

Appendix 'D'

~~the Colonies on the Hola incident and considered at the Cabinet meeting, stated that "There is no doubt that detainees were on that day illegally beaten".¹¹ The Cabinet discussed the Hola incident again on the 11 June 1959 and the Cabinet Conclusions to that meeting state:~~

~~"As regards the legality of the policy of rehabilitation by forced labour, which the Cabinet approved in 1954, it was open to question whether the Kenya regulations constituted a breach of the Forced Labour Convention of 1930, or the Convention of Human Rights. But there could be no doubt that the way in which the regulations were put into effect at Hola on this occasion involved a breach of both Conventions".¹²~~

(iv) Joint Liability of the Colonial Office

38. It is averred that the Colonial Secretary and/or officials within the Colonial office, encouraged, procured, acquiesced in or were otherwise unlawfully complicit in the torture and ill treatment inflicted upon the Claimants thereby making them liable as joint tortfeasors and the Defendant vicariously liable for the same torts. In particular, pending disclosure, the following facts and matters are relied upon as evidencing the aforesaid actions:

PARTICULARS

- a) The Colonial Office exerted effective control over the functions of the Colonial Administration and its security forces and had the power to overrule administrative orders and laws passed by the Kenyan legislature. The Governor of Kenya consulted the Secretary of State for the Colonies with regard to all significant administrative decisions, including detainee handling and allegations of detainee abuse.
- b) Colonial Office officials and the Colonial Secretary were presented with overwhelming evidence of abuse particularised at paragraph 47 below and well

¹¹ Memorandum C. (59) 92 [Appendix 4]

¹² [C.C. 34 (59) at page 5]. [Appendix 5]

knew that detainees were subjected to systemic, institutionalised unlawful violence during screenings and in the detention camps. Further, Mr William Mathieson, head of the East Africa Department in the Colonial Office during the Kenya Emergency, stated in an interview after Kenyan Independence had been granted that both the Colonial Office and the Secretary of State for the Colonies realised that there was “an infringement of basic legal rights going on in one of Her Majesty’s colonies”. He stated that the Colonial Office “...also regarded it as a really inevitable casualty of the situation”. Moreover, “there was evidence that there were incidents [of violence against individuals practiced illegally], probably there were more that didn’t come to light than actually did come to light...I think we all realised that there must have been a lot; if there was one or two things going on, there was probably a whole lot more”.¹³

c) In the face of that knowledge officials in the Colonial Office and/or the Secretary of State for the Colonies deliberately sought to suppress evidence of that systematic, institutionalised violence both of their own motion and in concert with the Colonial Administration. In particular:

(1) On 14 December 1954 Colonel Arthur Young resigned as the Kenyan Commissioner of Police due to the brutality committed by the Home Guard upon detainees. He wrote to the Colonial Office and claimed that the abuse of detainees was condoned by officers of the Provincial Administration and that the Governor himself had interfered in a Police investigation [Appendix 10]. In the public statement issued by the Colonial Office after Colonel Young’s resignation, no mention was made of the abuses committed by Europeans which they had been informed of and no investigation with respect to his allegations ensued.

¹³ RH, Mss. Brit. Emp. s. 527/528, *End of Empire, Kenya*, vol. 2, William Mathieson, interview, 157. in Elkins, C., pp 304, 2005. *Imperial Reckoning: The Untold Story of Britain’s Gulag in Kenya*.

- (2) In May 1956 a Colonial rehabilitation officer named Eileen Fletcher made public allegations about the conditions in the camps in a pamphlet entitled *"The Truth about Kenya – an eye witness account"*. The pamphlet detailed the inhuman conditions in the camps and the ill treatment detainees were subjected to. The Colonial Secretary and the Governor of Kenya exchanged secret telegrams in order to determine how to coordinate their refutation of the said allegations. Officials in the Colonial Office and the Colonial Secretary subsequently deliberately and dishonestly sought to undermine Miss Fletcher's credibility and character. The Colonial Secretary stated in the House of Commons on 31 October 1956: "I am quite satisfied that Miss Fletcher's charges are based in the main on hearsay, on partisan opinion and personal prejudice".
- (3) On 4 February 1957 a British Army Officer, Captain Philip Meldou wrote to the Colonial Secretary listing details of specific officers who perpetrated acts of torture and abuse in the detention camps [Appendix 12]. Before the letter was sent, Governor Baring, who knew of the allegations, sent a telegram to the Colonial Secretary on 31 December 1956 which stated: *"[The] letter may be bluff or blackmail but I am inclined to take it seriously. It may have the makings of another Eileen Fletcher affair."* The Colonial Secretary responded on 3 January 1957 as follows: *"[The] maximum results we can hope for from this approach is moderation and control of political exploitation of any disclosures made"*. Thereafter, the Colonial Secretary impugned the credibility of Meldou's claims in the House of Commons and in correspondence with the Opposition.
- (4) On 16 July 1957, the Colonial Secretary approved the amendment to the Prison Regulations approved by the Minister of Legal Affairs of Kenya to permit the use of overpowering force to punish recalcitrant detainees during the dilution process. Such force as was authorised included

repeated beatings of detainees, on occasion to unconsciousness, and the knocking detainees to the ground and forcing sand in their mouths.

- (5) On 8 June 1958 the Observer published a list of allegations from detainees at Lokitaung with regard to the inhuman conditions of their detention, particularly the lack of any drinkable water. On 10 June 1958 the Colonial Secretary wrote to Baring stating that "*We will now do our best to kill the allegations here*".
- (6) Throughout the Kenya Emergency the Colonial Secretary deliberately and dishonestly refused the continuous demands for independent investigations into the repeated allegations of detainee abuse. The said demands came from numerous quarters by parliamentarians, particularly Ms. Barbara Castle and Mr. Fenner Brockway, by members of the British press, as well from African members of the Kenyan Legislative Council.

It is averred that the acts of suppression set out in paragraph (c) above were all undertaken in the knowledge and with the intention that the system of abuse would be maintained.

~~39. The Claimants reserve the right to provide further particulars of the Colonial Office's complicity in the torture and ill treatment inflicted upon the Claimants. It is the Claimants' case, supported by expert analysis, that it is likely that material held by the Defendant which they have refused to disclose pursuant to the Pre Action Protocol, is likely to demonstrate the active role played by the Defendant in participating in, encouraging, procuring and acquiescing in the torture and ill treatment of detainees during the Kenya Emergency.~~

~~(b) taking of hostages;~~

(c) outrages upon personal dignity, in particular, humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.”

46. Having ratified the Conventions and as guardian of the Queen’s subjects in Kenya, the United Kingdom Government was under a duty to take all reasonable and necessary steps to ensure that those detained by the security forces were not subjected to such treatment and/or punishment.

47. The Defendant knew or ought to have known that systematic, institutionalised unlawful violence was being applied in order to defeat the insurgency and in particular in the course of arrests, screenings and detention in the camps to compel suspected Mau Mau members to confess and repent their allegiance and comply with the regime. The Secretary of State for the Colonies and his Office were presented with the overwhelming evidence set out herein below.

PARTICULARS OF KNOWLEDGE

- a) In December 1952 it was acknowledged that 45 prisoners had been badly beaten at a temporary detention camp in Rumuruti ‘with the object of extorting information and confessions’.¹⁴ This information was relayed to the Colonial

¹⁴ Anderson, D., pp 309, 2005. Histories of the Hanged: Britain’s Dirty War in Kenya and the End of Empire. London: Phoenix.

Office in London by the Kenyan Governor's Deputy in a memorandum dated 16 December 1952 which also stated that the Kenya Police Reserves were probably involved.

- b) In 1952 Mr Fenner Brockway M.P. established the Movement for Colonial Freedom. In the course of the Emergency, through this organisation and in the House of Commons, he raised on numerous occasions cases of abuse by security forces, amounting to torture and, in some cases, resulting in the death of Mau Mau suspects.
- c) On 28 January 1953 Canon T.F.C. Bewes wrote to Sir Evelyn Baring, the Governor of the Colonial Administration, setting out a list of alleged torture carried out by white members of the security forces against African members of his church. These allegations were published widely when in February 1953, Canon Bewes held a press conference in London addressing a host of journalists. He accused British security forces of using "the third degree" to extract intelligence and impress on insurgents the strength of colonial power.¹⁵
- d) On 29 January 1953 Elijah Njeru was killed in Embu by two officers of the Kenyan Police Reserve.
- e) From as early as January 1953, numerous individuals and pressure groups lobbied and campaigned in London to highlight the extent of the atrocities taking place.
- f) In the Spring of 1953, a letter written by Inspector H. Cross to his friends in England was published in the press. Inspector Cross had recently arrived in Kenya to run a police station in the South Nyeri Reserve. In his letter he detailed systematic abuse by the Home Guard when interrogating and detaining suspects. The letter came to the attention of the Secretary of State for the Colonies.¹⁶

¹⁵ [Appendix 6]

¹⁶ [Appendix 7]

- g) On 5 December 1953, the Governor of Tanganyika provided the Secretary of State for the Colonies with a full report concerning 40 complaints of serious assaults by beatings, whipping and burning using cigarettes that had taken place during screenings of suspected Mau Mau insurgents in October 1953. The screenings were carried out by Kenyan security forces under the supervision of a European officer named Mr Hayward.¹⁷
- h) Among hundreds of prosecutions brought against suspected Mau Mau insurgents, there was clear evidence of systematic violence perpetrated by the security forces against suspects in 80 per cent of the cases. In many cases the beatings were confirmed by the court. The severity of cases arising in Nyeri in the middle months of 1954 caused Justice Law, who tried many of the prosecutions against suspected insurgents, to write to the Chief Secretary to complain.
- i) On 18 July 1954 Muriu Wamai, a member of the Home Guard, together with five other members, murdered two men suspected of being Mau Mau at a special interrogation centre at Ruthagathi. Prisoners were brought there with the knowledge of British officers to be beaten and tortured. The six men were prosecuted and at their trial Muriu Wamai confessed to the murders and gave evidence about the systematic torture that took place. Muriu Wamai also told the Court that he had confessed the crime to the local district officer, Mr Richmond, who had advised him to cover it up and lie. Richmond had assisted him in forging entries in the records to further the cover up. Richmond had further assisted him in the concoction of sworn statements from the other five accused, supporting the defence. Three police officers also provided false evidence. In his judgement of 4 December 1954, in which he convicted Muriu Wamai and his co-defendants of both murders, Acting Justice Cram made public the systematic torture practiced at Ruthagathi as well as the corrupt and dishonest efforts made by the district officer and the police to hide the truth. At Governor Baring's

¹⁷ [Appendix 8]

direction an embargo was placed upon the judgment, but copies leaked out and a London based-group named the Federal Independence Party made copies. Governor Baring's attempts to stop the publication of the judgment ought reasonably to have alerted the Defendant to the possibility that he was seeking to hide institutionalised and systemic malpractice, and/or that he was not taking all reasonable and proper steps to ensure that no such malpractice occurred.

- j) As the trial was proceeding, Kenya's new Commissioner of Police Colonel Arthur Young, who had arrived from England in March 1954, became increasingly concerned. He was confronted by the evidence of widespread abuse and concerted and well organised attempts to obstruct the Criminal Investigations Department ("CID") in seeking to investigate and secure prosecutions in such cases. Attention was particularly focused on Nyeri in Central Province. The obstruction came at all levels of the Colonial Administration, from the Central Province Commissioner to the Member for African Affairs. In a series of communications with Governor Baring dated between 22 November and 28 December 1954, he raised his concerns setting out numerous and detailed examples of the most serious assaults by screening and Home Guard officers that had caused the deaths of suspects.¹⁸ In respect of many of these cases he also drew attention to the concerted attempts by officers of the Colonial Administration to interfere with investigations and bring them to a halt. Governor Baring did not respond to his communications and in a letter to him dated 14 December 1954, Colonel Young resigned.¹⁹ In giving his reasons, he again relied upon what he described as "the continuance of the rule of fear rather than that of impartial justice". He stated that two particular features affecting public order had caused him the greatest anxiety: "One is the interference by the Executive with the crime investigations of the Police, and the other is the disregard of the rights of the ordinary African when he is subject to detention in screening camps and in Home Guard posts". On 28 December 1954 Young wrote again to

¹⁸ [Appendix 9]

¹⁹ [Appendix 10]

Governor Baring: "I refer once again to my letter to you of the 22nd November last, to my resignation of the 14th December and my further letter of the 21st December, all dealing with the subject of the brutality committed by the Home Guard under the control of Government's Administrative Officers. Once again I regret that Your Excellency has not seen fit to acknowledge my communications to you on this subject or to give me an indication that anything effective is being done to remedy this shameful situation". Following his resignation Young also wrote to the Secretary of State for the Colonies setting out the reasons for his resignation, including that it was prompted by malpractices committed against Mau Mau suspects that "were condoned by officers of the Provincial Administration" and that there had been interference by the Governor himself into one such investigation.

- k) Following Colonel Young's resignation a debate took place in February 1955 about the circumstances that had given rise to it in Parliament. In the course of the debate allegations of systematic abuse were raised. Extracts from the judgement of Acting Justice Cram were read out in the House of Lords by Lord Jowitt, a former Lord Chancellor, including the following passage: "It appears that there exists a system of guard posts manned by headsmen and chiefs, and that these interrogation centres and prisons to which the Queen's subjects, whether innocent or guilty, are led by armed men without warrant and detained and, as it seems, tortured until they confess to alleged crimes, and then are led forth to trial on the sole evidence of these confessions".²⁰
- l) In 1955 Barbara Castle M.P raised with the British Government another case ("the Kichina case") where it was overwhelmingly demonstrated that the Administration was involved in a cover up of brutality by two European police officers which resulted in a suspect's death. Between the preliminary hearing and trial, the charges against the officers had been reduced from murder to causing grievous bodily harm.

²⁰ *HL Deb 10 February 1955 vol 190 cc1128-204 [Appendix 11]*

- m) Barbara Castle visited Kenya in November 1955. Upon her return she wrote in the national press about more cases of systematic abuse that she had uncovered.
- n) In May 1956, an article was published in the Quaker periodical *Peace News* by former Colonial rehabilitation officer, Eileen Fletcher entitled “Kenya’s Concentration Camps” and later a pamphlet entitled *Truth about Kenya – an eye witness account by Eileen Fletcher*. In this article she made serious allegations about conditions in prisons and detention camps generally and in particular raised concerns about the illegal detention of girls.
- o) In January 1957 Captain Philip Meldon published in *Peace News* and *Reynolds News* an account of his experiences of working in the Pipeline between March 1954 and May 1955, first as a temporary officer in the Kenya Police Reserve and then as a rehabilitation officer. On 4 February 1957 he wrote personally to the Secretary of State for the Colonies listing abuse of detainees in the form of beatings, assault, floggings and overwork. He also provided the names of specific British officers who had perpetrated acts of torture in Kenya’s detention camps.²¹
- p) A secret memorandum attached to a letter of 25 June 1957, compiled by the then Minister of Legal Affairs of the Colonial Administration, entitled “*Dilution – Detention Camps – Use of Force in Enforcing Discipline*”. The secret memorandum detailed the dilution technique used by colonial officers including the manhandling of detainees whereby “...a resistor who started [“the Mau Mau moan”] was promptly put to the ground, a foot placed on his throat and mud stuffed in his mouth; and that a man whose resistance could not be broken down was in the last resort knocked unconscious”.²²

²¹ [Appendix 12]

²² [Appendix 2]

- q) A memorandum on 17 December 1957 sent by the head of the Ministry of Community Development and Rehabilitation, Thomas Askwith, to the Governor's Chief Secretary, in which he stated that the violent treatment to which detainees were subjected could lead to death or serious injury.
- r) On 4 July 1958, the editor of the London *Observer*, David Astor wrote to the Secretary of State for the Colonies asking for assistance in relation to a letter he had received from 383 detainees and 25 convicts at Mariira Works Camp. The letter set out a series of serious complaints about the conditions of detention including beatings which had caused two deaths, one in January and one in June 1958. The letter explained that the detainees had written to the Kenyan Government on numerous occasions but received no response.
- s) On 26 September 1958 Governor Baring informed the Secretary of State that on 15 September 1958 a detainee had died in suspicious circumstances at Gathigiriri prison and detention camp in the course of a lengthy screening by experienced interrogators.²³
- t) Further reports of abuse in the camps came from Victor Shuter, a prison officer in Manyani and Fort Hall who, on 10 January 1959, sent a 15 page affidavit to the Colonial Administration outlining abuse and the names of a dozen British officers who had been involved in inhuman and degrading treatment in certain camps.²⁴ In February 1959, the Daily Mail published an article by Captain Ernest Law entitled "I knew too much". He described witnessing daily beatings during his first two months as a prisoner in Kamiti where he also saw women being repeatedly brutalised. Further evidence of abuse of African detainees in Kamiti came from two other Europeans who were imprisoned there and provided statements in February 1959: Leonard Bird and Anthony Williams-Meyrick.

²³ [Appendix 13]

²⁴ [Appendix 14]

- u) The allegations of systematic abuse were further corroborated and brought to the attention of the Colonial Administration and the Secretary of State for the Colonies by the detainees themselves. Over the years of the Emergency hundreds of letters were sent by detainees to them outlining the abuse including assaults and torture by members of the security forces.²⁵
- v) The Claimants repeat paragraphs 9-14 above. By reason of the matters aforesaid, Sir George Erskine and the soldiers of the British Army in Kenya during the emergency directly witnessed the systematic abuse and/or learned of its existence.

~~48. The aforesaid assaults and the resulting injuries caused to the Claimants were caused by the negligence of the Defendant in that it:~~

PARTICULARS OF NEGLIGENCE

- a) Failed to heed and/or act upon the overwhelming evidence presented to the Colonial Office from early 1953 onwards that the extreme, brutal and lethal assaults perpetrated in the course of arrests, screenings and/or detention were part of an institutionalised system which permitted the use of deliberately excessive force.
- b) Caused or permitted all investigations into allegations of abuse to be conducted by the Colonial Administration.
- c) Caused or permitted the Colonial Administration to treat all such cases as isolated incidents for which responsibility rested exclusively with the individuals who perpetrated the violence and perhaps their immediate supervisor.
- d) Failed to take any or any reasonable steps to institute investigations that were independent of the Colonial Administration;
- e) Failed to take any or any reasonable steps to institute investigations into the conduct of the Colonial Administration and in particular into the steps it had taken or failed to take to bring the aforesaid violence to an end and to ensure the full

²⁵ [Appendix 15 contains a small selection of letters from detainees.]