya following the detention of Martin Shikuku, J.M. Seroney reported in Target, Nairobi, October 26, 1975.

B I B L I O G R A P H YA. BOOKS

1. Arrighi, Giovanni and Saul, Joh Essays on The Political Economy of Africa, E.A.P.H. Nairobi, 1974.
2. Berle, A. Berle Power, Harcourt, Brace & World, N.Y. 1969.
3. Davidson, Basil Which Way Africa? Penguin African Library, 1971 3rd Ed.
4. Duff, Clomens Ed. Fundamentals of Marxism-Leninism Foreign Languages Publishing House, Moscow, 1963 2nd Ed.
5. Fairman, Charles The Law of Martial Rule, Chicago, Callaghan & Co. 1943 ch. 3.
6. First, Ruth The Barrel of a Gun, Penguin African Library, 1970.
7. Foran, F.W. The Kenya Police 1887-1960, Rober Hale Ltd., London, 1962.
8. Ghai, Y.P. & McAuslan, J.P.W. Public Law and Political Change in Kenya, Oxford University Press, 1970.
9. Lenin Selected Works Foreign Languages Press, Moscow, Vol. 2 p. 283.
10. Leys, Colin Underdevelopment in Kenya: The Political Economy of Neo-Colonialism, H.E.B. London, 1975.
11. Martin, Robert: Personal Freedom and the Law in Tanzania, Oxford University Press, Nairobi, 1974.
12. Marx, Karl: A Controbution to the Critique of the Political Economy, Progress Publishers, Moscow, 1970.
13. Mutiso, Gideon: Kenya: Politics Policy and Society E.A.L.B. Nairobi (1975).
- 13A. Murray-Brown, Jeremy: Kenyatta, Fontana, London, 1974.
14. Nyerere, Julius Freedom and Development, Oxford University Press, Dar., 1973.
15. Rawls, John A Theory of Justice, Clarendon Press, Oxford.

16. Shivji, Lssa G. Class Struggles in Tanzania.
17. Skolnick, Jerome H. Justice Without Trial Law Enforcement in Democratic Society, John Wiley & Sons N.Y. 1966.
18. Stein, Peter and Shand, John Legal Values in Western Society, Edinburgh University Press, 1974.
19. Van Zwanenberg R.M.A. Colonial Capitalism and Labour in Kenya 1919-1939 E.A.L.B. 1975.
20. Wolff, Richard D. Britain and Kenya 1870-1930
The Politics of Colonialism, Transafrica Publishers
Nairobi 1974.

B. PAPERS

21. Johns D.H. "Defence and Police Organisation in East Africa" Proceedings of the East African Institute of Social Research Conference January, 1964.
22. Kadish, Sanford H. "Legal Norms and Discretion in the Police and Sentencing Processes" (1912) 75 Harvard Law Review.
23. Langdon, Steve "The Political Economy of Dependence: Note Toward Analysis of Multinational Corporations in Kenya" Vol. 4 No. 2, 1974 Journal of Eastern African Research and Development.
24. Mutunga, Willy "Demystification of the Kenya Law of Hire Purchase" Vol. XI, No. 2, 1975 East Africa Law Journal.
25. Okoth-Ogendo, H.W.O. "The Politics of Constitutional Change in Kenya since Independence" Vol. 71, No. 282, 1972 African Affairs.
26. Seidman, Robert B. "Law and Stagnation in Africa" Vol. 5, 1973 Zambia Law Journal.
27. Stuart-Smith, James, "Military Law: Its History, Administration and Practice" 85 Law Quarterly Review 478.
28. Wasserman, Garry "The Independence Bargain: Kenya Europeans and the Land Issue 1960-1962" 1973 Journal of Commonwealth Studies.

C. UNPUBLISHED PAPERS

29. Gitobu, E.I. "Freedom from Arrest: An Examination of the Law Relating to Arrest with Particular Emphasis on Police Powers of Arrest" A research Essay in part fulfilment of the requirements of the 4th Term, 1975, Faculty of Law.
30. Leys, Colin "Politics in Kenya: The Development of Peasant Society" University of Nairobi, I.D.S. Paper No. 102, 1970.
31. Martin, Robert: "Teaching of Law of Kenya: A Personal Footnote" 1975 Canadian Association of African Studies Discussion Paper.
32. Ojwang, J.B.A. and Namasake, J.N. "The Independence of Magistrates" 1976 Kenya Magistrates Association Discussion Paper.
33. Ringera, A.G. "Essential Superstructural Features of the Colonial State in Commonwealth Africa and the Extent of their Transformation or Elimination During the Process of Constitutional Development Preceding Independence" class Essay, LL.B III 1975.
34. Kibaki, J.B. Trans Tribal Politics in Kenya, University of Nairobi, 1966.
35. Lyall, A.B. Land Law and Policy in Tanganyika 1919-1932, University of Dar es Salaam, 1973.
36. Mutunga, W. Kenya: The Rent Acts and the Exploitation of the Tenant, University of Dar es Salaam, 1973.
37. Ojwang, J.B. Executive Power in Independent Kenya's Constitutional Context, University of Nairobi, 1976.

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