

Penality, Violence and Colonial Rule in Kenya

(c. 1930–1952)

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‘There was every reason for a fight between your police and our people wholemeal on this night but thanks God they were persuaded to have patience and a small war was averted. (...) Whatever it may have been, we would only request you to instruct your force to take notice and care for religion and custom rights and not to act in a manner insulting and annoying to people so as to create a war, resulting in some dead and some wounded.’ (Extract from a collective petition written by the Swahili community of the Manyatha Arab location to the Superintendent of Police of Kisumu in the Nyanza Province, 16 February 1950.)

‘We fail to understand why rough treatment comes from European Officers as on that occasion. (...) If such mishandling should be let go on, then even yourself will be one day ashamed as these (African) gentlemen were. Whenever one is beaten about like that and before the public and without any reason, one really becomes angry and badly insulted and thus may easily fight.’ (Letter from the Luo Thrift and Trading Corporation to the Provincial Commissioner of Nyanza, 20 December 1948.)

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List of Abbreviations

CO	Colonial Office
CCP	Committee on Corporal Punishment
CHO	Committee on Habitual Offenders
CPAC	Committee on the Penal Administration in the Colonies
KNA	Kenya National Archives
KHRC	Kenya Human Rights Commission
TNA	The National Archives
RH	Rhodes House Library

1 - INTRODUCTION

In 1996, the Kenyan Human Rights Commission (KHRC) published an alarming report on prison administration in Kenya to focus public attention on human rights abuses and conditions of confinement in national jails.¹ For the first time, an organisation provided in-depth, accessible and critical research on prison conditions and administration in the country. The title of its report, *A death sentence. Prison conditions in Kenya*, resonated as a severe condemnation of the government and a public recognition of its failure to achieve the prison reform initiated a decade earlier. During the same year, both the Attorney General and the Minister for Home Affairs publicly acknowledged the deplorable state of Kenyan prisons and the rising number of inmate deaths as a result. In its ground-breaking report, the KHRC drew a picture of the whole Kenyan criminal justice system, tracing its foundations, failures and endemic violence back to the colonial period. The report exposed continuities in penal structures, conditions and policies: 'The new Kenyan state inherited a prison system from the colonial government shaped by nearly seventy years of British rule and particularly by a period of intense growth during the political crisis of the 1950s'.²

Indeed, colonial violence and penal repression carried on into the postcolonial world and bequeathed a longstanding legacy to the newly independent states in East Africa.³ After independence, the Kenyan government patterned its coercive agenda after colonial precedents, barely improved conditions of confinement and reproduced many of the most punitive criminal measures, including judicial flogging, political detention and the classification of certain crimes against property as a capital offence. After the publication of the KHRC report, the Prison Service initiated a new policy of reform, with a view to alleviating the harrowing experience of convicts in Kenya and adapting to international human-rights standards.⁴ Yet

¹ Kenya Human Rights Commission, *A Death Sentence. Prison conditions in Kenya* (Nairobi, 1996).

² Ibid, p. 7.

³ A. Burton, 'The Penal System and Punishment in British and Commonwealth East Africa, 1880-1990s: A Research Agenda', Unpublished paper for the workshop 'Cultures of confinement: Comparative Histories of the Prison in Africa and Asia', SOAS, University of London, June 2001, p. 2.

⁴ L. Weighton, 'Kenya: Wheels of Prisons Reform Struggle to Spin', *Daily Nation*, 19 January 2011.

reformist discourses merely helped to conceal the on-going violence of the penal system and the strongly entrenched hostility towards delinquents within society at large. In the face of rising rates of theft and burglary, expanding sections of the Kenyan urban upper- and middle-class vehemently condemned the state for failing to curb crime, and demanded an increase in punitiveness, both in court and penal institutions. In 2013, much-publicised cases of rape where alleged perpetrators were not brought to court sparked widespread controversy about the country's culture of violence and impunity, causing massive demonstrations in Nairobi.⁵ With a criminal justice system bedevilled by inefficiency and corruption, the capital today is awash in vigilantes, generally hired by businessmen who have decided to take the law into their own hands, resulting in a proliferation of private police forces and lynchings.⁶ On a wider scale, state and popular demands for increasingly severe punishments tend to undermine penal reform, and to preserve a chaotic, underfunded and highly punitive prison system that conjures up vivid memories of its colonial ancestor. In view of this lasting legacy, an analysis of penal reform and violence under colonial rule in Kenya is long overdue, especially now that discourses on crime and punishment have come to play a crucial role in the political and social life of the country. By way of introduction, we will first undertake a literature review of the topic, define more precisely the conceptual and methodological approaches adopted in this research and describe the types of archives collected. Then, we will briefly set the landscape of criminal justice in the colony, in order to gain a broad understanding of the structures, policies and issues that defined colonial justice and law enforcement in Kenya.

THE LITERATURE: COLONIAL JUSTICE AND PUNISHMENT REGIMES

Although physical violence and punishment were central to colonial domination in Africa, this topic has been poorly represented in the existing scholarship. As David Killingray

⁵ D. Harding, 'Demonstrators Outraged over 'Grass Cutting' Punishment in Kenyan Gang Rape Case', *Daily News*, 2 November 2013.

⁶ B. Shelby, 'Rough Justice', *Word Press Review*, 46/9 (1999).

points out, ‘scholarly interest has focused much more on the important questions relating to the framing and working of colonial legal codes and processes; it has been left largely to a few lawyers to comment on African colonial penal policies. This is in marked contrast to the very large and continuing interest shown by scholars in the history of imprisonment and punishment in Europe and North America’.⁷

Yet, over the last two decades, scholars have expressed a growing concern about the history of imprisonment in the colonial context, and have published considerable information on the subject. Two fairly distinctive generations of scholarship have studied and debated the history of state coercion in the colonial setting.⁸ The first, largely influenced by Michel Foucault’s analysis of the Western prison, has provided an in-depth analysis of colonial imprisonment in Asia, Africa, South America, the Caribbean and the Indian Ocean.⁹ In *Discipline and Punish*, Foucault identifies long-term historical changes in European penology and argues that, during the eighteenth and nineteenth centuries, ‘various, usually corporal forms of punishment were eliminated in favour of the uniform, almost egalitarian practice of imprisonment. With this, the focus of punishment shifted from causing the criminal physical pain to teaching him self-discipline through a regimented daily life of bathing, eating, exercise and work in jail.’¹⁰ By and large, Foucault associates the onset of modernity with the decline of state-inflicted destruction and public acts of punishment or torture involving the criminal body with a ‘softer’ and more discreet set of disciplining tactics, operating not only in carceral spaces, but also within schools, hospital, workhouses and asylums.¹¹ Largely influenced by this ground-breaking work, the first generation of studies interpreted colonial prisons as

⁷ D. Killingray, ‘Punishment to Fit the Crime?: Penal Policy and Practice in British Colonial Africa’, in F. Bernault (ed.), *A History of Prison and Confinement in Africa*, (Portsmouth, 2003), p. 98.

⁸ For further information on the historiography on the subject, see notably the article of T. C. Sherman, ‘Tensions of Colonial Punishment: Perspectives Recent Developments in the Study of Coercive Networks in Asia, Africa and the Caribbean’, *History Compass*, 7/3 (2009): 659-677.

⁹ M. Foucault, *Discipline and Punish: The Birth of the Modern Prison* (London, 1977). See notably: F. Bernault, ‘The Politics of Enclosure in Colonial and Post-Colonial Africa’, in F. Bernault (ed.), *A History of Prison and Confinement in Africa* (Portsmouth, 2003); C. Elkins, *Britain’s Gulag: The British End of Empire in Kenya* (London, 2005). Against the Foucauldian perspective, see P. Zinoman, *The Colonial Bastille: a History of Imprisonment in Vietnam, 1862-1940* (Berkeley, 2001) and F. Dikötter, *Crime, Punishment and the Prison in Modern China* (New York, 2002).

¹⁰ T. Sherman, ‘Tensions of Colonial Punishment’, p. 664.

¹¹ M. Foucault, *Discipline and Punish*.

original experiments in ‘hybridity’, mixing the disciplinarian features of their Western counterparts with local characteristics.¹² Despite significant variations in time and space, colonial forms of imprisonment had had many common features, which can be seen in the Kenyan context. These included the racialization of the carceral system, the endemic violence caused by unhealthy and unsafe conditions, poor diet, punitive labour and physical coercion, the primacy of economic considerations over reform, and the development of original forms of agency and resistance within jails. On a global scale, these colonial features challenged the history of Western punishment as represented by Foucault and Bentham’s model of the Panoptic penitentiary, demanding new interpretations of penal violence in the colonial context.

In the past few years, a second generation of research, breaking away from the Foucauldian model, has renewed the historiography and expanded the scope of investigations into colonial violence and punishment. Some studies have placed specific forms of punishment, such as judicial flogging or capital punishment, within the broader context of labour control and racial domination.¹³ Other recent works have broken new ground by examining punishment not in isolation but as part of ‘larger matrices of colonial coercion’ and social defence.¹⁴ As Taylor Sherman pointed out, penal practices in African colonies ‘ranged from firing on crowds and bombing from the air, to dismissal from one’s place of work or study, collective fines, confiscation of property, as well as imprisonment, corporal and capital punishment’.¹⁵ David Anderson demonstrated how various penal practices intersected with capital punishment during the Mau Mau uprising, insisting on the need for comprehensive

¹² See notably the various articles published in F. Bernault, *A History of Prison and Confinement*.

¹³ R. Turell, *White Mercy: A Study of the Death Penalty in South Africa* (London, 2004); S. Hynd, ‘Capital Punishment and Colonial Rule: Punishment, Violence and “Civilization” in British Africa’, D.Phil. thesis, University of Oxford, 2007; S. Pierce, and A. Rao, (eds), *Discipline and the Other Body: Correction, Corporeality, Colonialism*, (Durham, 2006); A. Devenish and S. Pete, ‘Flogging, Fear and Food: Punishment and Race in Colonial Natal’, *Journal of Southern African Studies*, 31/1 (2005): 3–21; D. Anderson, ‘Punishment, Race and “The Raw Native”: Settler Society and Kenya’s Flogging Scandals, 1895-1930’, *Journal of Southern African Studies*, 37/3 (2011): 479-497.

¹⁴ Quoted in: T. Sherman, ‘Tensions of Colonial Punishment’, p. 12. See also: C. Anderson, *The Indian Uprising of 1857–8: Prisons, Prisoners and Rebellion* (London, 2007); D. Anderson, *Histories of the Hanged: Britain’s Dirty War and the end of the Empire* (London, 2005); D. Branch, ‘Imprisonment and Colonialism in Kenya, c. 1930–1953: Escaping the Carceral Archipelago’, *The International Journal of African Historical Studies*, 38/2 (2005): 239–64; J. Alexander and G. Kynoch (eds), ‘Special Issue: Histories and Legacies of Punishment in Southern Africa’, *Journal of Southern African Studies*, 37/3 (2011).

¹⁵ T. Sherman, ‘Tensions of Colonial Punishment’, p. 16.

studies of punishment, reaching far beyond the confinement landscape.¹⁶ He recommended considering both institutional and non-institutional penal practices, whether intertwined, complementary or competitive, as well as intermediary channels, actors and institutions, because physical violence was often perpetrated by settlers and policemen acting of their own accord, outside the law. By adopting this perspective, scholars have managed to place penal practices into broader political, economic, ideological and social configurations. They have become more sensitive to the experience of colonised people who had to deal with colonial criminal justice and to the different local meanings attached to colonial punitive practices.¹⁷

Historians also engaged in broader debates over the extent of state hegemony and control and the colonial state's capacity to dominate colonised subjects at will through its penal institutions. According to Florence Bernault, states were particularly successful in stifling African dissent and opposition and maintaining the 'social antagonisms vital to white supremacy' in penal institutions.¹⁸ Peter Zinoman and Franz Dikötter take the opposite view, arguing that states were unable to impose strict discipline in jails, where convicts had the capacity to evade control and resist confinement.¹⁹ In a similar perspective, Daniel Branch argues that colonial prisons in Kenya were undisciplined spaces where both warders and prisoners established 'negotiated orders', from which European authorities were barred and where convicts often held the upper hand.²⁰ Depending on the context and institution, the rank and file of prison administrators could discreetly establish independent rules and arrangements with convicts designed to suit their own interest: 'warders, whether free or not, were notorious for extortion and corruption, for smuggling and for routine violence in jails. Their activities contributed to the sense that the prison walls were porous, as they acted as conduits between inmates and the world of goods and people on the outside. Because prisoners and warders often had more in common than warders and their European superiors in the colonial

¹⁶ D. Anderson, *Histories of the Hanged*.

¹⁷ T. Sherman, 'Tensions of Colonial Punishment', p. 17.

¹⁸ F. Bernault, 'The Shadow of Rule: Colonial Power and Modern Punishment in Africa', in F. Dikötter and I. Brown (eds), *Cultures of Confinement: a History of the Prison in Africa, Asia and Latin America* (London, 2007), p. 58.

¹⁹ P. Zinoman, *The colonial Bastille* and F. Dikötter, *Crime, Punishment and the Modern Prison*.

²⁰ D. Branch, 'Imprisonment and Colonialism in Kenya', p. 254.

administration, they tended to create their own 'customary order' inside the jail walls'.²¹ In their view, the colonial states became strikingly vulnerable when anticolonialist struggles developed across the British empire in the late 1940s, resulting in the jailing of new generations of political dissidents. In very different contexts, these studies have shown how nationalists and communists both managed to subvert the internal functioning of the colonial prison and to transform jails into centres of cultural and political resistance, by organizing their own programmes of education and training.²² Highly politicised convicts were vocal in condemning the dreadful conditions and increasingly challenged jail authorities, creating more visible and open spaces of confrontation, agency and resistance.

THE RESEARCH PROBLEM: PENALITY, PHYSICAL VIOLENCE AND GOVERNANCE

This thesis aims to explain the enduring violence and the impact of colonial repression in Kenya, through the exploration of a particularly significant period, from the year 1930, when a new Penal Code more closely modelled upon British legislation was introduced, to the beginning of the Emergency in 1952. From the late twenties onwards, the Colonial Office in London pressed colonial governments to initiate a series of legal and penal reforms modelled on metropolitan developments; these sparked off a global rethinking of crime and punishment in the colonial context, and notably in Africa. In Kenya, debates were held both in government appointed committees and in colonial society, attracting the attention and participation of large sections of the white public. Methods of punishment thus became a crucial issue, about which broader political, economical and ideological struggles were waged. They constitute a useful lens through which to study state domination and social order in the colony. As Gary Kynoch and Jocelyn Alexander have argued, in Southern Africa, punishment was central to the colonial encounter: 'repressive settler rule, armed liberation struggles and the absence of

²¹ T. Sherman, 'Tensions of Colonial Punishment', p. 663.

²² P. Zinoman, *The colonial Bastille* and F. Dikötter, *Crime, Punishment and the Prison in Modern China*.

equitable justice systems have ensured that discourses and practices of ‘punishment’ profoundly shaped the colonial experience’.²³ On a large scale, punitive mechanisms played a crucial role in creating and maintaining particular modes of governance, ideological representations and social identities; studying them reveals the capacities and ambitions of the state and the complexities of colonial society in Kenya. Debates about penal reforms and the failed attempts to implement them both resulted from and influenced relations of race, class and gender, as well as colonial ideas about state control, human rights and personhood.

In colonial Kenya, punishment must be primarily conceived as a means by which the state re-established or extended its reach and remade subaltern subjectivities. Over the period, the colonial state benefited from a dwindling modicum of legitimacy. It increasingly intervened to regulate and constrain the social and economic life of African subjects in order to maintain and reinforce white political and economic dominance. Along with global processes of state-making and capitalist accumulation, the colonial government criminalised new categories of ‘social deviants’ or political opponents, applying an expanding array of punitive legislation. The identification and punishment of new ‘threats to order’ or ‘enemies’ was central to processes of state formation and social control both in Europe and Africa and allowed the colonial government in Kenya to extend its reach, compensate for its vulnerabilities and challenge growing African political opposition, notably from the 1940s onwards. While singing the reformist tune of the Colonial Office, successive governments grudgingly adopted piecemeal penal reforms. In practice, they normalised high levels of judicial punitivity and bodily violence and permitted the development of parallel arenas of punishment offensive to national and international sensitivities, often to establish or regain control in territories where their supremacy was being challenged. Despite the rhetoric of reform, penal institutions and practices thus ‘worked as a social conservancy’, resulting in few improvements in conditions and organisation and high levels of irregularity and bodily

²³ J. Alexander and G. Kynoch (eds), ‘Special Issue: Histories and Legacies of Punishment in Southern Africa’, p. 395.

coercion.²⁴ In addition, the state's repertoire of coercive tactics grew steadily more severe and repressive, while exceptional or extra-legal excrescences of state and popular violence, designed to compensate for the frailties and shortcomings of state control, became permanent. In contradiction to Foucauldian-oriented studies which assumed the overwhelming pre-eminence of the prison within the repressive landscape, this research illustrates the extreme diversity of state punitive regimens, both institutional and otherwise, as well as the centrality of forms of corporeal violence and objectification inflicted on the African criminal body through coercive apparatuses and practices.

More precisely, this thesis seeks to understand in more depth the complex interplay between various punitive regimens and the troubled relationship between punishment, state governance and physical violence in colonial domination. Many academic studies of prisons have argued that the 'penal institutions of a people' are 'the expression of its social state'.²⁵ Various historical and sociological theories, notably within the Durkheimian, Marxist or Foucauldian traditions, have studied the relationship between humanitarian discourses on punishment and strategies of state control in a Western context. Foucault notably examined the onset and development of political liberalism from the late eighteenth century, with a view to 'historical processes redefining the political categories of the "human" and the body through modern projects of state control and regulation'.²⁶ In his view, 'modern' states in Europe progressively abandoned the public forms of physical violence and chastisement characteristic of the Middle Ages, a time when 'the Old Sovereign' primarily sought to control territories rather than populations and starkly imposed its rule upon its subjects. From the eighteenth century, European states increasingly resorted to a set of disciplinary techniques and institutions, with a view to touching and reforming the 'deviant' or 'criminal' soul, reducing physical pain to a minimum and promoting the internalisation of norms of good behaviour

²⁴ F. Bernalt, 'The politics of Enclosure', p. 74.

²⁵ Quoted by D. Branch, 'Imprisonment and Colonialism in Kenya', p. 258.

²⁶ J. Alexander and G. Kynoch (eds), 'Special Issue: Histories and Legacies of Punishment in Southern Africa', p. 396.

through complex processes of surveillance, individualisation and subjectification.²⁷ In view of the new sensitivities to physical pain, the reformed prison was meant to replace the most brutal forms of corporeal violence with physical discipline involving regular exercise and routine acts and dominate the repressive landscape.

When scholars looked at the colonial context, they generally argued that the dialectic between state legitimacy and violence and the modern technologies of bio-political regulation had followed a much more complex and troubled trajectory in dependencies, with the co-existence of ‘pre-modern’ and ‘modern’ forms of governance and punishment. The low disciplinary nature of prisons, the maintenance of corporeal technologies of power and the development of extra-legal means of coercion testified to this unfortunate fate of ‘modernity’ in the colonial context. Contrary to the dominant scholarship on the subject and before commenting precisely on the present conceptual and methodological approach, this research involves a fundamental shift in theoretical perspective, arguing that the academic division between ‘premodern’ and the ‘modern’ fails to capture what is really at stake in colonial penalties. The paradoxes of colonial punishment in Kenya were not a mere consequence of the state’s lack of funds; still less did they result from a brutal resurgence of supposed the ‘barbarism’ of ancient ages or ‘underdeveloped’ societies. Instead, they constituted an integral part of a state-sanctioned agenda for imperial control and were part of a larger equation involving local political, economic and ideological interests, all of which will be the object of close examination. Broad sections of colonial society in Kenya, both official and non-official, European and African, shared a definite interest in normalizing, sanctioning and institutionalizing punitive practices and bodily violence against African offenders. Actually, these contradictions in state punishment are also to be found, though in a less visible manner, in current Western contexts, whether disclosed by the recent upsurge in penal excess or by the treatment of immigrants from former colonies in the detention camps of Europe. Because the colonial context made them more visible, as punitive repertoires resonated with openly racial

²⁷ M. Foucault, *Discipline and Punish*.

ideologies, structures and practices, it constitutes a useful laboratory for reflecting upon and experimenting with state control and coercion. In the colonial setting, punitive regimens and policies were essentially based upon notions of embodied difference and of racialized disability. They used the African body and suffering as a crucial site of application. As pointed out by Alexander and Kynoch, the complex dialectic between state liberalisation and violence, and more precisely, between humanitarian protection of the body and physical subjugation was at the very centre of colonial governance and requires in-depth study. Therefore, as far as Kenya is concerned, we must get a better understanding of the political economy of public violence and punishment during the two decades preceding the Mau Mau counterinsurgency. Studying this topic offers a chance to discuss and shed fresh light on colonial tactics of state governance and the nature of colonialism in general.

THE METHODOLOGY AND CONCEPTUAL APPROACH OF THE THESIS: THE PRISON AND BEYOND.

This thesis will make several original methodological and conceptual choices, breaking away from previous scholarship and relying on the new perspectives opened up by the most recent works. In the wake of Michel Foucault's seminal work on the prison in Europe, studies of colonial punishment have focused either on the single institution of the prison or, more recently, on other isolated forms of punishment, such as corporal and capital punishment²⁸. As a result, these works have not considered the extremely diverse and complex nature of colonial punitive regimens or the complex nexus between them, and have thus misrepresented the underlying logic of domination and contradiction at work within the broader political economy of penal practice. The purpose of this thesis is to break new ground in the study of colonial punishment, by adopting a more holistic approach and considering a broader range of sanctions. Punishment was not limited to imprisonment and could take an extreme variety of forms, including fines, confinement, bodily punishment (judicial flogging and non-

²⁸ See notably Sherman, T. C., *State violence and punishment in India, 1919-1956* (London, 2011).

institutional forms of physical violence in the form of beatings, slapping, kicking and torture), collective punishment (notably through livestock seizures, the illegal seizure of properties, collective fines, etc.), banishment and displacement, and judicial and non-judicial killings. It could be enacted by state actors, subaltern authorities, or private forces (African and European) in both institutional and non-institutional contexts. All these practices mobilised different and often interconnected sections of the police, judiciary, administrative and penal systems, and constituted competitive 'coercive networks' with their own actors, logic and purpose.²⁹ They were also informed by common broader debates about law, order and punishment, disseminated by successive government-appointed committees. One has to consider all these networks in a single frame, both because punitive practices often intersected with one another, and also because comparing different punitive arenas reveals larger imperial technologies of power, as well as conflicts or collusion between different local groups.

It will be impossible to study precisely and equally all penal practices, as the scope of such research would exceed the framework of a thesis. The question of capital punishment will be set aside, since it has recently been thoroughly analysed by Stacey Hynd and only played a minimal role in the repertoires of state coercion during this period.³⁰ In colonial Kenya, overall rates of execution were quite low when compared to other British colonies. As Stacey Hynd argues, colonial authorities probably did not feel the need to resort to the death penalty as an easy response to violent crime. They could use a wide variety of other coercive measures and institutions to punish the most serious offenders: 'part of the reason behind this comparative restraint in the use of the death penalty, it can be argued, lies in the 'incumbent violence' of the evolving colonial order, with structures of imprisonment, widespread flogging and restrictions on African social and geographical mobility enabling the state to feel relatively secure: the very structures that will later enable State of Emergency responses to Mau Mau'.³¹ By contrast, the question of extra-legal police violence and the extra-judicial killings of

²⁹ The concept of 'coercive networks' is used by T. Sherman in 'Tensions of colonial punishment'.

³⁰ Hynd, S., 'Murder and Mercy: Capital Punishment in Colonial Kenya, c. 1909–1956', *International Journal of African Historical Studies*, 45/1 (2012), p. 85.

³¹ *Ibid.*, p. 86.

African workers murdered at the hands of their employers on white farms had much more impact and significance for colonial governance and public life and will consequently be the object of extensive attention.

Punishment can be understood only if contextualised within broader coercive, judicial and social configurations. The present study does not confine itself to an institutional analysis of punishment but includes the development of competing coercive networks, setting both within broader legal and policing structures and wider colonial discourses about crime and punishment. The focus of this research is the whole criminal justice system, or more precisely, what the sociologist David Garland calls 'penality'.³² As Garland writes, this term implies an analysis of 'the interlinked processes of law-making, conviction, sentencing, and the administration of penalties'.³³ This research seeks to consider a complex array of coercive institutions and discourses, which ultimately informed patterns of prosecution and punishment in the colony. Finally, as forms of punishment and severity are social constructions, this topic must be contextualised within broader social, political and cultural configurations. Great attention will be paid to the institutions and practices of social control and extra-legal punishment, which intersected with, replaced or reinforced institutional punitive regimens. Finally, this thesis will explore the social and cultural meanings attached to punishment, whether in settler, official or African communities, paving the way for a cultural history of punishment in colonial Kenya.

The study of punishment also offers an interesting insight into the state's internal divisions and allows a broader reflection on the nature of state governance in the colony. Previous studies of colonial Kenya have tended to take the strength and power of the state for granted, in comparison with other British colonies. By contrast, this work focuses on its shortcomings, contradictions and internal conflicts. Daniel Branch notably opposed Florence Bernault's assumption that colonial Kenya was characterised by a series of penal institutions

³² S. Hynd, 'Law, Violence and Penal Reform: State responses to Crime and Disorder in Nyasaland, c. 1915-1964', *Journal of Southern African Studies*, 37/1 (2011), p. 423.

³³ Quoted by S. Hynd in 'Law, Violence and Penal Reform', p. 423.

and a culture of control resembling a ‘carceral archipelago’ and that it successfully suppressed all forms of resistance or opposition within the jail.³⁴ In colonial Kenya, the state’s coercive repertoire was much more diverse, fluid and vulnerable than Florence Bernault acknowledges, illustrating both the shortcomings of colonial state control and the contradictions of colonial rule in general. As affirmed by Berman, the ‘Janus-faced’ state exerted only intermittent control over its lower ranks, giving colonial administrators, settlers and local authorities considerable latitude to influence the politics of crime and punishment in accordance with their own conflicting interests.³⁵ The implementation of coercive policies was consequently irregular and clearly embedded in local politics. As Taylor C. Sherman has demonstrated, in colonial India, ‘battles over the shape of the state tended to take place on the ground’, or sometimes in district offices, rather than in provincial or cabinet meetings.³⁶ Besides, colonial control and policing of the territory was actually limited in extent and replete with tensions and shortcomings. For lack of resources and staff, the judiciary, administration and police authorities tended to focus on criminal offenses that challenged the ideological or economical centres of colonial domination. Authorities in Kenya experienced considerable difficulties in ensuring control over Africans outside European-dominated cities and settled areas. They often showed little interest in the implementation of coercive policies in outlying areas, leaving spaces for original forms of African agency and resistance. In colonial Kenya, punitive regimens were often vulnerable, fluid, and negotiated, notably in rural areas or smaller urban centres. This study will consequently underline the colonial state’s frailties and impossibilities and shed fresh light both on its logics of domination and practices of neglect.

Finally, this research will engage with wider debates over the relationship between ordinary and exceptional violence in colonial domination. The scholarship on the subject focused on wars of conquest and decolonization and essentially considered colonial violence in its exceptional forms. As far as Kenya is concerned, the history of punishment before and

³⁴ F. Bernault, ‘The Shadow of Rule’, p. 65. D. Branch also discusses this aspect in ‘Imprisonment and Colonialism in Kenya’, p. 240.

³⁵ B. Berman, *Control and Crisis in Colonial Kenya, The Dialectic of Domination* (London, 1990).

³⁶ T. Sherman, *State Violence and Punishment in India*.

after the Mau Mau episode has been the object of little attention; instead, scholars has increasingly focused on state violence during the counterinsurgency campaign.³⁷ As Daniel Branch explains, ‘the unintended effect of the imbalance of scholarly enquiry has, perhaps, been to create an impression that the mistreatment of Mau Mau’ was merely ‘an aberration’ or only ‘a reaction to the peculiar circumstances of the Emergency period’.³⁸ The violence of the state’s response to the Mau Mau uprising can be better understood in light of the penal practices that prevailed over the two previous decades and the steady increase in colonial punitiveness in Kenya, both in court and in penal institutions. An increasing number of historians have demonstrated that colonial authorities ‘set alarming precedents’ in the decades preceding the emergency, ‘by increasing the harshness of sentences, making prison conditions much more punitive, and regulating and petty criminalizing the daily life of ordinary Africans’.³⁹ This research shows how the larger political and moral economies of violence, although massively increased in scale and intensity during the counterinsurgency, were an integral part of the ordinary penal system during the colonial period. Penal excess, despite reformist concerns, growing criticism from the Colonial Office and the very limited and slow modernisation of punishment, had been gradually developed and normalised far beyond the realm of the state and within the different layers of colonial society, over the two crucial decades which preceded the Mau Mau revolt. The thesis thus challenges the academic dichotomy between ordinary and exceptional repression; it sheds new light on the continuum of punitive practices throughout the colonial period and offers a chance to describe and analyse the normalcy of physical violence in the lives of colonised subjects.

³⁷ D. Branch, ‘Imprisonment and Colonialism in Kenya’, p. 243.

³⁸ Ibid.

³⁹ Ibid.

MAIN AREAS OF RESEARCH

In order to chart the very real challenges and contradictions of state violence and domination, the following argument will focus on several themes:

- The short-lived and unfortunate fate of penal reform and rehabilitative developments.
- The increasing punitivity of the state, often backed by strong popular demand and the converging interests of various sections of colonial society, including the settler community, colonial administration and African-appointed authorities.
- The state's reliance on special measures and extra-legal violence to deal with specific forms of crime or criminals and make up for its own frailties.
- The centrality of corporeal suffering and racialized body politics within the broader punitive landscape.

All of these developments contributed to a progressive normalisation of penal excess and bodily violence within Kenya's white society, turning what scholars would call the 'logic of exception' into the rule.⁴⁰ We will first see that reformist discourses, although greatly influenced by their metropolitan counterparts, took on hybrid forms in the colony, to adapt to the demands of settlers and to state economic and ideological concerns (Chapter 1). From the 1930s onwards, the colonial government attempted to modernize its penal system to support rehabilitation and social welfare. It implemented a series of reforms—though very limited in extent and purpose—in the fields of probation, aftercare and the management of juvenile offenders (Chapter 2). Yet, the most striking feature of the period is the progressive escalation in 'punitiveness' in major sectors or institutions of penal practice. On the one hand,

⁴⁰ The expression 'logic of exception' was first used by Denis Peschanski to designate states' strategy during the Second World War to rely on exceptional measures, contravening the basic rules of criminal justice, supposedly to deal with 'special threats'. See D. Peschanski, *La France des Camps. L'internement 1938-1946* (Paris, 2002).

punishments for certain economic and political offences became more severe, both in court and through the use of ‘exceptional measures’ of punishment (Chapter 3). On the other hand, high levels of physical brutality and retaliatory practices against African subjects, including judicial whipping, increasing police harassment and repression, on-going private violence on white farms and official quarters (Chapter 4) and increasing punitivity in conditions of confinement were normalised (Chapter 5).

SOURCES

This research draws upon a wide range of written sources, which are mainly located at the Kenya National Archive in Nairobi, at the National Archives in Kew and at the Rhodes House Library in Oxford. They provide a wealth of information and comprise a great variety of documents: official letters between the Colonial Office and the colonial government, official department annual reports, dispatches, cabinet minutes, reports of different advisory committees, and extensive correspondence from administrative officers, settlers, agricultural and commercial groups of interest, chiefs, headmen, African individuals and others.

The annual reports of the Judicial, Prisons, Police and Native Affairs Departments yield substantial information and statistics on a wide range of prison-related issues.⁴¹ During the 1930s, improvements in court returns make it possible to assess the long-term evolution of patterns of punishment in the colony, especially for criminal cases, and to break them down by age, race and gender. Statistical evolutions are generally briefly commented on in the reports, providing useful information about official perceptions of crime and punishment during the period. Prison reports provide annual aggregate statistics on the number of committals, on the daily average population of inmates and on the proportion of recidivists and ‘lunatics’. They provide first-hand data on detention life and give a detailed account of prisoners’ labour, health, diet, accommodation and punishments. These sometimes include the annual reports of

⁴¹ TNA CO 544, Annual Reports for all Government departments.

detention camps and Approved Schools. The Native Affairs Office annual reports include information on Native Tribunals and describe briefly how penal policies were appropriated by chiefs, headmen and other Africans during the year. Many documents relating to labour prosecutions have been classified in this section. Police reports also provide detailed data on the broader evolution of crime and policing during these years.

Considerable attention is also paid to the debates relating to the introduction of new legislation and to the numerous reviews and reports published over subsequent years by different committees of enquiry. These documents are particularly useful in understanding official debates on penal reform, controversies dividing colonial society and changes in penal policies and institutions. In the early 1930s, the Bushe Commission was set up to investigate the operation of the criminal justice system.⁴² The various studies written by Lord Hailey in his African Research Survey in 1935, the Paterson Report of 1939 and the minutes and papers of the Standing Advisory Committee on Penal Administration set up in the late 1930s also give fresh insight into the evolution of the penal system during this decade.⁴³ With the reformist impulse of the 1940s, a series of commissions were set up to enquire into various aspects of crime and punishment and specific categories of criminals and delinquents. The most important ones are the Committee on Juvenile Welfare (1942), the Slade Committee on Habitual Offenders (1946), the Committee on Law and Order (1948) and the Committee on Corporal Punishment (1952); these reports and minutes provide a wealth of information on the rhetoric, successes and failures of reform.⁴⁴ Considerable data can also be found in the original correspondence of the Colonial Office concerning East Africa and Kenya, comprising heteroclite dispatches and notes on penal matters, as well as precious letters from prisoners, warders and colonial officials.⁴⁵

⁴² TNA CO 822/53/3, Report of the Commission of Enquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika in Criminal Matters, May 1933.

⁴³ See notably TNA CO 859/34/5, TNA CO 859/73/10

⁴⁴ See notably KNA AG/7/13, KNA AG/7/40, TNA CO 912/4, TNA CO 822/53/3 and KNA JZ/6/17.

⁴⁵ TNA CO 533, TNA CO 822 and TNA CO 859.

I collected extensive documentation in the provincial and district archives of the Nyanza province at the Kenya National Archive. I chose to focus on the Nyanza archives for two main reasons. First, provincial archives relating to law and order, and more significantly to prison and camps in other areas, are scarce; most have little to offer in comparison with the voluminous correspondence available in the Nyanza files. In addition, the Nyanza Province archives on law and order provide information on crime and punishment in a great variety of contexts, including larger and smaller urban centres (with extensive information on Kisumu and Kericho), settled areas (in particular, the Sotik and Songhor farming areas) and African reserves (with extensive documentation on cattle raids and stock theft between the Lumbwa and Kisii groups). Most importantly, perhaps, these archives comprise original testimonies and letters from various non-official actors, both African and European. They thus provide fresh insights into local perceptions and interpretations of crime and punishment in specific areas, counterbalancing the pre-eminence of official perspectives on the subject. They reveal the centrality of corporeal violence in colonial society at large, whether in the form of popular networks of social defence or extra-legal official and police violence.

Additional information was found in the private paper collections from settlers, colonial officials and missionaries, mainly located at the Rhodes House Library in Oxford [RH].⁴⁶ The numerous trial transcripts which are finally available in the Kenya National Archives complete these sources.⁴⁷ During the whole period, the courts documented their proceedings in meticulous and voluminous detail. They provide invaluable information, including details of committal proceedings, statements from witnesses, the accused, advocates and judges, and information about the background of each convict. Unfortunately, the case records for Kenya subordinate courts have not survived in the archives, although a few papers related to revision cases and several primary published sources on primary courts and native

⁴⁶ See notably: RH Mss. Afr. s. 742, RH Mss. Afr. s. 746, RH Mss. Afr. s. 1086, RH Mss. Afr. s. 1153, RH Mss. Afr. s. 1350, RH Mss. Afr. s. 1386-95, RH Mss. Afr. s. 1487, RH Mss. Afr. s. 1942, RH Mss. Afr. s. 1973, RH Mss. Afr. s. 2062.

⁴⁷ Criminal trials are classified in two series, the first from the High Court (KNA RR), the second from the Ministry of Legal Affairs (KNA MLA)

tribunals cases can be found in the Kenya National Archive.⁴⁸ With regard to legislation, all legal statutes and prison ordinances can be found in the different archive centres, as well as in the Kenyan Gazette.⁴⁹

SETTING THE LANDSCAPE: COLONIAL (IN) JUSTICE AND THE AFRICAN EXPERIENCE IN COLONIAL KENYA

Before focusing on the history of punishment in colonial Kenya, one has to understand the larger structures of criminal justice that British powers introduced in the territory from the late nineteenth century. British colonisation had a dramatic impact on African societies, dismantling customary networks of authority and control, criminalizing the daily social life of Africans through an expanding array of offences and sanctions and introducing new penal institutions and practices throughout the territory.⁵⁰ In pre-colonial African communities, punishment was part of a reparative system where offenders had to pay some form of material compensation to the victim or his relatives, with a view to restoring ‘social equilibrium’ rather than coercing or punishing individuals.⁵¹ Prisons were non-existent in East Africa, and corporeal sanctions and torture were rare, used for a very limited number of offences. The export of British justice to Africa was closely linked to the civilizing mission: most colonial officials ‘saw their role as bringing peace and order and the benefits of modern law to darkest Africa’, and regarded customary law as ‘primitive’ and ‘barbaric’ in comparison with British legal ‘niceties’.⁵² The penal system was a constitutive part of imperial expansion and primarily aimed at performing ‘a punitive and deterrent role rather than a reformatory one’.⁵³ In the early period of colonial rule, for instance, ‘the measures adopted to coerce and punish were largely motivated by military and political expediency. Thus in ‘unsettled districts’, punitive

⁴⁸ Concerning revision cases, see Clayton and Savage, *Government and labour*, 32 n.36 and Ghai and Mc Auslan, *Public Law*, 142-4, for some examples. Concerning Native Tribunals, see: A. Phillips, *Report on Native Tribunals*, 1944.

⁴⁹ See notably in TNA CO 542.

⁵⁰ D. Killingray, ‘Punishment to Fit the Crime?’, p. 97.

⁵¹ A. Burton, ‘The penal system and punishment’, p. 2.

⁵² Ibid.

⁵³ A. Burton, ‘The penal system and punishment’, p. 1.

expeditions, often referred to as ‘extreme measures’, inflicted collective punishments by destroying houses and crops and removing cattle’.⁵⁴ By the early century, an armoury of new penal practices and institutions, along with a regular system of courts, were introduced, sketching out the official landscape of colonial repression for the following decades: prisons, camps, Approved Schools, and the legal power to impose fines, flogging, collective punishments and capital punishment.

From the late 1920s onwards, colonial authorities in Kenya became obsessed with curbing delinquency and crime. They initiated a series of reforms in nearly every field relating to law and order, thus attempting to modernise the management of African offenders in keeping with metropolitan reformist policy. On a general scale, they associated the ‘modernisation’ of punishment with the establishment of an efficient and impartial criminal justice system, a new sensitivity to the ‘evils of physical pain’ and the goal of reforming offenders.⁵⁵ The movement for reform, whether initiated by the Colonial Office or colonial liberals, led to the establishment of a series of local committees to enquire into the issue and commission fresh legislation in colonial dependencies. British colonial justice systems fell short of the reformers’ ideals and disclosed striking irregularities, including gross overcrowding in penal institutions, disproportionate sentences for certain offences and the extensive use of corporal punishment both in and out of court. For the Colonial Office, the state of penal affairs in the colonies challenged the alleged benevolence of the British civilizing mission, risking national and international criticism. In the late 1930s, influenced by metropolitan concerns in social welfare, the Colonial Office put renewed pressure on colonial governments to promote the reformist agenda in dependencies and set up the ‘Colonial Penal Administration Committee’ (CPAC) to collect information on colonial penal practice and

⁵⁴ D. Killingray, ‘Punishment to Fit the Crime?’, p. 98.

⁵⁵ F. Bernault, ‘The Shadow of Rule’, p. 77.

advise the Secretary of State.⁵⁶ This coincided with the development of a public humanitarian sphere in the United Kingdom, made up of organisations such as the Anti-Slavery Society, the Howard League for Penal Reform, the Fabian Colonial Bureau, various political parties and individual parliamentarians and representatives of Christian missionary societies'.⁵⁷

During the interwar period, British humanitarian debates incubated within Kenya's closely-knit white society and had a considerable influence on local patterns of punishment. Law and punishment were a 'near obsession' for white settlers and colonial officials and aroused considerable concern and controversy in the colony.⁵⁸ Punishment was a fundamental tool used by colonial powers and British colonizers to help maintaining authority and domination through the territory.⁵⁹ Pressed by the Colonial Office, the colonial government expressed its growing concern about the content and implementation of laws, and initiated a series of local debates to discuss legal and penal reforms. By an overwhelming majority, Kenyan white settlers and administrators systematically opposed the more formalised English codes and humanitarian developments, claiming to be the 'best protector of African interests in legal proceedings', and advocating a reactionary criminal justice system adapted to local circumstances.⁶⁰ However, in 1931, following a series of scandals where white settlers who had beaten to death African employees received minimal sentences from a conniving white judiciary, the Colonial Office managed to convince the Kenyan Attorney General to repeal the Indian Penal Codes and establish a new Penal Code and Criminal Procedure Code, limiting the power of magistrates. This was the crucial starting point for a progressive reform that aimed to bring criminal justice in colonial Kenya in line with the practice and procedures of the British system. The Colonial Office remained concerned about the administration of the law in cases involving Africans in the colony. Following the infamous Wagishu trial in 1928, during which

⁵⁶ The Colonial Penal Administration Committee was set up in 1937. Hereafter, for convenience sake, we will refer to this committee using this name. Yet, over the period, the committee has changed frequently in his name and was successively called the 'Penal Sub-Committee' (1943-46), the 'Treatment of Offenders Sub-Committee' (1946-52) and the 'Advisory Committee on the Treatment of Offenders in the Colonies' (1952-60).

⁵⁷ S. Hynd, 'Law, Violence and Penal Reform', p. 443.

⁵⁸ D. M. Anderson, 'Master and Servant in colonial Kenya, 1895-1939', *Journal of African History*, 41 (2000), p. 459.

⁵⁹ The degree of state control and domination will be discussed later.

⁶⁰ D. M. Anderson, 'Punishment, Race and 'The Raw Native'', p. 482.

the Governor commuted the sentence of death awarded by the Kenyan High Court to 60 people for the collective murder of a witchdoctor, the whole system of criminal justice administration in the colony came under closer scrutiny. In 1933, the Secretary of State decided to set up a commission of enquiry, under his Legal Adviser, H. G. Bushe, to recommend improvements to the criminal law and proceedings of the three British colonies of East Africa.⁶¹ The final report denounced the many failures and abuses of colonial justice and its conclusions sparked heated controversies within local white communities.

Before delving into the study of penal reform and violence, one has to understand both the particular configuration of the court system in the colony and related ideological debates. Two court arenas coexisted, with hazy and conflicting jurisdictions and legal codes. The first arena consisted of colonial courts, while the second was made up of so-called 'Native Courts'. The latter dealt with all cases involving Africans only, except in the case of the most serious crimes, while the former was in charge of "mixed-races" cases and most serious offences. The African courts were responsible for both civil and minor criminal cases involving Africans only, and thus administered justice to Africans in most cases. Their criminal jurisdiction was limited 'both as to punishment which might be imposed and as to the type of case which could be entertained' and subordinated to the supervisory role of the colonial judicial sphere.⁶² The colonial court system had exclusivity when it came to serious crime and was divided between the judiciary and magistracy, each providing its own specific 'brand' of staff to two different sets of courts. The judicial arena consisted of the High court and Resident Magistrate Courts, both staffed by judges or Officers of the judicial department, while the administrative arena was made up of a series of courts presided over by lay magistrates. This dual system of courts covered differences in legislation. The colonial sphere applied mainly the Indian- or British-derived laws and locally-enacted ordinances introduced by the colonial government; the

⁶¹ TNA CO 822/53/3, Report of the Commission of Enquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika in Criminal Matters, May 1933, hereafter called the Bushe Report in the thesis. For the whole correspondence, see also: KNA AP/1/1660, KNA AG/8/100 and TNA CO 822/67/7. For papers relating to Tanganyika and Uganda, see also: TNA CO 822/67/5 and TNA CO 822/67/6.

⁶² D. Anderson, 'Punishment, Race and 'The Raw Native'', p. 488.

African courts generally applied unwritten, customary law. However, this separation became less marked over the colonial period, as African courts gradually changed their organisation and proceedings, 'increasingly accepting principles of English law and procedure' and modelling themselves more closely on the magistrates' courts.⁶³ By the early 1950s, there was little difference in criminal procedures between the African and Magistrates' courts, although the former was 'in a more simple form'.⁶⁴ Finally, a wide array of minor illegalities involving Africans only were settled by elders, sometimes with District Commissioners while touring African reserves, outside the realm of colonial justice.

This complex judicial system granted wide jurisdiction to lay Magistrates who presided over the majority of subordinate courts, exercised administrative functions and could undertake 'judicial functions ex-officio according to their rank in the administration'.⁶⁵ Magistrates had generally received little legal training: some of them had a very limited knowledge of the Penal Code, the Criminal Procedure Code or local ordinances. As the Chief Justice, Sir Jacob Barth, pointed out 'a great majority of them have no experience in legal matters at all. So far as Kenya is concerned, once an Administrative Officer has passed his Law examination, the tendency is to make him a second class magistrate and second class magistrates have full jurisdiction over natives'.⁶⁶ In colonial Kenya, all District Commissioners and District Officers held the power of magistrates and were thus granted full jurisdiction over Africans: they 'could hear criminal cases of all categories (with the exception of murder, rape and one or two specific offences) in both Native Reserves and Settled Areas'.⁶⁷ According to their length of experience in the service, magistrates were given differential powers of punishment and divided into three classes. First and second class magistrates could pass any sentence authorised under the Penal Code or any other law and

⁶³ J. S. Read, 'Kenya, Tanzania and Uganda', in A. Milner (ed.), *African Penal Systems* (New York, 1969), p. 92.

⁶⁴ Ibid.

⁶⁵ TNA CO 822/53/3, Report of the Commission of Enquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika in Criminal Matters, May 1933.

⁶⁶ Ibid.

⁶⁷ D. M. Anderson, 'Policing, prosecution and the law in colonial Kenya c.1905-1939', in D. M. Anderson and D. Killingray (eds), *Policing the empire: Government, authority and control, 1830-1940*, Manchester: Manchester University Press, 1991, p. 187.

consequently had full jurisdiction over Africans. Third class magistrates had more limited powers of punishment and could only award sentences of imprisonment for a term not exceeding six months or a fine not exceeding twenty pounds, or both. Resident Magistrates had the same jurisdiction and powers of punishment as First class magistrates' courts. In addition, magistrates of the Northern province and Turkana district were given exceptional jurisdiction over African offenders. As these areas were remote and difficult for High Court judges to reach, they were under special jurisdiction and operated as 'special districts' under sections 14 and 15 of the Criminal Procedure Code. Here, subordinate courts could try all offences, even those normally reserved for the Supreme Court provided such cases 'shall be tried with the aid of assessors, and shall be inquired into and tried in the manner prescribed for the trial of such offences by the Supreme Court'.⁶⁸ Administrative Officers also played a fundamental role in the parallel system of Native Courts. They were entrusted with wide powers of supervision, revision and appeal and were responsible 'for guiding and directing their development'.⁶⁹

Setting aside the distant Privy Council and the regional Supreme Court for East Africa, the High Court was at the top of the judicial court architecture of the colony. It was responsible for dealing with most serious crimes and cases from subordinate courts.⁷⁰ The High Court was in theory the only court allowed to try cases of treason and analogous offences, homicide and rape. It exerted a supervisory role over subordinate court sentences, both through the practice of appeals, and the work of revision and confirmation. In the first case, an African offender who had been convicted by a subordinate court to a sentence greater than one month of imprisonment, or a fine of five pounds, or both, had the opportunity to file an appeal with the High Court and see his case reconsidered. The High Court also had to confirm all sentences passed by subordinate courts exceeding six months of imprisonment (peremptory or in default of payment or a combination), twelve strokes or a fine of 50 pounds.

⁶⁸ TNA CO 822/53/3, Report of the Commission of Enquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika in Criminal Matters, May 1933.

⁶⁹ Ibid.

⁷⁰ Ibid.

On the top of this system were the Supreme Court for East Africa and the Privy Council. The Supreme Court for East Africa was a regional court made up of the Chiefs Justices of Kenya, Uganda, Zanzibar, Tanganyika; all judges of these territories as members ex-officio. The Court sat four times a year, usually once in Kenya. A person convicted by the High Court could file an appeal to the Court of Appeal for Eastern Africa within thirty days following the High Court judgment. However, this procedure was restricted to capital cases and rarely used. The distant Privy Council could only be ‘reached at great expense’ and a very few cases only were ‘carried to this stage’.⁷¹ In capital punishment cases, the final decision lay in the power of mercy granted to the Governor, who could decide to let ‘the law follow its course’, or commute the death penalty into a sentence of imprisonment.

In colonial Kenya, penal reform was discussed within this complex judicial landscape, with two interdependent and competing colonial court systems, respectively staffed by executive and judicial officers. For both institutional and jurisdictional reasons, administrative officers had the upper hand in most criminal work, even though their powers were limited by the supervisory role of the High Court, which could decide to overturn, diminish or increase a sentence passed by a subordinate court. Debates over judicial reform thus essentially revolved around these conflicting court jurisdictions. The main opposition was between the judiciary, which defended a system closely patterned after the British one and linked to British legal safeguards and ‘technicalities’, and the magistracy, which supported a legal system in which administrative officers were considered the most able men to administer justice to Africans, thanks to their local knowledge and experience. The Colonial Office and the judiciary criticised magistrates both for their lack of independence (due to the confusion between their judicial and political functions) and for their lack of training in legal matters.⁷² In addition, the administrative Officer, who was also head of the Tribal Police in his district, often had knowledge of the police investigation, and sometimes even conducted the investigation himself. In general, the Colonial Office, the Chief Native Commissioner in Kenya and the

⁷¹ KNA AP/1/961, ‘The Law and the People’, *East Africa Standard*, 18 February 1937.

⁷² Ibid.

High Court tended to criticise lay magistrates for awarding harsher sentences than Resident Magistrates for the same offence, citing political circumstances in their jurisdictional area. The High Court had a marked tendency to reduce magistrates' sentence on revision. As pointed out by David Anderson, 'of all magistrates' cases requiring confirmation by the Supreme Court in the early 1930s, the sentences in some 20% cases were reduced upon review'.⁷³ On the other side, lay magistrates defended a judicial system adapted to local circumstances that entrusted them with extensive powers of punishment. In their view, substantial justice could be better achieved through the specific knowledge of local conditions and people, rather than legal technicalities and clear-cut procedures. They admitted that their version of justice was 'rough and ready', at the opposite end of the spectrum from the 'remote' and 'impersonal' High Court, but they claimed that it was adapted, 'speedy and intelligible to the native mind'.⁷⁴ They highly resented the interference and supervisory role of the High Court, which was accused of causing prolonged delays in trials and lengthy periods of remand.⁷⁵ Magistrates were exasperated to see their sentences reduced, especially when particular offences were prevalent in their districts. It was alleged that the reversal or modification of lower court sentences by the High Court undermined both the authority of administrative officials and white hegemony.

To increase the severity of sentences and bypass British legal 'technicalities', Administrative Officers could draw upon a blurry and ambiguous collection of pieces of criminal law, which had been progressively introduced during the early colonial period. Before the 1930s, legal codes in colonial Kenya were mainly based on Indian legislation. More than thirty Indian codes had been introduced in the early century, including the Indian Penal Code, the Criminal Procedure and Civil Procedure Codes and the Evidence Act. The Indian example had also left a definite imprint on many locally-drafted ordinances in Kenya. In 1930, on the recommendation of the Colonial Office, a new Penal Code and Criminal

⁷³ D. M. Anderson, 'Policing, prosecution and the law', p. 189.

⁷⁴ TNA CO 822/53/3, Report of the Commission of Enquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika in Criminal Matters, May 1933.

⁷⁵ Ibid.

Procedure Code had been introduced. The purpose was to make colonial criminal justice conform to British standards and practice and to establish more formalised judicial procedures, notably as regards the rules of admissibility of evidence. Given their limited legal training, administrative officers usually felt more comfortable handling Indian codes, ‘more codified and straightforward than English law’, and ‘based upon practicality rather than principles’, and continued to draw upon them to a significant extent.⁷⁶ They notably relied on an article of the Order-in-Council common to the three British colonies of East Africa, which mentioned that in all criminal and civil cases between Africans, the court should be guided by native law as far as it is ‘not repugnant to justice and morality’ and shall decide on such cases according to ‘substantial justice without undue regard to technicalities of procedure and without undue delay’.⁷⁷ As underlined by David Anderson, ‘many District Commissioners and District Officers interpreted the clauses as amounting to an effective ‘loosening’ of the strictures of court procedure’.⁷⁸ The judiciary was increasingly concerned about magistrates’, irregularities in following proper judicial rules: ‘The valuable provisions of Article 20 of the Order-in-Council are not to be misconstrued into an authority for administering justice to the native in the rough and ready style of which some affect to think highly, but which is generally the sign of lack of experience or of sympathy and patience and not infrequently results in what is in reality rough and ready injustice’.⁷⁹ Despite widespread support for the administrative approach, the judiciary, strengthened in its position by the Bushe Commission, increasingly managed to impose its views during the 1940s, at least within official circles.

Since the early colonial period, African courts had been under the direct influence and control of the district administration.⁸⁰ Under the doctrine of indirect rule, they constituted a cornerstone of indirect administration and the main link between district and local power structures, as embodied by chiefs and headmen. Administrative Officers supervised,

⁷⁶ D. M. Anderson, 'Policing, prosecution and the law', p. 187.

⁷⁷ TNA CO 822/53/3, Report of the Commission of Enquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika in Criminal Matters, May 1933.

⁷⁸ D. M. Anderson, 'Policing, prosecution and the law', p. 188.

⁷⁹ KNA AP/1/1660, Confirmation Case 97 of 1933, Justice Thomas, High Court of Kenya, 1933.

⁸⁰ H. S. Morris and J. S. Read, *Indirect Rule and the Search for Justice: Essays in East African Legal History* (Oxford, 1972), p. 113.

participated actively in and commended most of the changes in the functioning and organisation of native tribunals. Before 1930, most litigation among Africans was settled in clan barazas, which generally amounted to public discussions where some elders were entitled to adjudicate under Native Law and Custom. Disputes between clans were also settled in joint barazas, or when no agreement could be found, by fighting.⁸¹ With the Native Tribunals Ordinance, 1930, the first locational tribunals were established in the different provinces. Administrative Officers often considered African tribunals a 'fairly logical development of the old clan baraza'.⁸² However, African courts did not grow out of clan barazas but were judicial structures imposed by the colonial authorities to reflect and maintain British supremacy. Since their early stages, they were intimately linked to the colonial administrative and executive powers. They were presided over by the chiefs and the panel of African elders, who constituted the 'bench' of the tribunal and were appointed by the District Commissioner and the different chiefs of the area.⁸³ The selection of the panel did not reflect a colonial concern to include elders who, under Native Law and Custom, were entitled to award justice, as much as a politically-minded and carefully calibrated co-opting of elders who reflected the balance of power between the local clans and chiefs. Under the Native Tribunal Ordinance, administrative officers were granted extensive powers of supervision, revision, and appeal over African Courts.⁸⁴ This duty was generally carried out during their regular tours of the Native reserves and gave administrative officers the opportunity to assess the chief authority's effectiveness and legitimacy, to 'extol the virtues of British rule' and maintain regular contact with local African communities.⁸⁵ In the late 1940s, the judiciary successfully battled with the administration for the ultimate control over colonial courts, but lost all influence over the administration of native courts, which remained the exclusive preserve of the colonial administration.

⁸¹ KNA PC/NZA/2/7/109, 'Native Tribunals Enquiry', written by the District Commissioner, South Kavirondo, 13 Octobre 1943.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ H. S. Morris and J. S. Read, *Indirect Rule and the Search for Justice*, p. 115.

⁸⁵ Ibid.

In the early 1930s, the Bushe Commission provided an opportunity to expose and discuss the many defects of the criminal justice systems in East Africa. The Bushe Report findings were clear and definitive: 'It is no exaggeration to say that the machinery for the administration of justice as apparently set up by law in these territories does not work, and as at present constituted, cannot work'.⁸⁶ According to the Commission, there were so many shortcomings that instead of being considered a 'help' and 'assurance', criminal justice was often considered 'with dread' by Africans.⁸⁷ The defects of colonial criminal justice primarily stemmed from the state's scarce resources and shortage of administrative staff. Due to the increasing volume of criminal work, magistrates were completely overworked and subordinate courts backlogged. Administrative Officers faced a sheer judicial grind, being generally unable to devote more than one minute or two to individual minor criminal cases.⁸⁸ In one morning, they often had to deal with fifty or a hundred petty offences and could thus devote little or no attention to the history and personality of offenders or to the circumstances of the crime. There was also an excessive period of time between an arrest and the final charge. According to the Bushe Commission, in Kenya 'a period of three months was not unusual'.⁸⁹ The shortcomings of the police system also had a considerable impact on patterns of prosecution and punishment. Inadequate police investigation was 'an increasingly conspicuous feature of the cases sent to court'.⁹⁰ The police were understaffed and overworked; officers did not have time to prepare their cases properly: 'statements of essential witnesses were omitted from the court prosecutor files, incomplete prosecution cases were numerous, and cases were brought to court which should have not been'.⁹¹ Due to the inadequate strength of the force, police control was limited. According to the Police Assistant Superintendent of Police, around 75 % of serious

⁸⁶ TNA CO 822/53/3, Report of the Commission of Enquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika in Criminal Matters, May 1933.

⁸⁷ Ibid.

⁸⁸ Ibid. See also RH Mss. Afr. s. 2062 (Archives Hall), Memoirs of the District Commissioner, Mr Hall, [undated, c. 1943], p. 89.

⁸⁹ Ibid.

⁹⁰ KNA AP/1/1049, Letter from the Resident Magistrate, Nairobi, to the Chief Secretary, 5 June 1944.

⁹¹ KNA AG/7/13, Evidence by the Assistant Superintendent of the Police, Committee on Habitual Offenders, 1946.

crime went undetected in the mid-1940s.⁹² The police were very under-staffed, especially from the 1940s onwards, for two main reasons. First, because of the war, many officers were transferred to the military, depleting the already inadequate police ranks. Second, a significant part of the European police staff decided to resign in the early 1940s, expressing dissatisfaction with the bad service and housing conditions.⁹³

In colonial Kenya, the criminal justice system was also shaped along racial lines and heavily weighted against Africans, who received minimal help through judicial proceedings and had to defend themselves in ways they were generally not used to. Justice was badly administered in colonial courts, placing African defendants and witnesses in a structural position of vulnerability. They faced the intricacies of court proceedings, problems of language and translation, an insufficient number of advocates, difficulties in securing the attendance of witnesses, prohibitive expenses and prolonged delays. In capital cases, white juries ensured the normalisation of racialized politics within the judicial sphere and were responsible for many blatant miscarriages of justice in black-and-white murder cases. Although the archives have few documents in this area, African assessors appointed to advise the magistrate in the most serious cases, seem to have had little influence. As far as Native Tribunals were concerned, despite their reorganisation under the 1937 Ordinance, they were severely affected by endemic problems of bribery, corruption and nepotism and became increasingly unpopular among certain African groups during this period.⁹⁴ There was also general agreement that the system of appeals was ‘an appeal system run mad’ absorbing too much administrative time and needing an overhaul.⁹⁵ The period from 1945 to 1951 was marked by a series of debates and surveys aimed at ‘modernizing’ and transforming Native Tribunals into professionalised magisterial courts, with a view to integrating them fully into the colonial court system.

⁹² Ibid.

⁹³ RH Mss. Afr. s. 1973 (Blugh Archives), 'Committee of Enquiry, Police terms of service', written by L. R. Blugh, Assistant Superintendent of Police, 1946.

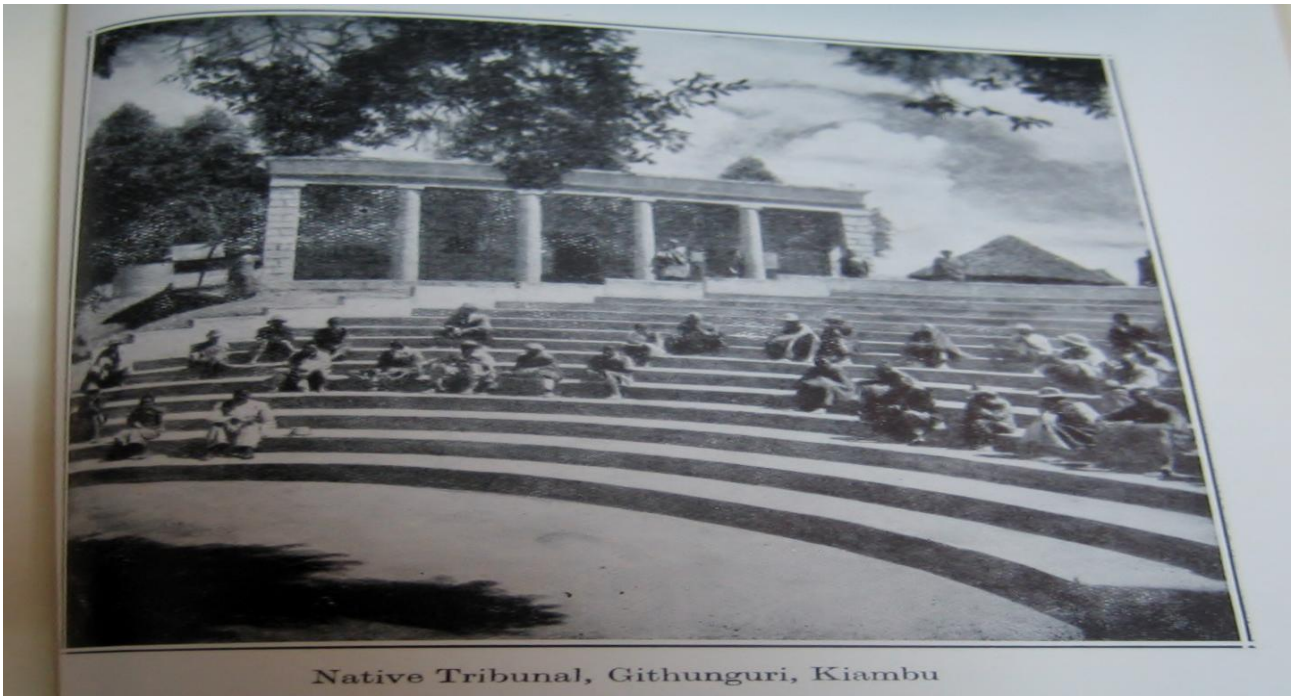
⁹⁴ KNA PC/NZA/2/7/109, 'Note on Native Tribunals', written by the District Commissioner, North Kavirondo, 13 April 1943.

⁹⁵ KNA PC/NZA/2/7/109, Letter from the District Commissioner, North Kavirondo to the Provincial Commissioner, Nyanza, 6 December 1945.

However, whether in colonial or native tribunals, African offenders in the 1940s showed an increasing capacity to defend themselves and to take advantage of the shortcomings of the criminal justice system. There was a growing tendency among African accused people to adopt delaying tactics, particularly when it came to the attendance of witnesses.⁹⁶ In Nairobi, the prevalence of certain types of crime, such as shoplifting, theft from parked cars and bicycle theft led to heavier sentences being imposed. According to the Resident Magistrate of Nairobi, the result was ‘a very natural reluctance to plead guilty’ and the proportion of defended cases was therefore higher: ‘The accused clings tenaciously to his right to have every effort made to secure their attendance (...). The accused often insists on summoning witnesses who prove to be completely valueless, apparently in the hope that the production of a formidable array of defence witnesses may secure his acquittal’.⁹⁷ Finally, in view of the crackdown on certain economic crimes, a rising number of wealthy Africans who could engage experienced advocates came to court and defended their cases with considerable vigour. Overall, criminal justice in colonial Kenya was characterized by many shortcomings and defects raising official concern and debates over the need to improve the whole system. As we will later see, the difficulties experienced by the judiciary and the police forces had considerable influence over patterns of prosecution and punishment in the colony. Within these discussions about judicial and police reforms, colonial authorities increasingly focused on the management of African offenders. From the 1920s onwards, questions of social control and punishment became at the centre of official preoccupations.

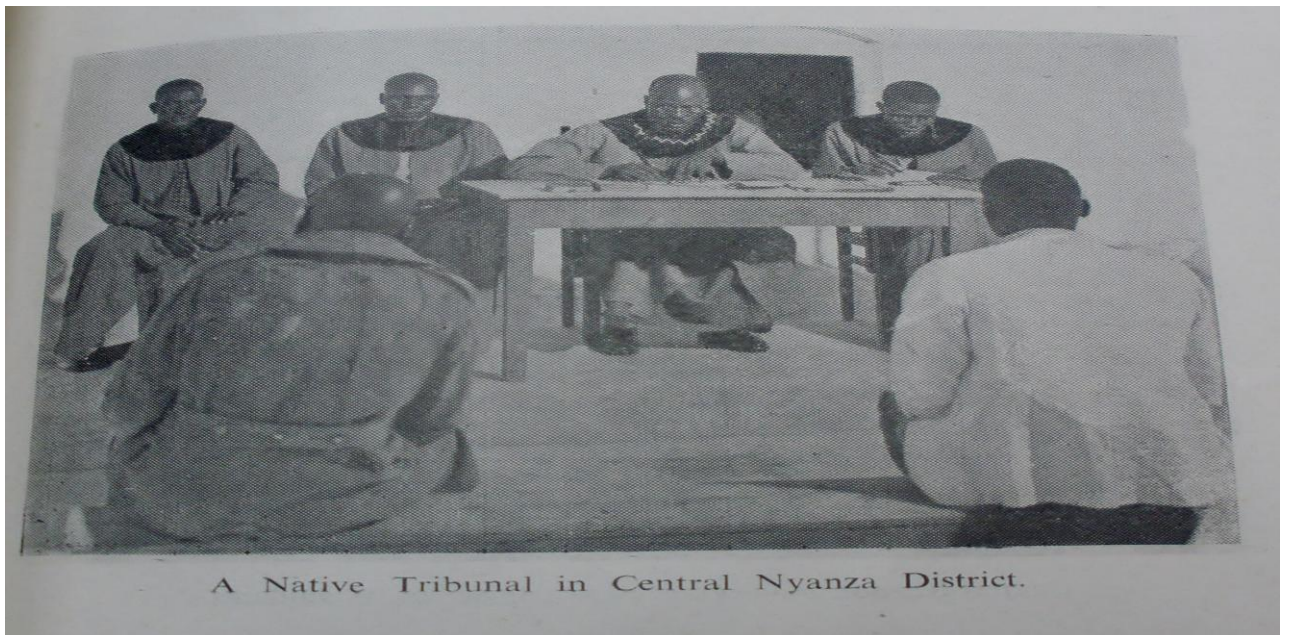
⁹⁶ KNA AP/1/1049, Letter from the Resident Magistrate, Nairobi, to the Chief Secretary, 5 June 1944.

⁹⁷ Ibid.



Native Tribunal, Githunguri, Kiambu

Native Tribunal in the Kiambu District, 1936.



A Native Tribunal in Central Nyanza District.

Native Tribunal in the Central Nyanza District, 1949.

2 - THE RHETORIC OF REFORM

During the 1930s and 1940s, colonial authorities paid increasing attention to the question of punishments for African offenders. The Colonial Office was very concerned about the steady increase in crime and the prison population in the colony and appointed a series of committees and reports to review the whole administration of criminal justice, with a view to reforming it. Since the early nineteenth century, prison reform movements in Europe had promoted new penological principles based upon the individualization of punishment and reforming concerns.⁹⁸ The goal of the Colonial Office was to keep colonial penal systems in line with metropolitan developments, while also determining the extent to which British reformist discourses and experiments should be modified to fit local conditions.

Historians have commonly shown that metropolitan discourses about penal reform were hard to plant into African soil; it took hybrid forms.⁹⁹ On transferral to the colonies, reformist concerns merged with local attitudes, creating a new brand of penal thought and practice that was primarily designed to suit the racial and economic interests of the state and of the white ruling class. What Steven Peté points out concerning the colony of Natal could equally apply to Kenya: 'The reasons for this become apparent upon an examination of the historical context in which the penal theories of Europe were imported into the far-flung colonies of Africa. (...) The principles and policies relating to punishment which were imported into the colony (of Natal) were to be shaped and twisted by local conditions, conflicts and needs, so that the system which finally emerged may be described as the articulation of the penal theories and assumptions of an industrialised metropolitan political

⁹⁸ M. Foucault, *Discipline and Punish: The Birth of the Modern Prison* (London, 1977); N. Elias, *The Civilizing Process: the History of Manners and State Formation and Transformation* (Oxford, 1994); D. Garland, *Punishment in Modern Society: A study in Social Theory* (Oxford, 1990).

⁹⁹ See D. Killingray, 'Punishment to Fit the Crime?: Penal Policy and Practice in British Colonial Africa', in F. Bernault (ed.), *A History of Prison and Confinement in Africa*, (Portsmouth, 2003) ; T. C. Sherman, 'Tensions of Colonial Punishment: Perspectives Recent Developments in the Study of Coercive Networks in Asia, Africa and the Caribbean', *History Compass*, 7/3 (2009): 659-77; Hynd, S., 'Law, Violence and Penal Reform: State responses to Crime and Disorder in Colonial Malawi, c. 1915-1964', *Journal of Southern African Studies*, 37/1 (2011): 431-447; J. Alexander and G. Kynoch (eds), 'Special Issue: Histories and Legacies of Punishment in Southern Africa', *Journal of Southern African Studies*, 37/3 (2011): 395-413; F. Bernault, 'The Politics of Enclosure in Colonial and Post-Colonial Africa', in F. Bernault (ed.), *A History of Prison and Confinement in Africa* (Portsmouth, 2003), 1-54.

economy with those of a rural colonial political economy'.¹⁰⁰ In the Kenyan historiography, scholars thoroughly studied the complex relationship between punishment, wage labour and urbanization.¹⁰¹ This chapter demonstrates that official discourses over penal reform similarly resonated with wider concerns over labour control and African mobility to urban centres. Beyond the difficulties of the state to provide sufficient funding, authorities paid little attention to the humanitarian and rehabilitative principles that at least to some extent guided metropolitan developments. Most discussions actually revolved around the necessity to ensure the economic profitability and racial subjugation of the penal labour force, for the sole benefit of the colonial state and of the settler community.

Over this period, the Colonial Office was primarily concerned with the dramatic increase in committals to prison and subsequent gross overcrowding within penal institutions. Compared to the United Kingdom, the percentage of committals to prison was extremely high in Kenya, with a significant increase during the Second World War and in the late 1940s.¹⁰² The Secretary of State was alarmed both by the steadily growing prison population and by the massive number of committals to prison for minor offences such as vagrancy, tax offences and breaches of local ordinances. There was a clear sense that colonial authorities indulged themselves in a new prison 'stampede' and failed to use alternatives, even for the most trivial offences. The increase in litigation and the prison population during this period also reflected an increase in reported crime and the improved efficiency of the police in identifying and arresting offenders. As few additional prisons were built over the period, prison overcrowding reached considerable proportions. Overall, the daily average prison population increased from 3005 in 1938 to 5177 in the first half of 1945, with a significant increase in the number of

¹⁰⁰ S. Peté, 'Falling on Stony Ground: Importing the Penal Practices of Europe into the Prisons of Colonial Natal (Part 1)', *Fundamina*, 12/2 (2006), p. 101.

¹⁰¹ D. Anderson, 'Master and Servant in colonial Kenya, 1895-1939', *Journal of African History*, 41 (2000): 459-485; B. J. Berman, *Control and Crisis in Colonial Kenya: the Dialectic of Domination* (London, 1990); A. Clayton and D. C. Savage, *Government and Labour in Kenya* (London, 1974); O. Opolot, *Communal Labour in Colonial Kenya: the Legitimization of Coercion, 1912-1930* (New York, 2012); S. Sticher, *Migrant Labour in Kenya: Capitalism and African Response, 1895-1975* (Harlow, 1982); R. M. van Zwanenberg, *Colonial Capitalism and Labour in Kenya, 1919-39* (Nairobi, 1975).

¹⁰² TNA CO 912/14, Colonial Penal Administration Committee, Minutes, 27 September 1950.

remand prisoners.¹⁰³ The upsurge in the number of remandees was mainly due to increased delays in trials and the lack of magistrates during and after the Second World War. In 1948, the percentage of remand prisoners in the prison population amounted to 43,9 %, contrary to the United Kingdom where the proportion was only 18,5 %.¹⁰⁴ Beyond these alarming figures, the Colonial Office was well aware that penal administration in Kenya fell dramatically short of the reformist ideals promoted during the 1930s, and pressured the colonial government to reform the system. The Colonial Penal Administration Committee, appointed in 1937, regularly complained to the Secretary of State and pointed out the main defects in prison administration in Kenya: gross overcrowding, overworked staff, the confinement of mental cases, a high number of escapes, an increasing number of juveniles committed to prison, and a lack of rehabilitative measures, classification and segregation.¹⁰⁵

Penal reform in Kenya was primarily discussed around a series of commissioned reports and committees appointed by the Colonial Office to investigate crime and punishment in the colony, with a view to framing more appropriate and efficient penal policies. The most important were the Bushe Commission in 1933, the Paterson report in 1939, the Habitual Offenders Committee in 1946, the Committee on Law and Order in 1948 and others relating to specific categories of offenders (juveniles, lunatics) and forms of punishment (probation, corporal punishment).¹⁰⁶ Debates over penal reform revolved around two main problems: the excessive imprisonment of petty offenders and the steady increase in recidivism. These discussions revealed a distinctive colonial rhetoric about penal reform, coloured by different strands of thought and influences, including the British new reformist penology, colonial examples such as South Africa and Northern Rhodesia (which both had significant white settler minorities and an earlier reformist tradition in penal matters) and local discourses on

¹⁰³ KNA AP/1/1049, Letter from the Commissioner of Prisons to the Registrar of the Supreme Court of Kenya, 18 August 1945.

¹⁰⁴ TNA CO 912/11, Colonial Penal Administration Committee, Minutes, 25 July 1947.

¹⁰⁵ For the minutes of the Colonial Penal Administration Committee, see TNA CO 912.

¹⁰⁶ All the reports of these commissions can be found in the Kenya National Archives and the British National Archives. For the Committee on Habitual Offenders, see KNA AG/7/13 and KNA AG/7/40. For the Bushe Commission Report, see TNA CO 822/53/3. For the Paterson Report, see TNA CO 912/4. For the Committee on Law and Order, see KNA JZ/6/17.

crime and punishment. Once transferred to the colony, the British rhetoric of reform retained much of its influence but was twisted by racial and economic considerations, aimed at forcing Africans into the labour market to promote the economic interests of the state and the white ruling class.

THE BRITISH STRAND OF THOUGHT

The reformist rhetoric of the Colonial Office was broadly influenced by the new developments in British penological philosophy and practice. As identified by Michel Foucault, since the eighteenth and nineteenth centuries, the emergence of the new ‘modern penitentiary’ in Europe shifted the focus of punishment from the body to the soul, from the infliction of painful and deterrent sentences to new concerns for the psychological and moral reformation of the offender.¹⁰⁷ This historical evolution was accompanied by a new public sensitivity to physical pain, by the constitution of new spheres of knowledge about offenders and by the use of an arsenal of normalizing techniques of power, based upon individualisation and surveillance and designed to act upon prisoners’ subjectivity and constrain deviant behaviours. When it came to the colonial territories, the British government was concerned to keep colonial penal systems in line with metropolitan developments, adapting them to fit local conditions. The reformist discourse of the Colonial Office evolved significantly over two decades and can be roughly divided into two different periods. In the 1930s, penal debates served to recast the phraseology of the civilizing mission and concerned the extent to which British conceptions of ‘modern’ punishment could be applied to African ‘backward’ societies. The impetus for reform was renewed during the Second World War, mainly because of London’s alarm at prison overcrowding and the rise in prison committals in most colonial territories. The newly-appointed Colonial Penal Administration Committee influenced attitudes at the Colonial Office, and encouraged increasing awareness of the need for social

¹⁰⁷ Foucault, *Discipline and Punish: the Birth of the Prison* (London, 1977).

welfare. From the forties onwards, the reformist rhetoric thus focused on the need to find alternatives to imprisonment, especially for minor offenders, and to prevent rather than cure crime by implementing broader social welfare policies. Reform-minded colonial officials became more alert to the social and economic causes of delinquency and crime. Their discourses also reflected a new concern for the reformation of offenders and the fate of certain categories of offenders, such as women, juveniles and people affected by mental trouble.

During the 1930s, discourses on penal reform in Kenya resonated in the layers of the wider rhetoric of the civilizing mission. The colonial enterprise aimed to bring the ‘underdeveloped’ communities of Africa the niceties of British justice and ‘modern’ forms of punishment.¹⁰⁸ Colonial powers were expected to introduce and publicise the main principles of British criminal justice, considered the hallmarks of modern penal practice and civilisation. The authorities sought to promote patterns of punishment thought to characterise all ‘enlightened systems of jurisprudence’; these featured death, imprisonment, fine, corporal punishment and compensation.¹⁰⁹ These forms of punishment were associated with a peculiar conception of crime. In the European penal tradition, crime was primarily considered an offence against the state, whereas under customary law in East Africa, crime was considered a private wrong and mostly settled by the payment of compensation.¹¹⁰ In most African communities, cases of murder or rape were settled by the payment of ‘blood money’ for instance.¹¹¹ The introduction of the British penal tradition and conception of crime was perceived as an integral part of the civilizing mission. The duty of the colonial government was ‘to civilise and to maintain peace and good order, and this can only be done by the introduction of British concepts of wrongdoing. (...) Crime must be regarded first and foremost as an offence against the community if the people of these territories are to advance

¹⁰⁸ TNA CO 822/53/3, Report of the Commission of Enquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika in Criminal Matters, May 1933.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ On this subject, see notably KNA/ KSM/1/19/208.

in enlightenment and prosperity'.¹¹² As a consequence, colonial magistrates were highly concerned about the criminal jurisdiction awarded to Native Courts.¹¹³ While African panels were considered efficient in handling civil cases, they were often criticised for their incapacity to punish criminal offences according to British principles of justice and punishment. According to magistrates, most elders were reluctant to impose sentences of imprisonment and tended to award fines, even for the most serious offences.

Colonial punishment was generally opposed to retrograde and 'barbaric' methods of punishing criminals, based upon revenge and physical pain, that were allegedly used by African communities during the pre-colonial period.¹¹⁴ According to secondary literature on the subject, pre-colonial punishments were in reality based mainly on reconciliation and compensation and little crime was punished by physical punishment or torture.¹¹⁵ However, the very few cases were generalised in the colonial imaginary as a structural pattern of pre-colonial African communities.¹¹⁶ By contrast, the alleged softness of British punishment was perceived as the apex of modern and civilised penal practice. From the colonial perspective, 'enlightened' punishment was based on two principles. First, due to increasing sensitivity to the dangers of physical pain, punishment was to be as physically painless as possible.¹¹⁷ If physical violence had to be inflicted, it should be carefully regulated, calibrated and restricted. British penal practice was also based upon the principle that 'punishment should fit the crime',

¹¹² TNA CO 822/53/3, Report of the Commission of Enquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika in Criminal Matters, May 1933.

¹¹³ KNA PC/2/7/109, 'Memorandum on the Future Development of Native Tribunals, with Particular Reference to South Kavirondo', undated [c. 1945].

¹¹⁴ TNA CO 822/53/3, Report of the Commission of Enquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika in Criminal Matters, May 1933.

¹¹⁵ On customary law and precolonial punishment, see notably: H. S. Morris and J. S. Read, *Indirect rule and the search for justice: Essays in East African legal history* (Oxford, 1972) and A. Philips, *Report on Native Tribunals* (Nairobi, 1944). Useful information can also be found in the archives located at the Rhodes House Library: see notably Mss. Afr. s. 1386-95 (Archives Watkins), which comprise notes on colonial perceptions of indigeneous punishment in the Elgayo, Nandi and Masai groups. See also: Mss. Afr. s. 1487 (Archives Rowlands) and Mss. Afr. s. 1153 (Archives Fazan), which includes general notes on Native law and custom.

¹¹⁶ Among exceptions, see notably the Wagishu murder and the 1933 case of a witchdoctor who was killed in the Meru district by a group of local residents. For further information on the latter case, see RH Mss. Afr. s. 742 (Archives Colchester).

¹¹⁷ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 33.

in other words be proportionate to the seriousness of the offence and not unduly severe.¹¹⁸ Ideally, punishment should be individualised in order to fit the particular personality of the offender and provide the most appropriate ‘treatment’. When determining a sentence, judges were encouraged to take into consideration the circumstances of the crime, any previous convictions and the physical, mental and personal history of the offender. In the same vein, colonial authorities were pressed to carry out studies of the ‘African mind’ and offenders in order to adapt punishments to individual, local or racialized characteristics.¹¹⁹ This discourse was an integral part of the new penological principles and practice prevailing in European sovereign countries. As underlined by Michel Foucault, since the late eighteenth century, European penal systems were increasingly based upon the individualisation of punishment, the creation of new spheres of knowledge about offenders, and the avoidance of any form of visible physical pain.¹²⁰

Over the course of the 1930s, the reformist discourses on punishment promoted by law officers at the Colonial Office were very narrow, both in object and scope. Due to scarce resources and the limited political influence upon the colonial government in Kenya, the Colonial Office made do with regular recommendations on the need to reduce prison overcrowding and to classify and segregate inmates, separating first offenders from serious criminals. Yet, these discourses were rapidly twisted or silenced by the dominant punitive attitudes prevailing within colonial society. Most enquiries and commissions only timidly suggested providing prisoners with agricultural training, so that they could internalise a capitalist work ethic and introduce, on their release, ‘various principles of successful’ agriculture into African reserves.¹²¹ The Paterson report of 1939 made the most significant impact by proposing a series of educational, recreational and aftercare measures for

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ M. Foucault, *Discipline and Punish: The Birth of the Prison* (London, 1977).

¹²¹ KNA JZ/6/5, ‘Systems of incarceration suitable for the African’, Memorandum written by M. Hailey, African Research Surveys, 1935.

prisoners.¹²² During the 1940s, the reformist rhetoric of the Colonial Office was recast within wider metropolitan concerns and discourses about social welfare and rehabilitation. Most committees appointed in the 1940s cared less about promoting British conceptions of justice and wrongdoing than about devising new penal solutions to curb recidivism and calm down settlers' anxieties about rising crime.¹²³ The Colonial Office put further pressure on the Kenyan Government to implement alternatives to imprisonment, such as prison camps, labour camps and extramural employment schemes, which were meant to reduce state expenses, effect segregation, and provide better environments for the rehabilitation of first offender and minor offenders.

The Colonial Office also became more aware of the social and economic causes of crime and delinquency during the 1940s. Crime was increasingly perceived as the result of society's failure to provide for the social and economic welfare of all its members, rather than of individual mental and intellectual deficiencies. To the Colonial Office, the treatment of offenders belonged within the competency of social departments, rather than the penal administration. There was a clear sense that the struggle against crime required a comprehensive policy, incorporating both remedial and preventive measures. Significantly influenced by the new developments in the United Kingdom, the 1942 report on juvenile welfare broke new ground by recommending a series of measures aimed at improving the social and economic conditions in African urban centres and reserves.¹²⁴ The subsequent committees and reports commissioned by the Colonial Office also promoted the new reformist dogma, promoting welfare and the prevention of delinquency and crime in the colony. They provided the Colonial Office with a platform for publicising its new concern for the training and reformation of offenders, state responsibility for the good care of prisoners while in

¹²² TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 19-20.

¹²³ See notably the Committee on Habitual Offenders (1946) and the Committee on Law and Order (1948).

¹²⁴ TNA CO 859/73/12, 'Juvenile Welfare in the Colonies', Report written by the Juvenile Delinquency Sub-Committee, 1942.

confinement and the social reintegration of the former.¹²⁵ The Secretary of State encouraged the Kenyan government to develop its embryonic aftercare system, set up rehabilitative measures within prisons and introduce a probation system for first offender and minor offenders. Concurrently, increasing attention was also paid to particular categories of offenders, including women, juveniles and people affected by mental trouble.

COLONIAL CONSIDERATIONS CONCERNING AFRICAN CRIME AND OFFENDERS

Penal reform in Kenya was first discussed within the framework of wider colonial discourses and concerns about African crime and offenders. In the early 1930s, there was a clear sense that criminals had become much more professional and organised.¹²⁶ Indeed, the colonial period was marked by a steady increase in crime and recidivism, with a significant increase in the number of reported offences against property. When a series of thefts, burglaries or housebreakings in a settled area was reported in the press, settlers often indulged in collective hysteria over 'crime waves'.¹²⁷ The colonial administration tended to downplay settlers' allegations, acknowledging the increase in offences but denying any serious outbreak in crime. However, the colonial authorities were very concerned about the rise of criminal gangs in urban centres and stock thieves operating at the frontier between African and settled areas. The African political opposition also raised concerns, and magistrates tended to impose heavy and exemplary sentences to harass and dismantle African political associations. However, the increase in delinquency and crime essentially resulted from the state efforts to petty-criminalize social misery and the ordinary life of Africans. Criminal returns from courts reflected the preponderance of petty crime in the colony, the bulk of convictions being for petty theft, petty assault, non-payment of Hut Tax and minor offences against local ordinances

¹²⁵ TNA CO 822/53/3, Report of the Commission of Enquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika in Criminal Matters, May 1933.

¹²⁶ D. Anderson, 'Black Mischief: Crime, Protest and Resistance in Colonial Kenya', *The Historical Journal*, 36, 4 (1993), p. 854.

¹²⁷ KNA/PC/NZA/2/6/86, 'Settlers worried by crime wave', *East African Standard*, 30 March 1944.

and municipal by-laws.¹²⁸ This was intimately linked to the increasing number of legal restrictions, in particular, locally-enacted ordinances, that regulated every aspect of African social and economic life over the period.¹²⁹ The prison population thus mainly consisted of minor offenders convicted for tax default, statutory offences and offences of a non-criminal nature, notably in the small outlying jails.

Colonial debates over penal reform were imbued with peculiar colonial perceptions of African offenders. They reflected and reinforced major social stereotypes, construed from a complex association of colonial dichotomies that associated African offenders' origin, intention or capacity: rural/urban, first offender/recidivist, petty/'dutiful'/professional criminal, 'corrigible'/'unredeemable', juvenile/adult, sane/insane, etc. More generally, colonial authorities constructed a series of social dangers involving different levels of threat, from the 'unsophisticated' African coming from the reserve, unaware he had committed an offence and clearly repentant, to the cunning, defiant and educated professional criminal operating in an urban centre. Colonial classifications played a prominent role in shaping penal policies and provided a socially sanctioned phraseology to legitimise differential sentencing patterns. Generally, penal reform was discussed from a dual perspective, as colonial authorities considered separate measures for petty offenders and serious criminals. These debates revolved around four major stereotypes of the African offender: the 'immoral unemployed', the young vagrant, the 'dutiful criminal' and the habitual offender. All were part of wider colonial discourses on urbanisation and detribalisation, and based upon racial consideration over African incapacity and psychology.

Crime was generally perceived as a symptom of the transformation of economic and social structures that followed British colonization; it was associated with wider processes of

¹²⁸ KNA AP/1/1049, Letter from the District Commissioner, Kapenguria, to the Provincial Commissioner, Rift Valley, 11 March 1943.

¹²⁹ TNA CO 822/53/3, Report of the Commission of Enquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika in Criminal Matters, May 1933.

labour migration, urbanisation, 'detrribalisation', and education.¹³⁰ The development of wage labour economies in European areas had resulted in a progressive drift of Africans to towns. Colonial authorities thus paid increasing attention to two major social figures: the 'detrribalised' native, born or living in a town or settled area, with no connection to a reserve, and the 'young migrant' who was born in a reserve and had migrated to town. In the colonial view, urban centres provided many opportunities for delinquency and crime, as Africans were confronted with strikingly superior European standards of living, while unconstrained by the traditional structures of social control that existed in the reserves. Wide economic inequalities between Europeans and Africans were interpreted as a temporary maladjustment due to the 'import of civilisation' and wealth in an 'underdeveloped' colony: 'We are patching an old garment in increasing degree with new cloth and the increase in crime is merely one of the rents in the garments which was to be anticipated'.¹³¹ These colonial stereotypes of delinquents and criminals reflected wider colonial anxieties about African mobility to European-dominated urban centres.

Colonial discourses on African urban offenders evolved dramatically during this period, from the 1930s, when the figure of the 'immoral unemployed' was dominant, to the mid- or late 1940s, when the figure of the 'poverty-stricken citizen' was promoted in reformist circles. In the 1930s, crime was generally perceived as 'the easiest method of living' chosen by urbanised Africans who wanted to 'afford the new products produced by British civilisation'.¹³² The underlying idea was that crime in Africa was not a matter of survival, as in Europe, but a mere means to attain a higher standard of living. The African was considered morally responsible for his crime; he could always find employment and earn a meagre living by 'honest toil' or return to the reserves and feed himself, thanks to the alleged African

¹³⁰ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 2.

¹³¹ KNA JZ/6/5, 'Unemployment and crime in Kenya', Memorandum written by J. H. Frank, Superintendent of Prisons, African Research Surveys, 1935.

¹³² KNA JZ/6/5, 'Recidivism in Kenya', Memorandum written by M. Hailey, African Research Surveys, 1935.

communal ownership of agricultural output.¹³³ According to colonial commentators, when coming to the city, the African was tempted to procure articles ‘which are often to the European necessities’ and ‘which he has quite happily done without in the past’.¹³⁴ Yet, over the 1940s, the colonial authorities became more attuned to the social and economic causes of delinquency and crime, distancing themselves from discourses based on individual responsibility or incapacity. The reformist rhetoric increasingly focused on African poverty, considering crime primarily a question of social welfare. Greater emphasis was placed on the punishing living conditions in both the overcrowded reserves and in the African sections of towns, as well as on difficulties experienced by young migrants in urban environments: ‘On arriving at the town, they find the only occupation open to them is to serve in the most menial capacity for two shillings a month in an Indian shop. They are just as hungry as when their parents feed them at home, but food in the town has to be paid for, and moreover there are many things in the town besides food that they want to buy. So they steal and the demand for life leads them to the loss of liberty’.¹³⁵

In colonial discourses, the increase in crime was also explained by the spread of education and the ‘steady increase in the number of sophisticated natives’.¹³⁶ Crime was perceived as resulting from the discrepancy between the quick evolution of mentalities and cultural norms among urban Africans and the more lengthy process of economic development. Town-bred educated Africans were stigmatised as the most dangerous class of citizens, as they both witnessed the wide inequalities in wealth in towns and had received enough education to criticise the whole system of colonial domination. Colonial authorities regarded general or literary education with the utmost suspicion, blaming it for aggravating the problem of crime by focusing on ‘broadening the outlook’ of Africans and instilling new ideas that challenged

¹³³ KNA JZ/6/5, 'Unemployment and crime in Kenya', Memorandum written by J. H. Frank, Superintendent of Prisons, African Research Surveys, 1935.

¹³⁴ Ibid.

¹³⁵ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 2.

¹³⁶ KNA JZ/6/5, 'Recidivism in Kenya', Memorandum written by M. Harley, African Research Surveys, 1935.

colonial legitimacy.¹³⁷ The social consequences of these new influences were classified using colonial—and often very stereotyped—perceptions of the ‘tribe psychology’. Kikuyu were usually perceived as ‘great imitators’, ‘astute and politically minded’, ‘swift to see and seize an advantage’ and ‘avid for new ideas’.¹³⁸ They were said to move quickly towards Europeanization and increasing ‘sophistication’ and were consequently considered the most likely to become criminals. They were usually contrasted with the Masai, who allegedly had no desire to change their state, were contemptuous of Europeans and customs and desired ‘nothing more than to be left alone to their savagery’.¹³⁹

Crime also resulted from the introduction of a criminal justice system based on European ideas of right and wrong into a colonial context. With the introduction of British rule, certain traditional pursuits, generally committed out of a sense of moral duty, had been declared illegal by colonial authorities. The civilising mission aimed to spread a British conception of justice in throughout the colonies, and eliminating pre-colonial concepts of criminality. The various crimes enshrined in the Penal Code did not differ fundamentally from those sanctioned under African law and custom.¹⁴⁰ The main ones were homicide, theft and rape. However, there were a certain number of exceptions, which included cases of stock thefts, raiding murders or killings of alleged witchdoctors. Colonial authorities vehemently condemned these crimes, which were committed out of tribal custom in certain African communities and not perceived as offences by their members. The courts saw many cases of murder committed because one person or a part of a group believed that an enemy had been engaged in witchcraft and was responsible for the death or disease of some of the group’s members. Other murders and raids were committed in the name of the group when one tribe had been attacked by another; this was considered a ‘just return’ by most African

¹³⁷ KNA JZ/6/5, 'Unemployment and crime in Kenya', Memorandum written by J. H. Frank, Superintendent of Prisons, African Research Surveys, 1935.

¹³⁸ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 2.

¹³⁹ KNA JZ/6/5, 'Unemployment and crime in Kenya', Memorandum written by J. H. Frank, Superintendent of Prisons, African Research Surveys, 1935.

¹⁴⁰ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 1.

communities. There were frequent incidents of this sort in the Nyanza Province between the Kipsigis and Masai groups, who kept attacking one another through the practice of raiding and counter-raiding: 'A man is found dead with a Masai spear between his shoulders. Four of his tribe, not with hot-blooded haste, but with the same decorum and sense of duty as a Kensington matron returning a call in due course, visit the nearest Masai village, and kill four of that tribe as a just return'.¹⁴¹

Cattle raiding and stock theft were also customary practices in certain African groups, a 'local sport' young men practiced supposedly to increase their social prestige and seduce girls: 'the cattle stealers have not in their heart done anything wrong. They were up against two adversaries, the cattle-owner and the police as well. The odds were against them and they were unlucky'.¹⁴² From the colonial perspective, such crimes resulted from the difficulty of the African in 'reconciling the stern dictates of the law with his deep-cut ideas of right and wrong'.¹⁴³ They were meant to disappear with 'the spread of education and the closer contact between the races'.¹⁴⁴ Colonial authorities were aware that such 'dutiful' young offenders, as coined by Alexander Paterson, could not be classified as ordinary criminals. Beyond their illegal traditional practices, they had generally committed no other crime and led the most ordinary rural existence. Therefore, one of the main aims of colonial prison reform was to separate rural young men who had committed crimes out of a sense of moral duty or ignorance of English law from the urban detribalised criminals who had made a profession out of crime. Overcrowded and unsegregated prisons were condemned as 'criminal schools', where professional criminals could freely teach the principles and techniques of their 'trade' to this category of rural offenders. As stock-thieving increasingly affected white farmers' properties and aroused considerable anxieties within settler communities, the colonial government became much more willing to find the means to reduce the incidence of such crimes. As a general pattern, lay magistrates tended to award substantial sentences of imprisonment in these

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

cases; this category of ‘dutiful criminals’ constituted thus one of the main groups of long-term prisoners in Kenyan prisons.¹⁴⁵

Colonial perceptions of African crime were also infused with racial stereotypes about Africans’ capacity for mental and intellectual development. During the 1930s, the colonial rhetoric of reform was significantly influenced by current racist and eugenic ideas of delinquency and crime, mainly derived from the research of two doctors, a psychiatrist, H. L. Gordon, and a pathologist, F. W. Vint, on African race and intelligence.¹⁴⁶ Though F. W. Vint seemed less interested in the political implications of his researches, both largely contributed to the diffusion of Kenyan racial theories within colonial society.¹⁴⁷ H. L. Gordon was notably Visiting Physician in the only mental health institution of the colony, Mathari Mental Hospital, from 1931 to 1937 and responsible for the psychiatric treatment of all patients. Influenced by the British eugenics movement, their ideas were discussed in the colony both within eugenicist institutions such as the Kenya Society for the Study of Race and Improvement, and also in official circles. Reformist discourses on penal reform and racial science were intimately linked, as most Kenyan eugenicists expressed a keen interest in juvenile delinquency and reformative ideas. In addition, colonial reformers were obsessed with the need to study ‘African mentality’, psychology and mental health, with a view to improving the care and treatment of offenders in the colony and paid significant attention to eugenic research and development. As reflected by Gordon’s research into the mental and intellectual development of juvenile inmates at the Kabete reformatory, eugenic thinking pretended to demonstrate scientifically the ‘neurological and emotional incapacity of the African to deal with change’ and the high incidence of mental deficiency in the African population.¹⁴⁸ Over the course of the 1930s, biological racism and racist thought thus permeated official circles and reformist discourses. There was a belief among certain sections of colonial society that African

¹⁴⁵ Ibid.

¹⁴⁶ C. Campbell, ‘Juvenile Delinquency in Colonial Kenya, 1900-1939’, *The Historical Journal*, 45/1 (2002), p. 146.

¹⁴⁷ C. Campbell, *Race and Empire: Eugenics in Colonial Kenya* (Manchester, 2012), p. 41.

¹⁴⁸ C. Campbell, ‘Juvenile Delinquency in Colonial Kenya’, p. 146.

offenders were generally of below average intelligence and affected by a high incidence of mental deficiencies and instability. Debates over colonial penal reform were similarly infected by racist and paternalistic ideas about the childlike and backward mentality of the African, particularly of 'the raw native' living in the reserve: 'Young children are not allowed to stray beyond the reach of the watchful eye of their nurse. The native of Kenya is still a young child'.¹⁴⁹ Although eugenic and racial considerations became less influential during the 1940s, the new liberal and socially-minded reformist discourses remained tinged with colonial assumptions about African incapacity.¹⁵⁰

DISCUSSING ALTERNATIVES TO IMPRISONMENT

In Kenya, colonial debates about penal reform revolved around two main problems: the excessive imprisonment of petty offenders and the steady increase in recidivism. The first problem sparked off many colonial discussions about the need for imprisonment and the difficulty in finding an alternative for minor offenders. The Colonial Office was extremely concerned about the dramatic increase in committals to prison and the increasing number of petty and remand prisoners in the colony during and after the Second World War. The Secretary of State firmly believed that the success of penal reform would largely depend on the capacity of the colonial state to find alternatives to imprisonment for this category of offenders.¹⁵¹ Punishment in colonial courts was generally limited to imprisonment, detention and fines. Alternatives to confinement were very few; whipping and the death penalty could only be used for a very small number of offences.¹⁵² The death penalty could only be imposed in cases of murder and rape. As stated by Stacey Hynd, figures of capital punishment were

¹⁴⁹ KNA JZ/6/5, 'Unemployment and crime in Kenya', Memorandum written by J. H. Frank, Superintendent of Prisons, African Research Surveys, 1935.

¹⁵⁰ C. Campbell, 'Juvenile Delinquency', p. 149.

¹⁵¹ KNA AP/1/1049, Letter from Lloyd to the Governor of Kenya, 3 September 1941.

¹⁵² KNA AP/1/1049, Letter from the Resident Magistrate, Kisumu, to the Registrar of the Supreme Court, 13 March 1943.

relatively low in colonial Kenya.¹⁵³ Adults could be sentenced to whipping for committing robbery with violence, the grosser sexual offences and aggravated assaults. In the subordinate courts, there were few such offences, the great bulk of offenders being convicted for theft or minor offences. In these cases, peremptory imprisonment, detention or fines were often the only sanctions available. In view of the alarming rates of prison and camp overcrowding, the Chief Secretary in Kenya decided in 1943 to send a circular to all magistrates, asking their opinions on the reasons for this increase and recommending the use of alternative punishments whenever possible.¹⁵⁴ As the structures of colonial confinement threatened to implode, new coercive measures had to be found and implemented urgently.¹⁵⁵ In response, the Colonial Office commissioned a series of committees, including the Committee on Habitual Offenders in 1946 and the Committee on Law and Order in 1948, to study the serious incidence of petty crime and recidivism in the colony and make concrete proposals for reform.¹⁵⁶

The first major issue was the massive incarceration of African first and petty offenders for lack of any sufficient alternative to imprisonment. In colonial Kenya, white public opinion, both official and non-official, disapproved of the use of confinement to deal with African offenders, especially minor ones. Settlers and administrative officers often held racist views; they generally alleged that imprisonment held no stigma and therefore little deterrent value for Africans.¹⁵⁷ White officials and settlers believed that the standards of comfort were ‘far lower among natives than Europeans’ and that imprisonment was thus ‘less unpleasant to the bodily senses’ to the former than to the latter.¹⁵⁸ It was additionally alleged that, due to Africans’ ‘lower wage earning capacity’, a period of idleness caused ‘little sense of loss’ and implied a differential ‘value of time’, which magistrates had to take into consideration when deciding on the length of sentence to be imposed.¹⁵⁹ Before the 1931 amendment by ordinance 41, there

¹⁵³ Hynd, S., ‘Murder and Mercy: Capital Punishment in Colonial Kenya, c. 1909–1956’, p. 85.

¹⁵⁴ KNA AP/1/1049, Circular to all Magistrates, N 26 of 1943.

¹⁵⁵ For all the replies of magistrates to the circular, see KNA AP/1/1049.

¹⁵⁶ KNA JZ/6/17, Report written by the Committee on Law and Order, 1948.

¹⁵⁷ KNA PC/NZA/2/7/47, District Commissioner, Machakos, quoted in a letter from another District Commissioner, to the Provincial Commissioner, Ukamba, 2 March 1933.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

were two 'scales of imprisonment' imposed when a fine could not be paid, a longer sentence for Africans, and a shorter one for non-Africans.¹⁶⁰ The amendment abolished the second scale and extended the non-African scale to all races. However, some District Officers deeply resented this change in legislation and proposed introducing a middle scale, which would apply to all races. The standard period of imprisonment for Europeans and Asians was considered not punitive enough for African offenders.

Colonial officials were most anxious that, due to overcrowding and lack of segregation, many first offenders or 'innocent' young men were 'corrupted' by contact with more 'hardened' or professional criminals within prisons.¹⁶¹ They were utterly convinced that the first step in penal reform was to 'separate the sheeps from the goats', or in other words first offenders and non-criminal offenders from serious ones.¹⁶² Remand prisoners were perceived as the first victims exposed to this threat of 'contamination'.¹⁶³ Due to the lack of segregated remand homes or cells, remand prisoners were mingled with convicts and serious offenders within colonial prisons, both at work and in communal spaces and dormitories. In the mid-1940s, the first remand prison was built in Nairobi where remand prisoners could be completely segregated from others.¹⁶⁴ Elsewhere, however, they were confined in the same prison and mixed with convicts and serious offenders. The problem reached considerable proportions during the 1940s, as the number of remand prisoners substantially increased. At best, precarious arrangements were made in some places to construct separate accommodation within the prison, but contact between these different categories of prisoners remained rife. The high number of remands and the disturbing levels of overcrowding put considerable strain

¹⁶⁰ KNA PC/NZA/2/7/47, Letter from a District Commissioner, to the Provincial Commissioner, Ukamba, 2 March 1933.

¹⁶¹ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 12-13.

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ KNA JZ/6/17, Report written by the Committee on Law and Order, 1948.

on prison accommodation and staff and exacerbated both lack of supervision and sanitary conditions.¹⁶⁵

This situation became particularly alarming during the Second World War. Due to the wartime food shortages and rationing, prison authorities increasingly had to produce reduced rations of food far below the minimum requirements.¹⁶⁶ The situation in prisons and camps was often on the verge of a human tragedy, risking general malnutrition, an outbreak of diseases or an epidemic. Finally, gross overcrowding prevented prison authorities from requiring all convicts to undertake hard labour, designed to increase the punitive and deterrent impact of imprisonment. Prison authorities were most concerned about the peculiar status of remand prisoners, who were not compelled to work and who constituted an 'enormous wastage of manpower' and money.¹⁶⁷ In January 1939, there were 19,182 remand prisoners in the colony. According to the Commissioner of Prisons, all would have worked if convicted and meanwhile, they constituted a financial burden for the colonial state, as they were fed and maintained on the prison budget. Colonial officials, such as Paterson, regularly proposed reducing the food ration of non-working remand prisoners.¹⁶⁸ For all these reasons, colonial authorities pressed hard for reform, to reduce the prison population by removing remand prisoners and minor offenders and segregating only the most serious offenders behind walls.

Fines, however, were perceived as unlikely to reduce the prison population or curb recidivism. In the early 1930s, the Chief Justice and the Expenditure Advisory Committee recommended that fines be used more often, particularly with first offenders, and that the latter should be given enough time to pay.¹⁶⁹ In their view, many first offenders would thus avoid incarceration, the 'contamination' by more serious offenders and the 'commencement of a criminal career'.¹⁷⁰ According to colonial authorities, fines could reduce the prison population,

¹⁶⁵ KNA AP/1/1049, Letter from the Commissioner of Prisons to the Chief Secretary, 28 April 1943.

¹⁶⁶ KNA AP/1/1049, Circular to all Magistrates, N 26 of 1943.

¹⁶⁷ KNA AP/1/1049, Letter from the Commissioner of Prisons to the Chief Secretary, 28 April 1943.

¹⁶⁸ KNA PC/NZA/2/1/126, 'Some Observations, called for and otherwise, on the Treatment of the Offender in Kenya Colony', Memorandum written by A. Paterson, March 1939., p. 23.

¹⁶⁹ KNA AP/1/1393, Circular by the Chief Justice to all Magistrates, 25 August 1933.

¹⁷⁰ Ibid.

recidivism and state expenditure to a significant extent; they also conformed to pre-colonial practices of retribution and were likely to be popular among African communities. In practice, however, this form of punishment could not be used on a large scale, as most offenders did not have enough money to pay and eventually were sentenced to a camp or prison in default of payment. In colonial Kenya, the proportion of sentences resulting from the non-payment of fines was much higher than in England and Wales.¹⁷¹ The award of fines was thus severely limited by the slow penetration of the cash nexus into the African reserves. Therefore, in official debates over penal reform, a specific colonial argumentation shaped along racial and class lines emerged to limit the imposition of fines. The view was commonly held that poor Africans would always prefer to be detained rather than pay ‘what would appear to us (Europeans) to be a small fine though to him of far greater magnitude’.¹⁷² Indeed, even if most fines were just one or two shillings (or two or three days of detention by default), they constituted a serious burden for most African families, deprived of any surplus cash.¹⁷³ Magistrates were also reluctant to impose fines, believing that African property was usually communally owned and that a warrant of distress was consequently very difficult to execute.¹⁷⁴ From the colonial perspective, this punishment was effective only for educated and wealthy African offenders.¹⁷⁵ According to the Labour Commissioner, if an African offender had money and was given a choice, he would always choose to pay a fine rather than go to prison.

Additionally, colonial officials often criticised the effectiveness of fines in light of the special conditions prevailing in the colony. According to the Attorney General, the British practice of awarding fines to minor offenders could not be followed blindly in Kenya, as there were ‘fundamental difficulties’ specific to the African context.¹⁷⁶ First, it was considered very easy for a convicted person in the colony, if not confined, to ‘disappear’ for months or years in

¹⁷¹ KNA AG/12/116, Letter from W. K. Horne to the Chief Justice, 31 December 1936.

¹⁷² KNA AG/12/116, Letter from the Attorney General to the Colonial Secretary, 12 February 1937.

¹⁷³ KNA AG/12/116, Letter from W. K. Horne to the Chief Justice, 31 December 1936.

¹⁷⁴ KNA AG/12/116, Letter from the Attorney General to the Colonial Secretary, 12 February 1937.

¹⁷⁵ KNA AG/7/13, Evidence by the Assistant Superintendent of the Police, Committee on Habitual Offenders, 1946.

¹⁷⁶ KNA AG/12/116, Letter from the Attorney General to the Colonial Secretary, 12 February 1937.

order to avoid paying the fine.¹⁷⁷ It was practically impossible for an offender to do the same in the United Kingdom, where the control and policing of territory was far more developed. The high number of Africans incarcerated for non-payment of fines could also be explained by the specific provisions of the law.¹⁷⁸ In colonial Kenya, there were legal clauses for instalments but none for giving offenders further time to pay or varying the amount of the instalments.¹⁷⁹ By and large, if the offender had no cash to pay the whole amount of the fine during his trial, he was sent to prison at once. As M. Justice Horn underlined, ‘the imprisonment goes automatically’.¹⁸⁰ The argument that prisons and camps were no deterrent because Africans were allegedly better housed and fed in penal institutions than in their own villages, was also mobilised to justify Africans’ alleged distaste for fines. From a colonial perspective, Africans did not suffer any stigma when they had been to prison, whereas in England this was considered a ‘disgrace’ materially affecting a man’s future.¹⁸¹ The deterrent value of fines was also assessed along tribal and racial lines, fines being considered more effective with some tribes than others.¹⁸² The Kikuyus, being wealthier and in possession of more surplus cash than other tribes, were said to be ‘more hard hit mentally’ by the imposition of a fine.¹⁸³ The infliction of that form of punishment upon a member of this tribe was generally considered effective, even when the crime was of a major nature. Fines were also regarded as the most appropriate form of punishment for Europeans and Asians. The imprisonment of Europeans was perceived as a direct challenge and ‘a disgrace’ to white supremacy. As a consequence, fines were considered punitive and a sufficient deterrent for

¹⁷⁷ Ibid.

¹⁷⁸ The actual text of the law can be found in the Penal Code, sections 28 and 169, and in the Criminal Procedure Code, sections 318 and 323.

¹⁷⁹ KNA AG/12/116, Letter from W. K. Horne to the Chief Justice, 31 December 1936.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² KNA AG/7/13, Evidence by a Resident Magistrate, Committee on Habitual Offenders, 1946. In 1946, he had been a Magistrate for 26 years in East Africa and a Resident Magistrate in Nairobi, Mombasa, Nakuru and Kisumu. He had also been a Visiting Justice in the prisons of Mombasa, Kisumu and Nakuru.

¹⁸³ Ibid.

white offenders. Imprisonment was imposed upon white subjects only for the most serious offences, involving manslaughter and murder.¹⁸⁴

The originality of the Kenyan penal system lay in the extent and development of its detention camp system, set up in 1925. The purpose of this system was to segregate first offenders, tax defaulters and all other offenders who had committed an offence involving no morale turpitude.¹⁸⁵ In the 1930s, detention camps generated considerable enthusiasm; they seemed to be a cheap and ideal alternative to reduce prison overcrowding and implement segregation. The Secretary of State and all colonial authorities strongly encouraged magistrates to favour detention over imprisonment for first and minor offences, resulting in a dramatic proliferation of camps in the colony up until the late 1930s.¹⁸⁶ However, the detention camps quickly failed, as segregation was in practice very difficult to achieve. First, many recidivist criminals were actually convicted to detention camps and these institutions often contained both minor and serious offenders.¹⁸⁷ This was due to the inability of magistrates to obtain reliable information on offenders' previous convictions. Because of the lack of adequate documentation, many recidivists, who had already been convicted for serious offences in their past, were sent to detention camps for a minor offence they had just committed. Detention camps also constituted a necessary holding tank, relieving the gross overcrowding in prisons. Magistrates were often left with no choice but to sentence to detention recidivists and serious offenders for lack of accommodation in the local prison.¹⁸⁸ As underlined by the Committee on Law and Order in 1948, 'it would not be possible at present to accommodate in prisons all persons who have been convicted' of offences involving morale turpitude.¹⁸⁹

¹⁸⁴ Ibid.

¹⁸⁵ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 13.

¹⁸⁶ See AP/1/1393.

¹⁸⁷ KNA JZ/6/17, Report written by the Standing Committee on Law and Order, 1948.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

Lay magistrates severely criticised detention camps for being poor deterrents, and were generally reluctant to impose sentences of detention for minor offences which were considered prevalent in their district. Colonial authorities and magistrates agreed that the camps had inadequate supervision, opportunities for hard labour and discipline.¹⁹⁰ As a consequence, magistrates tended to sentence offenders to prison rather than to camp for minor offences which were perceived as a danger to law and order in their areas, even when such offences involved no ‘moral turpitude’ whatsoever.¹⁹¹ The case of tax defaulters is particularly illuminating. Many District Commissioners, alarmed by the difficulties experienced by police and administrative officers in collecting taxes and providing revenue for the state, imposed very heavy sentences for tax offences, preferring imprisonment to detention. In 1933, for instance, 5134 tax defaulters were confined in Kenyan prisons.¹⁹² The practice was similar in the case of offenders convicted of manufacturing alcohol or drugs.¹⁹³ From the 1940s onwards, fewer offenders were thus sent to detention camps than to prison; the number of camps was reduced by one third during the Second World War.¹⁹⁴ This pattern was reinforced by the economic consequences of the war, which brought increased employment, greater prosperity and improved potential for tax collection. The magistrates’ practice of committing minor offenders to prison aroused considerable concern at the Colonial Office in London. The Secretary of State pressured the Chief Justice in Kenya to encourage magistrates to make more use of the detention camp system and avoid sending minor offenders and tax defaulters to prison.¹⁹⁵ However, colonial authorities were generally reluctant to interfere with magistrates’ discretion. The Chief Justice bypassed this issue, considering magistrates’ practice to be generally in line with the Colonial Office recommendations, except for prevalent offences such as illicit drinking or using drugs, where imprisonment was too often awarded. The

¹⁹⁰ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 13.

¹⁹¹ See the written replies of magistrates to the 1943 Circular in KNA AP/1/1049.

¹⁹² KNA AP/1/1393, Circular by the Chief Justice to all Magistrates, 7 July 1934.

¹⁹³ KNA AP/1/1393, Letter from the Registrar of the Supreme Court to the Colonial Secretary, 3 August 1929.

¹⁹⁴ KNA AP/1/1049, Letter from the Resident Magistrate, Nakuru, to the Resident Magistrate, Nairobi, 24 April 1942.

¹⁹⁵ KNA AP/1/1393, Circular by the Chief Justice to all Magistrates, 7 July 1934.

attitudes of the colonial authorities thus reflected the wide powers entrusted to lay magistrates and the political sensitivity of this issue. District Commissioners were given wide discretion in determining patterns of punishment and increasingly showed, both in discourse and practice, a marked distaste for the detention camp system.

Debates over penal reform also revolved around a series of proposals and experiments aimed at finding alternatives to the existing system of camps and prisons and making up for their shortcomings. The general idea of the reform-minded officials was that reformed penal institutions holding minor and non-criminal offenders should be modelled more closely on low-security establishments, such as open or semi-open camps or extramural employment schemes rather than prisons. The main purpose was thus 'to regulate a human life, without resorting to the complete restriction of imprisonment' and thus reduce the cost of state coercion.¹⁹⁶ At the international level, there was in the 1930s a general trend to move from walled prisons to the solution of detention or semi-open camps. This solution was promoted as the apex of modern prison administration for minor offenders in most Western sovereign countries in Europe and in the United States. Similar penal institutions had been introduced in various British colonies, such as Palestine, Burma, and Northern Rhodesia. Influenced by these developments, the colonial authorities in Kenya generally held the view that maximum-security prisons were not necessary for African minor offenders and that considerable savings could be made by developing low security structures. The main colonial prisons were very expensive to construct, maintain and supervise, as they required high walls, barred windows, locked doors, cells and chains. Open camps and prison farms considerably reduced building and maintenance expenses and resulted in significant state savings. These debates disclosed both the official aims of punishment and the dominance of economic and ideological concerns over rehabilitative ones in reformist discourses. These new penal institutions were primarily conceived of as alternative reservoirs of free unskilled and disciplined labour for the state; they were meant to reduce both prison population and government expenses. The Colonial

¹⁹⁶ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 33-34.

Office fully supported these penal innovations as economical alternatives to imprisonment that were not in conflict with the terms of the International Force Labour Convention. Reformist discussions were also racially informed and drew upon colonial beliefs about ‘African nature’ and ‘mentality’, according to which the African was not a ‘runaway’ and could be easily reduced to obedience and passivity.¹⁹⁷ The imperative of safe custody was considered less necessary for African offenders than for European ones. In the colonial imagination, as scornfully portrayed by Paterson, the African tended ‘to stay put’, ‘more naturally than a golf ball on the links or a child on the desk’.¹⁹⁸ Paterson estimated that roughly half the prisoners in Kenya did not need to be confined in closed prisons and could be transferred to open or semi-open prison camps. As a final, although less important incentive, these penal institutions were promoted as better environments in which to implement the new rehabilitative ideals of Western penal reform. In a nutshell, they were meant to accomplish what the detention camp system had dramatically failed to do. They would prevent contact between first and serious offenders in prisons, provide better care of convicts who would benefit from a healthier and freer environment, and facilitate rehabilitative projects for first offenders, through improved supervision and individualisation.¹⁹⁹

In colonial Kenya, the prison camp became the official ideal model of incarceration for minor offenders, ensuring strict segregation and resulting in considerable financial savings for the state.²⁰⁰ A prison generally cost the government half a million pounds, whereas a prison camp holding the same number of convicts cost a few thousands pounds only. Additionally, as prison camps only held minor offenders, the costs of supervision were significantly reduced. From the colonial perspective, most African small-term offenders would not try to escape, so that selected prisoners could be given a measure of responsibility and autonomy. The example of prison farms illustrates the scarcity of funds and the failure and contradictions of penal

¹⁹⁷ Ibid.

¹⁹⁸ Ibid.

¹⁹⁹ KNA AG/7/13, Evidence by a Resident Magistrate, Committee on Habitual Offenders, 1946. In 1946, he had been a Magistrate for 26 years in East Africa and a Resident Magistrate in Nairobi, Mombasa, Nakuru and Kisumu. He had also been a Visiting Justice in the prisons of Mombasa, Kisumu and Nakuru.

²⁰⁰ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 13.

reform in general. Such institutions cost little and were universally acclaimed in colonial circles and at the Colonial Office as the best way to solve the rising problem of recidivism and the high numbers of first offenders, notably juveniles.²⁰¹ For the colonial authorities, these camps combined the advantages of detention and labour camps. They benefited from the administrative, supervisory and sanitary arrangements of permanent camps, while providing the training and economic advantages of labour camps. Prison farms were to be turned into efficient farming establishments working in collaboration with and operating 'as the handmaid of the agricultural department' for the colonial state.²⁰² The provision of free convict labour provided the colonial state with an opportunity to undertake experiments that would not have been possible otherwise, due to the 'prohibitive cost of free labour'.²⁰³ Prison camps were thus meant to provide a free and disciplined agricultural labour force working directly for the benefit of the colonial state. This system was of mutual advantage to the prison and agricultural departments: the former provided the disciplinary staff, the latter the technical supervision. However, after the Kitale camp was built in the early 1930s, it took many years for the colonial government to set up a second similar farm in Western Kenya, at Shikusa. This camp cost the colonial government only 200 pounds and it lasted five or six years. Another one was planned for the Eastern Province but the funds were never made available.²⁰⁴ As a consequence, due to the shortfall of funds and probably wider punitive concerns, the system of prison camps remained extremely limited in extent and barely benefited the category of delinquents aimed at: juveniles and young first offenders under thirty.

Extramural employment schemes were also discussed as a possible solution in the early 1940s. The purpose was also to control the work output of African offenders and regulate their lives without the expenses of confinement. In this scheme, offenders had to perform a stated amount of penal work under some form of supervision and guidance for a specified number of

²⁰¹ KNA JZ/6/50, Prison Department Conference, Minutes, 15 Septembre 1952.

²⁰² KNA PC/NZA/2/1/126, 'Some Observations, called for and otherwise, on the Treatment of the Offender in Kenya Colony', Memorandum written by A. Paterson, March 1939.

²⁰³ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 34.

²⁰⁴ KNA JZ/6/50, Prison Department Conference, Minutes, 15 Septembre 1952.

hours and days, without being confined in a prison or camp.²⁰⁵ A daily task had to be completed in six hours and the duration of this punishment was to be equivalent to the period of imprisonment that would have been awarded for the same offence. At the end of the day, the offender would return to his home and feed himself by his own means, thus constituting no expense for the colonial government in wages or maintenance. In this scheme, offenders were not subjected to prison rules; working conditions and disciplinary rules were exactly the same as for a paid worker on public works, except that the offender was not paid.²⁰⁶ In the event that the convicted person did not follow the restrictions imposed upon him, he would be brought back to court and punished for the original offence with a sentence of rigorous imprisonment. In view of the significant increase in the prison population during the Second World War, the Colonial Penal Administration Committee put pressure on the Kenyan government to introduce this scheme. Extramural employment schemes had gained some measure of popularity at the Colonial Office, following successful experiments in other colonial territories, including Tanganyika, Nyasaland and Palestine. In 1933, Tanganyika became the first African British colony to establish an extramural labour system.²⁰⁷ In the late 1930s, 87 % of the prisoners of this colony were either awaiting trial or serving a sentence of one month or less. The probation system thus proved an efficient and economical method of dealing with an overwhelming majority of petty cases and significantly reducing prison admissions. It was later introduced in Nyasaland in 1939 and both colonies were asked in the early 1940s to provide substantial information on the workings of the system in order to publicise it to other colonial governments.

Yet, extramural employment was received with little sympathy among official circles in Kenya. Colonial authorities recognised the advantages of the scheme in theory but considered it 'quite unworkable in practice' in view of the local conditions prevailing in the

²⁰⁵ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 34-36.

²⁰⁶ KNA AP/1/1812, Letter from the Secretary of State to the Governor of Kenya, 30 December 1939.

²⁰⁷ TNA CO 912/3, Colonial Penal Administration Committee, Minutes, 30 July 1941.

colony.²⁰⁸ Although ‘very imperfect in organisation and discipline’, the whole system of detention camps was deemed preferable to both imprisonment and extramural employment in dealing with the very high number of small offenders in Kenya. From 1925 to 1940, the annual number of offenders committed to detention camps had averaged 13,676. By comparison, in Tanganyika, the annual number of minor offenders who could be eligible for such a system amounted to only 668. According to the Chief Inspector of prisons, an extramural scheme would thus implode under the alarmingly high number of persons convicted for minor offences in Kenya.²⁰⁹ All of the colonial authorities, including the Commissioner of Prisons, the Governor and all Provincial Commissioners, ultimately refused to introduce the extramural employment scheme and resigned themselves to use the detention camp system instead. It was alleged that, due to the very high number of minor offenders and the lack of staff, extramural employment schemes could result in various sanitary or disciplinary scandals. Despite their shortcomings, detention camps had the advantage of providing rations and bedding and ensuring minimal supervision through confinement. Finally, although irregularities were rife in the detention camps, the distant supervision of the District Commissioner and camps regulations prevented the most blatant abuses and constrained the ‘whims and fancies of the Officer-in-charge’.²¹⁰

Nevertheless, colonial authorities tried to promote and develop a large element of extramural work within the Kenyan penal system, both through prisoners’ work out-gangs and prison labour camps. In colonial Kenya, little work was actually available within the walls of prisons and most prisoners worked in out-gangs on state work in the vicinity of the prison and for various government departments. As it was often difficult to find useful and arduous work within the prison surroundings, prison labour camps were established in the immediate proximity of the work itself, along roads or building projects. Most were established during the Second World War and could be found along the Railway realignment between Nakuru

²⁰⁸ Ibid.

²⁰⁹ TNA CO 912/3, Colonial Penal Administration Committee, Minutes, 30 July 1941.

²¹⁰ KNA AG/16/225, Letter from the Governor of Kenya to the Secretary of State, November 1941.

and Gilgil, where prisoners worked on a large production of ballast and stone for the Railways and Harbour administration. Certain camps were also established to provide labour for the Public Works Department at Thomson Falls and elsewhere. During the course of the 1940s, colonial authorities applied further pressure to extend this system. Labour camps had the advantage for the colonial state of making punishment public and increasing the deterrent effect of imprisonment and detention. However they were primarily valued on economic grounds, as they provided a convenient source of cheap, unskilled and disciplined labour to perform arduous and manual work for the state. Temporary labour camps had the advantage of ensuring the mobility and flexibility of the convicts' labour force for government purposes; it was mainly used for large building programmes. Colonial authorities found extramural work appropriate for first offenders only, due to the difficulty of providing adequate staff and supervision. There was generally only one warder for 25 convicts, sometimes one or two for 50 prisoners. Prison authorities generally recommended a two-step process before convicts could be enrolled on extramural work. This process involved a preliminary disciplinary period, where prisoners performed punitive work in a central district camp. For the colonial government, such penal institutions had thus the advantage of reducing the economic costs of supervision, accommodation and safe custody to a minimum, while providing a free mobile labour force of African convicts to be used for state building and industrial purposes.

Over the period, a proposal to create labour camps for vagrants and poor people (alternatively called the Labour Corps) was also widely discussed among colonial authorities. These debates disclosed most clearly the ambiguities and contradictions of the colonial reformist rhetoric and the glaring primacy of economic and disciplinary concerns over the new rehabilitative-oriented discourses. All official circles of colonial power, whether in the executive, prison, judicial or administrative spheres, widely supported the introduction of a scheme of labour camps for African vagrants. Such enthusiasm can be explained only by the fact that these institutions were meant to achieve all of the official aims of prison labour and state punishment. They had to be openly punitive, economically useful and to work both for

the offender's and the public good. Above all, this project was an integral part of the colonial state's attempt to criminalise poverty, put all the 'spives and drones' to work and create a cheap, manual and organised labour force to fulfil the needs of the colonial market. The discourse of the Governor of Kenya in 1947 was very revealing and disclosed the tension between the economic, disciplinary and rehabilitative objectives of state punishment.²¹¹ He himself admitted that labour camps were primarily meant to create a free disciplined unskilled African labour force performing retributive work for the colonial state. In his view, labour camps had to be openly punitive and part of the prison system: 'it might (...) have a wing of that nature to which untouchables or people of a particular kind might be consigned, largely as a piece of regimental discipline'. In his view, prisoners and detainees should be employed on building schemes, notably on the construction of dormitory towns. The only reformist idea hinted at by the Governor was his suggestion that a handful of offenders could be provided training in skilled trades such as carpentry and blacksmithing 'to avoid turning the whole thing into unskilled labour force'. The Labour Corps' proposal was thus the ultimate embodiment of the principle that social welfare should be under the punitive, steel hand of the penal system. Even in reformist circles, penal modernisation in colonial Kenya was primarily meant to serve the economic interests of the state, rather than to provide for the welfare and training of African offenders.

It is actually surprising to see that the proposal of labour camps for African vagrants and poor people was ever supported by the Colonial Office. The Governor of Kenya was himself surprised to hear the Secretary of State say, during a conference in London, that he 'would give his approval to a fairly extended use of this principle'.²¹² The Governor had given a lot of thought to the subject and references had been made in the Legislative Council. The proposal had also gained wide popularity in Kenya, in view of certain successful precedents in other colonial territories. The closest precedent was the Special Service Battalions established in South Africa during the inter-war period, when the economic situation had considerably

²¹¹ KNA MD/4/1/1, Letter from the Governor of Kenya to the Chief Secretary, 13 March 1947.

²¹² Ibid.

deteriorated. These labour camps exclusively targeted the 'poor white' young man and child. The Governor of Kenya considered this experiment 'an unqualified success' which had acquired a good reputation in South Africa and provided valuable training in a number of skilled trades. In Kenya, the problem was completely different and the project became embroiled in racial politics, as it was implicitly meant for young African vagrants exclusively. The governor admitted that the legislation had to be 'non-racial' to avoid international criticism on grounds of racial discrimination. However, beyond this formal precaution, the labour camp corps proposal was mainly conceived along racial lines. The Governor was very concerned about potential cases in which Indian or European children might be convicted and assigned to the Labour Corps, to mix with African offenders and be subjected to the same punitive living and working conditions. The conception of the Labour Corps he had in mind, he himself succinctly acknowledged, would not be adequate for non-African children. What was implied was that penal labour imposed upon Africans in vagrant camps would be too punitive, arduous and unskilled for young people of other races.

PENAL REFORM FOR SERIOUS OFFENDERS

The colonial rhetoric on penal reform also focused on the problem of recidivism and habitual offenders. The Colonial Office was very concerned about increasing rates of recidivism and appointed two special committees, one in 1946, entitled 'the Slade Committee', to inquire into recidivism and make recommendations in view of its reduction and a second in 1948, the 'Committee on Law and Order' to consider more broadly the problems of crime and policing in the colony. In 1950, the problem of recidivism had reached considerable proportions. According to the 1950 annual prison report, 21,4% of the prison population was made up of persons who had been previously convicted.²¹³ Colonial authorities had also identified a 'class of habitual offenders', who had more than four previous convictions and

²¹³ KNA JZ/6/15, 'Corrective training', *East African Standard*, 4 December 1950.

numbered 981 in 1950.²¹⁴ Both committees reached similar findings: penal administration was largely responsible for the steady increase in recidivism.²¹⁵ In their view, the root of the issue lay in the magistrates' practice of awarding successive short sentences of confinement. The average length of sentences was very short and recidivists were often given successive short periods of imprisonment for small offences. In this context, offenders were released early enough to get back to the town, use the same criminal networks and commit new infractions. In addition, they could not be subjected to any form of corrective training in prison, as the length of confinement was too short for this purpose. In colonial Kenya, there was in prisons no attempt to 'reform' and teach prisoners how to support themselves on release. Many returned to prison because they did not acquire any skills while in confinement and could not find any employment on discharge. The technical instructor in the Nairobi prison estimated that a period of eight years was necessary if an African prisoner was to serve the full apprenticeship in one trade and be turned into a skilled craftsman.²¹⁶ However, the average sentence of imprisonment, even for long-term prisoners, was far less than eight years, taking into consideration that many inmates could be released after completing three quarters of their sentences on the grounds of 'good conduct and industry'.²¹⁷

The reformist rhetoric thus focused on the need to lengthen periods of imprisonment for recidivists and serious offenders, and to make prisons much more rehabilitative, both in purpose and practice. Both committees recommended longer sentences of imprisonment for recidivists, independent of the seriousness of their last offence. They wanted to entrust magistrates with the power to impose sentences of imprisonment from two to eight years, 'with the object not of imposing a specific penalty for a specific offence, but of subjecting the offender to such training, discipline, treatment or control as would be calculated to check and reform his criminal propensities'.²¹⁸ Reformist discourses on long-term corrective training

²¹⁴ Ibid.

²¹⁵ KNA JZ/6/15, 'A new approach to crime', *East African Standard*, 21 August 1950.

²¹⁶ KNA JZ/6/17, Report written by the Standing Committee on Law and Order, 1948.

²¹⁷ Ibid.

²¹⁸ Ibid.

were significantly influenced by the metropolitan example, where the new penological principles and practices promoted the internalisation of disciplined individualities within coerced and controlled bodies, through regulated work and regular exercise in prisons. In the reformist view, penal institutions were to be considered places of apprenticeship and rehabilitation. The aim of corrective training was explicitly to educate criminals serving long sentences in ‘a trade and in the principle of useful citizenship’, or in other words to ‘turn out trained artisans who can secure useful and remunerative work and need no longer have recourse to crime for their livelihood’.²¹⁹ Similarly, echoing metropolitan concerns, colonial reformers favoured the ‘scientific classification’ and observation of African convicts. They thus proposed to subject them to a period of specific observation in order to determine their mental, personal and physical characteristics and their aptitude for corrective training and working discipline.

However, Kenyan liberals also twisted reformist discourses towards recidivists and serious offenders to accommodate general attitudes towards punishment and labour within colonial society. Despite officially supporting the reformist stance promoted by the Colonial Office, colonial officials were obsessed with the need to instil a capitalist work ethic into African bodies and to meet the needs of the colonial labour market and the economic interests of the state. The primary aim of corrective training was to create and secure a disciplined and efficient labour force and to force Africans ‘averse to undertake work of any kind’ into the local economy.²²⁰ Similarly, corrective training would compensate the resource-trapped colonial state for the financial burden of prisons through the improved training and increased output of prisoners, and the reduced cost of policing and repression: ‘in this manner, the state will benefit from the prisoner’s labour and skill, through the medium of prison industries, and the public protected from the depredations of the offender over a long period’.²²¹ Finally, these reformist discourses barely veiled harsh colonial attitudes toward habitual offenders and

²¹⁹ KNA JZ/6/15, ‘Corrective training’, *East African Standard*, 4 December 1950.

²²⁰ KNA JZ/6/17, Report written by the Standing Committee on Law and Order, 1948.

²²¹ Ibid.

society's persistent demands for increased punitiveness. In the colonial view, African recidivists could be divided into two categories: the 'corrigible' ones who could benefit from corrective training and should be subjected to it during a period of no less than two years and no more than eight years, and the 'incurable ones' who should be subjected to a long—if not indefinite—term of corrective training.²²² Most colonial officials believed that one group of recidivists was 'essentially antisocial' and unable to be influenced by any form of apprenticeship or reformation work.²²³ In their opinion, these unredeemable offenders should be banished from society and confined in a penal settlement in a desert area, such as the Northern Province or on an island: 'this is the view of sociologists who are coming more and more to the conclusion that anti-social types should be banished for it is these types mentally unsuited for life in a community who provide temptation for others to break the law'.²²⁴

The Slade committee set up by the Colonial Office in 1946 defended a slightly more nuanced approach, although the solutions proposed were barely less punitive and severe. In contrast with most colonial officials, the Committee defended the idea that no offender could be beyond all hope of 'redemption' and opposed the idea of a penal settlement where recidivists would be segregated and confined for life.²²⁵ First, it was alleged that this would create a 'criminal tribe made up of all ages', unless children were banned and sterilisation compulsory.²²⁶ Moreover, in the view of the committee, it would involve an irrevocable stigmatisation of individuals as 'incurables'.²²⁷ In their view, offenders should be considered 'probably incurable' but given the opportunity to prove the contrary.²²⁸ As a consequence, the Slade committee proposed subjecting this category of offenders to a longer period of training in a corrective centre, no less than seven years and even up to fifteen years. This proposal was hardly less severe than banishment, as releases from the corrective centre would depend on the decision of the Commissioner of Prisons and the advice of an executive

²²² KNA JZ/6/15, Extract from the Slade Report, 1946.

²²³ Ibid.

²²⁴ KNA JZ/6/15, 'A new approach to crime', *East African Standard*, 21 August 1950.

²²⁵ KNA JZ/6/15, Extract from the Slade Report, 1946.

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Ibid.

standing board of enquiry. In other words, the reformers proposed that hardened recidivists should be part of a secluded system, separated from the ordinary penal machinery, that would confine them apart from society, with very few opportunities for release, for fifteen or twenty years of their lives.

3 - THE SLOW MODERNISATION OF PUNISHMENT

The development of social welfare in African colonies has been the object of increasing scholarly attention in recent years.²²⁹ In British colonial Africa, authorities began to subsidise social services after World War II as part of what came to be coined ‘the second colonial occupation’ of Africa.²³⁰ The West Indian riots in 1937 had brought the attention of the British government to the risks of mass unemployment and poverty across the empire. In the early forties, there was a clear sense at the Colonial Office that comprehensive welfare structures should be introduced in the colonies to deal with an overwhelming number of poor people, vagrants and minor offenders: ‘Social welfare as designed by the new Turks of the Colonial Office meant many things: implanting rural social betterment by animating civil society against social collapse; devising urban remedies for the incapacitated and the destitute; correcting the deviant; and training Africans to be their own policemen’.²³¹ Yet, social schemes remained highly limited in purpose and extent, notably in settler colonies such as Kenya or Zimbabwe where white domination over land ownership and political representation tended to cut against the grain of social reform. Comparing settler and peasant export colonies, Bowden and Mosley allege that ‘settler type political systems tended to produce highly unequal income distributions, and as a consequence, patterns of public expenditure and investment in human and infrastructural capital, which were strongly biased against smallholder agriculture and thence against poverty reduction’.²³² In the case of Kenya, Johanna Lewis writes that the Colonial Office dramatically failed to implement his welfare

²²⁹ A. Eckert, ‘Regulating the Social: Social Security, Social Welfare and the State in Late Colonial Tanzania’, *Journal of African History*, 45 (2004): 467-89; P. Kallaway, ‘Welfare and Education in British Colonial Africa and South Africa during the 1930s and 1940s’, *Pedagogica Historica*, 41/3 (2005): 337-356; J. Lewis, ‘Tropical East Ends’ and the Second World War : Some Contradictions in Colonial Office Welfare Initiatives’, *The Journal of Imperial and Commonwealth History*, 28/2 (2000) : 42-66; J. Lewis, *Empire State-Building: War and Welfare in Colonial Kenya, 1925-52* (Ohio, 2000); J. Midgley and D. Piachaud, *Colonialism and Welfare: Social Policy and the British Imperial Legacy* (Cheltenham, 2011); S. Bowden and P. Mosley, *Politics, Public Expenditure and the Evolution of Poverty in Africa, 1920-2000* (Manchester, 2010).

²³⁰ The expression was coined by D. Low and J. Lonsdale, ‘Introduction’ in D. Low and A. Smith, *Oxford History of East Africa* (Oxford, 1976), p. 12.

²³¹ A. Eckert, ‘Regulating the Social: Social Security, Social Welfare and the State in Late Colonial Tanzania’, *Journal of African History*, 45 (2004), p. 469.

²³² S. Bowden and P. Mosley, *Politics, Public Expenditure and the Evolution of Poverty in Africa, 1920-2000* (Manchester, 2010), p. 12.

agenda due to the staunch opposition of the colonial administration and of the settler community.²³³

With little surprise, settlers' antipathy to reform took greater proportions in the penal field; the white ruling class broadly subscribing to a common punitive sense towards African offenders. The historiography tended to overlook the questions of probation and after-care in colonial Africa, mainly because such systems were introduced in the late colonial period and rarely developed in scale.²³⁴ As David Killingray underlines, 'The other concerns of penal reformers – probation services, schemes for after-care of prisoners, only began to be implemented in the African colonies after 1945. Tanganyika introduced a small probation system only in 1951. (...) Such ideas cost money, and although this was in short supply, the principles of good government, humanity and welfare economics demanded that the late colonial state should have a modern system for dealing with those who offended the law. But, as with much of colonial rule, changes came but slowly, and they were too little and too late'.²³⁵ This chapter constitutes a first attempt to chronicle the slow emergence of these systems in the particular case of colonial Kenya. So far, scholarly attention has only focused on reforms seeking to improve the management of juvenile offenders in the British colonies.²³⁶ As far as Kenya is concerned, Chloe Campbell shows that colonial authorities implemented reformist proposals to a significant extent in the thirties, both in the judicial realm and in

²³³ J. Lewis, *Empire State-Building: War and Welfare in Colonial Kenya, 1925-52* (Ohio, 2000).

²³⁴ These aspects are quickly mentioned in some studies of colonial imprisonment and punishment, see notably: F. Bernault, 'The Shadow of Rule: Colonial Power and Modern Punishment in Africa', in F. Dikötter and I. Brown (eds), *Cultures of Confinement: a History of the Prison in Africa, Asia and Latin America* (London, 2007), 55-94; D. Killingray, 'Punishment to Fit the Crime?: Penal Policy and Practice in British Colonial Africa', in F. Bernault (ed.), *A History of Prison and Confinement in Africa*, (Portsmouth, 2003): 181-204.

²³⁵ D. Killingray, 'Punishment to Fit the Crime?: Penal Policy and Practice in British Colonial Africa', in F. Bernault (ed.), *A History of Prison and Confinement in Africa*, (Portsmouth, 2003), p. 202.

²³⁶ C. Campbell, 'Juvenile Delinquency in Colonial Kenya, 1900-1939', *The Historical Journal*, 45/1 (2002): 129-51; L. Chisolm, 'Education, Punishment and the Contradictions of Penal Reform: Alan Paton and Diepkloof Reformatory, 1934-48', *Journal of Southern African Studies*, 17/1 (1991): 23-42; L. Fouchard, 'Lagos and the Invention of Juvenile Delinquency in Nigeria, 1920-60', *Journal of African History*, 47/1 (2006): 115-37; M. Last, 'Children and the Experience of Violence: Contrasting Cultures of Punishment in Northern Nigeria', *Africa*, 70/2 (2000): 359-93; P. Ocobock, 'Spare the Rod, Spoil the Colony: Corporal Punishment, Colonial Violence and Generational Authority in Kenya, 1897-1952', *The International Journal of African Historical Studies*, 45/1 (2012): 29-57; S. Sen, 'A Separate Punishment: Juvenile Offenders in Colonial India', *The Journal of Asian Studies*, 63/1 (2004): 81-104; R. Waller, 'Rebellious Youth in Colonial Africa', *Journal of African History*, 47/1 (2006): 77-92.

Approved Schools.²³⁷ Extending Campbell's research, the following argument explores and uncovers the unfortunate fate of the penal reform over the following decade.

The social welfare reforms advocated by the Colonial Office were progressively implemented in Kenya, although to a very limited extent. Reflecting metropolitan liberal rhetoric, penal reforms were meant to develop broader welfare policies to prevent rather than cure and to promote the rehabilitation of first and minor offenders. With the creation of the Colonial Penal Administration Committee in 1937, the Colonial Office put further pressure on colonial governments to implement these new reformist principles in their territories. As a consequence, the Kenyan government initiated over the period of the 1940s a series of discussions and reforms to keep abreast of metropolitan developments. In the face of rising crime rates and growing official concern over recidivism, there was a clear sense that the penal system had failed and needed to be overhauled, with a special emphasis on welfare, rehabilitation and prevention. Debates primarily revolved around three major goals: the establishment of a probation system, the introduction of a comprehensive system of aftercare for ex-convicts and the improvement of the treatment of juvenile offenders. All these measures aimed to prioritise social welfare over penal administration in the treatment of first, minor and juvenile offenders. By and large, they reflected a new concern for the rehabilitation of prisoners, the social reintegration of ex-convicts within society and certain categories of offenders, such as children, urban offenders and long-term prisoners. However, in colonial Kenya, these reforms remained very limited in scale for a combination of financial, institutional and ideological reasons.

²³⁷ C. Campbell, 'Juvenile Delinquency in Colonial Kenya, 1900-1939', *The Historical Journal*, 45/1 (2002): 129-51.

PROBATION

In the early 1940s, the Colonial Office pressed for the introduction of a probation system in all colonial territories. Since the early twentieth century, this system had been introduced in most Western sovereign countries and certain colonial dependencies and was acclaimed worldwide as the best modern penal device for dealing with minor offenders and promoting rehabilitation.²³⁸ Probation was introduced in the United Kingdom in 1903 and later in various British colonies, such as Palestine, South Rhodesia and South Africa.²³⁹ The system proved particularly successful in the United Kingdom during the first half of the twentieth century. Introduced under the 1903 Probation Act, it quickly developed in scale until, by the mid-1930s, more than 50% of minor offenders charged with indictable offences were put on probation. Colonial territories, already equipped with probation systems, also reported on the success of their probation systems, which had much improved overall functioning. In South Africa, for instance, the probation system was both developed and professionalised during the first half of the 1930s. In this short period of time, the number of probation staff was doubled, the system was extended to many urban centres and the service was transferred to the Education Department. Probation was also introduced and increasingly favoured in New Zealand, Australia and Canada. In the early 1940s, the Colonial Office decided to publicise the advantages of probation and extend the system throughout the whole empire. The Secretary of State sent various dispatches to colonial governments on the subject, together with a memorandum on probation and a 'Handbook on Probation' dealing specifically with conditions in the United Kingdom.²⁴⁰ His hope was that probation would 'eventually become an integral part of judicial and penal administration throughout the empire' in both colonial

²³⁸ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 33-34.

²³⁹ KNA PC/NZA/2/6/3, 'A synopsis of the Colonial Office Report on Probation', written by the Committee appointed to consider the advisability of the introduction of a probation system in the colony (alternatively named Committee on Probation), [undated, c. 1942].

²⁴⁰ TNA CO 912/4, Colonial Penal Administration Committee, Minutes, 30 July 1941.

and native tribunals.²⁴¹ Paterson recommended introducing the scheme in Kenya for the first time in the late 1930s, in a report published after his tour of East Africa. Pressed by the Colonial Office, colonial authorities discussed the matter during the first years of the Second World War and appointed a committee to consider the advisability of introducing a probation system in the colony. The Probation Ordinance was eventually accepted by the Kenyan Legislative Council on 10 November 1943, without opposition.²⁴² However, due to the wartime shortage of administrative staff, the first Probation Officer was appointed only after the end of the war, in 1945.²⁴³

This system was defended on both practical and philosophical grounds. Probation was presented as a ‘simple, effective and economical method’ of keeping minor offenders out of prisons.²⁴⁴ The probation order, made by the court, provided for the offender to be under the supervision of a Probation Officer and stipulated that certain conditions be observed by the offender, such as residence or steady attendance at work. Other restrictions could also be imposed, such as forbidding some places of amusement or demanding that the offender return home by a certain hour in the evening. If the offender did not comply with the legal restrictions imposed by his order, he could be brought back to court and tried for his original offence. Probationers were thus required to live at home at their own expense: food, work and lodging were not provided. Similarly as extra-mural employment schemes, probation orders were meant to regulate human lives ‘without the constraints and expenses of imprisonment’.²⁴⁵ It was constantly insisted upon that this reform would result in great savings for the prison department, by reducing the prison population and recidivism. The establishment of a probation system was defended as a ‘small premium’ society had to pay to avoid the higher costs of recidivism, which was caused by contact between minor and serious offenders in

²⁴¹ TNA CO 859/73/6, Circular Dispatch by the Secretary of State, 4 June 1941, quoted in a Letter from Sergeant H. N. Tait to the Dominions Office, 11 December 1941.

²⁴² KNA JZ/10/5, 'Juvenile Offenders and the Law', *East Africa Standard*, 15 November 1943.

²⁴³ KNA JZ/6/17, Report written by the Committee on Law and Order, 1948.

²⁴⁴ TNA CO 912/4, 'A Note on the Discussion of the Problems of the Colonial Prison', written by A. Paterson, October 1938.

²⁴⁵ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 34.

prison and the lack of rehabilitative work. Prison authorities would thus be allowed to devote themselves to their primary aim: 'the segregation and adequate treatment of the vicious and dangerous criminal'.²⁴⁶ In addition, the wages required for the employment of Probation Officers were much less costly than the financial provisions necessary to maintain the whole prison machinery.

The arguments developed by colonial reformers also echoed the new penal philosophy promoted in London and served to recast the phraseology of the civilising mission. The Attorney General considered it a measure to 'keep with modern thought and modern civilisation' and to promote rehabilitation in the treatment of first offenders.²⁴⁷ Probation was presented as 'a very material step in social development' rather than in penal administration.²⁴⁸ This scheme was meant to foster the wrong-doer's sense of social responsibility, autonomy and citizenship rather than simply punishing him. Colonial authorities were highly aware that most convicts were minor offenders, who were perceived without a definite hint of paternalism, not as 'dangerous or expert criminals', but as individuals 'in need of guidance and supervision', or in other words, 'weak characters who (had) surrendered to temptation or, through misfortune and improvidence, (had) been brought within the operation of the police and the courts'.²⁴⁹ Colonial officials were often reminded that the success of the system depended on the character and tact of Probation Officers and on the manner in which courts made use of their power. As stated by the Probation Ordinance, the role of the Probation Officer was primarily to be familiar with local conditions, customs and communities in order to 'assist, advise or befriend' the offender and to control him by obtaining his consent and

²⁴⁶ KNA PC/NZA/2/6/3, 'A synopsis of the Colonial Office Report on Probation', written by the Committee appointed to consider the advisability of the introduction of a probation system in the colony, [undated, c. 1942].

²⁴⁷ KNA JZ/10/5, 'Juvenile Offenders and the Law', *East Africa Standard*, 15 November 1943.

²⁴⁸ Ibid.

²⁴⁹ KNA PC/NZA/2/6/3, 'A synopsis of the Colonial Office Report on Probation', written by the Committee appointed to consider the advisability of the introduction of a probation system in the colony, [undated, c. 1942].

confidence.²⁵⁰ Magistrates were entrusted with the delicate task of selecting ‘the right type’ of offenders to be subjected to this form of punishment.

Probation was also meant to individualise punishment and offer the most appropriate treatment to fit the personality of the criminal and the type of offence for which he was convicted. With responsibility for a small number of probationers, Probation Officers were able to obtain detailed information and a better picture of the circumstances and prior history of the offender. Reports written by Probation Officers had to contain full information about offenders’ home conditions and relatives, activities, religion, school and employment records, and more generally, everything relating to their personal, physical and mental history.²⁵¹ Probation Officers or their assistants were sometimes asked to make preliminary enquiries with the assistance of the police so that the court could compile further information on the trajectory of African offenders, and assess whether probation would suit their personalities and social conditions. Echoing transformations in British penology, the success of probation was thus intimately linked in colonial reformist discourses to the creation of new spheres of knowledge about African offenders. Reformist discourse on probation also served to recast the phraseology of the civilizing mission to a certain extent. Colonial authorities regarded Probation Officers as the marching soldiers of modern penal reform, bringing the benefits of British justice and civilisation to the most outlying areas. In contrast with prison or camp warders, Probation Officers worked in close collaboration with local administrative and welfare centres, traditional authorities and sometimes offenders’ relatives. For the colonial authorities, they could thus play a crucial role in publicising the cause of penal reform, justifying the benevolence of colonial rule and extending the reach of the colonial state into distant areas, in which ‘great was the difference between conditions obtaining here and those ideal conditions one would like to see introduced’.²⁵²

²⁵⁰ KNA PC/NZA/2/6/3, 'A synopsis of the Colonial Office Report on Probation', written by the Committee appointed to consider the advisability of the introduction of a probation system in the colony, [undated, c. 1942].

²⁵¹ KNA JZ/2/14, Letter from a Probation Officer, Grade I, to the Principal Probation Officer, 22 January 1948.

²⁵² KNA JZ/10/5, 'Juvenile Offenders and the Law', *East Africa Standard*, 15 November 1943.

However, the development of this system was very limited in scale. Funds were always lacking to employ additional staff and the probation system only extended to the main towns. In the mid-1940s, the European staff had to be reduced in Nairobi in order to set up a similar structure in Mombasa.²⁵³ Probation officers were appointed to Nakuru and Kisumu in the late 1940s only. The Slade Committee was very willing to extend the system outside Nairobi in order to remove probationers from the temptations of the capital.²⁵⁴ Probation Officers were also seriously concerned about the high numbers of probationers returning to the reserves or to smaller townships such as Thika, Dagoretti, Machakos, Kiambu where they could not report to the Probation Officer or to any assistant.²⁵⁵ Mobility was an integral part of African urban life. Those living in towns regularly came back to their reserves, sometimes neighbouring the township, to take care of and provide for their families, see friends or even cultivate a plot of land. Restrictive probation conditions could therefore be quite burdensome, and probationers had to be granted special authorisation by the court, for a specified number of days, if they wished to return to their home district for serious personal reasons. In the late 1940s, it was eventually decided that probation orders would only be given people living within a reasonable distance from the main urban centres, especially from Nairobi.²⁵⁶ As a consequence, the great mass of first offenders could not benefit from probation and were penalised if they wished to live and work outside the main cities.²⁵⁷

Despite pressure from the Colonial Office to extend the system, the assessment of the probation system in Kenya in the early 1950s was rather negative. Although the Colonial Penal Administration Committee considered that ‘the system had worked reasonably well’, its development had been considerably hampered by staff issues, in terms both of scale and training.²⁵⁸ In 1950, there were only six European Probation Officers; all had been appointed locally and none had received specialised training or had previous experience in the job. The

²⁵³ KNA JZ/6/17, Report written by the Committee on Law and Order, 1948.

²⁵⁴ Mentioned in KNA JZ/6/17, Report written by the Committee on Law and Order, 1948.

²⁵⁵ KNA JZ/2/14, Letter from a Probation Officer, Grade I, to the Principal Probation Officer, 22 January 1948.

²⁵⁶ KNA JZ/2/14, Circular by the Principal Probation Officer to all Probation Officers in Kenya, 29 January 1952.

²⁵⁷ KNA JZ/2/14, Letter from a Probation Officer, Grade I, to the Principal Probation Officer, 22 January 1948.

²⁵⁸ TNA CO 912/14, Colonial Penal Administration Committee, Minutes, 30 May 1950.

conference of ‘Probation Officers and Social Welfare’ held at Dar es Salaam in 1939 strongly recommended training for officers engaged in probation work, with special courses to be followed in the United Kingdom.²⁵⁹ In comparison, in South Africa, there were 24 European Probation Officers for a number of African offenders that barely exceeded the number in Kenya. All officers in South Africa received specialised training in probation work. In addition, the colonial authorities in Kenya faced difficulties in appointing African Assistant Probation Officers, both because funds were lacking, and because probation work became embroiled in local African politics and inter-ethnic rivalries. In some areas, the colonial authorities had to find African Assistant Probation Officers from the same social group as the offenders, in order to avoid local feelings of resentment and discontent. For instance, one local Probation Officer, aware of the enmity between certain Luo and Kipsigi groups, was very anxious about appointing a Luo Assistant Probation Officer in an area that included African groups such as the Kipsigis and Nandi.²⁶⁰ The Resident Magistrate of Kericho pointed out that an offender living in these communities would ‘lose the sense of self-respect’ and ‘amour propre’ if placed under the supervision of someone from another local group, especially from the Luo clan: ‘I think a young Kipsigi wrongdoer—with the pride of his tribe which is that of a Scottish clan—would be driven to hang himself rather than to report to a Luo probation officer’.²⁶¹ To solve the issue, the Principal Probation Officer decided that the Luo Assistant Probation Officer would only be responsible for probationers belonging to groups other than the Kipsigis, pending the appointment of another Assistant Probation Officer from either the Nandi or Kipsigis groups. However, the impact of inter-ethnic rivalries seemed limited to specified areas and did not affect probation work in the main urban centres, at least in the capital. According to the Probation Officer mentioned above, the same Luo Assistant

²⁵⁹ Ibid.

²⁶⁰ KNA JZ/2/14, Letter from the Probation Officer, Nyanza, to the Probation Officer, Nairobi, December 1950.

²⁶¹ KNA JZ/2/14, Letter from the Probation Officer, Nyanza, to the District Commissioner, Kericho, 18 December 1950.

Probation Officer had worked since 1947 in the Nairobi Courts and had ‘supervised men of various tribes with considerable success’.²⁶²

The development of probation was also considerably limited by the lack of interest or definite reluctance of white public or official opinion towards the scheme in Kenya. Only the Attorney General and the Commissioner of prisons were really interested in probation. In 1950, the Colonial Penal Administration Committee bitterly recognised that, without the action and enthusiasm of the Commissioner of Prisons, the probation system would have never been introduced in the colony.²⁶³ In the early 1940s, the Commissioner of Prisons was himself aware that the introduction of a probation system would face serious ‘objections from the courts, police and administration’.²⁶⁴ Most settlers and administrative officers interpreted probation as undue judicial clemency, threatening both their economic and political interests and the maintenance of law and order in the colony. The Provincial Commissioner of Nyanza himself admitted: ‘a fair proportion of the European community might only give a light blessing to the scheme. So long as it does not touch them closely. If we regard the letters sent to the press, a sentence of probation in lieu of punishment will be unwelcomed in cases of neglect of duty by a servant, or desertion, or theft from an employer’.²⁶⁵ Generally, both lay and resident magistrates were reluctant to impose probation sentences on African offenders, especially when European interests were involved. Colonial officials sometimes differentiated the relevance and efficiency of this form of punishment along tribal and racial lines. According to the District Commissioner of Kericho for instance, probation had to be avoided at all costs with Nandi and Kipsigis offenders and was in practice only very sparingly used in these cases in his district. In his view, these African groups were prone to defy the colonial authorities by stock theft and interpreted probation as state weakness: ‘They are a fine but

²⁶² Ibid.

²⁶³ TNA CO 912/14, Colonial Penal Administration Committee, Minutes, 30 May 1950.

²⁶⁴ Ibid..

²⁶⁵ KNA PC/NZA/2/6/3, Letter from the Provincial Commissioner, Nyanza, to the Colonial Office Committee on Probation, 20 May 1939.

ruthless tribe who despise weakness and are apt to misconstrue clemency as such'.²⁶⁶ Debates over probation were thus imbued with specific colonial considerations over African perceptions of punishment, severity and penal reform.

Finally, the development of the probation system was seriously limited by the lack of a wider state welfare apparatus. The committee appointed to consider the advisability of the introduction of a probation system in 1942 recognised that the main factor threatening the success of probation in the colony was the lack of social welfare in African communities, both in the reserves and Nairobi.²⁶⁷ In 1942, the annual report of the Municipal Native Affairs Officer in Nairobi solemnly condemned the 'grave inadequacy of the provisions being made at present for the social welfare of Africans residing in the municipal area, to the very serious native overcrowding in the native locations and to the great increase in prostitution resulting from these conditions'.²⁶⁸ According to the 1942 Committee, the probation system could only be successful if introduced jointly with 'a wide scheme of social welfare, embracing programmes for housing, health and recreation' and education.²⁶⁹ In other words, probationers would be unable to reintegrate into society or live a law-abiding life if not provided with basic labour and welfare opportunities. The 1942 Committee even proposed to set up a department of social welfare in Kenya to deal with problems such as the 'social and housing conditions of the African, the aftercare of discharged prisoners and the probation of offenders'.²⁷⁰ Despite these recommendations, social welfare in African communities remained very limited in extent and probation work remained confined to the penal sphere.

There was a clear tension between the social and penal aims of probation, which notably appeared in the diverging views Probation Officers and magistrates held on 'failed probationers'. Due to the lack of separate remand homes and segregation in prisons, Probation

²⁶⁶ KNA JZ/2/14, Letter from the District Commissioner, Kericho, to the Probation Officer, Nairobi, 21 December 1951.

²⁶⁷ TNA CO 859/73/6, Memorandum written by the Committee appointed to consider the advisability of the introduction of a probation system in the colony, 8 October 1942.

²⁶⁸ Quoted in: TNA CO 859/73/6, Memorandum written by the Committee appointed to consider the advisability of the introduction of a probation system in the colony, 8 October 1942.

²⁶⁹ TNA CO 859/73/6, Memorandum written by the Committee appointed to consider the advisability of the introduction of a probation system in the colony, 8 October 1942.

²⁷⁰ Ibid.

Officers were reluctant to send a 'failed probationer' to prison in order 'to rehabilitate him in a sterner environment' but were left with little alternative when probationers absconded.²⁷¹ At the opposite end of the spectrum, colonial authorities and magistrates were constantly pressing the probation service to apply for warrants of arrest in these cases in order to maintain the deterrent and punitive effect of probation.²⁷² Only a minority of Probation Officers seemed to perceive a need to withdraw probation from penal administration and to develop comprehensive welfare structures. The colonial authorities proved unable or reluctant to implement these reforms, mainly through lack of funds and perhaps also political will. Besides, they faced difficulties in setting up a central welfare department within a broader institutional landscape, when welfare activities had previously been organised at the district level, notably through the action of district welfare officers and centres. For all these reasons, probation work was offered to a very small number of African offenders, living in Nairobi or in the main urban centres of the colony.

THE AFTERCARE SYSTEM

Similarly, the system of aftercare for ex-convicts had not been fully developed over the colonial period, also because of a lack of funds, political will and wider welfare apparatuses. There was no proper aftercare system in the early 1930s, beyond an informal and haphazard liaison between the Superintendents of the five main prisons and District Commissioners. Whenever an offender was released, the Superintendent of the prison generally sent a letter to the District commissioner from the offender's area of origin to inform him of the release and anticipated arrival of the ex-prisoner in the district, and to ask the commissioner to provide work or take an interest in the offender's welfare.²⁷³ The Salvation Army was also given a small subsidy by the government to help some released prisoners; it monopolised the whole

²⁷¹ Ibid.

²⁷² KNA DC/KSM/1/27/43, Letter from the Senior Probation Officer, Nairobi, to the District Welfare Assistant, Kisumu, 14 April 1950.

²⁷³ KNA JZ/6/5, 'Recidivism in Kenya', Memorandum written by M. Hailey, African Research Surveys, 1935.

field of aftercare, sometimes acting in collaboration with District Commissioners, chiefs and native authorities.²⁷⁴ The system was timidly developed during the 1930s and 1940s. In 1936, a scheme was devised to provide accommodation for convicts in Nairobi for a limited period of time, before they were able to return home or find employment. A hostel was established for this purpose with the help of the Salvation Army and 'Discharged Prison Aid' homes, also managed by the Salvation Army and only remotely controlled by the colonial government were set up in Nairobi, Mombasa and Kisumu.²⁷⁵ On release, ex-convicts who wished to return to towns could come to these Aid houses, and be housed and paid in exchange of some handicraft work.²⁷⁶ However, they were responsible for buying their own food and marketing their produce. These Aid houses were very limited in resources and scope: they had scant financial resources and overworked volunteers could help only a very small number of ex-convicts. Moreover, beyond the few rooms available at the Nairobi Salvation Army hostel, little attention was actually paid to the general welfare and housing of ex-prisoners. Yet Salvation Army Officers considered the experiment a success. According to them, although numbers were low, most ex-convicts benefiting from their support 'did not get into trouble afterwards' and continued their trade with success.²⁷⁷ In 1946, an Officer of the Salvation Army described cases of long-term prisoners who were given some help on release and earned 60 shillings a month as tailors.

From the late 1930s on, colonial authorities tried to set up a dual system, with two different circles of responsibility.²⁷⁸ They decided that central government would be responsible only for the aftercare of ex-convicts returning to towns, while aftercare for Africans returning to the reserves should devolve upon District Commissioners or native authorities. This dual system reflected the colonial state obsession with regulating African migration, labour and crime in European areas and its limited control beyond the main urban

²⁷⁴ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 31-32.

²⁷⁵ KNA AG/7/13, Evidence by the Officer of the Salvation Army, Committee on Habitual Offenders, 1946.

²⁷⁶ Ibid.

²⁷⁷ Letter from a District Commissioner to the Secretary of State, 11 January 1946.

²⁷⁸ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 31-32.

centres and the White Highlands. In his report, Paterson himself admitted that the aftercare system could hardly extend to the reserves and scattered villages, as this would require a 'network too intricate and expensive' and a significant increase in staff.²⁷⁹ As a consequence, the resource-trapped colonial state preferred to rely upon the discretion and action of administrative officers and African authorities, such as Local Native Councils, chiefs and headmen.

The colonial government concentrated its reformist efforts on the white-dominated urban centres, which were the ideological and economic centres of colonial power and had to remain under the tight grip of the state. Colonial authorities encouraged and felt generally satisfied that the great majority of ex-prisoners wished to go back to their home areas on release, to rejoin their 'tribe', family and friends in the various African reserves.²⁸⁰ The main concern of the colonial state and aftercare committees related to a peculiar category of urban ex-convicts. In the colonial imagination, this category was dominated by two figures: the 'incorrigible town man' and the 'detrribalised' African who had no relationships in the reserves and no alternative except to return to a town on release from prison. A long-term convict, although sent back to their reserves on discharge, was generally forced to come back to town after one or two weeks, after experiencing social stigma, local hostility or difficulties in finding employment in the rural area: 'everybody was aware of his crime: his former employer, the police officer, the shopkeeper, his neighbours and everyone who could potentially help him'.²⁸¹ The second class of urban ex-convicts was made up of so-called 'detrribalised natives' who had no relatives in the reserves. They too suffered from serious social and economic hardship, had little prospect of employment and were forced to survive in the towns through pilfering and petty thieving. As Paterson underlined, the unemployed 'detrribalised native' was a 'stateless man who (had) lost his economic anchor' and could find

²⁷⁹ Ibid.

²⁸⁰ KNA JZ/6/17, Report written by the Committee on Law and Order, 1948.

²⁸¹ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 31.

harbour only in prison.²⁸² These categories of ex-convicts revived all kinds of colonial fears about ‘spives and drones’ and were commonly perceived by both colonial authorities and settlers as a stock of future recidivists threatening European properties and interests.

Over the course of this period, the Colonial Office and the colonial government in Kenya increasingly resented the monopolisation of the aftercare system by the Salvation Army. The Colonial Penal Administration Committee began to express concerns in the late 1930s, suggesting that Salvation Army officers ‘might not deal with the matter as efficiently as possible’ and that the system could be much improved under the close watch and within the welfare apparatus of the state.²⁸³ This was the beginning of a wider attempt by the Colonial Office to bring aftercare systems into line with the metropolitan model. In the reformist rhetoric, probation and aftercare belonged to the realm of social control and welfare, rather than penal administration. The colonial government wholly agreed with this view; it reinforced longstanding efforts to improve state control over African communities in towns and European areas and to limit the influence of missionary societies. The 1939 Conference of the Commissioners of Prisons in Zomba recommended giving responsibility for the aftercare system to the Community Development Department, which had similar functions to the Department of Social Welfare in the United Kingdom.²⁸⁴ In Kenya, the institutional landscape was slightly different and colonial authorities proposed to delegate the responsibility for aftercare to District Welfare Officers, as social work usually came within their competency. They would have the opportunity to bring ex-convicts back into the ‘community life of the welfare centre’.²⁸⁵ During the Second World War, a lack of funds and staff prevented the implementation of these reforms and the aftercare system remained the responsibility of the prison department. In practice, overworked District Welfare Officers had few opportunities to engage with this new task, spending most of their time on tour in the reserves.²⁸⁶ When

²⁸² Ibid.

²⁸³ TNA CO 912/4, Colonial Penal Administration Committee, Minutes, [undated, c. 1937-1940].

²⁸⁴ KNA AH/14/17, Letter from the Social Welfare Officer to the Chief Native Commissioner, 20 June 1947.

²⁸⁵ Ibid.

²⁸⁶ Letter from the Superintendent of Prisons, Kisumu, to the Provincial Commissioner, Nyanza, 8 June 1951.

probation was introduced in the mid-1940s, the colonial authorities thought it advisable to delegate aftercare work to Probation officers, as they generally had qualifications in social work and were closely connected to the different networks of labour recruiting.

Given rising rates of recidivism, there was in the late 1940s renewed official concern about the aftercare of convicts. The Colonial Office wished to reconstitute the Prisoners Aid Committees in Kenya, and to model them on the After Care Association in Great Britain.²⁸⁷ There were plans to link both organisations in the near future and afterwards set up a broader Commonwealth Association.²⁸⁸ In the late 1940s, the Colonial Office was acutely aware that the penal reforms it had advocated for over the previous two decades had been dramatically rejected by the colonies. In Kenya, reform-minded officials and liberal settlers proved much more critical of the contradictions and shortcomings of penal reform after the Second World War. In 1948, the Committee on Law and Order appointed by the Colonial Office vehemently condemned ‘the senseless system which at present prevailed of giving short sentences to confirmed criminals and releasing them to prey again upon the community without making any attempt to give them an alternative means of subsistence’.²⁸⁹ Reformist and rehabilitative opinions had gained wider influence within certain circles of colonial society, notably among Visiting Justices and Official visitors. Up to the mid-1940s, few Visiting Justices had gone beyond merely criticising prison overcrowding or the incarceration of ‘lunatics’. After the war, there was a definite shift in perceptions: many Official Visitors, alarmed by prison conditions and the lack of rehabilitative measures, proved much more interested in the questions of the aftercare and social reintegration of ex-convicts.

Increasingly, attention focused on the many hardships experienced by long-term convicts on release, such as extreme poverty, social exclusion, physical and mental exhaustion, isolation and the impossibility of finding any form of employment or alternative means of subsistence. Colonial authorities often assumed that short-term convicts did not

²⁸⁷ KNA JZ/6/50, Prison Department Conference, Minutes, 15 September 1952.

²⁸⁸ Ibid.

²⁸⁹ KNA JZ/6/17, Report written by the Standing Committee on Law and Order, 1948.

suffer any social stigma on release and could quickly reintegrate into society.²⁹⁰ However, prison authorities grew increasingly anxious about the aftercare of long-term prisoners. The prolonged absence from home often destroyed prisoners' social relationships with families and friends outside. Given the great distances between towns and reserves, visits were quite impossible if the prison was not a local one. As a consequence, most long-term prisoners did not receive any help on release. Moreover, employers were generally reluctant to employ ex-convicts, who were often condemned to stark poverty and vagrancy. As the Superintendent of Kisumu prison made clear, long-term prisoners had to face a dramatic change of their daily routine on discharge: 'For many years, he (the long-term prisoner) had been used to be ordered what to do and what to think. Besides, he was housed and clothed, fed regularly and had regular hours of work'.²⁹¹ Prison life constituted a whole machinery of compulsion and regularity, weakening any sense of initiative or responsibility. On release, long-term prisoners had to take up many new challenges to survive, earn a living and adapt to their new lives. As a consequence, they were often left with no choice but to relapse into delinquency and petty thieving. Colonial attitudes towards serious offenders seemed to evolve among reformist circles during this period. The recidivist criminal was not any more the 'evil' preying upon society's resources but was increasingly regarded as a victim of the many defects of colonial criminal justice and the failure of prison reform:

'For many years I have been an Official Visitor to Nairobi prison. Long ago it occurred to me that many of the recidivists one meets in the prison have not been really given a fair chance. They leave prison, after longish sentences, with no friends—other than the doubtful ones that they have met in prison—and in most cases, with no money. Their minds and bodies are probably suffering from some degree of maladjustment. Their tribal and family life have been completely disrupted and, being ex-convicts, their chances of getting work at once are very remote. Under these conditions, life must be very difficult and the future almost hopeless. It is not very surprising that many of them are literally forced by circumstances back into crime. Petty thieving to begin with but

²⁹⁰ KNA AG/7/13, Evidence by a Resident Magistrate, Committee on Habitual Offenders, 1946. In 1946, he had been a Magistrate for 26 years in East Africa and a Resident Magistrate in Nairobi, Mombasa, Nakuru and Kisumu. He had also been a Visiting Justice in the prisons of Mombasa, Kisumu and Nakuru.

²⁹¹ Ibid.

developing into a sort of thing reported in the article to which I have referred'.²⁹²

At the same time, little attention was paid to the aftercare of Africans returning to the reserves. For both financial and ideological reasons, the matter was offloaded onto District Commissioners, African authorities and offenders' families. In his circular of 22 March 1935, the Colonial Secretary recommended delegating the responsibility for aftercare in African areas to District Commissioners.²⁹³ According to him, the Superintendent of the prison was responsible for handing the ex-convict to the District Commissioner from his area of origin, and the latter was tasked with employing ex-prisoners or consulting potential employers to find them employment. This policy—or lack of it—was defended on different grounds. At root, the issue was primarily an economic one: delegating social control and welfare meant considerable savings for the colonial state, as expenses would be paid locally.²⁹⁴ An arsenal of colonial stereotypes about African communalism and psychology were also mobilised to legitimise the state's lack of commitment to the development of social welfare in African communities. In the colonial view, African communities were traditionally organised along communal lines that prevailed over the individuation of its members. According to the Provincial Commissioner of the Rift Valley for instance, colonial authorities were too inclined to consider African convicts from an individualistic standpoint, and should rely more heavily on perceived African traditional structures of sociality and authority.²⁹⁵ Drawing on this peculiar theory, the colonial authorities felt justified in transferring the burden of welfare work and social control to traditional authorities and African families. Besides, as aftercare depended on 'influence rather than coercive measures', it was believed that such influence would be more effective 'if emanating from a good African rather than directly from a European'.²⁹⁶ Colonial authorities aimed to ensure that any ex-convict who had a distant

²⁹² KNA AP/1/1193, Letter from D. Adams to the Chief secretary, 8 October 1950.

²⁹³ KNA PC/RVP.6A/20/1, Circular by the Colonial Secretary to all Provincial Commissioners, 22 March 1935.

²⁹⁴ KNA PC/RVP.6A/20/1, Letter from the Provincial Commissioner, Rift Valley, to the Colonial Secretary, 1 June 1935.

²⁹⁵ Ibid.

²⁹⁶ Ibid.

relation in a reserve was sent back and remained there. Local circles of authority and social control, from the district administration, to the chief, headman, relatives and neighbours had either to provide for his subsistence or help him obtain a piece of land to cultivate and reintegrate into the social life of the village.

The District Commissioners were strikingly reluctant to assume responsibility for the aftercare system in African reserves. In their view, they were already overwhelmed with work, 'quite out of touch with possible employment vacancies' and focused 'on community development projects (not purely social welfare)'.²⁹⁷ As a consequence, they felt that District Welfare Officers, in connection with the Labour Officer, were better suited for this type of work. In the early 1950s, the colonial authorities began to accept their point of view. The Commissioner of Prisons and Principal Probation Officer agreed that aftercare in African reserves should be within the competency of the Welfare Officer working in connection with the Labour Officer, through personal contacts between prospective employers and District Welfare Officers. Over the colonial period, overworked District Commissioners and District Officers thus provided little help to ex-convicts. They generally committed them to the charge of their tribal authorities with instructions that they had to cultivate a plot of land and never leave their location again. This lack of interest or action also extended to juveniles and young people who had just been discharged from Approved Schools. In the early 1950s, the Commissioner of Prisons, who was also the Chief Inspector of Approved Schools, made renewed effort to improve the aftercare of Approved School inmates.²⁹⁸ On release, the great majority of children returned to urban centres where District Commissioners held office. In 1949, the total number of boys discharged from Kabete and Dagoretti was 50, while the number discharged from other Approved Schools was negligible. Despite their low numbers, District Commissioners showed little interest in the fate of these young persons and provided them with no or minimal help. As a consequence, in 1950, the Commissioner of Prisons set up

²⁹⁷ KNA DC/KSM/1/27/36, Letter from the District Commissioner, Central Nyanza, to the Social Welfare Officer, 29 August 1950.

²⁹⁸ KNA DC/KSM/1/27/36, Letter from the Commissioner of Prisons to the Commissioner for Social Welfare, 11 October 1950.

a new system, in which the Superintendents of Approved Schools would notify District Commissioners three months before discharging boys who would be returning to their districts. Each District Commissioner would have then to 'make preliminary arrangements for his reception and aftercare' and inquire into vacancies and housing opportunities.²⁹⁹ However, with the advent of the Mau Mau uprising, these reforms were never implemented and aftercare of ex-convicts in the reserves remained embryonic and haphazard.

Debates over aftercare reflected administrative officers' lack of interest in, if not general antipathy toward, the scheme. As with probation, aftercare was generally perceived as undue clemency towards African offenders. The correspondence between colonial administrative officers illustrated their distrust and punitive approach towards African ex-convicts. The latter were generally perceived as marginal, dangerous or 'bad characters' who had to be effectively supervised and kept apart.³⁰⁰ Administrative Officers were reluctant to employ ex-convicts, either near or far from their headquarters. In their view, African ex-prisoners constituted a threat to their own kith and kin: 'a married District Commissioner would not like to employ known bad characters near his family'.³⁰¹ District Commissioners were also reluctant to employ them away from headquarters, on road camps for instance, where they could not be closely supervised and controlled. Some considered aftercare a 'frivolous' issue, in conflict with the primary need to increase the deterrent and punitive effect of imprisonment and curb crime: 'the comfortable, well fed, leisured lives of the criminals in the Kenya prisons must act as a powerful stimulus to recidivism. The circular (*the 1935 circular of the Colonial Secretary on aftercare*) looks like an attempt to plan out a patient convalescence, whilst totally ignoring the existence of the disease, from which the patient is

²⁹⁹ Ibid.

³⁰⁰ KNA PC/RVP.6A/20/1, Letter from the District Commissioner, Elgeyo, to the Provincial Commissioner, Rift Valley, 3 April 1935.

³⁰¹ Ibid.

suffering, and which must require prompt and drastic treatment, if a period of convalescence is anticipated'.³⁰²

Debates over ex-prisoners' employment were renewed in the late 1940s and disclosed hardened colonial views about the African incapacity for work and reformation. There was an entrenched belief, both at the level of the Colonial Office in London and the colonial administration in Kenya, that a class of African 'detribalised' and 'recidivist' offenders had become very 'averse to undertake work of any kind'.³⁰³ Rehabilitative measures were primarily aimed at making African prisoners internalise the capitalist work ethic, and forcing them into the colonial wage-labour economy. Corrective training in prisons was meant to provide sufficient training and habituation to a trade 'to overcome (in most cases) his (the African offender's) antipathy for work and to enable him to seek and keep employment' on release.³⁰⁴ These punitive discourses became particularly acrimonious and revealing when African ex-convicts refused to accept forms of employment proposed by District Commissioners or appeared unwilling to co-operate with the suggestions made to them. Due to a lack of vacancies, ex-convicts were generally offered employment opportunities that either had no connection with their previous occupations before imprisonment or were very badly paid.³⁰⁵ It seems that from the late 1940s, Africans ex-prisoners increasingly voiced their discontent with the marginal social and economic situation they were trapped in after release, and asserted their independence from the colonial authorities in choosing and locating work. The increasing number of Africans refusing offers of unpaid training and paid employment or struggling to find work in their chosen field particularly upset colonial authorities. The District Commissioner of Central Nyanza was especially vocal in denouncing the attitude of African ex-convicts who staunchly defended their right to work for themselves in a trade of their own choosing: 'I have little sympathy with a man who is so stupidly independent and refuses help.

³⁰² KNA PC/RVP.6A/20/1, Letter from the District Commissioner, Eldoret, to the Provincial Commissioner, Rift Valley, 13 April 1935.

³⁰³ TNA CO 859 234/3, Colonial Penal Administration Committee, Minutes, 30 May 1950.

³⁰⁴ Ibid.

³⁰⁵ See KNA DC/KSM/1/22/36.

Probably the truth is that he does not want to work'.³⁰⁶ More generally, colonial authorities resented ex-prisoners' reasonable expectation of finding well-paid employment on release. Their ambitions were viewed through a racist lens as 'the usual flight of the ex-prisoner imagination', believed to characterise the African mentality.³⁰⁷ Colonial discourses on aftercare were thus coloured by wider punitive attitudes and racial considerations related to Africans' mentality and capacity for work and development.

THE TREATMENT OF JUVENILE OFFENDERS

In colonial Kenya, penal reform was most influential and successful in the management of juvenile offenders. The impulse for reform came in the early 1930s when the Colonial Office appointed a series of committees and published reports proposing legislation and measures for juvenile offenders modelled on metropolitan policy.³⁰⁸ The colonial authorities in Kenya enacted new legislation, notably the 1934 Juvenile Ordinance, to promote the liberal British approach and introduce a more rehabilitative and separatist system. It was alleged that juvenile offenders needed different treatment and to be separated from adult offenders in judicial and penal institutions. This implied not only separate juvenile courts, but also separate cells in police stations, remand homes and prisons.³⁰⁹ There was also a prevailing idea that juvenile offenders required 'particular legal and psychological understanding' and that court procedures should be adapted to accommodate this.³¹⁰ In addition, these liberal views were based on research into alternatives to imprisonment and corporal punishment, which sought ways to train and rehabilitate juvenile offenders. As argued by the 1942 Report on Juvenile Welfare in the Colonies, 'it would be unfortunate if it were widely held that whipping is the

³⁰⁶ KNA DC/KSM/1/22/36, Letter from the District Commissioner, Central Nyanza, to the Probation Officer, 18 August 1949.

³⁰⁷ KNA DC/KSM/1/22/36, Letter from the Probation Officer to the Commissioner for Social Welfare, 31 July 1950.

³⁰⁸ Campbell, 'Juvenile delinquency' (2002), p. 129.

³⁰⁹ TNA CO 859/73/11, 'Memorandum on the Treatment of Juvenile Delinquency, Colonial Office Policy and Action', written by the Juvenile Delinquency Sub-Committee, [undated, c. 1942].

³¹⁰ Campbell, 'Juvenile delinquency' (2002), p. 128.

only instrument of justice that follows the British flag'.³¹¹ The only alternatives introduced in the United Kingdom were probation, established by the Probation of Offenders Act of 1907 and largely benefiting juvenile offenders, and a dual system of juvenile institutions. The first branch was made up of Approved Schools, known before 1933 as Reformatories and Industrial Schools and designed for juvenile offenders 'in need of care and protection'.³¹² The second branch consisted of Borstal Institutions suited for juvenile delinquents 'with definite criminal tendencies'.³¹³

In colonial Kenya, the metropolitan model was implemented to a significant extent over the course of the 1930s. A specialised Juvenile Court was established in Nairobi and various Approved Schools were set up, modelled closely on the British system of Borstal Institutions. Colonial authorities insisted that these penal institutions avoid a prison atmosphere and instead favour welfare, rehabilitation and education. In theory, the Approved Schools aimed at promoting vocational and academic education, physical exercise, the individualisation of the child, initiative, trust, responsibility and 'group-life in the social spirit of solidarity', rather than punitive and disciplinary practices.³¹⁴ As explained by Lord Hailey in his memorandum on 'Juvenile Crime in Kenya': 'the degree of discipline should be felt rather than seen. The ideal to be aimed at is that discipline should not be instilled by the fear of punishment but by careful leadership and example. This can be best obtained by hard work, hard play, the fostering of the community spirit and by as much as freedom as possible'.³¹⁵ During the 1930s, the Approved Schools made significant improvements in the management of their inmates, notably in terms of individual care, supervision and classification. The various Approved Schools were divided into three classes; the first was for destitute children 'in need of care and protection', the second for juveniles up to 16 and the third for juveniles

³¹¹ TNA CO 859/73/12, 'Juvenile Welfare in the Colonies', Report written by the Juvenile Delinquency Sub-Committee, 1942.

³¹² Ibid.

³¹³ TNA CO 859/73/11, 'Memorandum on the Treatment of Juvenile Delinquency, Colonial Office Policy and Action', written by the Juvenile Delinquency Sub-Committee, [undated, c. 1942].

³¹⁴ KNA JK/6/5, 'Juvenile crime in Kenya', Memorandum written by M. Hailey, African Research Surveys, 1935.

³¹⁵ Ibid.

between the ages of 16 and 21.³¹⁶ Juvenile offenders could be sent to Approved Schools for a minimum of three years, maximum of seven. Kabete, which was the main Class I Approved School, was divided into an ordered hierarchy of houses and grades, with a system of differential privileges, responsibilities and punishments awarded in accordance with the seniority and behaviour of the children. The boys belonging to the top grade, entitled 'the Blues', had been at the school for at least 18 months and were considered 'worthy of trust'.³¹⁷ They were granted special privileges such as carrying messages outside, working alone or in charge of other boys, being in charge of the supervision of the houses, etc. According to the Director of Education, the European staff made 'everything (...) to help the boys individually' and to carry out supervision with dispatch and flexibility.³¹⁸ In September 1941, an earning system had been established that was said to be much appreciated by the young 'inmates'. The profits were credited to a 'Sport Fund' and also served for the repair or building of staff houses, a kitchen, latrines and additional dormitories.³¹⁹

Yet, the reformatory work undertaken within Approved Schools should not be overstated. The primary goal of these schools was to curb child vagrancy by giving inmates only agricultural training and persuading 'them to return to their reserves'.³²⁰ As pointed out by the Director of Education, boys spent most of their day 'in fieldwork, cultivating crops of maize, beans and sweet potatoes'.³²¹ They performed daily agricultural work but could not be said to receive any form of agricultural training as such: 'they are employed in very much the same way as labour on estates'.³²² The educational and recreational agenda also remained extremely limited. There were only very short courses of general elementary education carried out after dark, four or five times a week. Boys, especially the youngest ones aged from 7 to 11, were often too exhausted after working all day outside to follow or benefit from these classes. In the early 1940s, the boys 'asked for increased education syllabus and grades' without much

³¹⁶ Ibid.

³¹⁷ Ibid.

³¹⁸ KNA JZ/6/4, Letter from the Director of Education to the Colonial Secretary, 23 April 1938.

³¹⁹ KNA AHL/2/2, Approved Schools Board, Minutes, 8 November 1941.

³²⁰ KNA AHL/2/2, Approved Schools Board, Minutes, 11 February 1947.

³²¹ Ibid.

³²² KNA JZ/6/4, Letter from the Director of Education to the Colonial Secretary, 23 April 1938.

hope.³²³ The Approved Schools Board admitted that physical training remained embryonic and should be developed to help inmates 'think by themselves and not only answer to command'.³²⁴ The lack of initiatives was probably linked to the state shortage of funds and to dominant racist ideas about juvenile delinquents' mentality and intelligence. Over the 1930s, official and non-official reformist circles were both ideologically and institutionally, connected to eugenic ideas about juvenile delinquency. As reflected by Gordon's research into the mental and intellectual development of juvenile inmates at the Kabete reformatory, eugenic thinking challenged the core of penal reform and rehabilitative thinking. As cited by Chloe Campbell, the Chief Justice of Kenya declared that Gordon's findings on the high incidence of mental and intellectual deficiency at the Kabete Reformatory appeared to 'militate against any permanent reformation of the great majority of the inmates being possible'.³²⁵ Though less influential over the 1940s, colonial discourses on eugenics might have hampered the implementation of reforms towards juveniles, notably in Approved Schools.

Besides, the management of certain 'unruly' inmates was still managed through punitive and coercive practices, bordering on penitentiary methods. Kabete notably comprised a penal house with separate cells where children punished for serious breaches of discipline were transferred for definite periods of time.³²⁶ During this period, they were forbidden to associate with other children or to talk at work and had to work harder, under stricter supervision. In the evening, they were compelled to work in their cells, instead of attending school or recreational activities. In 1938, a juvenile section, classified as a Class III Approved School, was also established in the Nairobi prison in order to deal with children 'charged with serious or repeated offences', deemed 'incorrigible' or 'exerting a bad influence on other

³²³ KNA AHL/2/2, Approved Schools Board, Minutes, 8 November 1941.

³²⁴ KNA AHL/2/2, Approved Schools Board, Minutes, 7 March 1939.

³²⁵ Quoted by C. Campbell, 'Juvenile delinquency', p. 149.

³²⁶ KNA JK/6/5, 'Juvenile crime in Kenya', Memorandum written by M. Hailey, African Research Surveys, 1935.

inmates'.³²⁷ The same measure had been taken in the United Kingdom, by declaring a wing of Wandsworth prison to be a Borstal Institution and confining some children there. These juvenile sections were little short of a prison ward, where children performed hard manual work and carpentry under close supervision. In the view of the Chief Inspector of Approved Schools in Kenya, 'conditions should be such as to impress upon the lads to show them that the way of an incorrigible is hard'.³²⁸ The Superintendent of Kabete was worried that the 'boys' wing' might not be as punitive as expected, and called loudly for increased provisions to punish them under prison rules rather than Approved Schools ones.³²⁹

In the early 1940s, the Colonial Office decided to put firm pressure on colonial governments to improve the managements of juvenile offenders. The Colonial Office was worried about rising rates of juvenile delinquency in certain colonies, notably in Lagos and Sierra Leone.³³⁰ There was a clear sense that most reforms, which had been recommended over the 1930s in all colonial territories, had failed to be implemented, at least in part, due to wartime staff and accommodation shortages in Approved Schools.³³¹ As regards Kenya, the Colonial Office was particularly troubled by the great number of young people between the ages of 15 and 20 and under 15 years old who were admitted to prison every year.³³² In the year 1942, 237 children under 15 had been sent to prison. Even though the increase could be partly accounted for by war conditions and the limited capacity of Approved Schools, the Colonial Office urged the Kenyan government to find alternative treatments for juvenile offenders. In 1946, 10% of all persons committed to prison were under 20 years of age.³³³ The scale of the problem grew during the second half of the 1940s and had reached alarming proportions by the early 1950s. In 1952, the prison department estimated that 42% of the

³²⁷ KNA AHL/2/2, Approved Schools Board, Minutes, 4 March 1939.

³²⁸ KNA PRISONS/1/17, Letter from the Chief Inspector of Approved Schools to the Superintendent of Kabete, 15 October 1938.

³²⁹ KNA PRISONS/1/17, Letter from the Superintendent of Kabete to the Chief Inspector of Approved Schools, 8 October 1938.

³³⁰ TNA CO 859/73/11, Dispatch by H. G. Bushe, 7 February 1942.

³³¹ As we will see later, the problem took serious proportion after the requisition of the Approved School of Kabete in 1939 for military purposes.

³³² KNA JZ/6/5, 'Slade Report', written by the Committee on Habitual Offenders, 1946.

³³³ KNA BZ/2/7, Report written by the Committee on Young Persons and Children, 1952.

convicts in Kamiti prison were under 25 years old and that a similar proportion could be found in other camps.³³⁴ In the colony, juvenile offenders also appeared to constitute the bulk of future recidivists. According to the Slade Committee on habitual offenders, 35 % of adult recidivists had committed their first offence before 25 years old and 67% of supervisees were under the age of 25.³³⁵

Alarmed by these figures, the Colonial Office pressed for a rethinking of policy to deal with African delinquency and crime in the colonies, with a view to prevention and rehabilitative treatment. These discussions not only further developed the principles defended in the 1930s, but included them in a global overview of juvenile welfare and social development. In 1942, the Juvenile Delinquency Sub-Committee of the Colonial Penal Administration Committee was commissioned by the Colonial Office to write up a report on the question of juvenile delinquency in the colonies, deliberately entitled 'Juvenile Welfare in the colonies'.³³⁶ The report drew particular attention to the environmental causes of juvenile delinquency: 'They may, after patient search, be found in the tangled roots of social, economic and educational insufficiencies'.³³⁷ Juvenile delinquency was associated with the economic and social changes resulting from the introduction of British rule and a settler economy: rapid urbanisation, child vagrancy due to migratory labour, the breaking-down of traditional structures of authority and social control, a lack of parental control in African reserves, and the under-development of colonial welfare structures. The main colonial stereotype of the juvenile delinquent was the figure of the 'young migrant' who experienced difficulties in adapting to morally and socially unregulated urban spaces. Reformist discourses increasingly insisted that children had vulnerabilities and hardships, notably in complying with numerous statutory regulations that they were generally unaware of, and with the intricacies of legal procedure when accused by the judicial system of infringing the law.

³³⁴ Prison Department Conference of Senior Prison Officers, Minutes, 1952.

³³⁵ KNA JZ/6/5, 'Slade Report', written by the Committee on Habitual Offenders, 1946.

³³⁶ TNA CO 859/73/12, 'Juvenile Welfare in the Colonies', Report written by the Juvenile Delinquency Sub-Committee, 1942.

³³⁷ Ibid.

Compared to the reformist rhetoric of the 1930s, the innovation in this report was to consider that remedial measures and penal institutions for juveniles could not be studied separately from the wider field of social welfare and prevention: ‘Although the present memorandum deals chiefly with delinquency services (probation, remand homes, approved schools, borstals, etc.), it will be impossible in actual fact to separate these services from other forms of social welfare, e.g. prisoners’ aid, the relief of destitution, the care of sick persons, social insurance, the social aspects of housing and land settlement, rural welfare organisation, industrial welfare, recreational activities, etc.’.³³⁸ Seen thus, the treatment of juvenile delinquency implied the creation and development of a new specialised and professionalised field of social welfare extending far beyond the realm of penal administration and intersecting with the works of the education, labour and medical departments. The report recommended a comprehensive policy of welfare and preventive measures, in order to reduce the migration of children from rural to urban areas, and improve the living conditions of juveniles in towns. The regulation of juvenile vagrancy implied both a firm policy of repatriating vagrant children and a series of measures to improve recreational, educational and welfare facilities, as well as economic opportunities in African areas. It was notably proposed to encourage the development of rural welfare organisations, community centres and youth associations and to pay special attention to enforcing the attendance of children at school. Similarly, the report recommended improving educational and recreational activities, housing conditions and employment opportunities for juveniles in urban centres. It finally suggested recruiting trained and experienced officers, acquainted with new spheres of knowledge such as social science or local studies, to improve social welfare in the colony.

More generally, reformist discourses on the treatment of juvenile offenders reflected a progressive shift, identified by Michel Foucault in European countries, in the official aims and forms of state governance.³³⁹ From the Foucauldian perspective, the latest centuries were

³³⁸ TNA CO 859/73/12, Summary of recommendations, 'Juvenile Welfare in the Colonies', Report written by the Juvenile Delinquency Sub-Committee, 1942.

³³⁹ M. Foucault, *Sécurité, Territoire, Population*, Cours au Collège de France, 1977-1978 (Paris, 2004).

characterised by the pre-eminence of a new form of governance, ‘governmentality’, which took over from previous forms of government, such as sovereignty and discipline and had as its target, population, as its principal form of knowledge, political economy and as its essential means, ‘apparatuses of security’.³⁴⁰ In other words, this new ‘art of government’ was characterised by an ensemble of institutions, procedures, analyses and reflections that were meant to provide for the wealth and well-being of its inhabitants. In colonial Kenya, forms of state governance remained dominated by sovereignty and discipline. The colonial state was obsessed, both with imposing laws and maintaining territory, and with disciplining its subjects and managing space and time to produce a governable society. The reformist discourse on juvenile offenders, largely influenced by the metropolitan example, hinted at these new aims, control techniques and spheres of knowledge featuring ‘governmentality’. For certain colonial reformers, social welfare in Kenya was to become the new alphabet of state politics. In their view, new forms of colonial governance should primarily aim to preserve the physical, economic, social and cultural well-being of the population. During the Second World War, C. J. Jeffries, Deputy to the Permanent Under-Secretary at the Colonial Office, strongly encouraged H. Moore, acting Governor of Kenya, to develop welfare policies in the colony:

‘It may reasonably be assumed that after the war, and perhaps even before, the activities which now fall under the general title of social services will become a far more important part of the state’s activities and that principles which are now regarded as the basis of social welfare will in future inform the activities of most departments of government. Thus it appears the need is not so much for the creation of a separate government department to pay special attention to the morals, health or indigence of individuals, as for a policy in which the right of the whole community to protection, instruction, nourishment, health services and work should be secured’.³⁴¹

The impulse for reform was also dictated by a new public interest in social welfare and juvenile delinquency in the colony, involving both voluntary and religious organisations and various African and European representative bodies. In 1942, a periodical conference on African social welfare in Nairobi was held under the chairmanship of the Chief Secretary and

³⁴⁰ Ibid.

³⁴¹ TNA CO 859/121/7, Letter from C. J. Jeffries to H. Moore, 13 May 1943.

reunited representatives from a wide spectrum of European voluntary, municipal and religious organisations.³⁴² The main ones were the Rotary Club, the East African Women's League, the Municipal Council, the Chamber of Commerce, the Girl Guides, the Scout Council, the Jewish Guild, The Roman Catholic Church, the Young War-Workers Club and various parents' associations. Additionally, the Youth Council was set up in Nairobi during the Second World War and recruited its members both from official circles and from the same voluntary and religious organisations of the settlers. The purpose of the Council was primarily to deal with the welfare of European juveniles and to 'act as a liaison between all youth organisations'.³⁴³ Even though it hoped to include African juvenile organisations later, the Council originally confined its activity to wartime youth activities for European children in Nairobi. New African representative bodies also were interested in the question of juvenile welfare; these included ethnic organisations, vocational groups and churches. Representatives from these organisations participated in the Native Advisory Committee created in 1939 under the chairmanship of the Municipal Native Affairs Officer. They attended its monthly meetings and regularly reported to the colonial government. The Committee, although confined to a purely advisory role, was perceived by the colonial government as essential to 'obtain African advice and cooperation on social welfare'.³⁴⁴

The reformist rhetoric of the Colonial Office retained its influence in colonial Kenya, even though unevenly, reflecting the colonial authorities' concerns about the figure of the urban juvenile vagrant. In the early 1940s, colonial authorities grew highly alarmed at the rising rates of juvenile delinquency in towns, especially in Nairobi, and the increasing number of young vagrants coming before the courts, some of them less than 13.³⁴⁵ As a consequence, colonial officials put greater emphasis on the question of social welfare for urban juveniles, whether delinquents or not, and deliberately overlooked juvenile welfare in African areas:

³⁴² TNA CO 859/121/7, Letter from H. Moore to C. J. Jeffries, 25 January 1944.

³⁴³ Ibid.

³⁴⁴ Ibid.

³⁴⁵ KNA PC/NZA/2/7/70, Letter from the Resident Magistrate, Kisumu, to the District Commissioners of Nyanza Province, 24 July 1944.

'This report 'Juvenile Welfare in the colonies' is concerned mainly to adapt and impose on colonial territories the form of juvenile welfare and penology which has been built up in England. Something can be learnt from this, but the report takes insufficient account of the fact that in England there is only one race and every child submits to a degree of education'.³⁴⁶

The main concern of colonial authorities in Kenya was the African wandering, poor and uneducated juvenile, who was 'born and bread in towns', had 'no home in the reserve' or did not wish to live there.³⁴⁷ The rise in juvenile vagrancy in the early 1940s was attributed both to the slackening of parental control in African reserves and to the increasing number of orphans who had lost their parents in the war. In 1946, there were around 1,000 homeless juveniles in Nairobi and between 150 and 200 in the area of Gilgil, between Naivasha and Nakuru.³⁴⁸

Destitute children had gained increased visibility during the war, as many were begging on the platforms of railway stations, where large numbers of visitors and soldiers daily arrived.³⁴⁹

The Railway Administration complained acrimoniously about child delinquency and mendicancy in the mid-forties. For financial reasons, they were unable to fence in the platforms or ensure proper supervision, and they pressed the colonial state for help. Colonial authorities identified vagrancy as the main cause of juvenile crime in towns. According to the Superintendent of Dagoretti, in 1946, out of the 187 inmates of Dagoretti, 150 had been 'sentenced away from their homes'.³⁵⁰ In other words, 150 inmates were children born in African reserves who had migrated to the towns. Similarly, only 3% of the 758 juveniles dealt with by the Nairobi Municipal Welfare Officer between 1 March 1944 and 15 September 1945 were the children of urban parents.

Over the 1930s, remedial measures had proved inefficient in dealing with vagrancy, due both to the lack of Approved Schools and Probation Officers and to the absence of the

³⁴⁶ KNA PC/NZA/2/7/12, Letter from the Provincial Commissioner, Nyanza, to the Chief Secretary, 9 May 1944.

³⁴⁷ KNA PC/NZA/2/7/12, Letter from the Provincial Commissioner, Nyanza, to the Chief Secretary, 9 May 1944.

³⁴⁸ KNA AHL/2/2, Approved Schools Policy Board, Minutes, 25 March 1946.

³⁴⁹ KNA PC/NZA/2/7/12, Letter from the Kenya and Uganda Railway General Manager Office to W. S. Marchant, 13 July 1944.

³⁵⁰ KNA AP/1/1700, Memorandum written by the Superintendent of the Approved School of Dagoretti, 27 oct 1946.

proper machinery to repatriate children to the reserves and confine them inside. Colonial authorities constantly complained about the lack of Class I Approved Schools to deal with ‘non-criminal’ types of juvenile offenders, i.e. mainly destitute children.³⁵¹ The 1934 Juvenile Ordinance advised confining poor, vagrant and orphan children in Approved Schools.³⁵² However, there were only two Class I Approved Schools in the mid-1940s, one run by the Salvation Army in Nairobi and another one at Malakasi.³⁵³ Due to the lack of accommodation in these institutions, magistrates were left with no choice but to order the repatriation of a child to his reserve. In practice, they committed an offender to an Approved School only after several convictions and repatriations, which was considered far ‘too late in the career of crime of the juvenile’.³⁵⁴ The repatriation system was replete with contradictions and shortcomings, as children from the neighbouring reserves of Nairobi could easily return to towns, or make quick visits during the day. The lack of policing and the cost of repatriation considerably hindered the enforcement of the Vagrancy Ordinance. In addition, the probation system was poorly developed and rarely extended to the care of juvenile offenders, despite increasing pressure from the Colonial Office. Even the Principal Probation Officer recognised in the early 1950s the failure of probation as far as juveniles were concerned: ‘Since 1946, the Probation Service has contributed little towards the remedial treatment of juvenile offenders. It is time for the service to shoulder its responsibility towards children and young offenders’.³⁵⁵ For Kenyan reformers, remedial measures had to be replaced by a comprehensive state welfare apparatus to prevent urban juveniles from delving into delinquency or crime.

As far as urban juveniles were concerned, the colonial state broadly supported—at least in theory—the reformist agenda of the Colonial Office. According to the Committee on Young Persons and Children appointed in Kenya, colonial authorities should take seriously ‘the

³⁵¹ KNA AHL/2/2, Report written by the Superintendent of the Approved School of Dagoretti, 23 October 1946.

³⁵² KNA PC/NZA/2/7/70, Letter from the Resident Magistrate, Kisumu, to the District Commissioners of Nyanza Province, 24 July 1944.

³⁵³ KNA AHL/2/2, Report written by the Superintendent of the Approved School of Dagoretti, 23 October 1946.

³⁵⁴ KNA AP/1/1700, Memorandum written by the Superintendent of the Approved School of Dagoretti, 27 Oct 1946.

³⁵⁵ KNA JZ/2/14, Letter from the Principal Probation Officer to all Probation Officers, 22 May 1951.

physical and mental dangers to which a juvenile is exposed' and not regard 'vagrancy as a nuisance' only.³⁵⁶ In the new reformist discourse, juvenile offenders had thus to be 'treated as being in need of care rather than as delinquents'.³⁵⁷ By and large, as was the case with probation, the management of juveniles was officially conceived first and foremost as a matter for economic and social reform rather than legislation and punishment. The report on the 'Welfare of Juveniles in the Colonies' sketched out the main lines of the Colonial Office's new welfare agenda, including the provision of 'education, spare time occupation through social centres (para 17)', the attention of colonial states to juveniles' 'conditions of employment and living conditions (para 6)', the establishment of 'a minimum wage for employment (para 40c)' and the regulation of juvenile migrations to towns.³⁵⁸ Nevertheless, welfare structures for Africans remained very limited, even in Nairobi. Over the second half of the 1940s, reformers were angered by the lack of state action and commitment to implement either the provisions of the 1934 Juvenile Ordinance or those included in the 1942 Report on Juvenile Welfare. In a critical article published in the *East African Standard*, the Reverend L.J. Beecher solemnly condemned the colonial state for lagging far behind the colony of South Africa as far as the welfare care of African urban juveniles was concerned. He instanced a South African town, which had provided 50,000 pounds for the provision of technical schools for young persons.³⁵⁹ In colonial Kenya, welfare reforms were few, limited to Nairobi and mainly developed by the Municipal Council. Social welfare for African juveniles in Nairobi was slightly improved in 1944 by the appointment of two welfare workers and the establishment of two nursery schools and play centres for African children under school age.³⁶⁰ The European officer in charge of these establishments also proposed some forms of recreational activities and youth service. Yet these measures remained very limited in purpose and extent.

³⁵⁶ KNA BZ/2/7, Report written by the Committee on Young Persons and Children, 1952.

³⁵⁷ Ibid.

³⁵⁸ KNA PC/NZA/2/7/12, Letter from the Provincial Commissioner, Nyanza, to the Chief Secretary, 9 May 1944.

³⁵⁹ KNA JZ/10/15, 'Juvenile offenders and the Law', written by Reverend L.J. Beecher, *East African Standard*, 15 November 1944.

³⁶⁰ TNA CO 859/121/7, Letter from H. Moore to C. Jeffries, 25 January 1944.

As was the case with aftercare policy, colonial authorities also delegated responsibility for the welfare of African juveniles and delinquents in African reserves to District Commissioners or native authorities. In the view of some colonial officials, the intervention of the colonial state in these areas was both ‘impracticable’ and ‘unnecessary’ and should extend at most to proper economic planning.³⁶¹ Others adopted a more moderate stance and agreed in principle with the 1942 Report on the need to promote preventive measures, making life in the reserves more attractive through the formation of youth organisations, sport clubs, farmers associations and other provisions.³⁶² Little official attention was actually paid to these proposals. The colonial state was more willing to devolve the responsibility and financial burden of welfare reforms upon local authorities and African families. In the mid-1940s, colonial authorities primarily sought the collaboration of religious and African local bodies to encourage them to take charge of the care of neglected, vagrant or ill-treated children.³⁶³ As a consequence, colonial officials and magistrates confined themselves to making recommendations and, mainly for lack of funds at the district or local level, few welfare reforms were actually implemented over the period. For instance, colonial authorities put hard pressure on Local Native Councils to introduce and provide funding for the establishment of provincial hostels, orphans houses or Approved Schools in African reserves.³⁶⁴ It was alleged that when a vagrant child was sent to the Approved School of Nairobi, he was likely to settle in town on release, as he had spent ‘five or six years outside his surroundings’, and to fuel the rising class of recidivists.³⁶⁵ Colonial officials even proposed setting up a Juvenile Agricultural Training Centre, similar to the one for adult offenders in Kitale.³⁶⁶ None of these suggestions was ever implemented, mainly for lack of sufficient funds either in the central or local state

³⁶¹ KNA PC/NZA/2/7/12, Letter from the Provincial Commissioner, Nyanza, to the Chief Secretary, 9 May 1944.

³⁶² KNA AHL/2/2, Report written by the Superintendent of the Approved School of Dagoretti, 23 October 1946.

³⁶³ KNA AHL/2/2, Letter of the Director of Education to the Colonial Secretary, [undated, c. 1946].

³⁶⁴ KNA PC/NZA/2/7/70, Letter from the Resident Magistrate, Kisumu, to the District Commissioners of Nyanza Province, 24 July 1944.

³⁶⁵ KNA PC/NZA/2/7/70, Letter from the Resident Magistrate, Kisumu, to the District Commissioners of Nyanza Province, 24 July 1944.

³⁶⁶ KNA AHL/2/2, Report written by the Superintendent of the Approved School of Dagoretti, 23 October 1946.

coffers. Another line of proposals was meant to improve juveniles' welfare by encouraging parental control and responsibility among African communities. Colonial authorities believed that parental control had slackened in the reserves and that African parents tended to abdicate their responsibilities, leaving their children in the care of the colonial state: 'Parents are often too willing to place the burden of responsibility of the upbringing of the child on the government at public expense'.³⁶⁷ For most colonial officials, the treatment of juvenile offenders and vagrants required closer supervision and regulation of African private and family life, jointly with a policy of penalising parents whose children had either been neglected or had committed an offence.

However, the reformist policy was considerably hampered in Kenya by the lack of financial resources and, more generally, by the consequences of the Second World War. The evolution of the Approved School system over the 1940s was probably the most dramatic failure. Presented as the apex of penal reform, Approved Schools had managed during the 1930s to apply—to a significant extent—the educational and correctional principles promoted by reformers. Over the 1940s, their functioning and organisation considerably deteriorated, due to wartime shortages of staff and accommodation. For war purposes, the colonial authorities requisitioned Kabete in 1939 and all inmates had to be transferred to Dagoretti or to be discharged.³⁶⁸ Kabete was again turned into an Approved School in February 1947. As a consequence, during eight years, juvenile offenders could only be sent to Dagoretti Approved School, which became quickly overcrowded. Given the lack of other similar institutions, magistrates were left with no alternative but to commit juvenile offenders to prison or flogging, and the number of committals to Dagoretti dramatically fell off. During 1940, for instance, only 71 boys were committed to Dagoretti: 59 were admitted during the first half of the year, as compared with only 12 during the second half.³⁶⁹

³⁶⁷ KNA JZ/2/14, Letter from the Principal Probation Officer to all Probation Officers, 22 May 1951.

³⁶⁸ TNA CO 912/10, Colonial Penal Administration Committee, Minutes, 11 February 1947.

³⁶⁹ TNA CO 859/73/11, 'Memorandum on the Treatment of Juveniles in Africa in Dependencies', written by the Juvenile Delinquency Sub-Committee, 1942.

Overcrowding in the Approved School of Dagoretti also prevented any form of classification or segregation and deeply challenged the progress that had been made during the 1930s in supervision and individualised care. According to the Superintendent of Dagoretti, the main problem was not so much the mingling of boys who had committed different types of offences (such as vagrancy, petty offences, burglary, murder or rape) but the impossibility of classifying and separating them by age-group.³⁷⁰ Children in the Dagoretti Approved School ranged in age from 7 to 21. As a consequence, older boys had a powerful influence on younger ones, who ‘could easily be turned into recidivists’ by peer pressure.³⁷¹ The drastic shortage of staff and accommodation aggravated these issues. Over the entire war period, there was only one European officer for a daily lock-up of 200 boys, whereas the maximum authorised lock-up was 145. This gross overcrowding resulted in very unsanitary conditions and a deterioration of the children’s health. The Superintendent of Dagoretti recognised that a lack of staff and supervision made it impossible to provide the ‘individual attention necessary for reformation’ and the Approved School had thus become ‘little short of a prison for juveniles’.³⁷² The system of Approved Schools never recovered from the dramatic consequences of the war. In the early 1950s, the Colonial Penal Administration Committee severely condemned Kenyan Approved Schools for being ‘all purpose institutions’ that had failed in their reformatory purpose.³⁷³ The lack of funds prevented any extension of the system, which remained too small in scale to improve significantly the management of juvenile offenders. Even the juvenile court, which had been set up during the 1930s in Nairobi, did not function during the following decade, embodying dramatically the failure of reform in the case of juvenile offenders.

³⁷⁰ TNA CO 912/10, Colonial Penal Administration Committee, Minutes, 11 February 1947.

³⁷¹ KNA AHL/2/2, Report written by the Superintendent of the Approved School of Dagoretti, 23 October 1946.

³⁷² Ibid.

³⁷³ TNA CO 912/14, Colonial Penal Administration Committee, Minutes, 30 May 1950.

4 - PUNISHMENT TO FIT THE CRIME?

Despite the impetus for reform and the slow modernisation of punishment, the colonial period was primarily characterised by the pre-eminence of a ‘common punitive sense’, both in penal practices and discourses. This translated into three major converging historical trends: a progressive escalation in the severity of sentences for certain economic and political offences, the maintenance of punitive devices and penal ‘short-cuts’, such as collective punishment and deportation, which were designed to cope with specific challenges or types of crimes, and the entrenchment of wider punitive claims emerging from various sections of colonial society, official and non-official, European and African.

This chapter draws upon a recent body of literature that seeks to understand the violence of the British response to the Mau Mau upheaval by focusing on punishment and repression prior to the beginning of the Emergency.³⁷⁴ Daniel Branch notably argues that colonial authorities in Kenya prepared the ground during the decades that preceded the insurgency by petty-criminalizing the daily life of Africans and increasing the harshness of sentences, in court and penal institutions.³⁷⁵ In this perspective, this chapter attempts at adopting a more comprehensive approach, exploring a large panoply of punitive practices from the thirties onwards. As underlined by Stacey Hynd, punitive policies were intimately linked to ‘the ‘incumbent violence’ of the evolving colonial order’ and cut across many arenas of state control, from the imposition of stifling sentences in court to the strict regulation of African mobility.³⁷⁶ These also included a vast array of ‘exceptional’ forms of punishment, such as deportation, collective fines, and detention in mental institutions. This holistic approach helps to grasp a better understanding of the nature of colonial control and repression

³⁷⁴ B. Berman, ‘Bureaucracy and Incumbent violence: Colonial Administration and the origins of the Mau Mau Emergency’, in B. Berman and J. Lonsdale, *Unhappy Valley: Conflict in Kenya and Africa* (London, 1992). D. Branch, ‘Imprisonment and Colonialism in Kenya, c. 1930–1953: Escaping the Carceral Archipelago’, *The International Journal of African Historical Studies*, 38/2 (2005): 239–64. Shadle, B. L. and Carotenuto, M., ‘Towards a History of Violence in Colonial Kenya’, *The International Journal of African Historical Studies*, 45/1 (2012): 1-9.

³⁷⁵ D. Branch, ‘Imprisonment and Colonialism in Kenya, c. 1930–1953: Escaping the Carceral Archipelago’, *The International Journal of African Historical Studies*, 38/2 (2005), p. 243.

³⁷⁶ S. Hynd, ‘Murder and Mercy: Capital Punishment in Colonial Kenya, c. 1909–1956’, *International Journal of African Historical Studies*, 45/1 (2012), p. 85.

in the colony and to start discussing general patterns. As Daniel Branch points out, punitive practices in Kenya appear ‘to offer a useful example of Frederic Cooper’s arterial model of the diffusion of power in colonial Africa’.³⁷⁷ Indeed, in a context of scarce resources, coercion was applied unevenly in Kenya and was generally limited to the political, economic and ideological centres of colonial domination in and around settled areas.

Relying upon the most recent works, this chapter also strives to place colonial punitivity within the broader social and political matrix of colonial power and to pay special attention to local relations of power.³⁷⁸ As Florence Bernault underlined, state repression enabled colonial authorities to open dialogues and alliances with settlers and African elites, with a view to justify the benevolence of colonial rule and extend the reach of the state, by outsourcing a part of its monopoly on legitimate violence.³⁷⁹ Punitive patterns resulted from a continuum of partly converging interests shared by various European and African circles of authority and power, such as the settler community, lay magistrates, colonial officials, native authorities, police authorities, and African elders. Focusing on the particular case of Nyanza Province, punitive networks in colonial Kenya disclosed original avenues for temporary cooperation and concerted repression between various European and African actors of colonialism, while shedding light on interest divergence and power relations in colonial society. The increase in punitiveness is particularly noticeable in areas where white interests were directly involved, notably for offenses against European property in both urban and rural

³⁷⁷ D. Branch, ‘Imprisonment and Colonialism in Kenya, c. 1930–1953: Escaping the Carceral Archipelago’, *The International Journal of African Historical Studies*, 38/2 (2005), p. 265. See also F. Cooper, ‘Conflict and Accommodation: Rethinking Colonial African History’, *American Historical Review*, 99 (1994): 15-33.

³⁷⁸ For a discussion of this aspect, see: J. Alexander and G. Kynoch (eds), ‘Introduction: Histories and Legacies of Punishment in Southern Africa’, *Journal of Southern African Studies*, 37/3 (2011): 413-414; F. Bernault, ‘The Shadow of Rule: Colonial Power and Modern Punishment in Africa’, in F. Dikötter and I. Brown (eds), *Cultures of Confinement: a History of the Prison in Africa, Asia and Latin America* (London, 2007): 80-81; T. C. Sherman, ‘Tensions of Colonial Punishment: Perspectives Recent Developments in the Study of Coercive Networks in Asia, Africa and the Caribbean’, *History Compass*, 7/3 (2009): 665-670; Shadle, B. L. and Carotenuto, M., ‘Towards a History of Violence in Colonial Kenya’, *The International Journal of African Historical Studies*, 45/1 (2012): 1-9. A few comprehensive studies have recently replaced punishment within wider social and political configurations, see notably: D. Anderson, *Histories of the Hanged: Britain’s Dirty War and the end of the Empire* (London, 2005); D. Paton, *No Bond but the Law: Punishment, Race and Gender in Jamaican State Formation, 1780–1870* (Durham, 2004); T. C. Sherman, *State violence and punishment in India, 1919-1956* (London, 2009).

³⁷⁹ F. Bernault, ‘The Shadow of Rule: Colonial Power and Modern Punishment in Africa’, in F. Dikötter and I. Brown (eds), *Cultures of Confinement: a History of the Prison in Africa, Asia and Latin America* (London, 2007), p. 80.

contexts, for labour offences on settlers' farms, for economic offences challenging white dominance, for offenses against local ordinances regulating African poverty and mobility to European-dominated towns and finally for political offenses.

In colonial Kenya, white public opinion, both official and non-official, broadly sanctioned and legitimised rough justice and retaliatory practices towards African offenders. White settlers were obsessed with the threat of crime and disorder and penal reform was thus widely discussed within colonial society at large.³⁸⁰ From the early 1930s, there was a clear sense among white settlers that professional crime and recidivism were on the rise. Offenses against European properties were highly reported in the local press and fuelled settlers' deep-rooted fears over African crime. Numbering 16,812 in 1931, European settlers felt constantly under siege and threatened by a comparatively large African population of at least three million. In the colonial imagination, every type of delinquent and criminal lurked in the 'shadows' of African reserves that bordered on settled areas: stock thieves, receivers of stolen property, housebreakers, manufacturers of illicit liquor, prostitutes, gamblers and 'many other lower in the scale of crime' illegally residing or operating in the neighbourhood.³⁸¹ They regularly indulged in moral panic and collective hysteria over 'crime waves', particularly in response to cases of sexual assault or to a series of minor thefts and burglaries in the area. Due to the lack of European staff and police supervision, white farm owners were obsessed with the disciplining of African squatters living and working on European estates, who might indulge in pilfering or petty thieving on their own properties or constitute a dangerous connection with local African criminal gangs. Eugenic considerations had also left a longstanding imprint on colonial ideology and some settlers considered specific African communities inherently criminal—prone to lust, theft or savagery.³⁸² Therefore, white public opinion regularly criticised the leniency of the judiciary and the inefficiencies of the colonial state in dealing with crime with a tough hand. Settlers resented the reformist influence of the

³⁸⁰ C. Campbell, 'Juvenile Delinquency', p. 129.

³⁸¹ KNA AP/1/1056, Letter from the First Class Magistrate, Nakuru, to the Senior Superintendent of police, 25 May 1948.

³⁸² C. Campbell, *Race and Empire: Eugenics in Colonial Kenya* (Manchester, 2012), p. 7.

Colonial Office, demanded sterner sentences in court and improved police control and were keen on sharing the task of enforcing coercion and punishment.

Depending on the personality and opinions of the lay magistrate, settlers' views were well-represented within the judicial sphere. The District Commissioner had great discretion in deciding on the severity and nature of a punishment and often awarded sterner sentences for offences perceived as a threat to law and order in the district or, to a lesser extent, to the economic and political interests of the settler community. Due to the confusion between their judicial and executive functions, District Commissioners tended to render justice, with a view to securing settlers' dominance and the balance of local powers. They were generally members of the local white community, more interested in supporting the views and interests of settlers than Africans in court. According to the Resident Magistrate of Kisumu, who claimed to speak for all magistrates, the seriousness of a crime did not depend on whether it was an offence against the Penal Code or upon the maximum sentence allowed by law.³⁸³ When awarding a sentence, the magistrate primarily considered the prevalence of the crime or its 'effect upon the public'.³⁸⁴ For this reason, patterns of punishment varied widely among districts and were largely influenced by local politics and relations of power. The same offence could be punished by a fine, detention or imprisonment depending on the local social climate and the magistrate's opinion of his constituency. On a general scale, despite local variations, lay magistrates tended, during the 1940s, to increase the severity of punishment for economic and political offences that specifically threatened white hegemony and colonial order. District Commissioners had also a strong interest in discreetly permitting or encouraging African forms of public violence, whenever the interests of the colonial administration and African elites merged. Finally, administrative officers were infamous for their enduring propensity to impose collective sanctions and 'exceptional measures' of punishment against certain

³⁸³ KNA AP/1/1049, Letter from the Resident Magistrate, Kisumu, to the Resident Magistrate, Nairobi, 7 April 1942.

³⁸⁴ Ibid.

categories of criminals or suspects, notably in cases of stock theft, labour offence or political dissidence.

THEFTS AND BURGLARIES IN TOWNS AND SETTLED AREAS

As can be easily expected, white settlers were primarily preoccupied with burglaries and thefts that challenged their properties or economic dominance. Scholars have paid increasing attention to property crime in colonial Africa in the last years.³⁸⁵ Though incidence and forms greatly varied across territories, there was much public concern about an escalation of the number of offences during and after the Second World War. In Kenya, this largely contributed to the entrenchment a common punitive sense towards thieves within colonial society at large.

Settlers often mobilised, through the medium of farmers' associations, to defend their own interests and criminalise forms of African subsistence or petty thefts. The settlers' hysteria over alleged crime waves would resurface on many occasions during the colonial period and it contributed to a dramatic increase in the severity of punishments for offences against European property, as lay magistrates responded positively to their claims and tried to protect their interests. A radical and vociferous part of the settler community was loud in denouncing each series of petty thefts or burglaries as new outbreaks in crime, threatening to plunge the whole colony into anarchy. In the Kericho district, for instance, one settler, alarmed by an increased number of burglaries and housebreakings in the neighbourhood, lambasted

³⁸⁵ D. Anderson, 'Black Mischief: Crime, Protest and Resistance in Colonial Kenya', *The Historical Journal*, 36/4 (1993): 851-77; and 'Policing the Settler State: Colonial Hegemony in Kenya, 1900-52', in D. Engels, and S. Marks (eds), *Contesting Colonial Hegemony: State and Society in Africa and Asia*, London: British Academic Press, 1994; A. Burton, 'Jamii Ya Wahalifu. The Growth of Crime in a Colonial African Urban Centre: Dar Es Salaam, Tanganyika, 1919-61', *Crime, History and Societies*, 8/2 (2004): 85-115. C. Campbell, 'Juvenile Delinquency in Colonial Kenya', 1900-1939, *The Historical Journal*, 45/1 (2002): 129-151; L. Fourchard, 'Urban Poverty, Urban Crime and Crime Control: the Lagos and Ibadan Cases, 1929-45', Paper given at the conference on African Urban Spaces, University of Texas, 2003; A. G. M. Ishumi, *The Urban Jobless in East Africa: A Study of the Unemployed Population in the Growing Urban Centres, with Special Reference to Tanzania* (Uppsala, 1984); Willis, J., 'Thieves, Drunkards and Vagrants: Defining Crime in Colonial Mombassa, 1902-1932', in D. M. Anderson and D. Killingray (eds), *Policing the Empire: Government, Authority and Control, 1830-1940* (Manchester, 1991), 219-235.

local authorities for allowing crimes that were just ‘a short step to rape and murder’ to persist.³⁸⁶ The number of reported thefts and burglaries against European properties particularly increased during the Second World War, due to the general food-shortage and increase in unemployment. In the early 1950s, there was thus a clear sense among the settlers of a general increase in crime and burglaries and of the development of well-organised African gangs of housebreakers and thieves operating in and around European-dominated areas, both in townships and farming areas.³⁸⁷

More generally, white public opinion, both official and non-official, seemed divided between two significant and uneven trends: a minority of reformers subscribing to the rehabilitative discourse defended by the Colonial Office and a large majority clamouring instead for increased judicial punitivity. According to one Resident Magistrate in the mid-1940s, a common punitive philosophy prevailed in most quarters of colonial society, demanding stern punishments and minimising the social and economic causes of delinquency and crime.³⁸⁸ Settlers criticised subordinate courts for awarding ‘trivial’ sentences and the High Court for reducing or quashing sentences. For settlers, the crux of the matter was the law—which provisions were considered not punitive enough—and the way it was interpreted by magistrates.³⁸⁹ As one responsible officer of the prison department vividly expressed it, this philosophy was based on the idea that offenders should be punished with such degree of severity as would tend ‘to teach them a lasting lesson’. In the opinion of the Resident Magistrate, a strong and often virulent body of white opinion in the colony embraced punitive attitudes and challenged the very core and purpose of rehabilitation: it ‘seems to me to derive from a defeatist attitude. It is a denial of the possibility of remoulding by benevolence the mind that has been found for the first time to be thinking wrongly’. The settlers’ demands for punishment increased markedly during the 1940s. According to the Attorney General, partly

³⁸⁶ KNA PC/NZA/3/15/147, Letter from one settler living in the Nyanza province, G. W. Norman, to Campbell, 14 October 1932.

³⁸⁷ TNA CO 859/234/3, ‘Anti-White Kenya Society Spreading’, *The Daily Telegraph*, 25 August 1951.

³⁸⁸ KNA AG/7/13, Evidence by a Resident Magistrate, Committee on Habitual Offenders, 1946. In 1946, he had been a Resident Magistrate for 25 years in Kenya in Nairobi, Mombasa, Nakuru and Kisumu. He had also been a Visiting Justice at the prisons of Mombasa, Nakuru and Kisumu.

³⁸⁹ KNA PC/NZA/2/7/86, ‘Settlers worried by crime wave’, *East African Standard*, 30 March 1944.

because of the second World War, white public opinion increasingly conflated the judiciary with the executive and objectives of state in supporting penal policies modelled on political and punitive lines.

Punitive claims were increasingly voiced by the Indian community as well, as petty thieving and shop break-ins financially affected both Indian farmers in rural areas and shopkeepers in urban centres. In 1934, the Indian Association of Kakamega complained to police authorities over the increasing number of shop burglaries or attempts at burglary by armed Africans in the city.³⁹⁰ The number of offences against properties had increased due to the economic depression and the increasing number of unemployed Africans living in the township. According to the association, almost every night, inhabitants of Kakamega all armed with sticks and pangas broke or tried to break into the Indian shops, representing a ‘daily threat of financial loss and physical injury’ for the Indian community. In addition, every evening, drunken Africans coming out of neighbouring bars ended up in ‘fights and brawls of crowds before the shops’. The local Indian community called for sterner sentences in court, the establishment of a police post in the township and the extension of police patrols in the bazaars of Kakamega. Though they were aware that policing was considerably impaired by the lack of staff and funding, Indians began to align their discourses with those of the European settlers during the 1930s. As they paid more in rent and licences compared to the 1920s, they felt entitled to improved and closer state protection. Indian farmers living in areas bordering on African reserves indulged in the same moral panic over African ‘crime waves’ as their European counterparts. Similar complaints were made by Indian farmers in a settlement between the Kajulu, Nandi and Kano reserves, through the medium of the Nyanza Farmers Association.³⁹¹ During one year, this area had been affected by 44 petty thefts on Indian farms; farm owners feared this would ultimately result in ‘a great loss to farmers’.

³⁹⁰ KNA PC/NZA/3/15/147, Letter from the Indian Association of Kakamega to the Commissioner of Police and to the Provincial Commissioner, Nyanza, 24 February 1934.

³⁹¹ KNA PC/NZA/3/15/147, Letter from the Nyanza Farmer Association to the Provincial Commissioner, Nyanza, 22 May 1943.

Resident Magistrates and judicial authorities increasingly criticised settlers for their excessive demands, denying that there was any outbreak in crime and mitigating on appeal the severity of sentences awarded by lay magistrates in subordinate courts. Administrative officers were severely criticised for imposing ‘savage sentences’ in these cases, notably for stock theft offences.³⁹² The conflict between the judiciary and administration, disclosed in the early 1930s before the Bushe Commission, became much more acrimonious during the 1940s. Resident Magistrates who usually tended to ‘go Settler’ rather than ‘Native’, though to a lesser extent than lay magistrates, started being openly critical of settlers’ and lay magistrates’ attitudes. According to the Resident Magistrate of Kisumu, contrary to what was alleged by most white farmers, there was ‘no crime wave’ in the late 1940s, ‘at least not to the extent that the public hysteria’ suggested.³⁹³ There was mostly an increase in the number of reported crimes, as police investigation and detection of crime had considerably improved over the 1940s. In his view, the expression ‘prevalent crime’ was chanted by lay magistrates primarily to serve their own political aims and to ‘describe that particular offence which they personally detest, as an excuse for imposing exemplary punishment’.³⁹⁴ According to reformers, there was a systematic practice by which the prosecution would ask for heavy sentences on the grounds that this particular type of crime was prevalent, when magistrates had scarce knowledge of the statistics and had glaringly overstated the prevalence of the threat.³⁹⁵ Over the course of the 1940s, the Attorney General loudly deprecated magistrates’ severity and jealously defended the independence of the judiciary. In his view, there was a ‘growing sense of frustration’ at an increase in crime ‘which is inevitable and which the ignorant layman feels can be cured by the infliction of savage sentences’.³⁹⁶ To avoid wide discrepancies in patterns of punishment, these debates provided the judiciary with an opportunity to reaffirm the reformist principles governing punishment, which had been formalised before the Committee on Habitual

³⁹² KNA AP/1/1087, Letter from the Resident Magistrate, Kisumu, to the Attorney General, 27 July 1948.

³⁹³ KNA AP/1/1056, Letter from the Resident Magistrate, Kisumu, to the Registrar of the Supreme Court of Kenya, 17 July 1947.

³⁹⁴ Ibid.

³⁹⁵ KNA PC/NZA/2/7/86, Letter from the Resident Magistrate, Kisumu, to the Chief Secretary, 10 January 1949.

³⁹⁶ KNA AP/1/1087, Letter from the Resident Magistrate, Kisumu, to the Attorney General, 27 July 1948.

Offenders, and to try to put a damper on the lay magistrates' mania for imprisonment. As underlined by the Resident Magistrate of Kisumu: 'No two persons will agree on the exact measure of a sentence. I have heard a judge in Kenya pronounce a sentence of five year imprisonment, and five minutes later reduce the sentence to two years. The stampede into prison is incited by popular clamour and even the Attorney General seeks sometimes to pacify the mob'.³⁹⁷

The settlers' collective discontent also focused on police failures to catch and bring to court offenders. This was one of the arguments used to justify punitive sentences in courts for petty thieving or other offences against European property. As offenders could rarely be caught, the unlucky few had to receive an exemplary punishment. From a colonial perspective, police inefficiency not only fuelled crime but symbolically threatened the core of white prestige and domination. The personal history of one European settler, H.B. Dooner, is very revealing in this respect. This settler was living in the early 1930s in the white farmers' area neighbouring the Lumbwa reserve.³⁹⁸ Following a series of burglaries and housebreakings on his property, he suffered important losses amounting to 3,260 shillings, which had aggravated an already fragile financial situation. As a consequence, Dooner was forced to reduce the number of African domestic servants working in his house and get rid of his cook and houseboy, who generally constituted the minimal African staff within settlers' properties. According to the District Commissioner, this was a case where the 'prestige' of a European had been entirely broken: Mr Dooner had been unable to maintain 'the standing suitable for a European in this country'.³⁹⁹ In colonial ideology, master and servant relations had to bring white prestige and domination into homes and privacy. The Provincial Commissioner was most anxious over the fact that Mr Dooner's wife had to do 'all household, laundry and other

³⁹⁷ KNA PC/NZA/2/7/86, Letter from the Resident Magistrate, Kisumu, to the Chief Secretary, 10 January 1949.

³⁹⁸ KNA PC/NZA/3/15/147, Letter from H. B. Dooner to the Assistant Superintendent of Police, Chemagel, 23 March 1933.

³⁹⁹ KNA PC/NZA/3/15/147, Letter of the Provincial Commissioner, Nyanza, to the Colonial Secretary, 21 April 1933.

work' and to perform housework which usually devolved upon black servants.⁴⁰⁰ In colonial society, offences against European property threatened to challenge the core of European economic dominance and white racial supremacy. As a consequence, the Provincial Commissioner decided to negotiate with the Agricultural Advances Board to advance Mr Dooner a sum of money and redress his financial situation; he also hurriedly proposed sending police patrols to his properties. More generally, thieves from the Lumwa group created particular concern among local authorities, as their actions were perceived as direct defiance towards colonial power and legitimacy. According to Mr Dooner, these offenders made no use of the articles they had stolen: they acted out of 'sheer bravado' to show 'their indifference' to the actions of the police.⁴⁰¹ The Commissioner of Police regarded them with great suspicion as an 'inhabitual class of criminals', 'animated by a spirit of bravado and mischief' mocking British power and supremacy.⁴⁰² In his view, thieves felt they had 'got away with it' and impunity encouraged them to commit further crime and deride colonial power.

Facing the shortcomings of the judicial and police systems, settlers pressed for drastic measures to increase state and police control over African reserves. Up until the late 1940s, African reserves were under the supervision of the District Commissioner, who exercised his authority through the chiefs and the Tribal police.⁴⁰³ Settlers often criticised traditional authorities and the tribal police for their corruption and lack of action in curbing lawlessness in the reserves neighbouring their properties. They repeatedly pressured the colonial government to place the control of African reserves under the charge of the Kenyan police. In the Nyanza Province, for instance, mining authorities denounced the lack of police control in local African reserves and workers' lines on mining properties. In the early 1940s, the Secretary of the Mine Owners and Managers decided to work in close collaboration with the Kenyan police and

⁴⁰⁰ Ibid.

⁴⁰¹ KNA PC/NZA/3/15/147, Letter from H. B. Dooner to the Assistant Superintendent of Police, Chemagel, 23 March 1933.

⁴⁰² KNA PC/NZA/3/15/147, Letter from the Commissioner of Police to the Colonial Secretary, 3 April 1933.

⁴⁰³ D. Throup, 'Crime, politics and the police in colonial Kenya, 1939-63', in D. M. Anderson and D. Killingray (eds), *Policing and Decolonisation: Politics, Nationalism and the Police, 1917-1965*, (Manchester, 1991), p. 128.

administration to deal with African petty thefts in his mines.⁴⁰⁴ In his view, ‘the hands of the police were tied by being unable to search the huts in the reserve adjacent to mine’ where the stolen properties were suspected to be hidden.⁴⁰⁵ He particularly resented local chiefs and headmen for not fully collaborating with colonial authorities to catch thieves and for discreetly permitting pilfering and petty thieving in the local mines.⁴⁰⁶ Windows and doors which had been stolen from unoccupied houses on mining properties were found used in the reserve. More generally, European farm areas and industries were established outside the jurisdiction of the Native Authorities. The colonial administration and settlers thus grew increasingly upset by the impossibility of obtaining the services of the Tribal Police as well as the collaboration of chiefs and elders to curb crime in European-dominated areas. According to the Provincial Commissioner of Nyanza Province, native authorities regularly put forward their territorial jurisdiction ‘as an argument that they (were) not responsible for what young men did there and showed marked reluctance to collaborate with the Kenya Police’.⁴⁰⁷ In 1948, the colonial government succumbed to settlers’ pressure and decided to place the policing of African reserves within the competency of the Kenyan police, taking a significant step toward extending state control over the colony.

Settlers also strove to help colonial authorities with policing and reducing the cost of repression. The struggle against thefts and burglaries provided a perfect opportunity for government and settlers’ economic interests to merge. The police, the administration and the settler community were obsessed with cracking down on crimes against European property and were therefore willing to lead a concerted action to extend policing over settled areas. On the one hand, settlers expected the colonial police force to preserve their own properties and economic interests, curb petty theft and control the labour force, whether on farms or industrial properties. On the other hand, the police and the administration, both lacking staff

⁴⁰⁴ KNA PC/NZA/3/15/147, ‘Mining No 2 Area’, Memorandum written by the District Commissioner, Central Kavirondo, 7 December 1940.

⁴⁰⁵ Ibid.

⁴⁰⁶ KNA PC/NZA/3/15/147, Letter from the Director of a goldmine in the Nyanza Province to the Commissioner of Police, 26 November 1946.

⁴⁰⁷ KNA PC/NZA/2/7/16, Letter from the Provincial Commissioner, Nyanza, to the Chief Native Commissioner, 14 February 1933.

and funds, were not unhappy to be supported by the settlers' private police forces in European-dominated areas. The settlers' contribution to policing was often made by economic and professional interest groups, such as farmers' associations, planters' organisations and co-operative creameries, to protect their own activity and properties.⁴⁰⁸ In 1948, for instance, the General Manager of the Kenya Cooperative Creameries was very concerned over an increase in thefts and burglaries; for that reason he offered to give land free of charge to the government to establish a police post at Morendat in order to reduce crime in the Naivasha area.⁴⁰⁹ Similarly, within an area of ten square miles of Kakamega, four goldmine producers raised a private police force of 70 men, ensuring control over mining properties and African workers' quarters.⁴¹⁰ In comparison, a police station was often made up of only a dozen constables. Colonial authorities thus had a strong interest in securing the collaboration of settlers' private police forces, which compensated for police shortcomings and extended the reach of the state into outlying or under-policed areas.

REGULATING AFRICAN LABOUR

The colonial period was also characterised by increasingly severe punishments for minor labour offences, notably from the Second World War, with lay magistrates showing a marked tendency to protect white farming interests in court. Over the colonial period, settlers were obsessed with a possible shortage of labourers and put considerable pressure on the

⁴⁰⁸ See for instance: KNA AP/1/1056, Letter from the Naivasha Farmer Association to the Provincial Commissioner, Nyanza, 24 May 1931; KNA PC/NZA/3/15/147, Letter from the Nyanza Farmer Association to the Provincial Commissioner, Nyanza, 22 May 1943; KNA PC/NZA/3/15/147, Letter from the Director of a goldmine in the Nyanza Province to the Commissioner of Police, 26 November 1946.

⁴⁰⁹ KNA AP/1/1056, Letter from the First Class Magistrate, Nakuru, to the Senior Superintendent of Police, 25 May 1948.

⁴¹⁰ KNA PC/NZA/3/15/147, Letter from the Director of a goldmine in the Nyanza Province to the Commissioner of Police, 26 November 1946.

colonial government to help recruit and secure an African labour force for their farms.⁴¹¹ Historians have already widely documented the relation between law, punishment and labour control in Kenya: 'The law was thereby used as a weapon in the 'disciplining' of labour, and had little effect in protecting the worker. Other laws impinged upon labour relations, especially those relating to the registration of workers and resident labourers; these laws came to be more widely used from the 1920s in the prosecution of offenses that had previously fallen under the master and servant code, for instance desertion'.⁴¹² Drawing upon this large body of research, this chapter focuses on settlers' social attitudes towards labour offenses and punishment.

Settlers often indulged in collective hysteria over scarce or undisciplined African labour and loudly criticised the leniency of magistrates when dealing with labour offences. In Nyanza province, settlers in the Songhor and Sotik farming areas were particularly virulent and regularly voiced their concerns to the government through the medium of farmers' associations: 'I realised the only way to obtain the ear of the government was to submit it under the auspices of a farmers' association. Individual appeals such as writing letters to the newspapers made no impression, although this method paved the way by forming public opinion'.⁴¹³ In the mid-1930s, the Songhor farmers association was very disturbed by the increasing number of reported desertions of African squatters and notably demanded more punitive sentences under the Master and Servants ordinance in order 'to combat the present leniency to disregard the sanctity of contracts'.⁴¹⁴

⁴¹¹ On labour law and regulation, see D. Anderson, 'Master and Servant in colonial Kenya, 1895-1939', *Journal of African History*, 41 (2000): 459-485; Anderson, D. M., 'Registration and Rough Justice: Labour Law in Kenya, 1895-1939', in P. Craven and D. Hay (eds), *Masters, Servants and Magistrates in Britain and the Empire, 1562-1939*, (Chapel Hill, 2004), 499-528; B. J. Berman, *Control and Crisis in Colonial Kenya: the Dialectic of Domination* (London, 1990); A. Clayton and D. C. Savage, *Government and Labour in Kenya* (London, 1974); S. Sticher, *Migrant Labour in Kenya: Capitalism and African Response, 1895-1975* (Harlow, 1982); R. M. van Zwanenberg, *Colonial Capitalism and Labour in Kenya, 1919-39* (Nairobi, 1975).

⁴¹² D. Anderson, 'Master and Servant in colonial Kenya, 1895-1939', *Journal of African History*, 41 (2000), p. 485.

⁴¹³ RH Mss. Afr. s. 1086 (Nestor Archives), Personal papers written by one settler, Mr Nestor [undated, c. 1936].

⁴¹⁴ KNA PC/NZA/2/9/17, Letter from the Songor Farmers Association to the Colonial Secretary, 28 November 1938.

The dominant white opinion on the punishment of labour offences can be illustrated by the acrimonious and emblematic attitude of one settler living in the Songhor farming area. Through his own admission, his opinion on the matter was shared by most settlers in the neighbourhood. There was a clear sense among local settlers that, in many labour cases, ‘the punishment (did) not fit the crime’ and that heavier sentences should be imposed to ‘bring home to guardians of valuable property the seriousness of being (...) incapable on duty’.⁴¹⁵ This settler was angry about a ten shilling fine imposed on one of the Nandi squatters he had employed as a night watchman in his coffee factory. One day, he had found his African servant drunk and wounded while on duty on his coffee plantations. Although the white farmer had employed his squatter for fifteen years and had always been on ‘amicable terms with his employee’, he readily brought him to the police station to be tried in court and personally attended the court sitting to ask for a particularly punitive sentence.⁴¹⁶ In his opinion, magistrates had to inflict exemplary and deterrent sentences for the most trivial labour offences in view of their prevalence in the district: ‘I informed the magistrate that the accused was in a position of responsibility and that the offence for which he was charged was of too common occurrence in this district and that therefore I hoped that he would ‘rap it in’ to the accused as a deterrent to others’.⁴¹⁷ The fact that the accused was fined with 10 shillings, whereas the maximum punishment under penal law for this offence was a fine of 50 shillings and six months of imprisonment, made the settler furious with the judiciary. Settlers often accused magistrates of leniency, which allegedly undermined both British rule and the authority of white farmers: ‘To me as a layman, the sentence appears to be fantastically inadequate and only served to make a laughing stock of the law and incidentally of the employer’.⁴¹⁸

⁴¹⁵ KNA PC/NZA/3/15/20, Letter from a settler living in the Songhor area to the Provincial Commissioner, Nyanza, 18 August 1936.

⁴¹⁶ Ibid.

⁴¹⁷ Ibid.

⁴¹⁸ Ibid.

Settlers' hysteria over African labour discipline resurfaced during the wartime period and resulted in an increasing number of prosecutions and severe punishments for minor labour offences. Settlers worried that the increasing requirements of the military would damage their farming activities and became much more willing to prosecute.⁴¹⁹ This resulted in an increasing number of reported petty offences under the Employment of Servants Ordinance.⁴²⁰ Due to the wartime depletion of European and African staff on white farms and sisal estates, there was a clear sense that squatters' wages would be forced up and that the supervision and discipline of African staff would considerably deteriorate. During the war, many white owners enlisted for military service and had to leave the supervision of their farms to their wives or to an overworked farm manager. Therefore, they worried that their employees would not carry out a full day's work, and that staff discipline would slacken while they were on duty. The increase in prosecutions was also linked to wider changes in squatters' recruiting patterns on European farms over the period. In some areas, the movement and arrival of displaced squatters resulted in an increase of petty thefts at European properties. In some cases, displaced and discontented squatters assaulted and attacked employed African servants to force them to leave their jobs and create employment opportunities for the newly-arrived squatters. In the mid-1940s, a series of raids and ambushes on European farms in the Sotik area considerably alarmed the local settler community.⁴²¹ Nothing was stolen; the purpose of the attackers was probably to force African labourers to leave the area with the object of securing work for themselves.⁴²² The local settler community and the Sotik production and manpower committee were considerably concerned by these attacks and their impact on an already defective mechanism for recruiting labour: 'Intimidation of casual Kisii, Luo and other labour is reaching such proportions that in some cases farmers are reduced to a mere skeleton

⁴¹⁹ KNA PC/NZA/2/9/17, Letter from the Provincial Commissioner, Nyanza, to the Chief Secretary, 16 February 1941.

⁴²⁰ KNA AP/1/1049, Letter from a Special Magistrate, Rongai, to the Registrar of the Supreme Court of Kenya, 17 March 1943.

⁴²¹ KNA PC/NZA/3/15/149, Letter from the Superintendent of Police to Major Webb, 28 September 1945.

⁴²² KNA PC/NZA/3/15/149, Letter from the Superintendent of Police to the Provincial Commissioner, Nyanza, 9 March 1946.

of what was in any case an inadequate labour force'.⁴²³ Therefore, pressured by the settler community, lay magistrates awarded heavier sentences of imprisonment and fines for very small labour offences.⁴²⁴ Magistrates were increasingly faced with 'non-criminal' labourers who readily admitted in court that 'they had behaved badly and felt rather ashamed about it': 'most of them are young men who have it in their heads that they must be awkward and difficult and worry their employer as much as they can, similar to school boys to a new master'.⁴²⁵

The interdependence between the punishment of labour offences and the ideological and economic concerns of the settlers became much more acute with the appointment of special magistrates in the early 1940s. Lay magistrates quickly became overburdened by the increasing volume of wartime prosecutions. The colonial government consequently decided to appoint settlers with no judicial training as special magistrates to deal with the sheer quantity of minor labour offences in settled areas.⁴²⁶ Special magistrates were granted full third-class powers and second-class powers for offences under the Employment of Servants Ordinance. Their territorial jurisdiction only extended to the district in which they were appointed and their work was limited to the trial of petty offences, such as those arising on the European farms. These magistrates received no salary and their sentences were examined and supervised by the High Court. At the end of the war, there were 22 special magistrates appointed in the whole colony. Like lay magistrates, special magistrates tended to give in to pressure from the settlers and to award stern sentences for trivial labour offences. They often lived in the same neighbourhood, were acquainted or friends with the European plaintiff or shared similar farming interests. Unsurprisingly, the first special magistrate, appointed in 1942 in the Sotik area, was a man unanimously supported by the local Sotik Farmers Association.⁴²⁷ When

⁴²³ KNA PC/NZA/3/15/149, Sotik Production and Manpower Committee, Minutes, January 1946.

⁴²⁴ KNA PC/NZA/2/9/17, Letter from the Provincial Commissioner, Nyanza, to the Chief Secretary, 16 February 1941.

⁴²⁵ KNA AP/1/1049, Letter from a Special Magistrate, Rongai, to the Registrar of the Supreme Court of Kenya, 17 March 1943.

⁴²⁶ See TNA CO 533/529/16.

⁴²⁷ KNA PC/NZA/2/7/120, Letter from the Provincial Commissioner, Nyanza, to the Colonial Secretary, 26 August 1942.

special magistrates failed to please settlers' expectations, white farmers denounced their work and accused them of favouring the African accused and challenging employers' authority. In the Kisumu-Londiani district, for instance, a local association of white farmers, the Koru Farmers and Planters Association, nicknamed the Koru coterie, met in early 1945 to criticise the sentences passed by special magistrates as well as the supervisory role of the High Court.⁴²⁸ Special magistrates were accused of being 'not enough conversant with all the ordinances', of multiplying grounds for appeals and consequently passed a resolution to recommend special magistrates' work to be confined to cases involving no Europeans.

Colonial authorities tended to respond positively to settlers' demands, despite adopting a more moderate stance. Provincial authorities were generally reluctant to interfere with lay or special magistrates or to support settlers' criticism of sentences awarded in subordinate courts.⁴²⁹ In addition, they tended to blame the settlers for the increase in labour offences. White farmers were criticised for employing African workers 'of bad quality' because it was difficult to secure adequate labour on farms.⁴³⁰ According to the Superintendent of Police, the Labour Officer had inspected many farms in the Sotik area in 1945 and realised that few farmers actually exerted proper control when registering and assessing their labour. Colonial authorities urged settlers to tighten up discipline for their workers and to comply with the provisions of the Resident Native Labourers and Registration Ordinance. The Resident Magistrate of Kisumu was deeply critical of the punitive stance and racist attitude of the settlers in his district. He particularly resented their administrative views on justice and believed there was 'no less "technicality"' when the accused was 'white, black, brown or multi-coloured'.⁴³¹ According to him, the settlers' punitive discourses primarily served to negotiate local power relations and the competing economic interests dividing the local white farming community. In his opinion, the resolution of the Koru Coterie in 1945 reflected

⁴²⁸ KNA PC/NZA/2/7/120, Letter from the Provincial Commissioner, Nyanza, to all Special Magistrates, 29 March 1945.

⁴²⁹ KNA AP/1/777, Letter from the Registrar of the Supreme Court to the Colonial Secretary, 3 February 1934.

⁴³⁰ KNA PC/NZA/3/15/149, Letter from the Superintendent of Police to Major Webb, 28 September 1945.

⁴³¹ KNA PC/NZA/2/7/120, Letter from the Resident Magistrate, Kisumu, 27 March 1945.

acrimonious conflicts between local white farmers: ‘the resolution is a monument to the stupidity of the persons passing it, in perpetuating (apparently) the view that an European farmer is incompetent to deal with his neighbours, and an insult to “a body of able, hard working and conscious men”. It is the product of “a personal fitina” of a kind that one would not tolerate in an African community and I could name the author without hesitation’.⁴³²

Yet, colonial authorities bowed to the settlers’ pressure to a certain extent and launched concerted action to extend police and administrative control over settled areas. In order to calm down settlers panicking over African labour, they occasionally drew upon the same repressive strategies that had been introduced to put down stock thieving or cattle trespasses in settled areas. In the Sotik area, following the series of ambushes in 1946, the police staff was renewed and increased with the introduction of extra and special patrols.⁴³³ Administrative and African authorities held many barazas in the neighbouring African reserves to condemn the attacks against settlers’ labour. Yet, the most striking feature of colonial policy was probably the close collaboration between white farmers and local police forces. The colonial administration explicitly permitted or supported the development of private forms of settler policing and social defence, either autonomous or working in collaboration with the Kenya police. They encouraged settlers to develop and secure private means of protection by appointing ‘good neoparas and encouraging their men to protect themselves’.⁴³⁴ Following the raids against their labour, some Sotik farmers collaborated with police officers on several police raids and ambushes designed to catch offenders in the neighbouring African reserves. By and large, although colonial authorities often criticised the settlers for exaggerating labour offences, they mobilised and extended the colonial apparatus of repression in both institutional and non-institutional forms, to calm white social fears and help to protect white farmers’ interests.

⁴³² KNA PC/NZA/2/7/120, Dispatch by the Resident Magistrate, Kisumu, [undated, c. 1945].

⁴³³ KNA PC/NZA/3/15/149, Letter from the Superintendent of Police to the Provincial Commissioner, Nyanza, 9 March 1946.

⁴³⁴ Ibid.

‘COLLECTIVE’ AND ‘CUSTOMARY’ OFFENCES IN RURAL AREAS

Debates over ‘traditional offences’ such as stock theft or ‘spear-blooding murders’ framed and reified new official understandings of collective responsibility and complicity, drawing upon colonial conceptions of African mentality and custom. The historiography has begun to explore the practice of stock thefts in various parts of colonial Africa and to study both regulations and social tensions generated by this particular form of crime.⁴³⁵ In the case of Kenya, D. Anderson argues that ‘the transformation from traditional raiding to organised crime was shaped both by the imposition of colonial legislation against stock theft and by the new incentives to steal cattle that emerged as the colonial economy evolved’.⁴³⁶ In his view, the colonial state imposed punitive legislation and stifling punishments to deal with stock theft. However, such action failed to break down social linkages and solidarity within the wider Kalenjin community. This chapter broadly supports his argument, paying closer attention to the administration of collective punishments in the colony and to their normalization both in discourses and practice over the period.

These offences were commonly perceived by the colonial authorities as collective offences, as most inhabitants of the local area were alleged to be either directly involved or tacitly conspiring, by hiding information from the police or admiring these acts. In the view of the Governor, administrative officers ‘have not merely individual criminals to deal with but the mental attitude of the community towards stock theft and its tacit connivance in the crime. Among certain warrior tribes the community is on the side of the thieves, though the tribesmen may not always give them active assistance, they will certainly not spoil sport by assisting the government in detecting them. Stock theft must be made to cease being both a popular pastime and a paying proposition and this can only be achieved by making it disagreeable to its

⁴³⁵ D. Anderson, ‘Stock Theft and Moral Economy in Colonial Kenya’, *Journal of International African Institute*, 56/4 (1986): 399-416; R. Bouch, ‘Stock Theft in the Eastern Cape, 1850-90’, Institute of Commonwealth Seminar Papers, London, 1984; C. R. Cutshall, ‘Culprits, Culpability and Crime: Stock Theft and Other Cattle Manoeuvres among the Ila of Zambia’, *African Studies Review*, 25, 1-6; R. Waller, ‘The British and the Masai: the Origin of an Alliance, 1895-1905’, *Journal of African History*, 17, 529-54.

⁴³⁶ D. Anderson, ‘Stock Theft and Moral Economy’, p. 412.

admirers and supporters who connive at it, give free passage to stolen stock through their territory and assist the thieves to cover up their tracks'.⁴³⁷ There was a clear sense that police control and investigations were considerably hampered by the lack of collaboration with the local population. Collective complicity was also inferred from the colonial perception that African communities had good knowledge of their own cattle and could easily identify stolen cattle circulating in the area and help the police in tracking down offenders.

From a frontier perspective, these types of offences were regarded as lost territories in the civilizing conquest and symbolically embodied the limits of state control and colonial enterprise. Perceived in colonial imagery as the ultimate bastion of a fetishized pre-colonial Africa characterised by ethnic violence and high clan feeling, these offences represented a serious threat to the state and generated considerable discussion and anxiety in both official and non-official circles. White public hysteria fuelled itself from the belief that stock theft was dramatically on the rise during the 1940s and early 1950s. The colonial administration fulminated against this 'heinous offence', which allegedly implied 'far reaching' and 'subversive' consequences threatening to subvert British supremacy and control.⁴³⁸ As a consequence, colonial criminal justice lashed out at this category of offenders and imposed heavy sentences in court for this particular offence. Lay magistrates often awarded punitive sentences of imprisonment of two years for a first offence, irrespective of the value of the cattle stolen. In theory, guidelines existed to help lay magistrates determine the severity of sentences in cases of stock theft: 'intrinsic value of the cattle stolen, antecedents of the accused, youth of the accused, conduct and plea of the accused in court, prevalence of this crime in the locality'.⁴³⁹ In practice, patterns of punishment for stock theft were mostly determined by the prevalence, either real or perceived, of this type of crime in the district and the personality of the magistrate. Some magistrates did not even take into consideration the value of the cattle stolen, as they held the opinion that the thief generally 'takes what he finds'

⁴³⁷ KNA PC/NZA/2/9/29, Letter from the Governor of Kenya to the Secretary of State, 31 July 1943.

⁴³⁸ KNA AP/1/1087, Letter from the Resident Magistrate, Kisumu, to the Superintendent of Police, Nyanza, 18 October 1948.

⁴³⁹ Ibid.

depending on his luck.⁴⁴⁰ The Resident Magistrate of Nakuru thus considered a sentence of two years imprisonment to be not excessively severe even when the accused had stolen one animal only. ‘Dutiful’ young rural offenders, as named by Alexander Paterson, thus constituted one of the main groups of long-term prisoners spending years confined in the main jails of the colony.

In light of the political sensitivity of the issue, the colonial administration also drew extensively upon a set of exceptional measures, such as collective punishments or levy fines, which were meant to deal specifically with these types of offences. Collective fines were generally imposed under the Collective Punishment Ordinance (1930) in cases of stock thefts, collective raids or murders, because the local tribe was accused of being collectively responsible for committing the crime or suppressing evidence that could help to catch offenders. Collective punishments fell upon a specified number of male members of the local community and had to be paid, either in cash or cattle. They were ordered by the District Commissioner following a collective punishment inquiry, which was meant to provide evidence of collective guilt and relied upon local testimonies. Afterwards, the order had to be successively approved by the Provincial Commissioner, the Governor and the Secretary of State. Under the 1930 ordinance, a part of the fine was to be paid to the injured tribe and the remaining amount to the local Native Council to fund local communal works. There was a clear sense among colonial officials that heavy sentences of imprisonment failed to suppress these forms of crime and had to be accompanied by substantial collective fines and individual financial rewards for informers. According to the District Commissioner of Kabernet, the policy of fines and rewards acted as a much stronger deterrent than long sentences of imprisonment.⁴⁴¹ In some cases, Tribal Police Levy Fines were also collectively imposed on the local population to fund an additional police force in the area, generally over a period of one or two years.

⁴⁴⁰ Ibid.

⁴⁴¹ Ibid.

The entrenchment of collective punishments thus became a conspicuous feature of the Kenyan penal system during this period and was widely legitimised within colonial society by dominant racial conceptions of African development and custom. According to the Governor, the colony of Kenya was not ‘advanced enough’ to get rid of communal punishments, as many ‘backward’ tribes were allegedly still not acquainted with or abiding by British modern moral codes on a large scale.⁴⁴² In the colonial view, collective punishments were meant to inculcate colonial ideas of right and wrong, break the social acceptance of such customary practices among African communities and obtain the collaboration of elders and local population when tracking down offenders: ‘Few or none would defend collective punishment. But there are still parts of Africa where we cannot introduce European ideas of security and order without it’.⁴⁴³ The revival of collective punishment was intimately linked to the difficulties of the police in obtaining information and witnesses and catching offenders. The primary aim of collective punishment was to force Africans to help police officers track down stock thieves and to punish them if they seemed unwilling to do so. There was a clear sense among police authorities that they could not carry out their work and maintain law and order without elders’ full support.⁴⁴⁴ In addition, collective punishments were often imposed when offenders had been acquitted in court for lack of evidence. These acquittals raised serious concerns among colonial authorities, who feared they would be misconstrued by young people or local communities as an act of state weakness. In their view, when acquitted, young people were all too willing to boast about it and to give the impression they had defeated colonial justice. For instance, the Chief Native Commissioner was worried about the impact that the acquittal of young Samburu Morans by the High Court in the early 1930s, following a series of raiding murders, could have upon local population, especially the younger generation.⁴⁴⁵ In these discussions, the Solicitor General gave the example of the practice used in the Pacific colonies. When a European was acquitted for killing a native, he was forbidden to return to the

⁴⁴² KNA PC/NZA/2/9/29, Letter from the Governor of Kenya to the Secretary of State, 31 July 1943.

⁴⁴³ TNA CO 533/526/10, Dispatch, unknown author, 20 August 1943.

⁴⁴⁴ KNA PC/NZA/2/7/16, Collective Punishment Enquiry, 11 July 1938.

⁴⁴⁵ KNA AG/1/342, Dispatch by the Attorney General to all District Commissioners, 25 August 1936.

area in which the offence had occurred, so as not to bring colonial justice and the state into disrepute. Collective punishment roughly served the same deterrent function and proved a useful alternative for circumventing the legal safeguards and rules of evidence that underpinned the ordinary criminal justice system.

In official discourses, collective punishments were also defended on the grounds that they were consonant with African pre-colonial compensatory practices in cases of murder. It was said that, in the Kikuyu tradition for instance, in case of homicide, the killer was summoned to pay a customary payment of 10 goats and 9 fat rams which were eaten by the elders and the family of the deceased.⁴⁴⁶ In the colonial imagination, collective punishments were in accordance with Native Law, which was largely based upon communal and family responsibility. They had the double advantage of securing the collective responsibility of the offender's family, subgroup and group and acting directly on local public opinion, as all male members had to pay for the misdemeanours of a few.⁴⁴⁷ In addition, this form of punishment was considered particularly appropriate and deterrent for wealthy African groups, such as the Samburu or Kikuyu, as the confiscation of cattle challenged the core identity and material wealth of the community. According to the *East African Standard*, an African headman gave a vivid illustration of the customary importance of cattle within some African communities at a baraza at Kisima during the visit of the Carter Commission.⁴⁴⁸ When asked what he would do if his cattle were increasing but the local grass disappearing, the headman had replied: 'I would still keep my cattle. I do not want them to die. I want to look after them. They are our life (...) I would rather have a thousand starving ones until God gives us grass, because if a man has a lot of cattle and some die, he still have some left, but if a man has a few cattle and they die, he has none left'.⁴⁴⁹ From the colonial perspective, the centrality of cattle within African social and economic life enhanced the deterrent and punitive effect of collective punishment. As pointed out by the article's author, with a definite hint of condescension: 'that

⁴⁴⁶ KNA AG/1/342, Letter from S.H. La F[ontaine] to the Attorney General, 8 May 1934.

⁴⁴⁷ TNA CO 533/397/11, Dispatch by the Governor of Kenya, [undated, c. 1931].

⁴⁴⁸ KNA AG/1/342, 'The Samburu Fine', *East African Standard*, 11 June 1931.

⁴⁴⁹ Ibid.

simple philosophy of life is what makes it so difficult to instil the common sense of cattle husbandry into the African pastoralists of Kenya but in this case it may lend a very desirable emphasis to the fine which the government has now imposed'.⁴⁵⁰

The continued use of collective punishment in the colony was perceived with great reluctance by the Colonial Office. The matter became an acrimonious subject of controversy between the Governor of Kenya and the Secretary of State in the early 1930s. The Colonial Office strongly disliked communal punishment, which was considered retrograde and punitive compared to British 'modern' penal practice, although they recognised it as unavoidable in certain 'underdeveloped' or 'inadequately policed' areas of Africa.⁴⁵¹ According to the Secretary of State, collective punishment constituted a 'confession of failure on the part of the government' and should remain 'a temporary expedient' only in the colony.⁴⁵² In his view, its use should thus be increasingly regulated and limited by additional safeguards, if not abolished within a short period of time. There was a clear sense at the Colonial Office that the administration of collective punishments in Kenya left much to be desired and constituted 'a temptation to relax the efforts to follow proper criminal procedure and find the actual offender'.⁴⁵³ In the late twenties, many cases of collective punishment were sent to the Secretary of State, where there was clearly no proven collective guilt or responsibility. Authorities in London feared that this could lead to serious abuses and a sense of injustice among African communities. Increasing attention was also paid to the apparent excessive severity of collective punishments in Kenya. For instance, in a number of cases, the amount of the communal fine was much greater in Kenya than in the Northern provinces of Nigeria.⁴⁵⁴ In the two colonies, the laws were drafted along the same lines, but the Colonial Office could see significant differences in their administration. If local explanations justifying the severity of sentences were generally accepted in the early 1930s, the Colonial Office grew reluctant to

⁴⁵⁰ Ibid.

⁴⁵¹ TNA CO 533/407/2, Letter from the Secretary of State to the Governor of Kenya, 30 March 1931.

⁴⁵² Ibid.

⁴⁵³ Ibid.

⁴⁵⁴ TNA CO 533/407/2, Dispatch, unknown author, 1st October 1931.

sanction them and, in practice, exercised closer supervision and control over the collective punishment cases that were submitted. The law officers in London argued for further scrutiny from outside the colony and for drafting of a list of up-to-date cases, which would be brought up for review annually.⁴⁵⁵

Despite the Colonial Office reticence, collective punishment became progressively normalised in discourses, practices and legal provisions in the colony during the 1930s and 1940s. In view of the new Forced Labour Convention, the new Collective Punishment Ordinance had to be redrafted in October, 1930.⁴⁵⁶ The new ordinance broadly sanctioned the position of the colonial government in Kenya and represented a significant extension of the scope and punitive provisions of the former ordinance. The offence of suppressing evidence was extended to all police investigations or inquests. Collective punishments were permitted in the case of offences against the person. They could be imposed, under Clause 2, when a community harboured or rescued a person who was ‘known to the knowledge of the community to have been accused of the commission of a crime, though not convicted’.⁴⁵⁷ Two new provisions were finally included: the power to remit a portion of the fine for good behaviour and the power to confiscate arms. The debates surrounding Clause 4 of the ordinance also revealed the wider punitive attitudes that prevailed within colonial society. This clause had become a very controversial matter and created ‘a good deal of fuss’ between the Colonial Office and the unofficial elected members of the Kenya Legislative Council in 1930.⁴⁵⁸ It was criticised by the latter for undermining the deterrent and punitive effect of collective punishment. Unofficial members demanded that the fine be paid exclusively to the central government, and not to ‘tribal authorities’, as permitted in Clause 4. In their opinion, this made the provision to repay a part of the fine after a period of good behaviour completely inoperative, as the whole community benefited from the payment of the fine, through the improvement of communal services: ‘So long as headmen find in these fines a source of

⁴⁵⁵ TNA CO 533/407/2, Dispatch, unknown author, 18 November 1931.

⁴⁵⁶ TNA CO 533/407/2, Collective Punishment Ordinance, October 1930.

⁴⁵⁷ TNA CO 533/407/2, Collective Punishment Ordinance, October 1930.

⁴⁵⁸ TNA CO 533/407/2, Dispatch, unknown author, 6 March 1931.

revenue for tribal services they are interested in, they are not likely to encourage their people to produce criminals and give evidence. The community has to lose money for the punishment to be deterrent'.⁴⁵⁹ The position of the Colonial Office was eventually adopted and the ordinance was voted through the Kenya Legislative Council despite the unanimous opposition of the eleven elected members.⁴⁶⁰ The punitive provisions of the 1930 Collective Punishment Ordinance were augmented through the 1943 amendment, which abolished the need for colonial authorities to make a preliminary public announcement describing stolen cattle, before the stolen cattle had reached the vicinity.⁴⁶¹ According to the Governor, this legal provision had made the ordinance inoperative as the cattle had generally passed through the village by the time police searches began, considerably restricting the imposition of collective punishments in the colony.⁴⁶² It seems that many orders for collective punishment inquiries were indeed refused by Provincial Commissioners, on grounds that the public announcement had been made after the cattle had passed through the village.

In practice, irregularities were a conspicuous feature of collective punishment inquiries. As provided in Section 8 of the ordinance, a collective punishment inquiry had to be directed by magistrates, 'as far as possible, as an inquiry under the law relating to criminal procedure'.⁴⁶³ In practice, the great majority of lay magistrates interpreted the collective punishment ordinance provisions as a loosening of the strictures of court criminal procedure, to be used as an alternative, when the courts failed to secure a conviction. The Provincial Commissioner of Nyanza grew particularly concerned in the early thirties. From 1930 to 1933, the number of raids on European farms and stock thefts perpetrated by local Nandi or Kipsigis groups increased sharply; District Commissioners easily ordered collective punishment enquiries to deal with the increase in crime: 'I suspect a tendency to invoke the collective punishment ordinance as an easy way of dealing with a situation when police investigations

⁴⁵⁹ TNA CO 533/407/2, Dispatch, unknown author, 1st October 1931.

⁴⁶⁰ TNA CO 533/407/2, Collective Punishment Ordinance, October 1930.

⁴⁶¹ KNA PC/NZA/2/9/29, Letter from the Governor of Kenya to the Secretary of State, 31 July 1943.

⁴⁶² Ibid.

⁴⁶³ KNA PC/NZA/2/7/8, Letter from the Chief Secretary, Kenya, to the Provincial Commissioner, Nyanza, 30 June 1938.

are difficult'.⁴⁶⁴ Many cases were explicitly undertaken by administrative officers using the provisions of the ordinance relating to the suppression of evidence, to administer 'rough and ready' justice when the person accused of a murder or cattle theft was acquitted in court. According to the Provincial Commissioner of Nyanza, some inquiries offered little tangible evidence of collective responsibility and consisted of 'a recital of events of which there is no evidence at the inquiry'.⁴⁶⁵ Most irregularities in procedure concerned cases where it appeared that the inhabitants 'did not take all steps to follow the tracks after the announcement had been made' or had deliberately suppressed or hidden evidence.⁴⁶⁶ The colonial administration also abusively resorted to collective punishments in the mid-thirties to harass and impose extreme punishment upon the local Samburu group. Since June 1933, white farmers living in the Laikipia and Nanyuki area had been increasingly worried over law and order in the region, following the murder by Samburu warriors of several Africans working as herdboys for settler stock-owners.⁴⁶⁷ Settler moral panics reached their kindling point in 1934 when five Samburu were accused of the murder of Theodore Powys, a young European who had died in mysterious circumstances in 1931. In 1935, following five murders committed by persons from the Samburu group, a heavy collective fine of 18,000 shillings was imposed upon 1,000 members of the 'tribe' for suppressing evidence.⁴⁶⁸ The collective punishment was eventually approved although the magistrate himself acknowledged, in the findings of the inquiry, that the police had not managed to prove that the Samburu were effectively responsible for suppressing evidence. The punitive fine was thus imposed on the mere assumption that 'the police got so little evidence that Samburu necessarily have other evidence they are hiding'.⁴⁶⁹ In many other inquiries, it was clearly stated that the degree of collective responsibility and

⁴⁶⁴ KNA PC/NZA/2/7/16, Letter from the Provincial Commissioner, Nyanza, to the Attorney General, 14 July 1933.

⁴⁶⁵ Ibid.

⁴⁶⁶ TNA CO 533/407/2, Collective Punishment Ordinance, October 1930.

⁴⁶⁷ C. J. Duder and G. L. Simpson, 'Land and Murder in Colonial Kenya: the Leroghi Land Dispute and the Powys 'Murder' Case', *The Journal of Imperial and Commonwealth History*, 25/3 (1997), p. 453.

⁴⁶⁸ TNA CO 533/443/3, Collective Punishment Enquiry, 1933.

⁴⁶⁹ Ibid.

complicity was only 'vague and not really proven'.⁴⁷⁰ Collective guilt was generally inferred from the mere fact that the whole local population, or part of it, was likely, given the circumstances of the crime, to have heard or witnessed something. Such 'evidence' might include the presence of a corpse on a nearby slope or the sound of a scream.⁴⁷¹ In colonial Kenya, highly punitive collective punishments were thus indiscriminately inflicted on the males of one or several locations in clear-cut contradiction to the most basic rules of evidence.

Systematic orders for collective punishments reflected the social fears and political anxieties of both settlers and the colonial administration. They were legitimised according to a 'logic of exception', on the ground that one particular tribe, location or form of crime threatened law and order in the area and required special action from the government. As demonstrated by the many irregularities in procedure, administrative officers were quite willing to initiate proceedings, despite the obvious lack of tangible evidence, and to impose exemplary punishments on grounds of perceived, rather than real, special dangers. District Commissioners did not hesitate to overstate the prevalence or threat of an offence in order to justify an extension of the Collective Punishment Ordinance, both in legal provisions and in practice. In the early 1930s, an officer in charge of the Masai district and the Provincial Commissioner demanded permission to add a special section to the Collective Punishment Ordinance which would give authorisation to the Governor, when 'the Provincial Commissioner is satisfied that the number of undetected thefts in one area means that the native population is habitually screening offenders and take no steps to bring them to justice', to make an announcement that if another stock theft occurred in the area, the inhabitants would be liable for a communal fine, the amount of the fine being decided by the Provincial Commissioner.⁴⁷² 'Abnormal', 'exceptional' unrest (or the 'disturbed state of a district') was the underhanded rhetoric used to justify the colonial administration's demand for an extension

⁴⁷⁰ TNA CO 533/458/21, Collective Punishment Enquiry, 20 February 1932.

⁴⁷¹ See various Collective Punishment Enquiries in BNA CO 533/458/21.

⁴⁷² KNA PC/NZA/2/7/34, Letter from the Officer-in-charge, Masai district, to the Colonial Secretary, 2 April 1939.

of the scope of the ordinance.⁴⁷³ Increases in stock theft, for instance, served as a common excuse for declaring high levels of threat and unrest and advocating exceptional measures of repression. According to the unusual testimony of one settler, the ‘Kenya scare’ following the unrest among the Lumbwa social group in the Nyanza Province in the early 1930s was purely imaginary and had been ‘exaggerated on purpose’.⁴⁷⁴ This settler claimed to have established a special contact with the local Kipsigis tribe and gained valuable knowledge of the situation prevailing in the district: he had lived 19 years among them, spoke their language, had ‘true friends’ among them and to quote his own words, associated ‘with them in a way that no European either dares or perhaps cares to’.⁴⁷⁵ In his opinion, the Kipsigis were actually ‘a very quiet people’: they were ‘most law-abiding except in so far as their unfortunate stock theft (was) concerned. This however (was) probably confined to some 5 % or 10 %’. In his opinion, the settlers’ hysteria and the punitive claims prevailing within colonial society, disguised under the official rhetoric of the civilizing mission and progress, expressed the underlying logic of European domination: ‘Produce! Want! Buy! Or go under!’.⁴⁷⁶

Provincial authorities and the judiciary were highly aware of the tight control exercised by the law officers at the Colonial Office, who carefully scrutinised each case. Provincial Commissioners found themselves in an ambiguous situation, caught between the recommendations of lay magistrates, who prepared, communicated and conducted (with little regard for proper procedure) collective punishment inquiries based upon flimsy evidence and the Colonial Office, which increasingly resented magistrates’ irregularities and threatened to repeal the ordinance if it continued to be misused. Some Provincial Commissioners were sensitive to the concerns and claims of the district administration as regards law and order. The Provincial Commissioner of the Central Province notably pressed for an extension of the Collective Punishment Ordinance ‘in view of the constant stock theft which obtains along the border between the Masai reserve and Central Province and for which Masai are mainly

⁴⁷³ See KNA PC/NZA/2/7/34.

⁴⁷⁴ TNA CO 533/397/11, Letter from one settler, 1st December 1929.

⁴⁷⁵ Ibid.

⁴⁷⁶ Ibid.

responsible'.⁴⁷⁷ In the same vein, in the early 1930s, the Provincial Commissioner of Nyanza loudly denounced the Kisii and Lumbwa people as 'out-of-hand' and 'inveterate stock thieves', who openly defied government.⁴⁷⁸ At the same time, Provincial Commissioners were increasingly reluctant to submit for approval by the Secretary of State collective punishment orders which did not draw upon reliable and incriminating facts. In 1933, for instance, the Provincial Commissioner of Nyanza had to refuse to submit orders for three inquiries from the Lumbwa district which provided no or tenuous evidence. Although he did not want to appear too meticulous in front of District Commissioners, he confessed to the Attorney General his apprehensions relating to the position and reaction of the Colonial Office if inquiries were not properly conducted. In his view, this would certainly bring the collective punishment ordinance into disfavour at the Colonial Office: 'it would be disastrous if the Secretary of State ordered a repeal of the ordinance because he thought it was being misused'.⁴⁷⁹ The Attorney General expressed the same concern in the late 1930s, following his refusal to send to the Secretary of State two weak inquiries calling for collective punishment.⁴⁸⁰ Provincial Commissioners and the Attorney General thus played a pivotal role in screening collective punishment orders for blatant abuses and irregularities in procedure before sending them to the Secretary of State.

Similarly, central authorities in Nairobi tended to downplay the administration's allegations and to temper their punitive claims. According to the Governor, the increase in crime among the Lumbwa community in the early 1930s, for instance, did not justify any special action, including an extension of the collective punishment ordinance.⁴⁸¹ In his view, this increase was only due to the current economic depression and the shortage of cash in the reserves and remained within reasonable boundaries. Due to pressure from the Colonial

⁴⁷⁷ KNA PC/NZA/2/7/34, Letter from the Officer-in-charge, Masai district, to the Colonial Secretary, 2 April 1939.

⁴⁷⁸ KNA PC/NZA/2/7/16, Letter from the Provincial Commissioner, Nyanza, to the Chief Native Commissioner, 14 February 1933.

⁴⁷⁹ KNA PC/NZA/2/7/16, Letter from the Provincial Commissioner, Nyanza, to the Attorney General, 14 July 1933.

⁴⁸⁰ KNA PC/NZA/2/7/16, Letter from the Attorney General to the Provincial Commissioner, Nyanza, 3 June 1939.

⁴⁸¹ KNA PC/NZA/2/7/16, Letter from the Governor of Kenya to the Secretary of State, [undated, c. 1933].

Office, the colonial Government tended to restrict the imposition of collective punishments and police levy fines. Colonial authorities were increasingly aware that heavy sentences of imprisonment and fines had failed to suppress stock thieving and they began to consider a wider arsenal of repressive measures, based on close administration and concerted police action. In the opinion of the Provincial Commissioner of Nyanza, collective fines could even have the opposite effect: making offenders steal more cattle, as they needed to make up for the wealth which had been taken by the colonial government.⁴⁸² As far as the Lumwa group was concerned, a first police levy had been inflicted in the early 1930s. The option of imposing of an additional fine was raised in February 1933 at a government meeting, following a series of murders committed by local groups, and was eventually found undesirable. Colonial authorities refused to sanction the district officers' diagnosis that the area was in 'a disturbed state' and to pursue a systemic policy of collective fines.⁴⁸³ Instead, the Governor increasingly pressed for concerted state action and a broader policy of repression, based upon intimidating propaganda work, closer administration, stricter enforcement of local laws and pass rules and extensive police activity. In the Lumbwa situation, an officer was dispatched to tour the area every month and headmen were encouraged to hold extra barazas on the subject. In addition, the Provincial Commissioner of Nyanza pressured the Chief Native Commissioner to increase the police force at Chemagel in the settlers' farming area. Colonial authorities enforced more rigidly the Native Arms Ordinance, as well as Lumbwa pass regulations on farm boundaries. The Provincial Commissioner and the District Commissioner finally recommended local disarmament operations, confiscating 1,000 spears and 1,000 swords from the Lumbwa people.⁴⁸⁴

Besides, colonial control and policing was actually very limited over the territory and collective punishments had only mitigated impact. In the mid-forties, colonial officials still

⁴⁸² KNA PC/NZA/2/7/16, Letter from the Provincial Commissioner, Nyanza, to the Chief Native Commissioner, 14 February 1933.

⁴⁸³ Ibid.

⁴⁸⁴ Local actions of disarmament were also regularly carried out in the Northern Province since the late twenties. See RH Mss. Afr. s. 1350 (Mullins Archives), Letter from the Provincial Commissioner, Northern Province, to the Colonial Secretary, 9 August 1932.

expressed deep concern about the lack of ‘public opinion on delinquency and crime’ and ‘stigma of conviction’ among most African communities. On the ground, administrative officers experienced great difficulties in securing the back-up of African elites and elders to clamp down on stock thieving or minor offenses against European properties. Colonial perceptions on the gap between European and African perceptions of crime and punishment were generally imbued with racial assumptions on African mentality and development. According to the Resident Magistrate of Nairobi, the lack of collaboration from African elites and authorities resulted from their ‘present limitations arising from (their) pre-logical mind’.⁴⁸⁵ Drawing upon the racist findings of Carl Jung on the ‘African primitive mind’, he strongly encouraged central authorities to ‘educate Africans, to inculcate them their responsibility in the reduction of crime’.⁴⁸⁶ Over the 1940s, the Governor in person held many barazas to seek collaboration and alliances with African elders and elites to suppress stock thieving and exert closer control over the younger generation. He notably addressed some African groups living in the Nyanza province in these words: ‘They are your children and brethren and known moreover to everyone in the village: how is it that they are not restrained? How is it that thieving is not your share? How is it that yourself do not strive to put down this thieving that is so great a disgrace to you? (...) A country harassed by thieving is an unclean country and only the inhabitants of the country are those who cleanse it’.⁴⁸⁷

Overall, it is very hard to assess the impact of colonial propaganda and collective punishments over the incidence of stock theft or African elders’ attitudes towards delinquency and crime. From officers’ testimonies, the colonial administration often failed to obtain elders’ full support in its struggle against property offenses. However, it seems that in some areas, Africans’ elders strongly feared the imposition of stifling collective punishments upon their

⁴⁸⁵ KNA AG/7/13, Evidence by a Resident Magistrate, Committee on Habitual Offenders, 1946. In 1946, he had been a Resident Magistrate for 25 years in Kenya in Nairobi, Mombasa, Nakuru and Kisumu. He had also been a Visiting Justice at the prisons of Mombasa, Nakuru and Kisumu.

⁴⁸⁶ Ibid.

⁴⁸⁷ Ibid.

communities and increasingly promised cooperation to local administrative officers.⁴⁸⁸ In 1934, the Provincial Commissioner of the Nyanza province had notably threatened several Lumbwa groups to be subjected to a collective punishment order, following a burglary in an Indian shop of the Kisponoi trading centre located in the Lumbwa reserve.⁴⁸⁹ As a result, one local headman decided to set up a local private police force, made up of more than 80 African residents to look for the culprits and recover the property stolen. Though they were unable to catch offenders in this case, they continued their policing work over the following months and handed over ‘many people who had committed other thefts’ to the local police officers.⁴⁹⁰ Therefore, even though colonial control was patchy and limited, the colonial administration was sometimes successful in obtaining the cooperation of African elites and the development of popular forms of policing and outsourcing a part of state coercion. The study of collective punishment in Kenya thus sheds fresh light on the relationship and tensions between the colonial state’s frailties and vulnerabilities and the ongoing resort to exceptional (or extra-legal) measures of policing and punishment against African suspects.

ECONOMIC OFFENCES

Some historians have shown in various contexts that African crime was characterized by increasing levels of organization and professionalization over the course of colonial rule.⁴⁹¹ As a consequence, authorities grew highly concerned about the emergence of more ‘sophisticated crimes’ that offered new opportunities to gain cash and attested to the

⁴⁸⁸ See notably KNA PC/NZA/3/15/153 and KNA PC/NZA/2/7/16.

⁴⁸⁹ KNA PC/NZA/2/7/16, Letter from the Provincial Commissioner, Nyanza, to the Colonial Secretary, 7 September 1934.

⁴⁹⁰ Ibid.

⁴⁹¹ Concerning Kenya, see D. Anderson, ‘Stock Theft and Moral Economy in Colonial Kenya’, *Journal of International African Institute*, 56/4 (1986): 399-416; D. Throup, ‘Crime, politics and the police in colonial Kenya, 1939-63’ in D. M. Anderson and D. Killingray (eds), *Policing and Decolonisation: Politics, Nationalism and the Police, 1917-1965*, Manchester: Manchester University Press, 1991, 127-157. For other colonial contexts: A. Burton, ‘Jamii Ya Wahalifu. The Growth of Crime in a Colonial African Urban Centre: Dar Es Salaam, Tanganyika, 1919-61’, *Crime, History and Societies*, 8/2 (2004): 85-115; S. Heap, ‘Jaguda Boys: pickpocketing in Ibadan, 1930-60’, *Urban History*, 24/3 (1997): 324-43; G. Kynoch, ‘From the Nineevites to the Hard Living Gangs: Township, Gangsters and Urban Violence in the Twenty-Century South Africa’, *African Studies*, 58/1 (1999): 55-85.

development of criminal gangs in urban centres. Similar trends can be observed in colonial Kenya. In the early forties, there was a graduated increase in the number of convictions for a whole set of economic offences.

Due to the conditions of the war, the colonial administration sought to control more closely illegal networks and black markets. This policy contributed to the increase in the prison population and was part of a broader policy of criminalising African economic and social daily life. One major feature of the period was a crackdown on the illegal consumption and marketing of alcohol and drugs. Some lay magistrates held the view that, due to their prevalence in the district, these offences should be severely punished by imprisonment, rather than detention, even though they involved no ‘moral turpitude’.⁴⁹² For instance, in Malindi, the majority of offenders coming before the magistrate and sentenced to prison were petty offenders against the Liquor Ordinance.⁴⁹³ In the early 1940s, the colonial administration grew more concerned about the expanding trade and consumption of European beer and the growing number of prosecutions for alcohol offences and pressed for heavier sentences. The increase in convictions resulted both from stricter enforcement of the Liquor Laws and from the consequences of the Second World War. During wartime, illicit liquor could be readily sold on the outskirts of towns, in markets or at the numerous military camps throughout the colony; it easily circulated through the African reserves.⁴⁹⁴ There was great demand for European beer, as many soldiers returning to civilian life had become accustomed to European alcoholic drinks, which were different from the liquor traditionally made within African communities.⁴⁹⁵ The increase in the consumption and marketing of alcohol in the early 1940s resulted in two major problems for colonial authorities. First, it led to an increased number of assaults against persons for drunkenness, especially among ex-soldiers or policemen. Within a few months of the end of the war, more than 40,000 demobilised men returned to the overcrowded reserves of

⁴⁹² KNA AP/1/1393, Letter from the Registrar of the Supreme Court to the Colonial Secretary, 3 August 1929.

⁴⁹³ Ibid.

⁴⁹⁴ TNA CO 859/234/3, Letter from the District Commissioner, Central Nyanza, to the Provincial Commissioner, Nyanza, 27 March 1951.

⁴⁹⁵ KNA AG/7/13, Evidence by a Resident Magistrate, Committee on Habitual Offenders, 1946. In 1946, he had been a Resident Magistrate for 25 years in Kenya in Nairobi, Mombasa, Nakuru and Kisumu. He had also been a Visiting Justice at the prisons of Mombasa, Nakuru and Kisumu.

the colony, 'feeling the absence of restraint after years of fighting, discipline and constant confrontation overseas' and facing potentially serious difficulties in reintegrating into the social life of the local community.⁴⁹⁶ Alcohol helped to relieve their frustration, resulting in an increasing number of fights and assaults.⁴⁹⁷ Consumption of alcohol was also rife among policemen; it undermined internal discipline and prompted abuses and assaults against civilians.⁴⁹⁸ Over the course of the 1940s, colonial authorities worried about the lack of professionalism and the poor quality of newly-recruited staff. During the Second World War, the best police recruits had enlisted, giving the police authorities no choice but to considerably lower their standards for recruits, training and discipline.

Clamping down on alcohol related offences was part of a wider attempt on the part of the colonial authorities to regulate African economic life and severely punish those who took advantage of war conditions to enrich themselves illegally. Heavy sentences were imposed mainly when beer was being sold on a commercial basis. According to the Resident Magistrate of Nakuru, the illegal manufacturing and selling of alcohol had to be severely punished by heavy sentences of imprisonment, although in cases of mere consumption, probation or dismissal should be preferred.⁴⁹⁹ The profitable trade in European alcohol was meant to benefit the colonial state exclusively, through state-controlled distilleries and gin shops.⁵⁰⁰ The example of the alcohol trade also provides an illuminating gender perspective, as the illegal production of and trade in Nubian Gin was almost exclusively in the hands of women.⁵⁰¹ As a consequence, in the early 1950s, women distillers became one of the main targets for colonial repression, as far as alcohol offences were concerned. In most African communities, women were traditionally given responsibility for brewing. Given the increasing demand for and

⁴⁹⁶ Ibid.

⁴⁹⁷ Ibid.

⁴⁹⁸ KNA PC/NZA/3/15/145, Letter from the Provincial Commissioner, Nyanza, to the Assistant Superintendent of Police, Kisumu, 17 November 1943.

⁴⁹⁹ KNA AP/1/1087, Letter from the Resident Magistrate, Nakuru, to all Special Magistrates, 31 August 1948.

⁵⁰⁰ KNA AG/7/13, Evidence by a Resident Magistrate, Committee on Habitual Offenders, 1946. In 1946, he had been a Resident Magistrate for 25 years in Kenya in Nairobi, Mombasa, Nakuru and Kisumu. He had also been a Visiting Justice at the prisons of Mombasa, Nakuru and Kisumu.

⁵⁰¹ TNA CO 859/234/3, Letter from the District Commissioner, Central Nyanza, to the Provincial Commissioner, Nyanza, 27 March 1951.

consumption of alcohol over the 1940s, women became aware that they could earn more money by distilling Nubian Gin and selling it on the outskirts of towns, in markets or in the African reserves.⁵⁰² As a consequence, an illegal trade developed and the number of prosecutions of women considerably increased. In this case, penal discourses and practices reflected and reified colonial perceptions of gender relations and practices prevailing in certain African communities. Therefore, colonial authorities unusually broke up with more paternalistic attitudes regarding women offenders in general, revealing both the political sensitivity of the issue and an original form of women's empowerment. In the early 1940s, some District Commissioners contemplated the possibility of prosecuting the husbands of these women to crack down on illegal traffic in alcohol. However, it was eventually decided to prosecute the women distillers only and not to penalise their male relatives. Colonial authorities alleged that the production and marketing of alcohol was their own trade and property, not controlled by their husbands. Female distillers were thus considered fully responsible and generally given heavy sentences involving fines and imprisonment.

A crack down on the production and consumption of drugs also took up a large amount of police time during the 1930s and first half of the 1940s.⁵⁰³ In the Nyanza province, drug traffic was particularly developed in and around the mines of South Kavirondo, in the maize fields of Central Kavirondo and around Songhor, Chemagel and Sondu. There was growing concern about the effect of smoking bangh or marijuana on the output and discipline of local African workers. Within the very dangerous conditions of the mines, the smoking of bangh had lead to an increased number of accidents and deaths, threatening to attract the attention of the Colonial Office, expose the situation prevailing in the colony's mining industry and create a scandal.⁵⁰⁴ Mining authorities were obviously reluctant to reveal the dreadful working conditions for miners, and their own inability to ensure proper control over their labour force.

⁵⁰² Ibid.

⁵⁰³ KNA DC/KSM/1/19/153, Letter from the Superintendent of Police to the District Commissioner, Central Kavirondo, 23 June 1941.

⁵⁰⁴ KNA AP/1/1393, Letter from the Inspector of Mines to the District Commissioner, South Kavirondo, 7 August 1935.

There were many reasons for the increase in miners' consumption of drugs. With the rapid development of the mining industry in South Kavirondo, the number of labourers had trebled within a year and standards of recruitment had been lowered or neglected. The large number of Africans confined in the mines made it very difficult for mining authorities to ensure proper supervision or to control the free circulation of bangh. This drug was consumed in very small quantities and was thus very easy for miners to conceal. Smoking bangh gave untrained and tired miners some respite from the violent work they were asked to perform. It was commonly believed 'to give strength' or to provide at least some form of relief.⁵⁰⁵ As a consequence, mining and colonial authorities urged magistrates to treat these offences with the utmost severity. This resulted in a serious increase both in the number of prosecutions and in the severity of punishments for these offences.⁵⁰⁶ For instance, in 1941, the police of Koru brought 46 cases of possession of bangh to court, and stern punishments were awarded.⁵⁰⁷

The clamp down on smoking and growing drugs also enabled the colonial administration to open dialogues and alliances with African elites and to secure the authority, prestige and economic interests of chiefs and elders. The example of Miraa in this respect is revealing. Up until the 1930s, the cultivation of Miraa was the privilege of a few prominent African men.⁵⁰⁸ Afterwards, production developed throughout the colony and sparked increasing concerns among colonial and African authorities.⁵⁰⁹ Large quantities were daily exported all over the colony on the railway under the heading of fresh vegetables. The Somali elders at Berbera and Hargeisa and the elders of the Meru group in the Meru District became concerned about excessive consumption, notably among children. In 1934, the Meru Local Native Council prohibited the practice of chewing Miraa ('*catha edulis*') for people others than those who were traditionally allowed to use it, especially in the younger generation.⁵¹⁰ Medical advice was sought to legitimise the crackdown. Miraa was alleged to produce similar effects to

⁵⁰⁵ Ibid.

⁵⁰⁶ See KNA DC/KSM/1/19/153.

⁵⁰⁷ KNA DC/KSM/1/19/153, Letter from the Superintendent of Police to the District Commissioner, Central Kavirondo, 23 June 1941.

⁵⁰⁸ KNA PC/NZA/3/15/161, 'Precis for a Provincial Commissioners' meeting', 1945.

⁵⁰⁹ KNA PC/NZA/3/15/161, Provincial Commissioners' meeting, Minutes, 1945.

⁵¹⁰ KNA PC/NZA/3/15/161, 'Precis for a Provincial Commissioners' meeting', 1945.

cocaine, creating ‘dangerous excitability and an inhibition of intelligence’.⁵¹¹ The drug did little harm when consumed in small quantities, but Miraa was considered a ‘habit-forming drug’, which led to addiction and the consumption of larger quantities.⁵¹² In the mid-1940s, administrative officers pressured the government to classify Miraa as a dangerous drug so that they could condemn offenders under the more punitive provisions of the Dangerous Drugs Ordinance.⁵¹³ The consumption of Miraa could only be punished under the section 8 of the Native Authority Ordinance, which provided a maximum penalty of a 250 shilling fine with two months of imprisonment in default or both. Under the Dangerous Drugs Ordinance, offenders could be fined up to 250 pounds or imprisoned for one year or both. As this change was not implemented, district officers looked for other ways to increase the severity of punishment for these offences. In the mid-1940s, they discussed drafting an ordinance to control and regulate the production, consumption and export of drugs within different parts of the colony.⁵¹⁴ Debates reflected both official concerns over dismantling production and export networks and the need to support the traditional practices of elders. The crux of the matter was not so much the medical damage done by extended consumption of this drug, but the fact that within ten years, an African illegal industry had developed that threatened to challenge African local hierarchies of authority and economic power. In the opinion of the District Commissioner of Meru, the new ordinance should not interfere with traditional internal consumption; the text should protect the interests of the biggest African producers in order to secure the backing of the Meru communities and preserve the local geography of power.⁵¹⁵

Over the 1940s, colonial repression also focused on a new category of professional and sophisticated economic crimes, generally perpetrated by educated and well-off Africans living in urban centres. These economic crimes raised particular anxieties, as they implied higher

⁵¹¹ KNA PC/NZA/3/15/161, Provincial Commissioners' meeting, Minutes, 1945.

⁵¹² Ibid.

⁵¹³ KNA PC/NZA/3/15/161, Letter from the District Commissioner, Central Kavirondo, to the Provincial Commissioner, Nyanza, 13 October 1938.

⁵¹⁴ KNA PC/NZA/3/15/161, Provincial Commissioners' meeting, Minutes, 1945.

⁵¹⁵ KNA PC/NZA/3/15/161, Testimony provided by the Provincial Commissioner, Nyanza, (following his conversation with the District Commissioner, Meru), Provincial Commissioners' meeting, Minutes, 1945.

levels of organisation and disclosed the existence of professional criminal gangs operating in or on the outskirts of cities, which generally managed to escape detection and punishment. In addition, when they were brought to court, these Africans were sufficiently well-off to engage advocates and defend 'their cases with considerable vigour'.⁵¹⁶ This resulted in lengthy trials, many of them occupying more than a full day of court hearings. Organised and professional networks of house or shop breakers, although limited in extent, also challenged the symbolic core of British supremacy and state control. As underlined by the Superintendent of Police, there was a certain 'element of excitement' in burglaries 'appealing to a certain type of African' who fled from the dull and punitive life of the reserves and liked 'to pit his wits against the police'.⁵¹⁷ Considerable energy was thus spent to detect and punish criminal gangs and black market operators. During the Second World War, due to the shortage of supplies and basic commodities, many coterie of receivers of stolen goods mushroomed between cities and the neighbouring reserves. Clothing was in particularly short supply and receivers, connected to criminal networks of thieves and house-breakers operating in the settled areas, found an immediate market in the surrounding reserves. This type of crime absorbed a large amount of police work during the 1940s. In Nyanza province, this illegal market was scaled down in the mid-1940s, after an important coterie of receivers had been rounded up in the Luo reserve, a short distance from Kisumu. Other types of professional and sophisticated economic crimes were also punished severely when brought to court; these included offences against price control regulations and the illicit manufacture of counterfeit coins.⁵¹⁸ In the latter case, there was a clear sense in the early 1940s that this illegal industry, although very limited in extent, had significantly developed. In the opinion of the Attorney General, such forms of sophisticated economic crime had become 'all too common in Kenya' and required stern punishment. As a consequence, magistrates imposed very punitive sentences, up to 7 or 10 years of imprisonment, although for the same offence, sentences were generally one-third or

⁵¹⁶ TNA CO 912/8, Letter from the Governor of Kenya to the Secretary of State, 8 August 1944.

⁵¹⁷ KNA AG/7/13, Evidence by a Resident Magistrate, Committee on Habitual Offenders, 1946. In 1946, he had been a Resident Magistrate for 25 years in Kenya in Nairobi, Mombasa, Nakuru and Kisumu. He had also been a Visiting Justice at the prisons of Mombasa, Nakuru and Kisumu.

⁵¹⁸ KNA ARC/MD/1/4/32, Letter from the Attorney General to the Governor of Kenya, 14 August 1938.

one-tenth less severe in the United Kingdom.⁵¹⁹ Despite the concerns expressed by the Colonial Office, the Attorney General justified this extreme severity by explaining that deterrent and exemplary sentences were required because the police could rarely catch the actual manufacturers.⁵²⁰

GOVERNING MISERY: PENAL REPRESSION AND SPATIAL CONTROL

Beyond economic crimes, penal repression also served to manage African poverty, vagrancy and mobility in the colony. Scholarship on the topic has considerably developed over the last decades.⁵²¹ Historians and criminologists have interpreted penal repression of misery and mobility in the colonial context, either as means to control the movement of labourers or to maintain law and order.⁵²² The following argument shows that in the case of Kenya, both frameworks of analysis help understanding the colonial state efforts to restrain African vagrancy.

According to the official view, the main social threat laid in the figure of the African urban vagrant or destitute, rather than in the professional criminal operating in the underground world of Nairobi. Colonial authorities were most anxious over the increasing number of supposedly detribalised Africans, either those born and bred in town areas or those, who as children of squatters, were unable to find work on European farms or a plot of land to cultivate in the reserves. Besides, increasing numbers of young people were fleeing the punitive conditions in the African reserves and settling in towns in order to find work and earn

⁵¹⁹ Ibid.

⁵²⁰ Ibid.

⁵²¹ R. Allen, 'Indian Immigrants and the Legacy of Marronage: Illegal Absence, Desertion and Vagrancy in Mauritius, 1835-1900', *Itinerario*, 21/1 (1997): 98-110; A. Burton, 'Urchins, Loafers, and the Cult of the Cowboy: Urbanization and Delinquency in Dar es Salaam, 1919-61', *Journal of African History*, 27/1 (2001): 199-218; M. K. Huggins, *From Slavery to Vagrancy. Crime and Social Control in the Third World* (New Brunswick, 1985); B. H. Kinkead-Weekes, *A History of Vagrancy in Cape Town* (Cape Town, 1984); J. Martens, 'Polygamy, Sexual Danger and the Creation of Vagrancy Legislation in Colonial Natal', *Journal of Imperial and Commonwealth History*, 31/3 (2003): 24-45; P. Ocobock, 'Joy Rides for Juveniles: Vagrant Youth and Colonial Control in Nairobi, Kenya, 1901-52', *Social History*, 31/1 (2006): 39-59.

⁵²² P. Ocobock, 'Joy Rides for Juveniles: Vagrant Youth and Colonial Control in Nairobi, Kenya, 1901-52', *Social History*, 31/1 (2006), p. 40.

a better living. However, migration and labour-hunting was often a very unlucky enterprise in colonial towns. Most young African vagrants were condemned to stark misery, left with no choice but to perform the most menial jobs and pay prohibitive rents.⁵²³ Colonial authorities became obsessed with evicting unemployed 'undesirable' natives and poor Africans from the main white-dominated towns, such as Nairobi, Mombasa, Nakuru, Kisumu and Eldoret. In the press, officials regularly warned of the dangers represented by urban social deviants and unemployed wandering Africans loitering around urban centres, i.e. vagrants, beggars and prostitutes.⁵²⁴ The presence and proximity of 'undesirables' in Nairobi, regarded as a major social problem during the 1930s, was increasingly resented during the Second World War, as the number of African urban destitutes and vagrants reached new heights.

Colonial officials' hysteria over urban unemployed natives was intimately linked to colonial perceptions of crime and labour policy. There was a clear sense within colonial society that the unemployed wandering African was responsible for most crime in the colony and constituted the main threat to European properties and bodies.⁵²⁵ Although African vagrants mainly indulged in pilfering and petty thieving, settlers and administrative officers feared they would evolve into a future 'criminal and dangerous class' of offenders.⁵²⁶ Official concerns over unemployed also reflected the colonial obsession with instilling discipline and good work habits into Africans, so that they would produce revenue and pay their taxes. In parallel, the settlers suffered from the labour shortage and constantly begged colonial authorities to help them recruit and secure African labour on their farms. Wide sections of colonial society thus held the opinion that African mobility and vagrancy had to be tightly controlled and directed into the channels and loopholes of the labour market. After the Second World War, there was renewed official concern about the problem of 'spives and drones' in

⁵²³ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 2.

⁵²⁴ KNA PC/NZA/2/7/15, Letter from the District Commissioner, Nairobi, to the Provincial Commissioner, Rift Valley, 22 December 1943.

⁵²⁵ KNA PC/NZA/2/7/15, Letter from the Provincial Commissioner, Rift Valley, to the Provincial Commissioner, Nyanza, 1st February 1935.

⁵²⁶ KNA DC/KSM/1/19/128, Letter from the Provincial Commissioner, Nyanza, to the District Commissioners of the Nyanza Province, [undated, c. 1943].

view of the drift of young Africans into towns and the repealing of wartime legal provisions enabling the state to impose compulsory labour for war purposes. The colonial government discussed the issue at length in the late 1940s when considering an ordinance to regulate the influx of ‘voluntarily unemployed Africans’ to urban centres.⁵²⁷ The matter had been under discussion since 1946 and the Governor wished to enact restrictive legislation promptly to solve this longstanding problem and make work compulsory: the large number of ‘young men who are voluntarily unemployed as defined in the draft bill, who have every intention of remaining so and who have been flocking into the larger towns, has given the authorities concerned great anxiety ever since February 1946 when the defence regulations relating to the direction of labour to essential undertakings were removed, and there then remained no effective means of regulating the influx of this class of drones to the towns. The draft legislation to deal with this problem has now been in discussion for nearly three years and the problem becomes steadily more difficult the longer it is left’.⁵²⁸

In parallel, the colonial state set up a complex legal arsenal and a policy of systemic repatriation regulating, restricting and penalising African mobility and vagrancy. Depending on the area, police officers could draw upon a wide variety of laws introduced since the early century to arrest and bring to court wandering Africans: the Vagrancy Ordinance, the Native Registration Ordinance, the Resident Native Ordinance, and various townships regulations.⁵²⁹ In the Rift Valley for instance, African vagrants could be arrested under the Native Registration Ordinance for failing to obtain or carry a registration certificate (the infamous ‘Kipande’), under the Resident Native Ordinance for unlawfully residing in the area, under the Vagrancy Ordinance for wandering outside their reserves with no means of subsistence or work, or under the Kitale township regulations ‘for unlawfully residing, congregating or being in the township for over 48 hours without work, or without a pass issued’ by the District

⁵²⁷ As far as debates relating to this ordinance are concerned, see BNA CO 533 566 6 and BNA CO 533 556 9.

⁵²⁸ TNA CO 533 556 9, Letter from the Governor of Kenya to the Secretary of State, 11 April 1949. The Bill on ‘Voluntarily Unemployed Persons’ was enacted in February 1950 and extended only to Nairobi.

⁵²⁹ KNA PC/NZA/2/7/21, Letter from the Superintendent of Police to the District Commissioner, Kakamega, 19 May 1931.

Commissioner.⁵³⁰ This legal system of territorial control was extended by a parallel system of passes, which had been introduced in the early 1930s and was only enforced in specific areas, such as the Kisii and Lumbwa reserves, to assist the police in maintaining law and order in and around white settlements.⁵³¹ Africans who were subjected to pass rules were not permitted to go outside their reserves without obtaining a pass issued by the District Commissioner. In these areas, the system of local passes placed African mobility directly in the hands of the executive power and granted very wide powers to police officers to control and harass African communities living on the borders of European areas and accused of indulging in petty or stock theft on white farms.

The colonial period was characterised by an increasingly rigid and drastic application of the law as regards vagrancy, particularly during the 1940s. With the Second World War and consequent food shortage, the problem of African poverty and vagrancy reached considerable proportions. As a consequence, police officers were given wide scope to pursue a policy of systemic harassment and repatriation of wandering Africans under the Vagrancy Ordinance. The number of African vagrants brought to court and sent to prison increased considerably during this period.⁵³² Within the precincts of the courts, magistrates were left with no choice but to order the repatriation of vagrants to their reserves or, after a certain number of previous convictions for vagrancy, send them to prison. Over the 1940s, the colonial administration pressed for an intensification of the state policy of repatriation and closer police control over African poverty and mobility. The District Commissioner of Nairobi proposed bringing the ordinance into line with Tanganyika regulations that allowed any person authorised by the District Commissioner to effect repatriation, including selected elders of the Native Advisory Council or members of the Tribal Police, who were considered to have a better knowledge of

⁵³⁰ Ibid. The 'Kipande' was an identity document accounting for personal details and employment history. The 1920 Native Registration Amendment Ordinance compelled Africans above the age of 15 to carry it on themselves, with a view to control and restrict African mobility and improve the recruiting of labour.

⁵³¹ KNA PC/NZA/2/7/21, Letter from the Provincial Commissioner, Rift Valley, to the Provincial Commissioner, Nyanza, 1 July 1937.

⁵³² KNA PC/NZA/2/7/21, Letter from the Provincial Commissioner, Nyanza, to the Provincial Commissioner, Rift Valley, 19 June 1937.

the local African population than African police constables.⁵³³ The colonial administration lobbied for more funds to repatriate and escort vagrants and to improve police control in settled areas. Police Officers were incited to take fingerprints of all vagrants and to record all persons repatriated. In 1934, a haphazard system of recording repatriation orders had been established in Nairobi to reduce the financial cost represented by expatriations with escorts.⁵³⁴

At the same time, the colonial administration generally subordinated concerns over the maintenance of law and order to the wider labour requirements prevailing in their districts. District Commissioners were highly sensitive both to the settlers' recruiting concerns and to the need to provide employment and wages to Africans to increase tax collection revenue. From this perspective, a certain amount of African vagrancy was necessary to ensure labour mobility and a constant flow of African labourers to meet white farmers' needs.⁵³⁵ The view held by the Provincial Commissioner of the Rift Valley epitomised the dominant official opinion on unemployed wandering natives:

'What we want to be able to say to undesirables in townships and on farms is something like this: 'You must not wander about the towns and on farms unemployed and living on your wits any longer; there is plenty of work on the farm of Mr A or Mr B; now off you go and get work right now. We have got your name noted and if we find you hanging about the town or on farms, we will put you inside for three months and work for H.H. King George or, if you prefer it, you can go and join the conscripts in the Labour camp'.⁵³⁶

As a consequence, District Officers began to point out contradictions in the repatriation policy and to criticise police officers for harassing Africans who were genuinely looking for work or who had already found some form of employment. According to the District Commissioner of Kavirondo, an increasing number of Africans were complaining that they had been arrested by police officers, despite carrying a registration certificate and without the sanction of a

⁵³³ KNA PC/NZA/2/7/15, Letter from the District Commissioner, Nairobi, to the Provincial Commissioner, Central Province, 22 December 1943.

⁵³⁴ KNA PC/NZA/2/7/15, Circular by the Principal Labour Inspector to all Provincial Commissioners, 12 November 1934.

⁵³⁵ KNA PC/NZA/2/7/21, Letter from the Superintendent of Police to the District Commissioner, Kakamega, 19 May 1931.

⁵³⁶ KNA PC/NZA/2/7/15, Letter from the Provincial Commissioner, Rift Valley, to the Chief Secretary, Kenya, 10 January 1944.

European police officer, while genuinely looking for work in Kitale or Eldoret. In some areas, in order to pay their annual Hut and Poll tax of 12 shillings, many Africans were forced out of the frying pan into the fire. On the one hand, adverse conditions in the African reserves prevented them from producing sufficient agricultural output and revenue. On the other hand, police officers harassed and arrested them whenever they left their reserves to look for work in European areas:

‘At the present time it would almost seem that a policy of active discouragement to natives going to a settled area is pursued. I know that most employers will not employ fresh labour, but the natives in the reserves have to produce their tax and they are now between the Devil and the deep sea. If they remain in the reserves they are told to go and work for their tax which the present price of produce prevents them obtaining by exertions in the reserves, and if they go out they are arrested’.⁵³⁷

Insofar as labour mobility was concerned, most District Commissioners believed that the vagrancy ordinance should be more sympathetically administered. In 1932, District Commissioners of the Nyanza province urged colonial authorities to amend the vagrancy ordinance and repeal the clause according to which Africans who had already been condemned for vagrancy should ask for special permission to leave their reserve.

Penal repression and spatial control also served to secure and strengthen local African hierarchies and social codes. Pass rules were unevenly administered in order to open hegemonic dialogues with African circles of authority and power and secure their control over the younger generation. The issue of passes could serve to strengthen age-based hierarchies, the authority of African elders and elites and their collaboration with colonial authorities. In the early 1930s for instance, the District Commissioner of South Lumbwa decided to award semi-permanent passes to Nandi elders, as they often wished to visit European farms to see friends or settle debts.⁵³⁸ At the opposite end of the spectrum, the colonial administration was much less willing to issue passes to younger people belonging to the warrior (*moran*) age-

⁵³⁷ KNA PC/NZA/2/7/21, Letter from the District Commissioner, North Kavirondo, to the Provincial Commissioner, Nyanza, 17 April 1931.

⁵³⁸ KNA PC/NZA/2/7/21, Letter from the District Commissioner, South Lumbwa, to the Provincial Commissioner, Nyanza, 26 October 1931.

grade and often responsible for stock thieving in settled areas. Sometimes, African local authorities and elders attempted to use pass rules to secure moral codes on civic virtue and patriarchal control over young boys and girls. In 1937, Africans living in Nyanza Province resented the number of unmarried girls who were ‘being enticed from their parent homes and taken out of the district by young men proceeding to work’.⁵³⁹ The chief and elders of the location considered it to be ‘a serious menace to the social tranquillity of the reserve’ and wished to use pass rules to shape gendered conduct and secure their local control over the younger generation.⁵⁴⁰ The District Commissioner, despite the colonial government’s reluctance to impede genuine workers with an extended system of passes, pressed the colonial authorities to respond positively to this request. According to him, this matter went far beyond the usual political calculation, balancing crime management with labour policy: ‘This is not a question of the executive controlling habitual law breakers. This request comes from the people themselves seeking to preserve and strengthen their social codes’. The overriding goal was both to secure British legitimacy by obtaining the confidence and collaboration of elders and African authorities and strengthen patriarchal control over young women: ‘we should do all we can to support their system, and so preserve the tranquillity and confidence in our rules’. Debates over pass rules thus reflected wider shifts in the African moral economy and practices: the bride-price system, to which elders supposedly observed strict obedience during their youth, was increasingly challenged by the younger generation of girls who wished to marry men they loved. Discourses on penal severity and ethics thus served to open symbolic alliances between district and conservative African authorities to help maintaining patriarchal control over African young women and their political influence in the area. In this case, the request was eventually turned down by the Provincial Commissioner and deemed both ‘impracticable’ and ‘retrograde’.⁵⁴¹

⁵³⁹ KNA PC/NZA/2/7/21, Letter from the District Commissioner, South Kavirondo, to the Provincial Commissioner, Nyanza, 5 October 1937.

⁵⁴⁰ Ibid.

⁵⁴¹ KNA PC/NZA/2/7/21, Letter from the Provincial Commissioner, Nyanza, to the District Commissioner, South Kavirondo, 11 December 1937.

The matter took on significant proportions with the issue of the forced repatriations of suspected prostitutes from urban areas to their homelands. M. Carotenuto has vividly demonstrated how both European and African actors discussed and collaborated ways to ‘uphold customary law and social discipline’ and to maintain patriarchal control over ‘wayward women’ in European-dominated urban centres.⁵⁴² Constituents of ethnic urban associations regularly ordered the forcible repatriation of women ‘who operated outside the control of patriarchal rural authority and came to the urban centres for a variety of social and economic reasons’: ‘Those serving as domestic labourers, nurses, midwives and even teachers in urban areas were often deemed to be prostitutes or ‘runaways’ as associations denounced entire professions for exposing women to undesirable influences’.⁵⁴³ Scenes of forcible repatriation and gendered violence were probably very common in the colony and sometimes accompanied by public acts of violence and humiliation, with forced strippings and head shavings. It seems that colonial authorities adopted an ambivalent attitude towards Africans’ autonomous practices of punishment and coercion. In this particular case, they tended to turn a blind eye to forcible repatriations of African women to rural areas; they extended police action over urban centres and responded to the moral panic that urbanisation and African mobility often sparked off among both European and African authorities. Beyond that, they helped to reinforce a double patriarchal control over urbanised African women and testified to ethnic organizations’ willingness to help the colonial state cracking down on minor crime. Yet, these temporary convergences were probably very limited in scope and purpose. In 1946, the Resident Magistrate of Nairobi notably expressed his ambiguous feelings towards Luo ethnic organizations’ policing actions against alleged prostitutes in Nairobi.⁵⁴⁴ Though he interpreted it positively as ‘an awakening sense of tribal responsibility’, he feared African elites belonging to these associations might rely upon ‘old tribal teachings and a probable antipathy to foreign

⁵⁴² Carotenuto, M., ‘Repatriation in Colonial Kenya: African Institutions and Gendered Violence’, *The International Journal of African Historical Studies*, 45/1 (2012), p. 11.

⁵⁴³ *Ibid.*, p. 15.

⁵⁴⁴ KNA AG/7/13, Evidence by a Resident Magistrate, Committee on Habitual Offenders, 1946. In 1946, he had been a Resident Magistrate for 25 years in Kenya in Nairobi, Mombasa, Nakuru and Kisumu. He had also been a Visiting Justice at the prisons of Mombasa, Nakuru and Kisumu.

trends of thought'. He consequently advised central authorities to exert remote control and make sure that ethnic organizations 'cooperate with state-sponsored training of public conscience'.

The policy of systemic repatriation and penalisation of vagrancy proved to be a total failure and caused much embarrassment within the colonial administration. In 1951, the District Commissioner of Central Nyanza spelled it out: the vagrancy policy dramatically fell short of its stated purpose and was a '100% failure of the law, which was brought into discontent'.⁵⁴⁵ In the eyes of the colonial state, this assessment was indeed rather gloomy. Despite constant police harassment, few Africans actually returned to or remained in their reserves on return. The Principal Labour Inspector admitted that it was 'a common practice for vagrants to be repatriated and then to return immediately to towns'.⁵⁴⁶ After several convictions for vagrancy, wandering Africans eventually ended behind prison walls, fuelling prison overcrowding and recidivism statistics:

'The present procedure with detribalised natives who become vagrants is to take them to court. When questioned, the vagrant discloses before the magistrate some connection, however slight, with one parent in the reserve and the magistrate orders his return to the reserve. He is sent back to his reserve where most of times, he has no friends, family or land, and it is a matter of days or weeks before he leaves and becomes again a vagrant. The next step is further prosecution and maybe this time he goes to gaol. The final result is that the vagrant 'becomes a gaol habitué''.⁵⁴⁷

Under official recommendations, repatriations with escorts and motor cars were increasingly reserved for 'criminal characters' only.⁵⁴⁸ Most vagrants were just given a free train ticket and did not return to their reserves. The police net provided by the Vagrancy Ordinance had many loopholes. According to some District Commissioners, adults were generally in possession of some cash, in contrast to most juvenile vagrants, and could thus not be brought to court under

⁵⁴⁵ KNA DC/KSM/1/19/129, Letter from the District Commissioner, Central Nyanza, to the Member for Law and Order, 27 December 1951.

⁵⁴⁶ KNA PC/NZA/2/7/15, Circular by the Principal Labour Inspector to all Provincial Commissioners, 12 November 1934.

⁵⁴⁷ KNA DC/KSM/1/19/128, Circular by the Colonial Secretary to all District Commissioners, 4 November 1937.

⁵⁴⁸ KNA PC/NZA/2/7/45, Circular by the Principal Labour Inspector to all Provincial Commissioners, 25 May 1933.

the Vagrancy ordinance.⁵⁴⁹ Besides, according to the District Commissioner of Kavirondo, due to the lack of proper police records and staff, a wandering African ‘had few chances at being picked up by the police and identified as a previously repatriated vagrant’.⁵⁵⁰ In his opinion, a person with ‘criminal intentions’ could easily avoid police detection and the ordinance in this respect proved ‘no deterrent whatever’.⁵⁵¹

POLITICAL OFFENCES

There was also a marked trend over the colonial period to rely upon exceptional and punitive measures to deal with political offences. Only recent works have begun to uncover the extent of ordinary political repression during the colonial era.⁵⁵² Scholarship on Kenya has paid scarce attention to the topic, focusing on the repression of resistances to colonial rule in specified cases, and more significantly, on the deployment of state violence during the fifties.⁵⁵³ This chapter constitutes an effort to scratch the surface of political coercion in Kenya during the two decades that preceded the insurgency; it also calls out for further research on the matter.

In colonial Kenya, offenders subjected to political state repression can be roughly classified within two categories: Africans belonging to organisations defending their political, economic or cultural rights, particularly those militating within the precincts of the Kikuyu Central Association, and Africans holding strong political influence in one location and

⁵⁴⁹ KNA PC/NZA/2/7/15, Letter from the District Commissioner, Nairobi, to the Provincial Commissioner, Nyeri, 22 December 1943.

⁵⁵⁰ KNA DC/KSM/1/19/103, Letter from the District Commissioner, Central Kavirondo, to the Provincial Commissioner, Nyanza, 12 March 1946.

⁵⁵¹ Ibid.

⁵⁵² See notably: D. Paton, *No Bond but the Law: Punishment, Race and Gender in Jamaican State Formation, 1780–1870* (Durham, 2004); T. C. Sherman, *State violence and punishment in India, 1919-1956* (London, 2009); S. Thenault, *Violence Ordinaire dans l’Algérie Coloniale. Camps, Internements, Assignations à Résidence* (Paris, 2012).

⁵⁵³ D. Anderson, ‘Black Mischief: Crime, Protest and Resistance in Colonial Kenya’, *The Historical Journal*, 36/4 (1993): 851-77; C. Brentley, *The Giriama and Colonial Resistance in Kenya, 1800-1920* (Berkeley, 1981); D. Ellis, ‘The Nandi Protest of 1923 in the Context of African Resistance to Colonial Rule in Kenya’, *The Journal of African History*, 17/4 (1976): 555-75; S. Mahone, ‘The Psychology of Rebellion: Colonial Medical Responses to Dissent in British East Africa’, *Journal of African History*, 47/2 (2006): 241-58; B. A. Ogot (ed), *Politics and Nationalism in Colonial Kenya* (Nairobi, 1972).

challenging the authority of the acting chief or headman. Colonial authorities were most anxious about these offences, which challenged the legitimacy of either the higher or lower ranks of the colonial state. As a consequence, they generally considered legal provisions and the usual diet of heavy prison sentences and fines to be insufficiently deterrent for political cases, and devoted much effort to discouraging dissent and suppressing African politics itself. Solutions were needed to increase the punitive effect of punishment and the period under which political offenders would be subjected to it. For the authorities, the sentences of imprisonment that could be awarded under current penal provisions were far too short and lenient. Therefore, the colonial administration resorted to 'penal short-cuts' to deal with this particular category of offenders and bypass the ordinary functioning of criminal justice. The short-cuts could take various forms, including deportation orders, confinement within mental institutions and stricter enforcement of laws regulating African political activity and harassing political dissidents.

Over the period, authorities increasingly restricted and suppressed political activity and the freedom of expression and assembling in the colony. As explained by Susanne D. Mueller, 'the civil service which was created under colonialism was, for instance, never apolitical, being designed to ensure stability and the continuation of British rule. As such, one of its main goals was to control and contain African politics within an administrative framework. To the extent that early associations appeared threatening, civil servants had a vast array of laws and tactics which were used to stifle and, in some cases, to eliminate political groups. These measures included controls over the licensing of public meetings, the registration of political parties and their branches, the issuance of permits to travel to 'outlying districts' and requests to solicit funds on behalf of various groups. Civil servants were also encouraged to inform the executive of any 'bad hats' which should be detained, or any subversive groups which should be banned'.⁵⁵⁴ In Kenya, two major pieces of law circumscribed the organisation and attendance of political meetings. Section 8 of the Native Authority Ordinance empowered

⁵⁵⁴ S. Mueller, 'Gouvernement and Opposition in Kenya, 1966-9', *The Journal of Modern African Studies*, 22/3 (1984), p. 402.

headmen to issue orders prohibiting or restricting Africans from 'holding or attending any meeting which might tend to be subversive of peace and good order'.⁵⁵⁵ Under the section 110 of the Criminal Procedure Ordinance (1914), any magistrate or officer in charge of a police station could 'command an unlawful assembly or an assembly of five or more persons likely to cause a disturbance of the peace to disperse'.⁵⁵⁶ The assessment of the seriousness of the disturbance was left to the discretion of the magistrate or the officer. In practice, this legislation meant that a meeting could not be held or pursued without the authorisation of a headman or a District Commissioner. Local authorities were thus given wide discretion to repress actively all forms of political meetings and events in their area; they made increasingly wide use of their powers.

Beyond that, a vast battery of laws and ordinances provided the colonial administration with effective means to prohibit African parties and associations from forming at all or extending beyond the district level. For colonial authorities, political activists operating outside the conservative precincts of the semi-representative Legislative Councils represented the main danger threatening to undermine British rule. Colonial authorities accused them of 'spreading subversive and anti-Government propaganda' and severely limited their right to hold meetings, to establish political organisations or trade unions or to set up new local branches at the district or provincial level. Over the period, Kenyatta, and more generally the Kikuyu Central Association, were vocal in criticising the lack of freedom of speech, association and movement in the colony: 'Indeed Africans are not discouraged from attending football matches or meetings of the Salvation Army. But they are not acceptable substitutes for the right to form trade unions, co-operative societies and other organisations to protect African political, cultural and economic rights'.⁵⁵⁷ The 1902 'Outlying District Ordinance' notably prevented political parties from organising on a national basis, as political dissidents had to obtain permits from the colonial administration to move to another district. It should be no

⁵⁵⁵ TNA CO 533 487 2, 'Native Rights in Kenya: 'Unlawful Assemblies'', Article written by Jomo Kenyatta, *Manchester Guardian*, 13 January 1939.

⁵⁵⁶ Ibid.

⁵⁵⁷ Ibid.

surprise that District Commissioners were reluctant to grant authorisations and could easily stifle African political activity and opposition. As a consequence, the anti-colonialist struggle braced itself against the renewed efforts of colonial powers to harass African political dissidents. In the late 1930s, Kenyatta struggled to alert metropolitan humanitarian bodies to political repression in the colony and notably addressed the Manchester Fabian Society in these words: ‘I not only say that there is British fascism in the colonies, but can give you facts and examples for you to judge whether the Jews in Germany are treated worse than we are in the colonies’.⁵⁵⁸

Under the Native Authority Ordinance and other laws, colonial authorities were able to pursue a policy of harassment against the leaders of African political organisations and impose the most punitive sentences when they were brought to court. An increased number of political opponents had been sent to prison in the early 1930s, following a series of political meetings surrounding the controversy between the Kikuyu Central Association and missionaries on schools and female circumcision.⁵⁵⁹ Even the High Court, which was generally well-known for mitigating lay magistrates’ punitive sentences, succumbed to the political climate of the period. In 1930, the press widely reported the decision of the High Court, which increased and pronounced the maximum sentence against Joseph Kangethe, the president of the Kikuyu Central Association, for attending an illegal meeting.⁵⁶⁰ The political activist was sentenced by the Court to two months of imprisonment and a fine of 150 shillings, whereas the subordinate court had previously imposed one month of imprisonment only, with a minimal fine. Judges of the High Court referred to the offence as ‘an impudent challenge against authority and good government’ and considered the African leader ‘an educated man’ who was responsible for setting a ‘wicked example to the less fortunate members of his tribe in defying the

⁵⁵⁸ TNA CO 533 487 2, ‘Treatment of Natives in Kenya’, Article written by Jomo Kenyatta, *Manchester Guardian*, [undated, c. January 1939].

⁵⁵⁹ Anderson.

⁵⁶⁰ TNA CO 533 396 2, ‘Young Kikuyu Leader’s Appeal Fails: High Court Increases the Sentence’, Article written by J. E. R. Stephens and B. Dickinson, *East African Standard*, 7 May 1930.

headman'.⁵⁶¹ The unusual severity of the sentence awarded by the High Court stirred up considerable concern and discontent among the law officers of the Colonial Office: 'I consider this is a shocking sentence for attending a prohibited meeting which probably should not have been prohibited at all. I am surprised at the Supreme Court and would like to know what attitude legal officers of the Kenyan Government took. Did they ask for an increased sentence I wonder? This is the kind of stupid actions which make difficulties. This man will come out a rebel and no wonder'.⁵⁶² Yet, with the growing scale of the anti-colonialist movement over the 1940s, the Colonial Office proved much less willing to interfere with magistrates' decisions or to criticise punitive sentences imposed against African political activists.

The Penal Code was amended in 1938 to regulate and penalise to a wider extent the writing or possession of 'seditious publications' and to provide both magistrates and police officers with accrued powers of repression against political dissidents. With the development of African political opposition in most British colonial territories, the Colonial Office pressured the Kenyan government to bring the legislation into line with the law of other colonies and to control more tightly African activists' networks of publication and distribution.⁵⁶³ The 1938 amendment constituted an extension of the scope of the legislation restricting the freedom of speech and political and intellectual activity in the colony, in terms both of object and punishment. In the amendment, a seditious publication was defined as any book, newspaper or document disclosing an 'intention to bring hatred or contempt or to excite disaffection against the person of his Majesty, his heirs and successors, or the Government of the colony, as by law established, or against the administration of justice (...); or to raise discontent or disaffection amongst the inhabitants of the colony, or to promote feelings of ill-will and hostility between different classes of the population of the colony'.⁵⁶⁴ In the very blurry words of the ordinance, a claim could be made only 'in good faith' and 'with a view to

⁵⁶¹ Ibid.

⁵⁶² Ibid.

⁵⁶³ TNA CO 533 487 1, Amendment of the Penal Code, 1938.

⁵⁶⁴ Ibid.

the reformation' of the system.⁵⁶⁵ In other words, Africans were strictly forbidden to make or to read serious critiques of the colonial government, or to publicise revolutionary or anti-colonialist discourses. The ordinance provided for stern punishment for this type of 'subversive' offences; first offenders would be liable to imprisonment for one year and a fine not exceeding fifty pounds and recidivists would be liable to a sentence of imprisonment for up to two years. The ordinance also provided police officers with increased powers of control, allowing them to open any packet likely to contain seditious publications and to detain meanwhile the people who possessed such packets.

Magistrates held the power to subject some categories of political offenders to deportation orders, often in addition to a sentence of rigorous imprisonment. Various ordinances included legal clauses for deportation: the Deportation Ordinance, the wartime Defence Regulations and the Witchcraft Ordinance (1925). This legislation provided magistrates with increased powers of punishment to deal with special cases, which were imbued with strong political significance and generally involved local political figures or alleged witchdoctors. The colonial administration was particularly concerned by cases against witchdoctors, as these were usually deeply embroiled in local politics and could constitute a threat to the maintenance of law and order in their district.⁵⁶⁶ In 1945 for instance, two elders in North Gem were accused of being witchdoctors and were deported under the Witchcraft Ordinance.⁵⁶⁷ According to their advocate R. E. G. Russel, a young European working in the Kisumu area, and the District Commissioner, one of the two deported elders was actually the ex-chief of the location and had a 'large following' among the local population, threatening the authority of the acting chief. According to the advocate, the acting chief Samuel had spread accusations 'by fear and jealousy' that the previous chief be reinstated as chief.⁵⁶⁸ In his view, this kind of political turmoil was quite frequent in the local Kisii social group and

⁵⁶⁵ Ibid.

⁵⁶⁶ See KNA PC/NZA/2/7/40. For wider considerations on witchcraft, colonial law and punishment in Kenya, see R. Waller, 'Witchcraft and Colonial Law in Kenya', *Past and Present*, 180 (2003): 241-75.

⁵⁶⁷ KNA PC/NZA/2/7/40, Letter from the advocate R. E. G. Russel from Russel and Co to the Chief Native Commissioner, 5 November 1945.

⁵⁶⁸ Ibid.

witchcraft accusations often served to solve these conflicts: “witchcraft” is the most convenient and deadly weapon for any native or set of natives to safely vent their spleen against those with whom they are not in accord’.⁵⁶⁹ The District Commissioner, although on the side of the prosecution, confirmed in the preliminary inquiry the political impact and significance of the case in the location. In his view, these two prominent elders held wide political influence in the area and had subjected the local population to ‘a minor reign of terror’.⁵⁷⁰ More generally, the colonial administration feared cases involving witchdoctors, as rumours were spreading among African groups that ‘the government could do nothing against’ them.⁵⁷¹ In order to maintain the appearance of colonial supremacy and to increase the deterrent effect of punishment in these cases, magistrates could thus make recommendations for deportation under the Witchcraft Ordinance and condemn alleged witchdoctors to banishment and exile.

As collective punishments, deportation provisions provided another opportunity to bypass the legal requirements and safeguards of criminal justice and to increase the punitive effect of judicial punishment. They relied on blurry preliminary enquiries comprising little tangible evidence and depended ultimately upon the decision of the executive power in the person of the Governor. As underlined by the advocate R. E. G. Russel, expulsion provisions were ‘fringing closely on disregard of the basic principles of Habeas Corpus’.⁵⁷² They dispensed with the need for a judicial trial and constituted in practice a loosening of the strictures and rules of evidence. Deportation orders were sometimes imposed when the local court had failed to secure conviction for lack of reliable proof. Lay magistrates were often frustrated by the difficulty of obtaining testimonies and reproached witchdoctors for instilling fear in the local population, which was ‘too frightened to come to testify’.⁵⁷³ In practice, District Commissioners often carried out preliminary enquiries with little regard to due

⁵⁶⁹ Ibid.

⁵⁷⁰ KNA PC/NZA/2/7/40, 'Findings of a Magistrate's Enquiry for an Order of Deportation', 18 October 1943.

⁵⁷¹ Ibid.

⁵⁷² KNA PC/NZA/2/7/40, Letter from the advocate R. E. G. Russel from Russel and Co to the Chief Native Commissioner, 5 November 1945.

⁵⁷³ KNA PC/NZA/2/7/40, 'Enquiry under SEC 9 (1) of the Witchcraft Ordinance 23 of 1925', Findings, 18 October 1943.

procedure, as provided by the ordinance. In 1933, the advocate R. E. G. Russel complained that one African accused who was condemned to deportation had not been given any chance to defend himself against the charge and that he himself, as the man's advocate, had been refused the access to the records of the preliminary inquiry. In his view, expulsion provisions constituted a 'very retrograde step', threatening to challenge the legitimacy of colonial justice among African communities: 'It is an arbitrary and bitter punishment of natives without any charge nor judicial trial, discrediting seriously faith on the part of natives in our judicial system'.⁵⁷⁴ The Legislative Council itself recommended the use of deportation orders only 'in extreme cases outwith the scope of the criminal law', as they provided many opportunities for irregularities and abuses.⁵⁷⁵ Similarly, African political activists could be subjected to deportation orders under the Deportation Ordinance and the Defence Regulations. Under this special legislation, offenders could be sent individually or in batches of ten or twenty into distant and outlying areas where their political influence could be minimised.⁵⁷⁶

By and large, orders of deportation amounted to highly punitive sanctions. On the one hand, opportunities for release were very few and political opponents were thus condemned to banishment from their home surroundings either for very lengthy or indefinite periods of time. Following the political protest organised by the Kikuyu Central Association in the early 1930s, eight political opponents were deported to Kipini in the Tana River District.⁵⁷⁷ Although they had given 'no trouble' on the admission of the District Commissioner, they were confined there and excluded from their home area for eight years.⁵⁷⁸ Only in 1942, due to the heavy costs of maintaining them, two were granted a special authorisation to return to their homes for a probationary period of six months. Yet, they were still subjected to the original deportation order and, in case of misbehaviour, could be readily returned to Kipini. The colonial administration was generally reluctant to withdraw deportation orders under which

⁵⁷⁴ KNA PC/NZA/2/7/40, Letter from the advocate R. E. G. Russel from Russel and Co to the Chief Native Commissioner, 5 November 1945.

⁵⁷⁵ Ibid.

⁵⁷⁶ See KNA PC/NZA/2/7/40.

⁵⁷⁷ KNA PC/NZA/2/7/52, Letter from the District Commissioner, Tana River, to the Provincial Commissioner, Coast Province, 16 April 1942.

⁵⁷⁸ Ibid.

political activists were banished from their own communities. For instance, in the early 1940s, 22 Africans were detained under the Defence Regulations for ‘subversive activities in connection with the Kikuyu Central Association’ at Kapenguria, where they were forced to work for the colonial government and engage in market gardening.⁵⁷⁹ According to the Chief Secretary, with the exception of one detainee, all others had ‘maintained an intransigent attitude towards their detention and towards government generally’ and had thus to be strictly excluded from the hub of their political activity at Nyeri.⁵⁸⁰ In 1941, the Chief Secretary proposed to release the only man who had ‘showed some spirit of collaboration’ and to keep him under close supervision in Nyeri in order ‘to differentiate in the treatment of those willing to collaborate with the Government’.⁵⁸¹ Yet, the colonial administration of the Central Province was anxious over the impact of such releases on political activity in the area that they eventually turned down the proposal. Although the Taita Hills Association had been dismantled years before, the District Commissioner feared that the return of one former leading activist would ‘fan the flame of political agitation, which, in the present circumstances, should be kept as low as possible’.⁵⁸² In practice, orders of deportation thus amounted to lengthy, if not indefinite, periods of banishment and exclusion for the persons upon whom they were imposed.

Living conditions for the deportees could be truly harsh. Deportation orders often required complete and permanent segregation from their families and life surroundings and a drastic degradation of their living conditions. The case of two witchdoctors who were deported to Mfangano Island in South Kavirondo is very revealing. In Kanyaga where they used to live, they ‘were well-off, they had very large families and cattle’ and were prominent social figures within the local community.⁵⁸³ When the court imposed upon them an order of deportation,

⁵⁷⁹ KNA PC/NZA/2/7/52, Letter from the Chief Secretary to the Provincial Commissioner, Central Province, 16 June 1941.

⁵⁸⁰ Ibid.

⁵⁸¹ Ibid.

⁵⁸² KNA PC/NZA/2/7/52, Letter from the District Commissioner, Voi, to the Provincial Commissioner, Coast Province, 7 June 1941.

⁵⁸³ KNA PC/NZA/2/7/40, Letter from the advocate R. E. G. Russel from Russel and Co to the Chief Native Commissioner, 5 November 1945.

they had to leave all their current affairs and plots of land in the hands of their wives and be exiled to Mfangano Island. On arrival, they were only given 'hilly useless ground' with a very small proportion of low-lying ground.⁵⁸⁴ The lake shore was already extensively used and there was consequently no room for the two newcomers to establish and cultivate their plot of land (*shamba*). The island was well-known for its adverse climatic conditions and the two elders had consequently to bring most of their food from the mainland by canoe.⁵⁸⁵ In addition, the two old deportees were forbidden to bring cattle, for fear of disease, and were thus deprived of any regular supply of milk and meat. They could only cultivate potatoes and cassava (*mohogo*) and were left with no choice but petty trading in the market to provide for their subsistence. According to the District Commissioner of South Kavirondo, the local population did not seem to resent their presence but made no effort to help them. Deportation also meant severe social exclusion and separation from their relatives and friends.⁵⁸⁶ Their wives could come to visit them but the difficulties of transport and the long distances made these visits rare and difficult. One of the two men was forbidden to return to his area to attend the funeral of two of his wives and perform the required ceremonies. Yet, colonial authorities granted him a special authorisation to return home for the funeral of his daughter, although this permission only covered a restrictive period of fourteen days.⁵⁸⁷

As far as political activists were concerned, the colonial administration also relied on medical and mental institutions to confine and exclude offenders from society over lengthier periods of time. Political offenders were often portrayed as dangerous, irrational, fanatical or intellectually defective persons.⁵⁸⁸ Colonial authorities were keen on classifying them as mental cases and associating anti-colonialist political claims with esoteric religious beliefs or mental disorders. Speaking about one of the leading African political figures of the Nyanza

⁵⁸⁴ Ibid.

⁵⁸⁵ KNA PC/NZA/2/7/40, 'Report on the condition of the 4 Kanyada witchdoctors exiled to Mfangano', Memorandum written by the District Commissioner, South Kavirondo, 7 December 1944.

⁵⁸⁶ KNA PC/NZA/2/7/40, Letter from the advocate R. E. G. Russel from Russel and Co to the Chief Native Commissioner, 5 November 1945.

⁵⁸⁷ KNA PC/NZA/2/7/40, Letter from the Provincial Commissioner, Nyanza Province, to the Chief Native Commissioner, 26 October 1933.

⁵⁸⁸ S. Mahone, 'The Psychology of Rebellion: Colonial Medical Responses to Dissent in British East Africa', *Journal of African History*, 47/3 (2006): 241-256.

Province, the Provincial Commissioner drew upon the same blurry colonial stereotypes linking African activism, spirituality and madness: ‘this man is a very dangerous political character as he was obsessed with a religious mania which dictated him to undertake propaganda and in some case actions to evacuate all non-natives from the area of his location. He claimed to have divine visitations on this subject’.⁵⁸⁹ As a consequence, colonial discourses on insanity and race served to legitimise the confinement of certain political prisoners at the Mathari Mental Hospital in Nairobi, the only institution of its kind in the colony. The colonial administration could thus get round the problem of short sentences of imprisonment and detain indefinitely dangerous political characters on the sole grounds that they were insane and would probably never recover their sanity.

Yet, in this respect, colonial control was considerably limited by the lack of accommodation and supervision in hospitals. In 1947 for instance, medical authorities of Mathari wrote to the Provincial Commissioner of Nyanza to inform him that, for lack of a room, they could not keep one of the leading political figures of the Kikuyu Central Association, named Elijah, a man who used to live in the location of Kimilili in the North Kavirondo district.⁵⁹⁰ The colonial administration ordered the hospital to keep him for a few additional years, or at least until they could find other arrangements for his detention.⁵⁹¹ The Provincial Commissioner of Nyanza was most anxious over the effects the return of this political dissident would have upon law and order, as there was considerable ‘subversive’ political activity in Kimili in 1946 and 1947 and this political dissident had retained significant influence in the area. Yet, in May 1947, the medical officer of Mathari was left with no choice but to sign off the his discharge papers from the mental hospital and to release one major political figure of African political opposition.⁵⁹² The colonial administration was very upset

⁵⁸⁹ KNA PC/NZA/2/7/97, Letter from the Provincial Commissioner, Nyanza, to the Medical Officer-in-charge at Mathari Mental hospital, 11 June 1946.

⁵⁹⁰ KNA PC/NZA/2/7/97, Letter from the Medical Officer-in-charge at Mathari Mental hospital to the Provincial Commissioner, Nyanza, 17 June 1946.

⁵⁹¹ KNA PC/NZA/2/7/97, Letter from the Provincial Commissioner, Nyanza, to the Medical Officer-in-charge at Mathari Mental hospital, 11 June 1946.

⁵⁹² KNA PC/NZA/2/7/97, Letter from the Medical Officer-in-charge at Mathari Mental hospital to the Member for Law and Order, 8 May 1947.

by the decision of medical authorities, having no legal means to prevent his return to Kimilili. Bounded by law, colonial authorities had to wait for him to commit a further offence either to commit him to prison, issue a deportation order or to certify him as insane and send him back to Mathari Mental Hospital. As a consequence, financial stringency, interest divergence and legal provisions circumscribed to a certain extent colonial control and repression against political dissidents throughout the colony.

5 - CRIMINAL JUSTICE AND THE AFRICAN BODY

Over the period, debates over penal excess tended to focus on the politically sensitive question of the flogging of African subjects. Historians have long been aware of the prolonged significance of corporal punishment in colonial domination, both in the form of judicial flogging and as extra-legal physical violence.⁵⁹³ As Florence Bernault has underlined, one of most important features of colonial penology in Africa was ‘the revival and institutionalising of corporal punishment’.⁵⁹⁴ This colonial economy of physical violence starkly contradicts the historical studies of penal reform in Europe, which presented the birth of the modern penitentiary as paralleling the decline of state-inflicted physical pain.⁵⁹⁵ In colonial territories, corporal punishment retained its prominent place in the repressive arsenal. The recent historiography began to study the practice of flogging in its own right and paid great attention to the moral and political economy of physical violence in the colonial context.⁵⁹⁶ Several scholars usefully demonstrated the role of the colonial theory of indigenous inadequacy in legitimising bodily punishment to deal with so-called ‘backward’ African populations. As Steven Pierce and Anupama Rao have argued, ‘colonial disciplinary correction was understood to be a consequence of native inadequacy, which justified the use of any level of force and violence. The visceral, embodied experiences of domination and control—the immediate manifestation of colonial corporeality—were an integral part of governmental

⁵⁹³ For a broad perspective of the question, see F. Bernault, 'The Shadow of Rule: Colonial Power and Modern Punishment in Africa', in F. Dikötter and I. Brown (eds), *Cultures of Confinement: A Global History of the Prison in Asia, Africa, the Middle-East and Latin America* (London, 2007); F. Bernault (ed.), *A History of Prison and Confinement in Africa* (Portsmouth, 2003); J. Alexander and G. Kynoch (eds), 'Special Issue: Histories and Legacies of Punishment in Southern Africa', *Journal of Southern African Studies*, 37/3 (2011); D. Killingray, 'Punishment to Fit the Crime?: Penal Policy and Practice in British Colonial Africa', in F. Bernault (ed.), *A History of Prison and Confinement in Africa*, (Portsmouth, 2003): 97-118; S. Pierce, and A. Rao, (eds), *Discipline and the Other Body: Correction, Corporeality, Colonialism*, (Durham, 2006).

⁵⁹⁴ F. Bernault, 'The Shadow of Rule', p. 77.

⁵⁹⁵ M. Foucault, *Discipline and Punish: The Birth of the Prison* (London, 1977).

⁵⁹⁶ D. Anderson, 'Punishment, Race and 'The Raw Native': Settler Society and Kenya's Flogging Scandals, 1895-1930', *Journal of Southern African Studies*, 37/3 (2011): 479-497; A. Devenish and S. Pete, 'Flogging, Fear and Food: Punishment and Race in Colonial Natal', *Journal of Southern African Studies*, 31/1 (2005): 3-21; M.-B. Debours, 'La Chicote comme Symbole du Colonialisme Belge?', *Canadian Journal of African Studies*, 26/2 (1992): 205-25; S. Peté, 'Punishment and Race: the Emergence of Racially-Defined Punishment in Colonial Natal', *Natal University Law and Society Review*, 1/2 (1986): 99-114; S. Pierce and A. Rao, 'Discipline and the Other Body: Humanitarianism, Violence and the Colonial Exception', in S. Pierce and A. Rao (eds), *Discipline and the Other Body*, 1-32; S. Pierce, 'Punishment and the Political Body: Flogging and Colonialism in Northern Nigeria', in S. Pierce and A. Rao (eds), *Discipline and the Other Body*, 186-214.

practices of codifying, categorising and racializing difference'.⁵⁹⁷ Historians also placed corporal punishment within the wider social and economic fabric of colonial society, underlining notably its role in the disciplining of farm labour.⁵⁹⁸

Drawing upon the most recent developments in the historiography, this chapter brings three fundamental contributions. First, in the Kenyan historiography, recent works have begun to study the practice of flogging in specified arenas of colonial society, focusing mainly on the period up to the late twenties or on juveniles.⁵⁹⁹ The following analysis constitutes an attempt to explain the entrenchment of bodily violence within colonial society at large during the 1930s and 1940s, at a time when reformist discourses against corporal punishment had come to prominence in public debates. In this respect, considerable attention is being paid to the enduring political conflict between the Colonial Office in London and settlers in Kenya over the intertwined questions of judicial flogging and white rough justice on farms against Africans. Besides, this argument seeks to provide a detailed account of the social and cultural meanings attached to flogging for settler society and to pave the way for a cultural history of punishment in colonial domination. The large number of testimonies provided by settlers and officials before the 1952 Commission on Corporal Punishment shows the dominant social attitudes towards physical violence.⁶⁰⁰ Finally, this chapter considers corporal punishment in all its forms, ordinary and exceptional, legal and extra-legal. Scholars have only recently begun to uncover the excessive use of corporeal violence in colonial societies, both in public and private spheres, and therefore tend to focus on its use in specified contexts only. Yet, the infliction of bodily violence took place in many spheres of colonial society that stretched far

⁵⁹⁷ S. Pierce and A. Rao, 'Discipline and the Other Body: Humanitarianism, Violence and the Colonial Exception', in S. Pierce and A. Rao (eds), *Discipline and the Other Body*, p. 5. On this question, see also A. Devenish and S. Pete, 'Flogging, Fear and Food'.

⁵⁹⁸ On this aspect, see D. Anderson, 'Master and Servant in colonial Kenya, 1895-1939', *Journal of African History*, 41 (2000): 459-485; D. Anderson, 'Punishment, Race and 'The Raw Native''; B. K. Mbenga, 'Forced Labour in the Pilanesberg: the Flogging of Chief Kgamanyane by Commandant Paul Kruger, Saulspoort, April 1870', *Journal of Southern African Studies*, 23/1 (1997): 127-40; M. Turner, 'The 11 O'Clock Flog: Women, Work and Labour Law in the British Caribbean', *Slavery and Abolition*, 20/1 (1999): 38-58.

⁵⁹⁹ See notably D. Anderson, 'Master and Servant'; D. Anderson, 'Punishment, Race and 'The Raw Native''; Ocobock, P., 'Spare the Rod, Spoil the Colony: Corporal Punishment, Colonial Violence and Generational Authority in Kenya, 1897-1952', *The International Journal of African Historical Studies*, 45/1 (2012): 29-57.

⁶⁰⁰ KNA JZ/6/18, Committee on Corporal Punishment (CCP), 1952.

beyond the penal realm, including settlers' farms, police cells, administrative officers' offices, public spaces, etc. This research constitutes thus an attempt to promote a comprehensive approach of corporal punishment and to replace it within a wider system of racial oppression and state control.

In colonial Kenya, the infliction of corporal pain and injury was a common feature of the colonial encounter and took various forms, both institutional and non-institutional. To a certain extent, flogging was permitted and regulated under law: it constituted a legal punitive device for certain offences that colonial courts and penal institutions could both resort to. Judicial flogging could be imposed both as a sentence of the courts or for offences committed within the precincts of a prison or an Approved School. As far as adults were concerned, flogging could never be used for women, males sentenced to death or men considered to be over 45 years of age.⁶⁰¹ Governed by section 28 of the penal code, corporal punishment could be awarded in court for a limited number of serious offences, mainly sexual offences, crimes involving personal violence and burglary. In prison, flogging was used as a means of discipline and punishment for certain breaches against prison rules, such as 'repeated serious offences against discipline', 'personal violence to any person', 'grossly abusive or offensive language' and 'any act of grave conduct and insubordination'.⁶⁰² In both cases, the number of lashes could not exceed 24 and every aspect of the procedure was strictly regulated under law. For juveniles under the age of 16 years, corporal punishment could be used to a much wider extent, both as a sentence of the court and as a legal punishment in an Approved School for a great variety of minor and serious offences.⁶⁰³ Beyond judicial flogging, physical violence was illegally used on a very wide scale by large sections of white society, both official and non-official, as a means to govern, discipline and punish African subjects.

The entrenchment and normalisation of high levels of bodily violence in the colony was intimately linked to the racial and moral economy of colonial domination and became

⁶⁰¹ KNA JZ/6/18, Majority Report of the Committee on Corporal Punishment, 1952.

⁶⁰² Ibid.

⁶⁰³ Ibid.

intrinsically embroiled in local, national and international politics. The Colonial Office's interference in penal matters was particularly conspicuous where flogging was concerned. Legal advisers in London were deeply disturbed by the widespread use of the lash in colonial territories, notably in settler states such as Kenya or Natal, and urged colonial governments to regulate and restrict local practice. Over the course of the 1940s, the international and national movement for the abolition of judicial flogging in the metropolitan territory and the need for the British government to preserve the 'benevolent face' of its civilizing mission gave rise to a renewed interest in the question of colonial corporal punishments in the colonies. Yet, this push towards reform had mitigated effects in Kenya. Although official statistics reported a limited rise in judicial flogging, forms of extra-legal violence persisted to a significant extent—and in some cases increased—over the 1940s, attesting to the normalcy of bodily violence within society at large. Cases of Africans murdered at the hands of their white employers did not disappear and the use of bodily violence remained widespread in some white areas of the colony, whether on settlers' farms or in official quarters. Police harassment and brutality was a common occurrence across the territory and seem to have increased, both in extent and intensity, from the 1940s onwards. More importantly perhaps, debates over judicial whipping revealed the persistence of widespread reactionary support for the cane and a 'common racialized understanding of African subjects' within white society, which helped to maintain and legitimize high levels of bodily violence in the colony.⁶⁰⁴

BODILY VIOLENCE, RACIAL IDEOLOGY AND COLONIAL DOMINATION

The question of bodily violence in African colonies was deeply embedded in the different layers of colonial ideology and racial thinking. Flogging was primarily a matter of race and a display of white sovereignty. The incidence of judicial flogging was much higher in

⁶⁰⁴ S. Pete and A. Devenish, 'Flogging, Fear and Food: Punishment and Race in Colonial Natal', *Journal of Southern African Studies*, 31, 1 (2005), p. 3.

colonies such as Natal and Kenya where small settler communities were established, than in other British territories.⁶⁰⁵ As pointed out by David Anderson, this inclination for the lash was meant to act 'as a powerful deterrent while also reinforcing the solidarity of European identity'.⁶⁰⁶ The social fears of a small white community towards African crime fuelled a common 'reactionary resort to coercion' and legitimised an extended use of physical oppression against African bodies, in both institutional and non-institutional forms.⁶⁰⁷ The leniency of the judiciary in punishing white farmers who took the law in their own hands and illegally flogged African workers showed a high degree of solidarity among white settlers, colonial officials, administrative officers and magistrates. In early 1952, a Committee of Enquiry was set up by the Governor to inquire into the question of judicial flogging in the colony, with a view to its abolition.⁶⁰⁸ The body of evidence provided by witnesses revealed that administrators, magistrates and settlers still widely supported the use of the lash and retaliatory practices towards Africans to broadcast their authority. Only a very small minority seemed to be in sympathy with the new rhetoric of reform promoted by the Colonial Office. The white public opinion disclosed by the Native Punishment Commission in 1921 and described by David Anderson had hardly evolved in thirty years.⁶⁰⁹ This striking permanence of white local opinion over time can be explained both by dominant racial attitudes and by local relations of power within colonial society at large.

The racial and moral economy of physical violence

In Kenya, debates on corporal punishment both reflected and served to secure racial hierarchies prevailing in the colony. They first helped to construe and reinforce biological

⁶⁰⁵ S. Pete and A. Devenish, 'Flogging, Fear and Food', pp. 4-5.

⁶⁰⁶ D. Anderson, 'Punishment, Race and 'The Raw Native': Settler Society and Kenya Flogging Scandals, 1895-1930', *Journal of Southern African Studies*, 37, 3 (2011), p. 497.

⁶⁰⁷ Ibid, p. 497.

⁶⁰⁸ This committee will often be called in this paper 'the 1952 Committee'. For the report and correspondence produced by the committee, see KNA JZ/6/18, Committee on Corporal Punishment (CCP), 1952.

⁶⁰⁹ D. Anderson, 'Punishment, Race and 'The Raw Native'. See also: KNA AG/1/118, Native Punishment Commission, 1921.

divides based on the alleged differential ability of white and black people to feel pain. As Florence Bernault underlines, ‘Africans, according to European views, complied with judicial beating either because they did not take issue with the virtue of bodily pain’ or ‘were not sensitive to it’.⁶¹⁰ Penal discourse also served to stratify colonial conceptions of civilisation and development. Judicial violence was racially perceived as a necessary ‘primitive’ punishment to fit ‘primitive’ local conditions, on the ground that the majority of the native population had not yet reached the ‘stage of development’ of their British counterparts.⁶¹¹ These racist assumptions underpinned both settlers’ and colonial magistrates’ conceptions of punishment. As pointed out by M. J. M. Martin, any ‘enlightened administrator with front-line experience’ in Kenya would endorse the following point of view presented in the Nigerian Circular Dispatch of 1949:

‘Reviewing the whole field which this important subject covers, you will appreciate that the differences between practice in Great Britain and in this territory where a large proportion of the inhabitants still live under primitive conditions are due to the difference in the stage of development reached by the peoples of the two regions. There are instances such as crimes of violence, rape and torture, when whipping is the only means of controlling malefactors of a primitive mentality, and the prompt administration of corporal punishment to these types of offenders is better appreciated than the long-drawn-out processes of British legal procedure. I feel confident that existing safeguards against any abuse of the power to award corporal punishment and insistence upon the object of this government to abolish this form of punishment as soon as possible will be a surer, and to the community at large, a fairer method of dealing with the matter than the issue of sweeping orders for reform which are quite likely to be misunderstood by the very people they are designed to benefit.’⁶¹²

Colonial debates over punishment also consolidated racial divides emerging in conjunction with growing urbanisation and new developments in social thought. In this perspective, the corporeality of the African body was differentiated according to the level of civilisation of the offender. Some witnesses of the 1952 Committee were particularly concerned about the effects of corporeal chastisement on the ‘sophisticated’, urbanised,

⁶¹⁰ F. Bernault, ‘The Shadow of Rule’, pp. 80-81.

⁶¹¹ KNA JZ/6/18, Evidence by A.B. Patel, Member of the Executive Council and Legislative Council, Committee on Corporal Punishment, 1952. See also: TNA CO 912/11, G. Rennie, quoted in the ‘Memorandum on Corporal Punishment in the colonies’, 1948.

⁶¹² TNA CO 859/239/6, Dispatch by J.M. Martin, 27 April 1950.

educated native.⁶¹³ For this category of natives, bodily violence was considered to have potentially the same degrading effect as for white people. The Bushe Commission had already expressed the same concern, assuming that corporal punishment was more damaging to the self-respect of Africans who had advanced to a certain stage of civilisation.⁶¹⁴ At the same time, from the colonial perspective, corporal punishment had no ill effect on the ‘raw’, ‘backward’ native who had never left his reserve and could only understand the lesson of the lash. These colonial divides were mobilised and secured within the precincts of the courts. Corporal punishment seems to have been much less relied on in the Resident Magistrate courts of towns than in the District Courts of the African reserves. Mr Gillepsie, a Resident Magistrate in Nairobi since 1947 and an ex-Administrative Officer, admitted that he had made a wide use of corporal punishment when he was an Administrative Officer at Meru and had to deal with ‘backward tribes’ but seldom used it when he was a Resident Magistrate at Nairobi.⁶¹⁵ Racial categories and conceptions were thus constantly reified and consolidated in the realm of penal thought and practice.

Judicial violence was also advocated on the grounds of cultural differences, colonisers putting forth what they believed Africans’ opinion or custom was. It was believed that Africans supported corporal punishment, accepting it either as a customary punishment used by their ethnic group in the pre-colonial period or as a ‘just form of punishment’ in comparison to others. This patronising discourse served as a marker of racial difference, consolidating cultural divides between races. Settlers had used the same argument thirty years ago in front of the Native Punishment Committee in order to legitimise ‘rough justice’ on the farm, so as to be able to discipline freely their labour force.⁶¹⁶ In their opinion, Africans preferred to be beaten on the spot by an employer rather than be brought to court, because they avoided long periods of incarceration and unemployment and also because this punishment

⁶¹³ KNA JZ/6/18, Evidence by I.H. Gillepsie, Resident Magistrate of Nairobi and former administrative officer at Meru, Committee on Corporal Punishment, 1952.

⁶¹⁴ TNA CO 859/16/4, Circular by the Secretary of State to colonial governments, 5 January 1939.

⁶¹⁵ KNA JZ/6/18, Evidence by I.H. Gillepsie, Resident Magistrate of Nairobi and former administrative officer at Meru, Committee on Corporal Punishment, 1952.

⁶¹⁶ KNA AG/1/118, Native Punishment Commission, 1921.

was similar to their customary forms of ethnic sanction. Settlers and colonial officials referred to the fact that prisons were alien to pre-colonial societies and regarded in the twenties with the greatest suspicion by Africans as ‘places of moral perdition’.⁶¹⁷ Colonial debates over corporal punishment also engineered and reified colonial conceptions of indigenous punishment, notably the widespread assumption that sentences awarded in magisterial courts were strikingly soft when compared with what could be imposed under customary law during the pre-colonial period. In the view of the Colonial Penal Administration Committee, Africans generally found it difficult to understand European leniency, both as regards sentencing and failures to convict for technical reasons, such as lack of evidence.⁶¹⁸ Administrative officers’ feeling was that Africans preferred flogging, particularly for offences they regarded seriously, such as cattle stealing or offences repugnant to local custom. In the 1952 Committee on Corporal Punishment, only a very small minority—nearly all Africans—tried to oppose this dominant view and to challenge colonial stereotypes. As later confirmed by the secondary literature on the subject, Michael Waweru, who had been president of Nairobi Native Tribunal for twelve years and a half, explained that flogging was actually contrary to the custom of most African groups, except in the case of juveniles, and had consequently no deterrent or curative effect whatsoever for adults.⁶¹⁹ He put forth the fact that African communities mainly used methods of compensation in the pre-colonial period to regulate conflicts and punish offenders and used corporal violence very sparingly. His opinion was completely silenced in the final majority report.

As underlined by Pete and Devenish concerning colonial Natal, colonial punishment was also ‘linked to a particular understanding of colonial subjects that was shaped by colonial paternalism and a deeply embedded fear of attack from the surrounding black population’.⁶²⁰ The racial presumption that ‘child-like’ Africans could only understand the ‘lesson of the lash’

⁶¹⁷ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 2.

⁶¹⁸ TNA CO 859/239/8, Sub-Committee on Treatment of Offenders, Minutes, 30 May 1951.

⁶¹⁹ KNA JZ/6/18, Evidence by H. Waweru, President of Nairobi Native Tribunal, Committee on Corporal Punishment, 1952. In 1952, he had been president of Nairobi Native tribunal for twelve years and a half.

⁶²⁰ S. Pete and A. Devenish, 'Flogging, Fear and Food', p. 3.

was widely shared in colonial society.⁶²¹ The sentence had to be punitive and physically painful for the ‘uncivilised’ black man to understand he had done wrong and to accept the need for discipline and good behaviour. In the colonial perception, the too formal nature of carceral punishment and the deprivation of liberty escaped Africans’ comprehension, as proved by the lack of stigma attached to it. This paternalistic racism overshadowed much of the colonial debate over corporal punishment during the whole colonial period and disclosed, as Pete and Devenish have emphasised, ‘a typical colonial perception of the aims of punishment’.⁶²² Opinions of white settlers and colonial officials in Kenya in 1952 were strikingly similar to those of white colonisers in Natal in the late nineteenth century. In more than seventy years, arguments advocating the use of the lash had remained couched in the same racist and paternalistic terminology and resonated within wider discourses on African capacity and development. In this respect, the use of the cane was normalised by a wider acceptance of corporal punishment as a means of education in schools or for parental control in the United Kingdom.⁶²³ In colonial Kenya, flogging was thus regarded as a legitimate tool of discipline and enlightenment to civilise and educate the child-like native. According to David Anderson, this was also associated with notions of masculinity and bodily punishment internalised by settlers and administrators as necessary for the development of virile and strong individualities during their common experience within British schools or in the army: ‘There was a clear parallel between the European experience of punishment in the classroom and the perception of the African as a child. It might further be argued that colonies retained a sense of the closed institution, like the school or the army, and thereby stood at one remove from any broader trend of social and political reform’.⁶²⁴

Corporal punishment appeared to offer the best chance of reforming offenders and exercising a particular kind of colonial governance. According to Florence Bernault, ‘a

⁶²¹ KNA JZ/6/18, Evidence by K.L. Hunter, 30 years in the administrative service in colonial Kenya, Committee on Corporal Punishment, 1952.

⁶²² S. Pete and A. Devenish, 'Flogging, Fear and Food', p. 8.

⁶²³ C. Campbell, 'Juvenile Delinquency in Colonial Kenya', 1900-1939, *The Historical Journal*, 45/1 (2002): 129-151.

⁶²⁴ D. Anderson, 'Punishment, Race and 'The Raw Native'', p. 497.

particular disciplinary project emerged in the colonial context, drawing back together what Western penal ideologues had sought to separate since the eighteenth century: the confluence of physical pain, punishment and individual reform'.⁶²⁵ In colonial Kenya, corporal punishment was indeed perceived as the most appropriate means to achieve the three main functions of punishment: to deter the offender and other would-be offenders, to be economically useful and to reform criminals.⁶²⁶ This idea was reinforced by the gloomy realisation that prisons had failed to be reformatory, as even the prison authorities would confess. The Commissioner of Prisons admitted in 1939 that imprisonment was not a better solution than corporal punishment in Africa: there was in prisons no classification nor segregation, special treatment was not possible for any particular class and there was a strong risk of 'contamination' between the various categories of convicts.⁶²⁷ Imprisonment was frequently criticised on the grounds of colonial stereotypes about African communitarian and gregarious behaviour. As Florence Bernault explains, 'in colonizers' minds, monitored beating seemed to have held greater reformatory power than imprisonment, as custodial confinement was frequently seen as a non-indigenous treatment incompatible with the gregarious, family-bonded and undisciplined African, too desperate to survive incarceration or too lazy to understand it as punishment'.⁶²⁸ In other words, colonial subjects were not considered individuated enough to be subjected to the reformatory power of prison discipline. Besides, the probation system was introduced in the colony in the mid-1940s only; afterwards, only a minority of first offenders could benefit from its embryonic development. Therefore, in the view of most colonial officials, corporal punishment remained much more successful for the reformation of the offender than any other penal device. Corporal violence, as long as it was carefully monitored, was widely considered the most appropriate tool to transform criminals into law-abiding citizens, creating a 'more immediate kind of metamorphosis'.⁶²⁹ What Steven Pierce points out in the case of Nigeria seems to be equally relevant in colonial Kenya:

⁶²⁵ F. Bernault, 'The Shadow of Rule', p. 83.

⁶²⁶ KNA JZ/6/18, Evidence by the Deputy Public Prosecutor, Committee on Corporal Punishment, 1952.

⁶²⁷ TNA CO 533/516/1, Circular by the Commissioner of prison, 26 May 1939.

⁶²⁸ F. Bernault, 'The Shadow of Rule', p. 82.

⁶²⁹ KNA JZ/6/18, Evidence by the Deputy Public Prosecutor, Committee on Corporal Punishment, 1952.

‘flogging was thus supposed to be doubly instructive: appropriate to the Nigerian mind *and* demonstrating a new kind of governance. Corporal punishment ultimately would allow a wide-ranging transformation in the scope of criminality, and this in the end, would mark a different set of behaviour as criminal and at the same time inculcate ‘modern’ forms of governance and civic socialisation’.⁶³⁰

However, in colonial Kenya, the minority of white settlers lived in constant fear of insecurity and crime, which could easily develop into moral panic and racial fears over African crime. Corporal punishment was thus widely supported within colonial society on grounds of its deterrent value. Penal debates tended to overshadow the question of the reformatory virtues of corporal punishment, focusing on its punitive function. Racial fears and colonial tropes about the ‘brutal’ and ‘savage’ nature of Africans crystallised across corporeal punitive practices and legitimised their use within and beyond the judicial sphere. For the most serious offences, such as sexual assaults and robbery with violence, corporal punishment was considered the only sanction likely to deter and with sufficient punitive power to be feared by the most serious African offenders. Justice Thacker, who had been a Puisne Judge for 14 years in Kenya, gave the example of a man convicted to prison and 24 strokes of corporal punishment for robbery with violence. It appeared obvious to him during the trial that it was the latter part of the sentence that he feared the most.⁶³¹ Mr Allen, Superintendent of Nairobi prison, also instanced the case of a prisoner who had been sentenced three times for robbery with violence. The third time, he was awarded, in addition to a prison sentence, a sentence of corporal punishment. According to the Superintendent, he never returned to court afterwards, probably strongly deterred by the flogging. As a result of the failure of penal reform and as prisons had allegedly no deterrent effect, corporal punishment was considered the only chance of making punishment punitive.⁶³² Judicial flogging acted as a powerful deterrent not only

⁶³⁰ S. Pierce, ‘Punishment and the Political Body: Flogging and Colonialism in Northern Nigeria’, in S. Pierce and A. Rao (eds), *Discipline and the Other Body*, p. 206.

⁶³¹ KNA JZ/6/18, Evidence by Justice Thacker, Puisne Judge, Committee on Corporal Punishment, 1952.

⁶³² KNA JZ/6/18, Evidence by V. Allen, Superintendent of Nairobi Prison, Committee on Corporal Punishment, 1952. In 1952, he had worked for 25 years in the Kenya Prison Service.

because of the pain it inflicted but also because—it was believed—of the value of ridicule as a punishment.⁶³³

From the colonial perspective, the deterrent effect of corporal punishment laid partly in the fact that it could be applied promptly and surely. The power of confirmation of the High Court was often regarded as a legal burden causing delay and detracting from the efficiency of corporal punishment which should be inflicted as soon as possible after conviction. The sentence of a magistrate had to be confirmed by the High Court, while the execution of a sentence awarded by the High Court had to await the result of an appeal to the Supreme Court of Appeal for East Africa. It often meant a delay of two or three weeks, sometimes longer. According to Mr Cowley, the Native Court Officer representing the African Affairs Branch, who worked for 16 years as an Administrative Officer and Magistrate, the delay for confirmation was burdensome.⁶³⁴ He consequently advised awarding fewer strokes and dispensing with confirmation. Mr Allen, Superintendent of Nairobi Prison, also lobbied to speed up the appeal machinery. In his view, because of the delay for confirmation, the African offender often did not make the link between the sentence and the punishment.⁶³⁵ The essence of this punishment was to be 'swift and sure'.⁶³⁶ Similarly as in the case of capital punishment, the deterrent power of the lash was nearly fetishized among settlers and officials in colonial Kenya. Its abolition was regarded as a tragedy, which would leave magistrates with no deterrent power to face rising crime and particularly the most serious and prevalent offences.⁶³⁷ Despite the findings of the Cadogan Committee in United Kingdom, many were

⁶³³ BNA CO 533/516/1, Memorandum on Corporal Punishment written by the Chief Justice, 1939.

⁶³⁴ KNA JZ/6/18, Evidence by K.H. Cowley, Native Court Officer representing the African Affairs Branch, Committee on Corporal Punishment, 1952. In 1952, he had 16 years of experience as an administrative officer and magistrate in Kenya.

⁶³⁵ KNA JZ/6/18, Evidence by V. Allen, Superintendent of Nairobi Prison, Committee on Corporal Punishment, 1952. In 1952, he had worked for 25 years in the Kenya Prison Service.

⁶³⁶ KNA JZ/6/18, Evidence by K.L. Hunter, 30 years in the administrative service in colonial Kenya, Committee on Corporal Punishment, 1952.

⁶³⁷ KNA JZ/6/18, Evidence by Justice Thacker, Puisne Judge, Committee on Corporal Punishment, 1952.

concerned that the abolition would result in an increase in such crimes, particularly indecent assault and robbery with violence.⁶³⁸

Some sections of settler and official public opinion supported even sterner sentences of flogging and a more draconian use of the law against African offenders. Over the 1920s, settlers broadly favoured ‘order by the lash’ and regularly criticised colonial courts for being too lenient in punishing Africans.⁶³⁹ Thirty years later, settlers’ and colonial officials’ opinions had hardly changed.⁶⁴⁰ Few seemed to be in sympathy with the Colonial Office policy of abolishing judicial whipping. Admittedly, flogging was no longer perceived as an acceptable form of punishment for minor offences and some witnesses took comfort in asserting their personal repugnance to this form of barbaric punishment. But, as disclosed before the CCP, a significant and vociferous part of white public opinion, both official and non-official, still advocated sterner sentences and an extended use of the lash. The Deputy Public Prosecutor, for instance, supported the use of the birch rather than the cane.⁶⁴¹ According to him, it would be more painful and less dangerous; the birch was a ‘weapon the young criminal was afraid of’.⁶⁴² For Mr Allen, Superintendent of Nairobi Prison, caning was not severe enough for the ‘hardened criminal’ who repeatedly assaulted prison staff.⁶⁴³ In his view, the birch or cane should also be introduced for this category of convicts. Some colonial officials defended the idea that the number of offences for which corporal punishment could be awarded should be increased. In their opinion, these should include theft and hurtful indecency, as well as many other cases involving wounding or assault. In other words, corporal punishment should be used in all cases in which brutality played a role. Mr Boulderson, Resident Magistrate in Mombasa and Provincial Commissioner in different places, went even further, arguing that corporal punishment be used in cases of minor offences becoming prevalent; these included theft from

⁶³⁸ The Cadogan Committee was appointed by the British government in 1939 to consider the abolition of corporal punishment as a court penalty in the United Kingdom.

⁶³⁹ D. Anderson, ‘Punishment, Race and “The Raw Native”’, p. 480.

⁶⁴⁰ KNA JZ/6/18, Committee on Corporal Punishment, 1952.

⁶⁴¹ KNA JZ/6/18, Evidence by the Deputy Public Prosecutor, Committee on Corporal Punishment, 1952.

⁶⁴² Ibid.

⁶⁴³ KNA JZ/6/18, Evidence by V. Allen, Superintendent of Nairobi Prison, Committee on Corporal Punishment, 1952.

the person, snatching jewellery and pickpocketing.⁶⁴⁴ The majority of white witnesses testifying before the 1952 Commission showed a marked reluctance to criticise such attitudes: they were deemed understandable in view of the peculiar circumstances prevailing in the colony. The same striking opinions denounced by Chamberlain in 1897 and later revealed by the Commission on Native Punishment in 1921, were thus still current in the early 1950s. Both officials and non-officials had legitimised the use of corporal punishment against African offenders to a considerable extent and were clearly unwilling to bow to the pressure of the Colonial Office to abolish whipping or control its use.

Flogging, regulation and the civilising mission

Paradoxically, penal discourse and practice also served to reaffirm the alleged benevolence of the civilising mission and to ease the growing concerns of the Colonial Office over the prevalence of flogging in the British colonies. The colonial discourse was meant to assert white supremacy and the civilising influence of Western penal 'rationality' over the supposedly barbaric punishments of African communities. Some settlers contrasted the softness of colonial punishments to the brutality of pre-colonial native sanctions, whipping with the birch or cat in other colonies or the cruelty of medieval Western ordeals. This argument was aimed at undermining the violence of corporal punishment and promoting 'the educative virtue of the Western reform'.⁶⁴⁵ It was generally considered by settlers and colonial administrators that the degree of severity of corporal punishment in Kenya was far less than in other colonies or countries. In their opinion, in Ethiopia or North Africa, the flogging administered to Africans was comparatively very severe and often fatal.⁶⁴⁶ Settlers also

⁶⁴⁴ KNA JZ/6/18, Evidence by G.H.C. Boulderson, Resident Magistrate of Mombasa, Committee on Corporal Punishment, 1952. In 1952, he had been a District Commissioner and a Provincial Commissioner in various places of Kenya.

⁶⁴⁵ F. Bernault, 'The Shadow of Rule', p. 82.

⁶⁴⁶ KNA JZ/6/18, Evidence by M. Miller, Resident Magistrate in Nairobi, Committee on Corporal Punishment, 1952. He had been a Resident Magistrate in Nairobi since 1949. He had previously worked as a Superintendent of prison in Palestine and as a Commissioner of police and prison under the occupied enemy territory administration in Ethiopia and North Africa.

questioned the severity of judicial flogging in comparison with disciplinary punishments they themselves had received while in the British Army. According to Commander Fenton, the severity of corporal punishment in Kenya could not be compared to what he had experienced himself as a midshipman in the Royal Navy, 'which he likened to 'whipping up a race horse'.⁶⁴⁷ Some considered the difference with other colonies to be so marked as to merit a different nomenclature, and referred to caning in Kenya as 'chastisement' to distinguish it from judicial corporal punishment as commonly understood, for example, in the United Kingdom.⁶⁴⁸ Corporal punishment was also advocated on grounds that it was sparingly used in colonial courts, even for the very limited number of offences for which it could be awarded under law. The award was indeed neither automatic nor general as it was widely left to the discretion of the local magistrate or judge. For the same offence, whereas one magistrate might award corporal punishment, another might not, depending on his personality or the situation prevailing in the district.⁶⁴⁹ Colonial officials often pictured judicial flogging as a difficult and balanced choice between ethical and political considerations. Some witnesses testifying before the 1952 Committee expressed their personal repugnance for such 'barbaric' practices and their rational resignation to the political virtues of physical punishment in a colonial context.⁶⁵⁰ As Florence Bernault has underlined, 'colonial representations, in short, drew a forceful contrast between a determined African compliance with force, cast as cultural or biological, and a rationalised European acquiescence, envisaged as a matter of moral choice or self-inflicted political necessity'.⁶⁵¹

Judicial flogging in Kenya was strictly regulated and bound by law. According to the Colonial Office, although bodily violence could not be quickly abolished in the colonies, it

⁶⁴⁷ KNA JZ/6/18, Evidence by Commander Fenton, Committee on Corporal Punishment, 1952. In 1952, Commander Fenton had worked for 10 years in the Kenya Prison service with three years in Approved Schools.

⁶⁴⁸ KNA JZ/6/18, Evidence by D.G.W. Malone, colonial official in the Kenya Prison service, Committee on Corporal Punishment, 1952. In 1952, he had 13 months of experience in the Kenya Prison service, mostly in Approved Schools. He had previously worked for 19 years in the prison services of the United Kingdom and Germany.

⁶⁴⁹ KNA JZ/6/18, Evidence by Justice Thacker, Puisne Judge, Committee on Corporal Punishment, 1952.

⁶⁵⁰ KNA JZ/6/18, Evidence by D.G.W. Malone, colonial official in the Kenya Prison service, Committee on Corporal Punishment, 1952.

⁶⁵¹ F. Bernault, 'The Shadow of Rule', p. 81.

should at least be carefully measured, regulated and rationalised to conform to Western ‘modern’ penalties: ‘measure, regulation and predictability would function as the imprint of white penal civilisation on local physical hubris. Whipping, for instance, was consciously justified as a modern and standardised form of bodily retribution deemed to replace traditional mutilation, stoning or death’.⁶⁵² The rules governing the infliction of judicial whipping were carefully defined, regulating every aspect of the procedure—from the maximum number of blows for each offence, to how and where they should strike the offender—and ensured judicial and medical supervision.⁶⁵³ The procedure had to be minutely standardised as an embodiment of the supposed rationality and non-brutality of British penal reform. Even the length and diameter of the caning stick were prescribed by law.⁶⁵⁴ The presence of a medical officer was compulsory in all cases, whether the offender was an adult or a juvenile.⁶⁵⁵ He had to certify that the prisoner was physically fit to undergo the sentence. The strokes had to be applied on the buttocks of the offender, and not on his thighs, in order to limit the painful and potentially damaging effect of the thrashing over his body. A damp cloth had also to be put on the buttocks to lessen the impact of the beating and the trousers had to be removed. The man was usually laid along a low bench, and a folded blanket had to be laid upon the back to prevent injury from a ‘mis-hit’. The medical officer had to attend the infliction of the punishment and could order its cessation if he considered the offender unable to undergo further pain. All the aspects of the procedure were carefully defined, calibrated and regulated by law, in order to bring the practice of flogging into the realm of the civilising project and reaffirm the supremacy of British rule.

This ideological dimension was particularly evident in the reaction of the Colonial Office towards technical lapses or errors in the awards of judicial floggings. The fact that the proper procedure was sometimes not followed or that a sentence of corporal punishment had

⁶⁵² Ibid.

⁶⁵³ For all the regulations governing judicial corporal punishment, see: KNA JZ/6/18, Committee on Corporal Punishment, 1952.

⁶⁵⁴ TNA CO 859/16/3, Letter from the Governor of Kenya to the Secretary of State, 1 September 1939. Under law, the prescribed cane was 42 inches in length and half an inch in diameter for adults. In the case of juveniles, it was the same length but three-eighths of an inch in diameter.

⁶⁵⁵ KNA JZ/6/18, Majority Report of the Committee on Corporal Punishment, 1952.

been illegally awarded created concern among the Law Officers of the Colonial Office.⁶⁵⁶ This was part of a wider attempt to monitor and supervise judicial flogging from the metropolitan territory, notably through annual returns. From 1931, under the Governorship of Joseph Byrne, settlers had lost ‘the comfort and shelter from London’s interference that they had been afforded by Grigg during the 1920s’ and felt more acutely ‘the gradual tightening of the grip of the Colonial Office on the Kenya Legal Department’.⁶⁵⁷ The fear of scandals relating to judicial floggings was probably less important than in Northern Nigeria, however. Indeed, in Kenya, the colonial government did not allow Native Courts to use corporal punishment, drawing upon the colonial perception that African judges and panels might indulge in a ‘savage’ or ‘bestial’ enforcement of customary law.⁶⁵⁸ Any irregularity in the application of flogging was thus the direct responsibility of British powers and threatened to undermine colonialism’s benevolent face. The few ultra-vires sentences identified in the corporal punishment returns were the object of immediate inquiries and warnings from the Colonial Office. Minute attention seems to have been devoted to every detail and procedural aspect in London, in order to legitimise bodily violence as a necessary adjunct to the civilising mission. However, on a global scale, the Colonial Office was far less concerned with this problem than with the settlers who brutally assaulted their employees, these being more likely—as we will see later—to develop into scandals.

Judicial whipping and settlers’ domination

Judicial whipping also underpinned the settlers’ economic dominance and political authority. For certain offences, it was less the ingredient of violence in the offence that seemed to be an issue, but rather the demands of white public opinion for security and the social fears attached to specific forms of crime. In the case of burglary, corporal punishment was awarded

⁶⁵⁶ TNA CO 533/434/12, Letter from the Governor’s Deputy to the Secretary of State, 23 February 1933.

⁶⁵⁷ D. Anderson, ‘Punishment, Race and ‘The Raw Native’, p. 495.

⁶⁵⁸ See corporal punishment returns in TNA CO 859/18/8, TNA CO 533/416/17 and TNA CO 533/434/12.

for reasons that had little to do with the threat of violence or injury. Burglary was a common criminal offence, and the settlers pressured the authorities to protect them against this and other offences against their properties.⁶⁵⁹ Their opposition to penal reform also reflected local concerns about the recruiting and disciplining of African workers on farms. Since the early colonial period, judicial and non-judicial corporal punishment had played an overriding role in obtaining and securing African labour.⁶⁶⁰ In the mid-twenties, with the restoration of economic prosperity, settlers became increasingly concerned about the need to increase production and the dangers of the labour shortage. In the 1930s and 1940s, judicial whipping was still linked to a wider economy of extra-legal violence against African workers justified as discipline and a necessary measure to secure the labour force. In the 1930s, the judiciary was troubled by well-publicised cases of settlers indulging in extra-judicial floggings on their farms that resulted in the death of employees. Magistrates and judges were thus more willing to impose stern sentences of corporal punishment in court for labour offences, as a way of tempering the settlers' propensity for the lash. Many magistrates admitted that they had resigned themselves to defending judicial flogging because it constituted a lesser evil than the 'rough justice' administered by employers on farms.⁶⁶¹

The case of sexual offences is probably most revealing as regards the political and racial fears underpinning colonial punishment. In 1952, it was decided that corporal punishment should absolutely be retained for rape, the attempt to commit rape, indecent assault on females, defilement or the attempted defilement of girls under 16 and the defilement of 'idiots' and 'imbeciles', with a view to protecting European women.⁶⁶² This reflected not only the physical violence involved in these offences, nor the prevalence of such crimes (actually very limited) but the perceived threat of this offence and long-standing public anxieties about the 'Black Peril'. In the 1920s, the settler community succeeded in getting

⁶⁵⁹ KNA JZ/6/18, Majority Report of the Committee on Corporal Punishment, 1952.

⁶⁶⁰ D. Anderson, 'Master and Servant in Colonial Kenya, 1895-1939', *Journal of African History*, 41, 3 (2000).

⁶⁶¹ KNA AG/1/118, Native Punishment Commission, 1921. See also: KNA JZ/6/18, Majority Report of the Committee on Corporal Punishment, 1952.

⁶⁶² KNA JZ/6/18, Majority Report of the Committee on Corporal Punishment, 1952.

permission for capital punishment to be awarded in cases of rape, following a series of highly publicised assaults on white women. As David Anderson has pointed out, ‘Black Peril’ scares and the retention of corporal punishment expressed racial fears connected with the proximity between races and the ‘dangers’ of miscegenation.⁶⁶³ White settlers’ anxiety even coloured the draft dispatches of the Colonial Office: ‘Possibly in Kenya where white and coloured races are in proximity on a larger scale than in neighbouring dependencies, it may be held that there are special reasons, on account of special dangers, for the retention of corporal punishment for certain sexual offences. Similar consideration might apply to Northern Rhodesia’.⁶⁶⁴ In Kenya, more than in any other colony, corporal punishment was used in the case of racial offences, such as natives having or attempting to have sexual relations with white women or procuring white women for the purpose. It was primarily for these racial and political reasons that most settlers and colonial officials staunchly refused to do away with judicial flogging in the colony.

THE FAILED ATTEMPTS AT PENAL REFORM

Since the early twentieth century, the Colonial Office, influenced by debates on prison reform in Britain during the 1890s, had striven to monitor the impositions of corporal punishment in the colonies and to limit its excessive use within or outside the judicial sphere. The Chamberlain circulars recommended that its use should be restricted to exceptional cases in court and condemned abuses committed by white ‘men of rough fibre’ on the farms, who indulged in illegal floggings of their African employees.⁶⁶⁵ Despite the Colonial Office recommendations, the use of the lash was widespread in most British colonies during the 1920s. Judicial and non-judicial flogging was the rule—and not the exception—and used to

⁶⁶³ D. Anderson, ‘Sexual Threat and Settler Society: ‘Black Perils’ in Kenya, c. 1907-1930’, *The Journal of Imperial and Commonwealth History*, 38, 1 (2010).

⁶⁶⁴ TNA CO 533/516/1, Draft dispatch, author unknown, 25th January 1940.

⁶⁶⁵ For the question of penal reform before the 1930s, see D. Anderson, ‘Punishment, Race and ‘The Raw Native’.

maintain colonial order and promote settlers' interests in Kenya.⁶⁶⁶ Chamberlain himself was concerned about the increasing use of the lash in British colonies, 'observing that [corporal] punishment is much freely resorted to in the Crown colonies than in the United Kingdom, and that there has been in some instances perhaps a tendency rather to widen than to contract the scope of its application'.⁶⁶⁷

Failing to reduce its incidence, the Colonial Office managed to introduce some regulations to restrict legal practice and limit the severity of corporal punishment in colonial territories in the early century. The Flogging Regulation Ordinance of 1902 limited the maximum number of strokes that could be awarded by colonial courts to 24 (for single and combined offences) and required every sentence in excess of 12 strokes to be confirmed by the High Court.⁶⁶⁸ From 1902, the instrument had to be approved by the Governor and flogging could no longer be used for women. However, in colonial Kenya, the Indian Penal Code [IPC] and the Court Ordinance of 1907, Section 34, provided wide-reaching provisions that permitted a widespread and liberal use of the lash in the colony. By 1930, magistrates could thus award flogging 'for *any* offence, and not just those specified in the Indian Whipping Act'.⁶⁶⁹ The 1907 regulations had prohibited the use of the kiboko 'notorious for causing considerable pain and severe physical damage'.⁶⁷⁰ In practice, as the Chief Justice himself admitted, magistrates regularly abused their power of punishment and indiscriminately awarded severe sentences of flogging for minor offences. Prior to the enactment of the 1902 regulations, 'floggings of 40 lashes or more were not uncommon' and the majority of colonisers strongly supported sentences superior to thirty strokes.⁶⁷¹ The 'cult of the cat' identified by Pete and Devenish in colonial Natal had thus one equivalent in white settlers' faith in the disciplinary power of the lash in colonial Kenya.

⁶⁶⁶ D. Anderson, 'Punishment, Race and 'The Raw Native', p. 481.

⁶⁶⁷ Ibid.

⁶⁶⁸ Ibid.

⁶⁶⁹ Ibid.

⁶⁷⁰ Ibid.

⁶⁷¹ Ibid.

The 1920s were marked by an acrimonious battle between the Colonial Office and the settler community, which crystallised over the question of extra-judicial flogging enacted by white farmers upon their African labour. The jury system and the terms of the IPC in its treatment of homicide had allowed the Kenyan judiciary to award strikingly lenient sentences in several cases of extra-judicial flogging resulting in the death of employees.⁶⁷² The lax attitude of colonial courts towards white employers sparked off considerable discontent at the Colonial Office and led to a series of legal reforms and to the replacement of Kenya's Indian Penal Code in 1930. The Secretary of State wished at that time to 'restrict settler independence and reduce both judicial and extra-judicial corporal punishments' in the colony.⁶⁷³ Joseph Byrne, Governor from 1931 to 1938, played a pivotal role in the implementation of penal reforms and revision of the sentencing powers of magistrates. Contrary to his predecessor, Governor Grigg, who had expressed considerable sympathy for the settler community, Governor Byrne was far more sensitive to the reformist tune of the Colonial Office.⁶⁷⁴ From the 1930s, settlers had consequently lost a crucial supporter in their struggle against the reformist action of the British government and the critical attitude of the Colonial Office towards judicial flogging.

Penal reform and the abolitionist movement

The introduction of a new penal code in 1930 had a significant influence on the practice and extent of corporal punishment. Under this legislation, corporal punishment could be awarded to adults as a sentence of the courts for only twenty-one offences, which can be roughly divided into three categories: sexual offences, crimes involving personal violence, and the remainder (including burglary).⁶⁷⁵ For male juveniles, corporal punishment could be awarded as a sentence of the courts under section 28 (3) of the Penal Code to any juvenile

⁶⁷² Ibid.

⁶⁷³ Ibid, p. 480.

⁶⁷⁴ Ibid, p. 481.

⁶⁷⁵ For all these legal provisions, see: KNA JZ/6/18, Majority Report of the Committee on Corporal Punishment, 1952.

under 16 years on conviction of any offence punishable with imprisonment in addition to or in substitution for any other punishment to which he was liable. In practice, this covered a very wide range of serious and minor offences, such as assaults, petty theft, pickpocketing, etc. Flogging in penal institutions was governed by section 28 of the Prison Ordinance, 1930, and rule 8 of the Approved School rules, 1934. It could be awarded for four types of offences against prison discipline: repeated serious offences against discipline, personal violence to any person, grossly abusive or offensive language, and any act of grave misconduct or insubordination. As regards Approved Schools, corporal punishment could be awarded for a very wide range of minor and serious offences against discipline and could not exceed twelve strokes. The new 1930 Penal Code thus significantly reduced the scope and severity of judicial flogging. Yet, magistrates still had considerable discretion and could decide whether flogging should be awarded for the sub-mentioned offences or another punishment preferred. As a consequence, patterns of punishment and corporal punishment remained highly dependent on the personality of the magistrate and varied significantly across courts, areas and districts.

From the 1930s onwards, the question of penal reform remained an overriding source of struggle between the Colonial Office and the colonial administration in Kenya. Metropolitan anxieties over judicial whipping resulted in the creation of the Penal Advisory Sub-Committee (PASC) in 1937, which was charged with obtaining all available data on the practice of corporal punishment in the colonies, and making recommendations as to whether it should be abolished.⁶⁷⁶ The question of judicial flogging in the colonies was seriously considered for the first time in 1939, following the publication of the Cadogan Departmental Committee report. The Cadogan committee was appointed by the British government to consider the question abolishing corporal punishment as a court penalty in the United Kingdom.⁶⁷⁷ In view of the committee's report and after heated debates, the British government decided to abolish corporal punishment on the metropolitan territory, save for prison offences. This provision was to be included in the forthcoming British Criminal Justice

⁶⁷⁶ TNA CO 859/15/11, Dispatch by J.L. Keith, 14 June 1939.

⁶⁷⁷ TNA CO 859/121/1, 'Review of corporal punishment in the colonies', written by M. Tew, 18 August 1944.

Bill, which was at that time before Parliament. Because of the outbreak of World War II, the bill was postponed and the abolition of flogging became law nine years later, in 1948. However, these debates in the United Kingdom gave naturally rise to the question of whether flogging should be abolished in the colonies and to renewed concerns about penal reform at the Colonial Office. In his Circular Dispatch of the 2nd July 1940, the Secretary of State Lord Lloyd explicitly declared for the first time that the gradual abolition of corporal punishment as a sentence of the courts was a desirable aim of policy in British colonial territories. Meanwhile, judicial flogging had to be restricted to assaults against the person involving brutality and could only be used on men between 18 and 45 years. Yet, he admitted that the time had not come yet for the total abolition; his goal was merely to ensure no colony was outstandingly at variance with 'modern principles of penal administration, either in practice or in law'.⁶⁷⁸ Following his dispatch, many colonial governments decided to reduce the number of offences for which corporal punishment could be awarded.

In 1946, the Colonial Office showed renewed interest in the question of flogging in the colonies due to the personal action of the new Secretary of State, Creech Jones, who felt particularly strongly about this issue.⁶⁷⁹ Creech Jones was determined to work quickly for the complete abolition of corporal punishment in the colonial territories, in view of the new sensitivity to corporal punishment on the metropolitan territory and the current legislative work over the British Criminal Justice Bill. The Secretary of State sensed a growing feeling, both in parliament and in public opinion, that Britain 'was behind the times in its liberal treatment of the colonies' and he therefore demanded reform.⁶⁸⁰ The movement for the abolition of flogging in Britain and in the colonies coincided with the development of a humanitarian public sphere headed by the political actions of the Howard League for Reform, as well as with growing African political opposition and the anti-colonialist struggle. Over the course of the 1940s, questions were frequently raised in Parliament on the practice of flogging

⁶⁷⁸ TNA CO 859/121/1, 'Review of corporal punishment in the colonies', written by M. Tew, 18 August 1944.

⁶⁷⁹ TNA CO 912/9, Colonial Penal Administration Committee, Minutes, 8 May 1946.

⁶⁸⁰ Ibid.

across the empire. Some MPs, notably from the Howard League, were concerned about the increasing use of corporal punishment in certain colonies. Despite the recommendations of the Colonial Office, the number of awards of judicial canings had increased in Kenya and the Gold Coast and had only slightly decreased in Uganda and Nigeria between 1941 and 1945.⁶⁸¹ In the mid-1940s, Creech Jones was strongly determined to obtain a 'change of heart' and to convince colonial governments that their conservative attitude 'lagged a long way behind a majorities of territories, including some that they themselves might regard as backwards'.⁶⁸² He recommended that the power to award corporal punishment as a sentence of the court to be confined to the Supreme Court, as a preliminary step before its abolition.⁶⁸³

On the other hand, the Colonial Office remained deeply aware of the political implications of penal reforms in certain colonies and of the settlers' staunch opposition to any modification of the status quo. In this respect, debates over corporal punishment reflected divisions within the wider circle of metropolitan reformers, notably as regards the pace of reform. The Colonial Penal Administration Committee clearly wished to work towards abolition progressively and did not wish to 'put forward proposals of a controversial nature', considering that the time was 'not ripe for this in the colonial empire'.⁶⁸⁴ In its views, corporal punishment should temporarily be maintained in the colonial context on grounds of its deterrent effect.⁶⁸⁵ Despite its official allegiance to the abolitionist rhetoric, the Colonial Office contented itself with giving general standards for guidance and advocating further restrictions on the extent and severity of whipping. These were discussed in view of forthcoming Criminal Justice bills in the colonies. The use of 'modern' methods of dealing with offenders, such as reformatory and probation treatment, was mildly encouraged.⁶⁸⁶ As a consequence, although the whip had been replaced in all colonies during the 1930s by a 'less

⁶⁸¹ TNA CO 912/11, Parliamentary question on corporal punishment in African colonies, R. W. Sorensen, 21 January 1946.

⁶⁸² TNA CO 912/13, Colonial Penal Administration Committee, Minutes, 3 January 1951.

⁶⁸³ TNA CO 912/9, Circular by the Secretary of State to all British colonial governments, 15 October 1946.

⁶⁸⁴ TNA CO 912/12, 'Memorandum on corporal punishment in the colonies', written by the Colonial Penal Administration Committee, 1949.

⁶⁸⁵ Ibid.

⁶⁸⁶ Ibid.

severe instrument', the cane, corporal chastisement continued to be awarded as a sentence of the court or in prisons to a significant extent.⁶⁸⁷ At the very most, the Colonial Office succeeded in persuading colonial governments to reduce the number of offences for which corporal punishment could be awarded. In Kenya, the colonial government considered the question of corporal chastisement in 1939 in conjunction with the Criminal Procedure amendment.⁶⁸⁸ Judicial flogging was discontinued for two offences (casting away of a vessel and attempting to cast away a vessel), although the question of abolition was still not on the agenda.

After the mid-1940s, the proposed reforms of the Colonial Office were hampered by the conditions of the Second World War. The advisory committee decided to downplay its criticism in view of wartime conditions and staff shortage.⁶⁸⁹ All members agreed that the number of offences for which corporal punishment could be awarded in the colonies was high but considered that this power was in most cases used sparingly. More generally, the Colonial Office was satisfied by the fact that 12 out of 32 colonies had recently adopted reforming legislation as regards juvenile offenders, probation and corporal punishment. The increase in corporal punishment figures in certain colonies was put into perspective in contrast with the stringent requirements and consequences of the war.⁶⁹⁰ Emergency legislation and work had reduced the time available for normal legislative work and war conditions were perceived to have led to an increase in lawlessness, particularly amongst vagrant children. The increase in juvenile migration and the scarcity of food had consequently 'made praedial larceny a more serious offence' and justified an extended use of corporal punishment for juveniles during the war in most colonial territories.⁶⁹¹ As a consequence, the attention of the CPAC focused on the situation prevailing in seven colonial territories outside Africa, where figures of flogging

⁶⁸⁷ D. Anderson, 'Punishment, Race and 'The Raw Native', p. 482.

⁶⁸⁸ TNA CO 533/516/1, Penal Code Legislation Amendment, 1939.

⁶⁸⁹ TNA CO 859/121/1, 'Review of corporal punishment in the colonies', written by M. Tew, 18 August 1944.

⁶⁹⁰ TNA CO 859/121/1, Letter from M. Marlow to M. Blaxter, 25 September 1944.

⁶⁹¹ Ibid.

against juveniles appeared to be alarmingly on the rise.⁶⁹² Due to war conditions, corporal punishment was mainly used on children for property offences, including petty theft, and for offences under municipal laws relating to the social economy of the territories. By and large, the committee's concern about these figures echoed a broader official interest in rising juvenile delinquency in the British empire.⁶⁹³ Juvenile crime and committals had considerably increased between 1938 and 1942 and recidivism of juveniles ranged from 35% to 55% in most colonial territories. The committee was deeply aware that war conditions were only partly responsible for this situation and feared these problems would endure after the war. In this respect, Kenya showed comparatively low rates of flogging; it was therefore less affected by the discussions over child delinquency among the officials of the Colonial Office.

The movement for penal reform in the colonies gathered weight with the passing of the Criminal Justice Bill abolishing corporal punishment as a sentence of the courts in the United Kingdom in 1948.⁶⁹⁴ From that time, corporal chastisement could only be awarded for breaches against prison discipline and was limited to three very serious offences: mutiny, incitement to mutiny and gross personal violence against a prison officer. Following A. Creech Jones' s dispatch in 1946 and the 1948 Criminal Justice Bill, criticism of the use of whipping in the colonies gained influence, both in the British parliament and in international opinion. In parliamentary debates, Mr Sorensen was particularly vocal in denouncing this form of punishment 'of a medieval character' and regularly pressured the Colonial Office to speed up the process for abolition in the colonies.⁶⁹⁵ The Secretary of State kept a low-profile attitude during the war years and justified the increase in the caning of African prisoners in certain colonies, as being down to the increase in the prison population and the shortage of regular prison staff, as so many had gone on to war service.⁶⁹⁶ Yet, it was clear that times were

⁶⁹² TNA CO 859/37/8, Colonial Penal Administration Committee, Minutes, 15 April 1940. The seven colonies are: Bahamas, British Honduras, Jamaica, Cyprus, Seychelles, British Guiana, Zanzibar and Trinidad.

⁶⁹³ TNA CO 859/121/1, Letter from M. Marlow to M. Blaxter, 25 September 1944.

⁶⁹⁴ KNA AH/14/3, Circular by the Secretary of State to all colonies, 1 August 1950.

⁶⁹⁵ TNA CO 912/11, Parliamentary question on corporal punishment in African colonies, R. W. Sorensen, 21 January 1946.

⁶⁹⁶ TNA CO 912/9, Answer of the Secretary of State for the colonies to the parliamentary question of R. W. Sorensen, 21 January 1946.

changing. The evolution of the international situation and opinion put further pressure on the British government to abolish flogging in its colonial territories. On the international level, most governments had abolished the use of flogging in previous years, both in their metropolitan territories and in their dependencies. In the late 1940s, corporal punishment had been illegal for some time in the French overseas territories and in most European countries.⁶⁹⁷ In the United States, it was forbidden both in the Federal courts and in correctional institutions. It was also very rarely used in Australia, New Zealand or Latin America. By the mid-1940s, the British Commonwealth was one of few remaining political groupings that 'made extensive use of this form of punishment discarded by the rest of the civilised world'.⁶⁹⁸ The Howard League for Reform was vocal in condemning the British government for its outstanding brutality in dealing with colonial subjects:

'The civilised world outside the British Empire has practically abolished flogging as a punishment for crimes or for offences against prison discipline. Within the British Isles, it has largely fallen into disuse in Ireland and Scotland, where it is not employed at all in the local prisons, and only rarely in convict prison. England, however, maintains its ancient faith in the power of the lash to induce morality, and strong in the faith, she is responsible for the whipping each year of over six thousand persons, adults and juveniles, in India, and nearly five thousand in Crown colonies, Protectorates and Mandated Territories'.⁶⁹⁹

In 1950, the General Assembly of the United Nations sanctioned the changed international standard and passed a resolution recommending the immediate abolition of corporal punishment in all colonial territories.⁷⁰⁰

During the 1940s, the CPAC showed the utmost concern over the situation prevailing in Kenya, which stood out among all colonies for its excessive use of judicial flogging for adult offenders and enduring resistance to penal reform. During its 12th meeting in April 1940, the CPAC expressed serious concerns over three 'bad governments' that showed particularly high figures for corporal punishment in court: 'the chief offenders are Hong Kong,

⁶⁹⁷ KNA AH/14/3, Circular by the Secretary of State to all colonies, 1 August 1950.

⁶⁹⁸ Ibid.

⁶⁹⁹ TNA CO 859/239/6, 'Flogging, the Law and Practice in England', Pamphlet written by the Howard League for Reform, 1937.

⁷⁰⁰ TNA CO 859/239/8, United Nations General Assembly, Minutes, 9 November 1950.

Somaliland and Kenya, so far as adults are concerned'.⁷⁰¹ However, Hong Kong and Somaliland were partly excused, the first one in view of the abnormal conditions created by World War II, the second because the colony had already shown 'signs of grace', the governor allegedly doing his best to initiate reforms in line with Paterson's recommendations after his visit to the colony. Kenya, however, was severely criticised as the problem child among all the British colonies, with a marked preference for the lash in dealing with African subjects: 'The only real offender is Kenya, where there is a suspicion that corporal punishments are awarded to satisfy a general opinion that it is the best way to deal with African offenders'.⁷⁰² After the war, Kenya still showed the highest incidence of corporal punishment of all the African colonies.⁷⁰³ In 1948, corporal punishment could still be awarded in Kenya for offences such as housebreaking and burglary, contrary to the practice in other colonial territories.⁷⁰⁴ Besides, Kenya was among the seven British colonies which refused to restrict the power to inflict corporal punishment to the Supreme Court, on grounds that it would lead to long delays in the criminal justice machinery. Finally, Kenya was among the six British colonies that did not restrict corporal punishment to the three prison offences specified in the United Kingdom or even to a fourth, violence towards a fellow prisoner being sometimes added. Despite the rising concerns of the Colonial Office and some Kenyan liberals, the Secretary of State eventually got round the issue and downplayed criticisms in the late 1940s.⁷⁰⁵ He rather underlined that that figures of corporal punishment as a sentence of the courts in Kenya had shown a slight decrease during 1948, which might bode well for the future of penal reform in the colony. Despite significant shifts in national and international opinion regarding physical pain after the Second World War and reforming trends in most dependencies, the Colonial Office proved unable to influence the practice and incidence of judicial flogging in the settler colony of Kenya and essentially bowed to punitive views prevailing within local settler society. Over the

⁷⁰¹ TNA CO 859/37/8, Colonial Penal Administration Committee, Minutes, 15 April 1940.

⁷⁰² Ibid.

⁷⁰³ TNA CO 912/12, 'Memorandum on Colonial Penal Administration, written by the Colonial Penal Administration Committee, 1947.

⁷⁰⁴ TNA CO 912/12, 'Memorandum on corporal punishment in the colonies', written by the Colonial Penal Administration Committee, 1949.

⁷⁰⁵ TNA CO 912/13, Colonial Penal Administration Committee, Minutes, 3 January 1951.

period, judicial caning in Kenya showed an upward trend: the annual number of sentences of corporal punishment awarded in the High Court and in the subordinate courts shot up from 297 in 1933 to 739 in 1951.⁷⁰⁶ Similarly, the proportion of charges where corporal punishment was awarded in the High Court and in the subordinate courts steadily rose from 0,7% in 1933 to 1,32% in 1950.

New liberal discourses and the civilizing mission

More significantly perhaps, the reformist discourse of the Colonial Office, which was clearly in line with metropolitan policy, merged with local attitudes and served to a certain extent to recast the phraseology of the civilising mission, in keeping with new liberal concerns. The Colonial Office was not greatly concerned over the question of flogging for prison offences: figures were generally low with the exception of Northern Rhodesia, which witnessed an alarming increase in the 1940s and was immediately called to order by the Colonial Penal Administration Committee.⁷⁰⁷ The Secretary of State only wished to restrict the imposition of flogging to the same three offences as in the United Kingdom and resented its use in cases of violence against a fellow detainee, such a practice being subject to ‘grave abuse’.⁷⁰⁸ As far as flogging of juveniles was concerned, the position of the Colonial Office was less clear-cut. National and international pressures were much less important in this respect, corporal chastisement of juveniles being widely used as a means of parental control.⁷⁰⁹ Besides, flogging was still widely considered a lesser evil than ‘contamination’ by adult offenders in colonial prisons.⁷¹⁰ Over the whole period, successive Secretaries of State admitted that flogging for juveniles could not be abolished because there was no alternative to

⁷⁰⁶ TNA CO 544, Annual Judicial Reports, 1930-52.

⁷⁰⁷ TNA CO 859/121/1, Letter from M. Marlow to M. Blaxter, 25 September 1944.

⁷⁰⁸ TNA CO 912/12, 'Memorandum on corporal punishment in the colonies', written by the Colonial Penal Administration Committee, 1949.

⁷⁰⁹ P. Ocobock, 'Spare the Rod, Spoil the Colony: Corporal Punishment, Colonial Violence and Generational Authority in Kenya, 1897-1952', *The International Journal of African Historical Studies*, 45/1 (2012), p. 32.

⁷¹⁰ TNA CO 912/12, 'Memorandum on corporal punishment in the colonies', written by the Colonial Penal Administration Committee, 1949.

imprisonment. In the view of the Colonial Penal Administration Committee, juvenile courts, Approved Schools and probation were the best solutions for juvenile delinquents and should be developed, although members acknowledged it would be a very long time before sufficient funds were made available.

In conjunction with the rhetoric for reform, a new human rights-based discourse emerged, crystallising over the question of judicial whipping for male adults. This line of argument was both influenced by the metropolitan reformist strand of thought, which had developed over the 1930s and 1940s to advocate the abolition of corporal punishment in the United Kingdom, and imbued with colonial considerations to do with race, punishment and state control.⁷¹¹ The first line of argument of the abolitionists was to emphasise the psychological ill-effects of corporal punishment and to introduce new ideas of rights, protection and personhood in keeping with metropolitan liberal thought. The Colonial Office and Kenyan reformers, who were mainly recruited from the medical and probation sections, presented flogging as contrary both to psychological integrity and individual self-esteem.⁷¹² This point of view coincided with new humanitarian discourses focusing on the complex interiority and psychic frailty of every individual. Corporal punishment was regarded as both detrimental to the offender being punished and to the person who had to inflict it. It could push an offender towards revenge or harden him, undermining rehabilitative efforts and increasing the chance of recidivism. In his testimony before the 1952 Committee, Mr Owen, who had worked for 12 years in the Home Probation Service and who had been the Senior Probation Officer in Kenya since 1946, gave the example of a young person who received a birching and subsequently went on to a 'bad criminal career'.⁷¹³ More generally, reformers in Britain and in

⁷¹¹ TNA CO 859/239/6, 'Flogging, the Law and Practice in England', Pamphlet written by the Howard League for Reform, 1937.

⁷¹² See notably: KNA JZ/6/18, Minority Report of the Committee on Corporal Punishment, 1952; KNA JZ/6/18, Evidence by C.S. Owen, Senior Probation Officer in Kenya since 1946, Committee on Corporal Punishment, 1952; KNA JZ/6/18, Evidence by E.J. Foley, Specialised Psychiatrist in the Kenya medical department since 1949, Committee on Corporal Punishment, 1952.

⁷¹³ KNA JZ/6/18, Evidence by C.S. Owen, Senior Probation Officer in Kenya since 1946, Committee on Corporal Punishment, 1952.

Kenya drew upon the testimony of British prison officials connected with the abolitionist movement in the United Kingdom to illustrate the brutalising effect of flogging on convicts:

‘I never in all my long experience knew a single case in which the ‘cat’ did not brutalise a man. I never knew one of its victims who was not a worse man in every sense afterwards than he was before (...). It increases their contempt for morals, hardens them unspeakably, and turns them out of prison at the end of their sentences greater human ghouls than when they entered (...). The cat practically in every case confirms criminality in the victim for ever. (...) To give the cat is pure vengeance and nothing else. All that reform is hopeless—they become as hard as nails’.⁷¹⁴

Penal debates also became a focal point, through which the new liberal claims about human dignity and frailty were engineered, discussed and popularised. According to the colonial reformers, flogging could inculcate a spirit of cruelty and cause sexual ‘perversion’, particularly in the case of juveniles.⁷¹⁵ According to Mr Owen, corporal punishment had a degrading effect on the person who had to inflict it and could strengthen ‘sadistic tendencies’.⁷¹⁶ The Howard League used the same argument in the 1940s: ‘In view of the very definite psychological relationship between eroticism and flagellation, the insistence upon flogging for sexual crimes is not unworthy of comments’.⁷¹⁷ The underlying idea was that the cane did more harm than good and should be condemned on humanitarian and psychological grounds. When not pointing to the supposed relationship between flogging and sexuality, reformers opposed corporal punishment for its destructive power over psychic integrity. Mr Owen vehemently opposed the views of witnesses testifying before the 1952 Committee on corporal punishment, according to whom 99% of boys punished with the cane suffered no ill effects.⁷¹⁸ He instanced his own experience, as he himself had suffered corporal punishment at school and become nervous and frightened. However, these views were not devoid of racism.

Dr J. Foley for instance, a specialised psychiatrist from the medical department since 1949,

⁷¹⁴ TNA CO 859/239/6, ‘Flogging, the Law and Practice in England’, Pamphlet written by the Howard League for Reform, 1937.

⁷¹⁵ KNA JZ/6/18, Evidence by C.S. Owen, Senior Probation Officer in Kenya since 1946, Committee on Corporal Punishment, 1952.

⁷¹⁶ Ibid.

⁷¹⁷ TNA CO 859/239/6, ‘Flogging, the Law and Practice in England’, Pamphlet written by the Howard League for Reform, 1937.

⁷¹⁸ KNA JZ/6/18, Evidence by C.S. Owen, Senior Probation Officer in Kenya since 1946, Committee on Corporal Punishment, 1952.

opposed all forms of corporal punishment, on grounds of its psychological dangers and the risk of developing sadomasochist tendencies in the individual.⁷¹⁹ Yet he considered sadomasochist tendencies more likely to develop in Europeans than in Africans, confirming the racial prejudice that the two groups had different psychological and physical sensitivities to pain.

This point of view reflected and contributed to the development of new conceptions of human dignity, equality and cultural difference, challenging the core of colonial racist representations. To most settlers, concepts of dignity and self-esteem were the intellectual property of British civilisation and were completely absent from African custom or mentality. Dr J. Foley was the only white witness before the 1952 Committee to challenge colonial cultural prejudices, underlying that dignity and manhood were also central to African communities' cultures and that it was well known in African groups that one adult could not flog another. This idea was reasserted in the minority report of the 1952 Committee: the law on corporal punishment 'operated in direct contradiction of this African attitude. (...) This means that an adult (felt) very degraded if another man (told) him 'I am going to thrash you''.⁷²⁰ The great majority of settlers testifying before the 1952 Committee still clung to the enduring belief that Africans preferred flogging and that bodily violence reflected pre-colonial practice and resulted in no feeling of humiliation and resentment. Reformers drew on a new body of liberal social thought developing in the United Kingdom and also on the evolution of religious thinking on the infliction of physical pain and inhuman treatment. Mr Inamdar, who was advocate at the Supreme Court and president of the Hindu Union for 25 years, explained to the Committee that ideas about corporal punishment had significantly evolved over the last decades worldwide and that even religions, like Hinduism, of which he was a member, had taken a more moderate stance on this practice.⁷²¹

⁷¹⁹ KNA JZ/6/18, Evidence by E.J. Foley, Specialised Psychiatrist in the Kenya medical department since 1949, Committee on Corporal Punishment, 1952.

⁷²⁰ KNA JZ/6/18, Minority Report of the Committee on Corporal Punishment, 1952.

⁷²¹ KNA JZ/6/18, Evidence by T.J. Inamdar, Advocate at the Supreme Court, Committee on Corporal Punishment, 1952. In 1952, T.J. Inamdar had also been President of the Hindu Union for 25 years.

The humanitarian concerns expressed by the Colonial Office and a minority of colonial officials in Kenya not only promoted universalistic liberal claims about bodily and psychic integrity but suggested a larger political agenda aimed at securing the legitimacy of British rule in the colonies. The human rights arguments laid down new ideological foundations to justify the colonial enterprise and the ‘enlightened rationality’ of British rule in the colonies. This new penal discourse was in consonance with and contributed to a wider liberal paradigm on individual rights, state responsibility and justice. One of the core arguments of the Colonial Office was that the popular philosophy of ‘eye for eye’, upon which judicial whipping was based, was contradictory to the basic principles of justice in a civilised society and threatened to challenge the benevolent face of colonialism. The aim of a ‘wise penal code’ was not ‘vengeance, retribution or punishment for its own sake, but the maintenance of law and order’.⁷²² Reflecting these views, the Secretary of State tried to present settlers’ and colonial officials’ demand for retributive sentence as a retrograde attitude unworthy of their own culture, education and history. British reformers presented flogging as a result of ignorance, ‘ignorance of the long history of failure of the lash’ and ‘ignorance of the psychological roots of the impulse which derives satisfaction from the infliction of corporal punishment’.⁷²³ One of the brochures of the Howard League began with this quote from Jeremy Bentham: ‘The legislator who orders whipping knows not what he does; the judge is nearly as ignorant’.⁷²⁴ In his memorandum of 1951, the Secretary of State recycled the same rhetorical strategy and legitimised these new liberal claims, tracing them back to the historical origins of British modern justice and penal philosophy. He notably quoted Lord Oxford who had said in 1900 during a debate in the House of Commons: ‘I can imagine nothing more repugnant to the most elementary principles of justice and common sense than to say that, because a man has

⁷²² Ibid.

⁷²³ Ibid.

⁷²⁴ Ibid.

committed a savage offence, those whose duty is to enforce respect of the law should begin that man's punishment with correspondingly savage treatment'.⁷²⁵

CORPOREAL VIOLENCE AND 'ROUGH JUSTICE' WITHIN COLONIAL SOCIETY

Beyond the purview of the state, the use of corporeal chastisement upon Africans was deeply legitimised and normalised within the wider circles of official and settlers' cultures. The African body became a central site for the enactment, reassertion and maintenance of colonial power and white supremacy within colonial society at large. In colonial Kenya, body and power were intimately linked, both by ideological and epistemic connexions in racial thought and by coercive bodily practices used by colonial officials and settlers on a regular basis. Extra-legal violence was enacted in many contexts, whether on white farms, in police cells, in official quarters or in public spaces, in other words, potentially in every corner of society where colonial authority could be seen and felt. This could take on a great variety of forms, such as beatings, slapping, kicking, boxing, caning, flogging, and in some cases, killing and murdering. In the colony, non-institutional bodily violence was widely accepted as a legitimate means of punishment and discipline for African subjects. It was justified by colonial officials on the grounds of 'deterrence' and political necessity, making up for the shortcomings of state control and repression, and by white settlers as a 'necessary evil' to secure African labour and popularise capitalist notions of working discipline. The colonial construction of the African body as a political entity was also imbued with current racial strands of thought and ideas about African mentality and nature. By and large, physical violence towards Africans constituted a routine display of colonial power and white supremacy, aiming at applying the mark of British and white 'superiority' upon African bodies. Although illegal, these forms of corporeal violence were actually embedded into colonial apparatuses of power, both ideologically and in practice. Officials and settlers

⁷²⁵ KNA AH/14/3, Circular by the Secretary of State to all colonies, 1 August 1950.

indulging in illegal punishments and violence benefited from state connivance at various levels of hierarchy and from the clemency of a judiciary structured along racial lines. Despite pressure from the Colonial Office and its adherence to the reformatory rhetoric, the colonial state was reluctant to offend settlers and discreetly permitted high levels of illegal physical coercion and brutality, granting a large degree of impunity to white perpetrators. On a global scale, the tacit acceptance and normalisation of extra-legal punishments extended the state's monopoly on legitimate violence to the wider circles of white society, and partly outsourced the exercise of colonial governance.

For lack of archives on the subject, it is very difficult to know whether African authorities resorted to physical punishments to assert their own authority within their communities. As far as adults were concerned, it was probably very sparingly used. It seems that most Africans highly resented the infliction of official bodily violence upon adults and considered flogging a very extreme form of punishment, involving public shaming.⁷²⁶ During the 1940s, local African and Indian communities vehemently voiced their outrage against administrators' and policemen's persecution and brutality, increasingly perceiving extra-legal bodily punishments against colonised subjects as a mere expression of colonial iniquity. At the opposite end of the spectrum, the flogging of children and boys was commonly accepted within most African communities. In colonial Kenya, it served to secure alliances between European and African authorities and helped to reinforce patriarchal control over the younger generation. Outside the realm of colonial courts, African elders and parents commonly resorted to the use of the cane, as a marker and instrument of the generational order: 'corporal punishment was not simply an instrument of the British colonial state; it was also the weapon of African parents and elders, used to define age and generational station'.⁷²⁷ The caning of juveniles was widely normalised both in the metropolitan and colonial territories as an acceptable way to discipline children at school or at home and secure generational control over

⁷²⁶ KNA JZ/6/18, Minority Report of the Committee on Corporal Punishment, 1952. See also Africans' testimonies before the CCP.

⁷²⁷ Ocobock, P., 'Spare the Rod, Spoil the Colony: Corporal Punishment, Colonial Violence and Generational Authority in Kenya, 1897–1952', *The International Journal of African Historical Studies*, 45/1 (2012), p. 32.

the young. During the colonial period, an increasing number of European and African actors felt entitled to chastise and cane children at school, in the domestic household and in the workplace: ‘although colonial rule sometimes empowered elders, it also redistributed the right to punish the young among a host of other actors. Likewise, while it freed some young people from elder surveillance, it brought them under the watchful eyes of a wider community of disciplinarians. The right to beat a boy, once the exclusive right of African parents and elder kin, was extended to include missionaries, schoolteachers, employers, chiefs and the colonial state’.⁷²⁸

Illegal physical punishment and the settler society

Over the colonial period, white farmers could resort to illegal flogging on their estates in order to punish and discipline African labourers. Imbued with feelings of racial and moral superiority, white farmers perceived themselves as ‘Lords of their Manor’ on their estates and ‘felt entitled to freely chastise their African labour’.⁷²⁹ They indulged in paternalistic and racist attitudes, sometimes in the most cruel and brutal forms of physical subjugation. In rural areas, settlers were obsessed with enforcing the attendance and efficiency of their African servants and denounced colonial justice for failing to impose deterrent sentences in cases of labour offences, notably when African workers were found drunk or deserted. They feared that lengthy judicial trials would consume too much of their time and hamper agricultural activities, withdrawing precious African workers from the farm. Instead, they preferred to enforce their own brand of justice. Many of the arguments put forward before the 1952 Committee on Corporal Punishment to legitimise judicial flogging were also used by white farmers asserting their right to freely discipline and punish African labourers on their properties. In their view, whipping was deterrent, cheap, efficient, not unduly painful and in

⁷²⁸ Ibid, p. 33. In this article, P. Ocoock has thoroughly analysed the question of corporal punishment for children and young persons in colonial Kenya. This chapter will consequently focus on extra-legal forms of bodily punishment against African adults in the colony.

⁷²⁹ D. Anderson, ‘Punishment, Race and ‘The Raw Native’, p. 480.

consonance with Africans' customary punishments, bodily sensitivity and 'stage of development'.⁷³⁰ The African supposedly resented both carceral punishment and fines and could only understand the lesson of the lash, which was believed to resemble pre-colonial forms of bodily retribution:

'In actual practice, some employers give delinquents the option of being dealt with by such correction, in preference to fines (which, when imposed by employers are just as illegal and much more unpopular) or imprisonment, which is an alien innovation of ours foreign to all East African cultures. In many tribes, old mutilation was a regular form of punishment, and a few strokes—exceedingly rarely causing more than temporary pain—are a mild variant of what the native understands'.⁷³¹

Over the period, there was a definite practice of white settlers seeking the collaboration of the local police or administrative officer and asking him to punish and beat an African worker, without any trial or charge. These forms of illegal and non-institutional whipping were carried out by colonial agents of the state at the request of settlers for the most trivial labour offences. They escaped legal safeguards and any form of external control. According to the District Commissioner of Rumuruti, these were a very common occurrence in the colony during the 1920s: 'Some years ago, it was quite a common practice to my own personal knowledge for people to send a houseboy who had annoyed them with a chit to the Police or District Officer telling him to give the boy a beating, and without hearing the boy's story, he was beaten either by the Police or the District Officer'.⁷³² In some cases, whippings were inflicted on African workers without any offence having been committed, on the mere whim or fancy of their employers. These practices continued over the 1930s and 1940s, although to a much lesser extent. In 1935, the Provincial Commissioner of Nyanza identified a small group of white farmers in his area, who regularly called on local Police Officers to punish, restrain or whip illegally their African servants and to 'act beyond their powers'.⁷³³ He consequently pressured local police authorities to end these illegal punishments and to inform police officers

⁷³⁰ Ibid.

⁷³¹ TNA 533/450/8, 'Flogging in Kenya', written by F. H. Melland, *New Stateman*, 27 October 1934.

⁷³² KNA AP/1/1465, Confirmation Case N 333 of 1930, written by the First Class Magistrate, Rumuruti, 1930.

⁷³³ KNA PC/NZA/3/15/147, Letter of the Provincial Commissioner, Nyanza, to the Assistant Superintendent of police, Kisumu, 29 November 1935.

that such actions made them liable to charges under the Penal Code: 'Except under legal warrant, no employee should be sent to a Police Officer either for extra-judicial punishment or illegal restraint'.⁷³⁴

Though much reduced in extent, white farmers' violence against African workers and the lenient attitude of the judiciary in punishing white criminals remained permanent features after the repealing of the Indian Penal Codes in 1930. The new Penal Code and Criminal Procedure Code introduced in 1930 restricted magistrates' practice and limited the most blatant abuses. In the mid-1930s, a few cases of African employees murdered at the hands of their white employers were brought to court; these drew the attention of the legal advisers at the Colonial Office to the many defects of racial criminal justice in the colony. The much-publicised Selwyn case of 1934 is probably the most emblematic example, featuring both the striking connivance of the judiciary towards white offenders and the high levels of brutality some African workers could be subjected to on settlers' farms.⁷³⁵ Mr and Mrs Selwyn were established on a farm in the Friston Estate near Kitale. In 1934, they discovered that 'the byre of their farm had been broken into' and that 'two bells had been cut off from the necks of their cows'.⁷³⁶ After some research in the area, they traced the bells to a neighbouring farm, where one African herd boy and five other African servants were working. On the 8th of June, they decided to shut the six alleged thieves in the store of their own farm and subjected each of them to a brutal and severe flogging. The two white farmers ordered five of their African servants working on their properties to administer the punishment and Mrs Selwyn decided to witness the complete flogging. One of the six Africans, Keyen Luyamoi, died as a result of the injuries inflicted. In his particular case, the four African workers held him down by force and a fifth one administered the flogging on Mrs Selwyn's order. The white farmer commanded to administer the flogging with 'an ox hide yoke strop, described by Dr Cowen, District Surgeon

⁷³⁴ Ibid.

⁷³⁵ On the Selwyn case, see BNA CO 533/450/8 and BNA CO 533/457/9.

⁷³⁶ TNA CO 533/450/8, Letter from the Attorney General to the Chief Secretary, 30 August 1934.

at Kitale, in the preliminary inquiry as a brutal and inhuman weapon'.⁷³⁷ On Mrs Selwyn's orders, the thighs of the African victims were lashed, and not the buttocks, as in the case of judicial whipping, with a view to increasing the painful effect of the beating, 'owing to the fact that the thighs have a number of nerves and blood vessels'.⁷³⁸ Following the killing of Keyen Luyamoi, the two white settlers were arrested and brought to trial on a charge of murder.

The judicial treatment of the affair strikingly disclosed the preferential treatment awarded to white offenders during the whole trial process, as well as the racial dynamics underpinning colonial criminal justice in the colony. In cases of murder involving one European, the court pattern was different; the final sentence was determined both by the magistrate and a white jury, made up of settlers living in the local area. In these cases, the white accused benefited from a partial and racialized judicial system and, more specifically, from the indulgence of an all-white jury, well-known for sharing a common racist and discriminatory understanding of black offenders and witnesses. White offenders benefited from a great deal of sympathy from the jury, whereas black complainants and witnesses were often openly dismissed as unworthy of trust or as 'truculent natives' who had deserved in some way the brutal beating they had been subjected to. As pointed out by the Attorney General, W. Harragin, there are 'great difficulties in administering justice in a country where the jury accept the statement of one European against twenty natives'.⁷³⁹ In cases of assaults or murders perpetrated by white settlers against Africans, European juries were infamous for indulging in racial solidarity and justice, assuming the innocence of white offenders despite incriminating evidence laid against them. In this respect, the Patrickson case in 1936 is very revealing.⁷⁴⁰ The settler had struck an African on his jaw with his fist and the person had died from his injuries, as the blow had dislocated his jaw. During the trial, the European jury was willing to acquit Patrickson and expected him to make a plea of self-defence. Yet the jurymen were very disturbed when the white accused insisted on pleading guilty and confirmed the

⁷³⁷ Ibid.

⁷³⁸ Ibid.

⁷³⁹ TNA CO 533/467/2, Letter from the Attorney General, W. Harragin, to H.G. Bushe, 9 July 1936.

⁷⁴⁰ TNA CO 533/467/2, Letter from the Attorney General, W. Harragin, to H.G. Bushe, 18 October 1936.

nature of the facts as stated in the accusation. Legal advisers of the Colonial Office understood the racial prejudices of Kenyan juries and the blatant miscarriages of justice they often lead to:

‘Oath or no oath I do not think that the jury (in the Patrickson case) thought of anything but that: this is a decent young European, he has struck a truculent native a blow which in our opinion he rightly deserved. By ill luck etc., the native happens to have died, the accused has pleaded guilty to an assault and the Crown should be thankful for that. I would go further and say that in my opinion had the inherent decency of the accused not forced him against legal advice to plead guilty to the assault, the jury would have found him not guilty of that also. I of course consider that it was a travesty of justice’.⁷⁴¹

The white jury was generally successful in passing the most lenient sentences towards white offenders and significantly influenced patterns of prosecution and punishment in black-and-white criminal cases. Judges and magistrates were reluctant to offend the settler element and easily bowed to the pressures of the European jury. As underlined by the Attorney General, W. Harragin, the verdict of judge Lane who presided over the Watcham and Patrickson cases was markedly swayed by the position of his jury: ‘he was led away by what he knew (with his intimate knowledge of the Kenya juryman) was in the minds of these minds rather than addressing his mind to the strict legal position’.⁷⁴² Lay magistrates, settlers sitting in the jury, or even white accused or witnesses, shared a high degree of racial and class solidarity: they often knew each other, lived in the same white and wealthy area or neighbourhood and shared a strong interest in defending their position within the racial and social hierarchy of the colony. The attitude of Mr Selwyn after being arrested reveals the remarkable culture of impunity and white connivance prevailing within colonial society in Kenya. Within settler communities, there was a clear understanding that white offenders, if convicted, would be defended by their peers in the jury and escape punishment. Racial, social and local solidarities fuelled a sense of white superiority and privilege, placing them beyond law and justice. After being arrested, Mr Selwyn was notably escorted to the police station and had a discussion in the motor car with the Head of the Criminal Investigation Department of

⁷⁴¹ Ibid.

⁷⁴² Ibid.

the police.⁷⁴³ On this occasion, he confessed to the police officer ‘that he was not a bit worried about the case and that it did not concern him at all. When Superintendent Stewart asked Selwyn what he meant, Selwyn said that every single European in the area was his personal friend, and that he had no fear of the outcome of the case’.⁷⁴⁴ Before the beginning of the trial and despite incriminating evidence against him, Mr Selwyn was thus deeply confident that the white jury in Kitale would be willing and able to acquit him.

Blurry legal provisions gave wide discretion to the jury to transform a charge of murder into one of manslaughter or assault and to impose lower sentences on white criminals. Under law, the charge of manslaughter was imposed when the accused did not *intend* to kill or to cause serious injury, the charge of ‘assault causing actual bodily harm’ when the beating was not the *direct* cause of the death.⁷⁴⁵ As a general pattern, the same logic prevailed and criminal cases revolved around one technical point, according to which the nature of the charge laid down against the white accused would be determined or reduced. In most cases, the European jury drew upon official medical reports, comprising doubtful or partial material evidence. In the Selwyn case for instance, the European Medical Surgeon had established that the deceased had developed an infection while in hospital due to an ‘abrasion of the skin following the beating’.⁷⁴⁶ As a consequence, the jury skilfully used these medical findings to withdraw the charge of murder and lay down a charge of manslaughter, assuming that death did not result directly from the beating, but from the infection. Yet other medical testimony and most material facts compiled in the criminal case conflicted with the medical report and largely corroborated the cruelty of the flogging and the causal relation between the beating and the death of Keyen Luyamoi. On the admission of the surgeon, when the African victims were brought to the local hospital, all were ‘streaming with blood’ and had their skin completely ‘broken’ by the beating.⁷⁴⁷ Three of them were such in a bad condition they actually had to

⁷⁴³ TNA CO 533/450/8, Letter from the Attorney General to the Chief Secretary, 30 August 1934.

⁷⁴⁴ Ibid.

⁷⁴⁵ TNA CO 533/450/8, Criminal case N 110 of 1934, Summary, 24 September 1934.

⁷⁴⁶ Ibid.

⁷⁴⁷ Ibid.

remain in hospital for a very long time. In colonial Kenya, medical institutions were ‘constantly overcrowded’, tried ‘to get rid of their patients as soon as possible’ and could only accommodate the most serious cases on a long term basis.⁷⁴⁸ Yet, the jury ignored this evidence and the magistrate himself eventually dismissed the seriousness of the wounds and African witness testimonies with utmost condescension: ‘You need not bother with that: ignorant people always exaggerate, particularly in a matter concerning themselves’.⁷⁴⁹ Despite the gruesome details of the thrashing and the severity of the injuries inflicted upon the five African victims, the white jury finally pronounced a minimal sentence of one year of imprisonment on the charge of manslaughter against Mrs Selwyn.⁷⁵⁰

The European jury dealt with the Patrickson and Watcham cases along similar lines. In the first case, whereas the white accused insisted on pleading guilty, the jury estimated that the death was not due to the blow but to the operation and the anaesthetics the deceased had received in hospital.⁷⁵¹ The same strategy was used as in the Selwyn case: the chain of casualty was broken thanks to a medical factor deemed directly responsible for the death. In this case, the jury withdrew the charges of murder or manslaughter and sentenced Patrickson to a small fine on the count of ‘assault causing bodily harm with fatal consequences’.⁷⁵² The law officers of the Colonial Office were disturbed by this case, denouncing in a confidential correspondence the abuses of white justice in Kenya: ‘The jury arrived at the conclusion that the death was not caused by the blow, if they arrived at any other conclusion than the accused was white and the deceased was black’.⁷⁵³ In other cases, European juries followed a different strategy and managed to secure an acquittal, by accepting doubtful or inconsistent pleas of ‘self-defence’. In the Watcham case for instance, the white accused was an old man of seventy years old with a crippled hand, who was regarded as ‘slightly mental’.⁷⁵⁴ He was charged for

⁷⁴⁸ Ibid.

⁷⁴⁹ Ibid.

⁷⁵⁰ Mr Selwyn developed malaria while on remand at the prison of Eldoret and died out of the disease before his trial began.

⁷⁵¹ See TNA CO 533/467/2, Notes written by the Judge Lane on the Patrickson case, [undated, c. 1936].

⁷⁵² Ibid.

⁷⁵³ TNA CO 533/467/2, Letter from H.G. Bushe to the Chief Justice, 1 October 1936.

⁷⁵⁴ TNA CO 533/467/2, Letter from the Attorney General, W. Harragin, to H. G. Bushe, 18 October 1936.

firing on and injuring an African and pleaded self-defence when brought to court. On the own admission of the Attorney General, the line of defence of the accused was not coherent and altered almost hourly during the trial:

‘Actually his real defence was that the wounded man was coming with a rungu (a heavy headed wooden weapon capable of being thrown with accuracy) that it was not until his aggressor was within about thirty yards of him that he fired, at which time it would have been unsafe to retreat etc. and that he fired into the ground to frighten. The Crown’s case was that the distance was thirty yards and not thirteen and that the wounded man had in fact turned to go away. He himself stated that he was running away but this was burned out by our other witnesses (...). We thought he had a strong case and we were disappointed at the result’.⁷⁵⁵

Mr Grattan Bushe also recognised that a plea of self-defence was inaccurate in this case, as the accused had every opportunity to escape: ‘You are entitled to fire at or near a man who is coming towards you in a threatening manner. (...) The justification must depend on the degree of danger in which you are and whether you could not have avoided it by any other means, such as walking away’.⁷⁵⁶ Despite incoherences in the evidence, the plea of self-defence was accepted by the white jury and the charges of murder and manslaughter were withdrawn. The Attorney General himself confessed that ‘the accused was benefiting from a great deal of sympathy from the jury’ and consequently added the charge of ‘wounding and common assault’ to secure a conviction.⁷⁵⁷ As he explained to Mr Grattan Bushe at the Colonial Office, this was meant to limit the discretion of the white jurymen, ‘who might salve their instinctive prejudice against convicting a European by acquitting on a more serious charge’.⁷⁵⁸

Racial connivance also played a role at different levels of the trial proceedings. Racial solidarity first expressed itself in the familiarity, social consideration and preferential treatment offered to white offenders by judicial and police authorities. During the arrest and trial of Mr and Mrs Selwyn, local officials made considerable efforts to ease their experience when faced with the colonial judicial and penal apparatuses. As regards Mr Selwyn, the Head

⁷⁵⁵ Ibid.

⁷⁵⁶ TNA CO 533/467/2, Letter from H.G. Bushe to the Chief Justice, 1 October 1936.

⁷⁵⁷ TNA CO 533/467/2, Letter from the Attorney General, W. Harragin, to H.G. Bushe, 9 July 1938.

⁷⁵⁸ Ibid.

of the Criminal Investigation Department of the Police came to his farm in person to escort him to the police station. The familiar and frank conversation they shared in the motor car, previously mentioned, reveals the strength and solidarity of local white communities, generally united by kin-and-kith relationships and common feelings of social, racial and moral superiority.⁷⁵⁹ In practice, colonial officials granted special privileges to white offenders to alleviate their hardships, loosening or infringing the most basic police and criminal justice rules. After his arrest, Mr Selwyn was allowed to spend the night at the Kitale hotel instead of the police cell, see friends and leave without police escort.⁷⁶⁰ The solidarity and connivance of white colonial officials placed white offenders into a privileged position before the law, police and justice, maintaining a criminal justice system structured on racial lines. Similarly, Mr and Mrs Selwyn managed to impose their choice as regards to the location of the trial. They had strong interest in securing a trial at Kitale instead of Nairobi, as they would benefit from the indulgence of a white jury made up of settlers and neighbours living in the area. Despite the opposition of the Attorney General, who wished the trial to take place in Nairobi to avoid a miscarriage of justice, Mrs Selwyn put pressure on the colonial administration and finally obtained a trial in Kitale, on the grounds that she had poor health and could not travel to Nairobi.⁷⁶¹ Pending the trial, she was accommodated in the Kitale Nursing Room, instead of being confined in the local prison or prison hospital as required under law. In this context, she could benefit from a privileged environment where ‘friends and comforting assurances’ could visit and where she could be medically closely supervised by nurses and medical officers.⁷⁶²

As illustrated by the treatment she received in prison, these privileges stretched out to the confines of penal institutions. Claiming a medical condition, Mrs Selwyn obtained permission to spend the whole of her sentence in the prison hospital of Mombasa, where she benefited from ‘some relaxation of the rules in the matter of letters’ and other privileges.⁷⁶³

⁷⁵⁹ TNA CO 533/450/8, Letter from the Attorney General to the Chief Secretary, 30 August 1934.

⁷⁶⁰ TNA CO 533/450/8, Letter from the Commissioner of police to the Secretary of State, 23 August 1934.

⁷⁶¹ TNA CO 533/450/8, Letter from the Attorney General to the Chief Secretary, 30 August 1934.

⁷⁶² TNA CO 533/450/8, Letter from a friend of the Selwyn's family to the Attorney General, [undated, c. 1934].

⁷⁶³ TNA CO 533/457/9, Letter from the brother-in-law of Mrs Selwyn to the Colonial Office, 9 April 1935.

She was notably allowed to receive four letters instead of one per month, as well as business letters; she did not have to wear the prison uniform and could do her own sewing of prison work. By and large, conditions in the European quarters of the Mombasa prison hospital were much better than those prevailing in the local prison. In the hospital, Mrs Selwyn benefited from constant medical care, healthy surroundings and the social presence of the medical staff. In April 1935, prison authorities contemplated sending her to the hospital of Nairobi prison. They finally turned down the project under pressure from Mrs Selwyn's brother-in-law. The latter was most anxious that Mrs Selwyn might not enjoy the same privileges in Nairobi as the prison Superintendent seemed 'much more strict and less kindly disposed'.⁷⁶⁴ He feared that her privileges regarding letters, clothes, accommodation, and penal work might be withdrawn. The brother-in-law of Mrs Selwyn persuaded the prison authorities to cancel her transfer to Nairobi prison, arguing that she would be treated 'with much less consideration' over there.⁷⁶⁵ At different levels of the hierarchy, whether in Nairobi or among local officials, prison authorities thus played a crucial role in the preservation and institutionalisation of racial privileges within the penal system.

Most European juries were successful in acquitting white offenders or passing minimal sentences on lower charges. When juries failed or refused to do so, the High Court in Kenya and the Supreme Court for East Africa could also reduce the sentence imposed in the magisterial court, with a view to placating white public opinion in the colony. In this respect, the judicial case of Fritz Kloepfer is very revealing. Fritz Kloepfer was a German farmer living in the Eldoret district, who killed one his African labourers by throwing a stick at his face:

'Being annoyed by a native labourer, (he) threw a stick at him and the point of the stick penetrated the face, just below the right eye, in an inward and upward direction, the penetration extending to the brain and causing a wound from which the boy died. The stick in question was a light one and weighted only 5 oz. but had a sharp point and the distance at which the stick was thrown was from eight to ten yards. The only

⁷⁶⁴ Ibid.

⁷⁶⁵ Ibid.

contradiction in the evidence led by the prosecution and the defence was that the two native witnesses for the prosecution stated that the boy was facing the accused when the stick was thrown'.⁷⁶⁶

During the trial, the nature of the charge laid against the German accused thus depended upon a very single decisive point, whether at the moment he threw his stick, the deceased had turned his face to him or not. In the first case, Kloepfer would be tried for murder, in the second case for manslaughter. The body of evidence was most incriminating; two African eye witnesses had testified that the deceased was facing Kloepfer when he threw the stick and the medical report had corroborated this version, showing that the stick could not have penetrated the face below the eye 'if the deceased had not faced his aggressor'.⁷⁶⁷ During the trial before the subordinate court in Eldoret, the jury seemed convinced by the evidence provided by the prosecution and imposed a sentence of three years of imprisonment for murder. The unusual severity of the sentence shocked white public opinion in the colony and stirred up considerable discontent, in both official and non-official circles.⁷⁶⁸ In the following months, the High Court managed to withdraw the charge of murder and manslaughter and finally imposed a sentence of three years of imprisonment on the lower count of 'assault inflicting serious bodily harm', with premeditation.⁷⁶⁹ Afterwards, the Supreme Court of Appeal substantially reduced the sentence to six months of imprisonment.

The condemnation of white offenders could provoke considerable discontent within colonial society, notably when an acquittal or a lower sentence had been expected. In the Kloepfer case, despite the substantial reduction granted by the Supreme Court for Appeal, the sentence of six months of imprisonment provoked the wrath of local German subjects, who felt that 'injustice had been done to the accused' and that the sentence was strikingly severe in comparison to those usually awarded against British subjects for similar offences.⁷⁷⁰ This

⁷⁶⁶ TNA CO 533/379/8, 'Memorandum in connection with the case of REX versus Kloepfer', [undated, c. 1928].

⁷⁶⁷ Ibid.

⁷⁶⁸ TNA CO 533/379/8, 'Aide Mémoire', Report written on the Kloepfer case, unknown author, 1928.

⁷⁶⁹ TNA CO 533/379/8, 'Memorandum in connection with the case of REX versus Kloepfer', [undated, c. 1928].

⁷⁷⁰ TNA CO 533/379/8, 'Aide Mémoire', Report written on the Kloepfer case, unknown author, 1928.

feeling was shared in wider circles of colonial British society, which denounced the severity of the court in this particular case: ‘the opinion was generally held in those circles that the extent of the punishment was in striking contrast to other sentences in cases where a much more incriminating set of facts for the accused justified the adverse decision’.⁷⁷¹ British and foreign authorities established in the colony were fully cognizant of these cases and extensively discussed the matter. The Governor had private conversations on the subject with the Colonial Secretary, the Attorney General and the Chief Justice. The higher ranks of German authorities also made considerable efforts to help Kloepfer through the judicial proceedings. After his conviction before the Supreme Court, Kloepfer immediately approached the German consulate in the colony ‘with the request that his case be taken up by the personal intervention of the Governor’.⁷⁷² The German Consul, Herr Karlowa, personally proceeded to Nairobi to have an interview with Mr Schwartz, the British lawyer who had defended the German accused, and then visited Kloepfer who was incarcerated at the Nairobi prison. At the same time, he communicated with the Foreign Office in Berlin, sending a report on the case and an article from the *East African Standard* written on 19 June 1928. The Prince himself personally intervened and had a conversation with Mr Huxley at the Foreign Office in London on 29 June 1928. Yet in this particular case, despite the personal intervention of both German and British high profile political figures, the colonial government refused to grant a pardon, considering that the Supreme Court had already reduced the severity of the sentence to a considerable extent.

The law officers at the Colonial Office deeply resented the institution of the European jury in the colony and the consequent miscarriages of justice, though they felt helpless to overhaul the whole system in view of settlers’ longstanding influence. Sir Grattan Bushe and Sir Harrangin were deeply critical of the Kenyan judicial machinery in black-and-white cases: ‘it is no exaggeration to say that the trial of a white man for an offence against a native by a white jury constitutes, at any rate, a problem; and that a judge trying such case ought to be

⁷⁷¹ Ibid.

⁷⁷² Ibid.

especially careful so as to secure, so far as he can, that justice is done, and by justice I mean the conviction of the guilty as well as the acquittal of the innocent'.⁷⁷³ The Colonial Office showed renewed concern over the matter in the mid-1930s, following a series of criminal cases 'where miscarriage of justice due to the existence of the white jury was obvious', notably the previously mentioned Patrickson, Watcham and Selwyn cases.⁷⁷⁴ The question of abolishing the European jury had been contemplated on several occasions, but each time, the proposal was postponed either in view of settlers' opposition in the colony or because the law officers had scarce material evidence 'to show definite perversity on the part of the jury'.⁷⁷⁵ By and large, the Colonial Office proved unable or reluctant to offend settlers' opinion in Kenya and to push for a structural reform of the system. There was a clear sense that the abolition of the white jury would provoke an outcry within the highly politicised settler society. The Attorney General, W. Harragin warned Mr Grattan Bushe not to offend the racial feelings which unified large sections of white communities and found a vivid outlet in highly publicised criminal trials: 'you are aware of the feeling in Kenya in white and black cases'.⁷⁷⁶ In practice, despite official concerns, the Colonial Office was unwilling to interfere with magistrates' discretion and professional careers, or to punish them when they committed errors and abuses. Judge Lane, who had presided over the Watcham and Patrickson cases, was even promoted in the following months.⁷⁷⁷ The matter was discussed between the Attorney General, W. Harragin, and Mr Bushe of the Colonial Office in a confidential correspondence. Though both agreed that Judge Lane's judgments in these cases were 'legally unsound', they ultimately refused to stand in the way of his promotion.⁷⁷⁸

⁷⁷³ TNA CO 533/467/2, Letter from H.G. Bushe to the Chief Justice, 1 October 1936.

⁷⁷⁴ TNA CO 533/467/2, Letter from the Attorney General, W. Harragin to H. G. Bushe, 18 October 1936.

⁷⁷⁵ TNA CO 533/467/2, Dispatch by C. Bottomley to J.E.W. Flood, 6 October 1936.

⁷⁷⁶ TNA CO 533/467/2, Letter from the Attorney General, W. Harragin to H. G. Bushe, 18 October 1936.

⁷⁷⁷ Ibid.

⁷⁷⁸ Ibid.

Illegal physical punishment and the colonial administration

Corporeal violence upon African bodies was entrenched and normalised within official spheres, particularly in the upper and lower ranks of the colonial administration. Some administrative officers resorted to illegal physical coercion against Africans on a regular basis to punish those who did not satisfy their expectations or who challenged their authority. These practices could take place in a great variety of contexts, official or not: in barazas against civilians attending the meeting, on Government public works against state servants, during public events or in the street against ordinary citizens. Illegal beatings and punishment were widely accepted within settler society as a legitimate means of maintaining authority and disciplining African subjects on the spot. It should be no surprise that administrative officers indulged in the same practices, alternatively disclosing paternalistic attitudes or the crudest forms of racism. Some of them could perform daily physical violence against Africans, including beatings, slapping, kicking, whipping, with complete impunity. Only the most severe cases of flogging could sometimes lead to minimal administrative sanctions, such as warnings or transfers to outlying districts. Yet, colonial authorities proved highly reluctant to challenge administrative officers' authority and discretion and covered up their abuses to a significant extent, generally reminding themselves of 'the extreme difficult conditions in which District Commissioners have to work'.⁷⁷⁹ Administrative Officers themselves justified illegal physical coercion, citing 'particular local circumstances' challenging law and order in their area and requiring prompt and drastic action.⁷⁸⁰ They felt satisfied that they had accomplished their duties and took responsibility for exceeding their powers on grounds of political necessity.

The 'barazas', which were public meetings held by District Commissioners while on tour in African reserves, provided an opportunity for many physical abuses and humiliations.

⁷⁷⁹ TNA CO 533/455/11, Dispatch by Joseph Byrnes, 24 February 1935.

⁷⁸⁰ TNA CO 533/455/11, Letter of the District Commissioner, Isiolo, to the Officer-in-charge, Northern Frontier, 18 April 1934.

As barazas were central to the functioning of indirect administration, strengthening colonial control in the periphery, illegal public physical beatings constituted stark re-enactments of colonial power upon African bodies, particularly when it was felt colonial authority or legitimacy was being challenged. In 1934 for instance, the District Commissioner of Isiolo District ordered the illegal flogging of two Africans of 18 and 20 who were asked during a baraza to testify about several murders which had been committed among the Samburu group.⁷⁸¹ In his view, the two witnesses had ‘assumed an attitude of defiance, casualness and indifference’ when answering to the District Commissioner before an attendance of elders and young Morans. Infuriated by their behaviour, the District Commissioner ordered that these two young Africans be subjected immediately to a flogging of ten strokes each ‘in the presence of everyone’. When asked by the Colonial Office to give reasons for this abuse of power, the District Commissioner of Isiolo presented it as a matter of political necessity and expediency; he had a strong sense that colonial supremacy was being symbolically challenged. Despite the fact these two Africans had committed no offence under law, the District Commissioner felt the situation had become ‘ridiculous’, as ‘all the Samburu were watching’: ‘I told them I was not prepared to be told untruth, to let them have such attitude and come back to their friends to brag about it’. Colonial authorities decided not to institute any judicial proceedings against him and to impose only light administrative sanctions. The District Commissioner was reprimanded and transferred to an outlying area, in Moyale.

More generally, some District Commissioners strongly believed in the value of ridicule as a punishment and exposed African subjects to acts of public humiliation, with a view to instill a sense of social discipline and reinforce symbolically their authority. On the ground, administrative officers had wide discretion to settle small illegallities or local disputes and to chastise offenders outside the realm of colonial law. Whether in barazas or before their office, some of them expressed their personal sense of justice and subjected alleged offenders to humiliating scenes for the sole purpose of punishment and public shaming:

⁷⁸¹ Ibid.

‘In Kissi, I had another occasion to use ridicule as a punishment. One of my servants was grossly disobedient and I gave him the option of being prosecuted before a District Commissioner or of apologising to me. He chose the latter. Next day when an assembly of men and women were gathered outside my office, I formed them into a ring, and in the centre was my recalcitrant servant. I advised the assembly that he wished to apologise for his misdemeanour the other day and ordered him to kneel before me and ask for forgiveness. Greatly embarrassed he did so, accompanied by murmurs of derision by the crowd. It was declared as a just and fitting punishment’.⁷⁸²

In cases involving alleged witchdoctors, some District Commissioners ordered extra-legal forms of punishment in the form of social separation or public humiliation, notably when it was felt that court sentences or deportation orders had failed to restore social order in the area:

‘It was in Nandi that I learned that public ridicule is a very effective punishment for unsophisticated Africans. The witch doctors were causing a lot of embarrassment, and I decided to extract them from their secretive corners and make them live on the main footpaths, and gave them a personal name-board at their huts advertising their alleged supernatural powers. The embarrassment soon waned’.⁷⁸³ On one occasion, the District Commissioner of Central Kavirondo, Mr. Hunter, notably decided to impose unlawful punishment involving humiliation on a witchdoctor, named Barserion, living in the area. Barserion had already been subjected to a deportation order in 1923 and the Provincial Commissioner of the Nyanza province suggested Mr Hunter that he exceeded his powers and controlled him through extra-legal means. Therefore, Barserion was forced to live with his family in the district headquarters under restrictive and humiliating conditions: ‘Barserion was ordered to sit all day in front of my office and glue his eyes on me, when I was present, with a Tribal policeman near him, and at night he was under curfew. This daylight restriction was withdrawn in due course, but the night curfew was maintained’.⁷⁸⁴

The complicity and connivance of the colonial state reached new heights during the 1940s, when colonial administrators resorted to illegal physical violence and intimidation to stifle and harass political dissidents. In the early 1940s, the district administration of Central

⁷⁸² RH Mss. Afr. s. 1942, Memoirs of Mr Hunter, District Commissioner, [undated, c. 1935].

⁷⁸³ Ibid.

⁷⁸⁴ Ibid.

Kavirondo grew concerned about the political turmoil prevailing in the location of Nyakash.⁷⁸⁵ A group of young political activists, the Kodul clan, protested against colonial oppression as represented by the attitude of the acting chief and Native Authorities and more precisely against abusive tax collection procedures. The District Commissioner, Mr Hunter, was concerned that they had gained significant influence in the area. On 5th August 1941, the District Officer came to the township and told the local population that the District Commissioner would come the next day to hear complaints against tax collections. In view of the many irregularities in procedures and abuses, inhabitants of Nyakash were loud in voicing their grievances during the baraza and pressed district authorities to come and introduce reforms. The District Commissioner visited the next day to recruit men for the war to train at the Maseno depot. As he had to do further recruiting in the location of Ahero, he decided to leave and refused to hear complaints relating to tax collections, giving only ‘a vague expression of willingness to return’ and arousing the fury of local inhabitants.⁷⁸⁶ After having lunch with three other European Officers, Mr Hunter headed towards his car and found himself faced by a crowd of 200 disappointed residents, protesting against his apathy and refusal to hear their claims. The District Commissioner grew infuriated by ‘the discourtesy of the crowd’, rushed into his car without responding to the grievances and was about to depart when one of the local inhabitants approached him and said: ‘I have something to say’.⁷⁸⁷ Mr Hunter immediately kicked the inhabitant’s hand. Another resident stepped out of the crowd, approached the car without laying his hands on it, and repeated the same words: ‘I have something to say’.⁷⁸⁸ This second intervention sparked off the wrath of the District Commissioner, who ferociously assaulted the African speaker: ‘Mr Hunter says that the native tone was most insulting. His fury was once more aroused, and he jumped out of the car, kicked

⁷⁸⁵ KNA PC/NZA/2/7/122, Criminal Case N 2381 of 1941, Resident Magistrate Court, Kisumu, 2 November 1941.

⁷⁸⁶ Ibid.

⁷⁸⁷ Ibid.

⁷⁸⁸ Ibid.

the native very forcibly in the buttocks and knocked him down'.⁷⁸⁹ The crowd immediately withdrew to a distance and the District Commissioner slowly drove away.

Despite the official rhetoric of political necessity and 'law and order', non-institutional physical coercion was primarily a symbolic display of colonial power and an efficient way to negotiate local relations of power. In colonial imagery, the barazas and crowds of people conjured up a particular symbolic universe threatening to undermine the legitimacy, either of the colonial administration or of locally-appointed African authorities. Illegal punishments were mostly inflicted when colonial officials had a sense that Africans had behaved in 'a most insulting and provocative manner' and in very minor cases of dissent where Africans voiced criticisms or refused to obey in front of a crowd of people.⁷⁹⁰ When colonial administrators indulged in illegal and spontaneous physical violence, they were less trying to control 'dangerous' African dissidents threatening the attending white minority—and their bodies—than to assert the symbolic right of the state to deploy violence to maintain order. In the case of Nyakash, from the Resident Magistrate's own admission, despite the massive meeting of local people and their clamorous protests, 'there was nothing in the conduct of the crowd to raise alarm', 'Mr Hunter's chief preoccupation seems to have been the discourtesy showed to him by the crowd'.⁷⁹¹ Inhabitants were standing at a distance of from 3 to 6 yards from the District Commissioner's car, did not prevent him to come to the car and eventually fell back to give him space. Among the two hundred Africans protesting, no one assaulted or molested the District Commissioner or even tried to put their hands on his car. As pointed out by the Resident Magistrate, 'there was no interference, no violence or no trouble of any sort—only excitement, shouting and disappointment'.⁷⁹² Above all, non-institutional punishments constituted an alternative strategy to consolidate the power and legitimacy of African-appointed authorities, when faced with local opposition. In the case of Nyakash, the behaviour

⁷⁸⁹ Ibid.

⁷⁹⁰ KNA PC/NZA/2/7/122, 'Report on Nyakash disturbance on 6th and 11th August 1941', written by the District Commissioner, Central Kavirondo, 1941.

⁷⁹¹ KNA PC/NZA/2/7/122, Criminal Case N 2381 of 1941, Resident Magistrate Court, Kisumu, 2 November 1941.

⁷⁹² Ibid.

of the District Commissioner should be primarily understood as an attempt to undermine the political influence of the Kodul clan and to protect the authority of the chief and his acolytes. When justifying his attitude before the Provincial Commissioner, Mr Hunter explicitly recognised what was politically at stake in the local incident: ‘The attitude towards their chief of some of these well-nourished, prosperous looking young men in Nyakash location is thoroughly bad, a conspiracy which is going to bring nothing but harm and discredit on all the inhabitants of Nyakash’.⁷⁹³ Non-institutional punishment was thus clearly embedded in local politics and also served to secure the legitimacy of African authorities by public displays of power and physical coercion.

The colonial government legitimised and tacitly permitted high levels of unlawful physical abuse and violence perpetrated by colonial administrators against African subjects. In this respect, the story of Mr Hunter is very revealing. Following the illegal beating, colonial authorities did not investigate the facts and did not bring the District Commissioner to trial for exceeding his powers. In fact, the colonial administration attempted to sue the eleven ringleaders of the Kodul Clan at the Resident Magistrate Court of Kisumu, using a charge of unlawful assembly.⁷⁹⁴ During the trial, both the District Commissioner and African witnesses broadly agreed on the chronology and details of the confrontation. The Resident Magistrate did not condemn the District Commissioner for his behaviour but considered that the Crown had failed to make a *prima facie* case against the eleven African political dissidents and acquitted them. The decision of the judiciary aroused the wrath of local authorities, both European and African. According to the Native Anglican Church and Church Missionary Society, local Native Authorities denounced the local magistrate for failing to punish and dismantle local political opposition: ‘I suspect that the fall in rice production may be the

⁷⁹³ KNA PC/NZA/2/7/122, Letter from the District Commissioner, Central Kavirondo, to the Provincial Commissioner, Nyanza, 31 December 1941.

⁷⁹⁴ KNA PC/NZA/2/7/122, Criminal Case N 2381 of 1941, Resident Magistrate Court, Kisumu, 2 November 1941.

producers' way of trying to give a marked expression to this dissatisfaction'.⁷⁹⁵ As disclosed during and after the trial, the connivance and converging interests of the colonial administration and African appointed-authorities constituted a striking feature of indirect administration in the colony. Central authorities in Nairobi had limited influence over the power struggles that took place on the ground in peripheral areas and proved reluctant to offend and punish administrative officers when they indulged in physical abuse and assault against African subjects. Except in the most severe cases of illegal flogging, corporeal violence was a common feature of administrators' control and normalised as part of an acceptable continuum or excrescence of the colonial state monopoly over violence. Given this perspective, Mr Hunter felt entitled to continue performing illegal beatings afterwards and to acknowledge them in official reports without worrying about potential consequences or sanctions. Five days after the incident, Mr Hunter held a new baraza in the location of Nyakash to investigate tax irregularities and indulged in the same excesses.⁷⁹⁶ A man in the crowd who was shouting was brought to him by the Sergeant and beaten up immediately with a cane: 'I took from the sergeant a cane which he held and tapped this man smartly on the head'.⁷⁹⁷ In his official report, the District Commissioner minutely described the caning and quickly justified his actions on the grounds that such illegal punishments 'were essential to preserve discipline and order' in barazas where he had to face a crowd of Africans.

Some District Commissioners used corporeal violence as a systematic means to humiliate local African populations and instil discipline, obedience and fear within subaltern individualities. The social and racial attitudes of District Commissioners and District Officers covered a large range, from 'benevolent' paternalism to the coarse and brutal forms of racism. In the former case, colonial administrators presented physical violence as a political imperative which they felt morally reluctant to resort to. Yet, parts of the colonial

⁷⁹⁵ KNA PC/NZA/2/7/122, Letter from the Native Anglican Church and Church Missionary Society to the Provincial Commissioner, Nyanza, 6 October 1941.

⁷⁹⁶ KNA PC/NZA/2/7/122, 'Report on Nyakash disturbance on 6th and 11th August 1941', written by the District Commissioner, Central Kavirondo, 1941.

⁷⁹⁷ Ibid.

administration used physical punishment as a routine display of power and daily tactic of governance and persecution, whether in official quarters with African employees or in the street with the most ordinary citizen. In the mid-1940s, the newly-appointed District Commissioner of Kavirondo who held office in the township of Kericho became locally infamous for excelling in the field of persecution. Part of the local African population working for the colonial government had been given accommodation in quarters belonging to the Kipsigis Local Native Council, which came under the supervision of the District Commissioner.⁷⁹⁸ According to one of the African employees, the arrival of the new District Commissioner, Major H. G. Gregory-Smith, had deeply disrupted both the internal organisation of the government compounds and the social climate of the whole location. From his own testimony, which had been undersigned by many other witnesses living in the area, it appears that the District Commissioner subjected both African employees and local inhabitants to a minor reign of intimidation and ‘terror’, through a daily regimen of insults, humiliations and beatings. African occupants of the official quarters falling under the responsibility of the District Commissioner were the first target of Mr Gregory-Smith’s oppression:

‘He has made a practice of coming to our quarters at 6am to find occupants asleep, beating at the door with his fimbo and shouting at us, checking the property, abusing us to collect some scrap of paper. He uses abusive language regardless of our respectful position in front of our children, wives and guest. He even beats us in some cases. This treatment cannot be borne by human beings, we cannot tolerate it any further’.⁷⁹⁹

It seems that the bullying and racist attitude of the District Commissioner had been experienced by many other people in the township, some ordinary citizens being subjected to ‘a rougher treatment’: ‘As it is generally known in this township, the District Commissioner has given quite a number of people very hard beating with his fimbo, kicking some, abusing some. (...) He finds a very wide opportunity to bully us as much as he chooses and kick us

⁷⁹⁸ KNA PC/NZA/3/15/145, Letter from an African person living in the Central Kavirondo District to the Provincial Commissioner, Nyanza, 25 June 1944.

⁷⁹⁹ Ibid.

about as any football in the field'.⁸⁰⁰ From this testimony, most inhabitants resented the District Commissioner's presence and found relief and peace only when he left on tour in safari. They ultimately decided to warn colonial authorities with a common petition and pressed for a change in office, arguing that the District Commissioner's daily abuses of power might ultimately result in 'unspeakable unrest' and collective rebellion.⁸⁰¹

From an ideological perspective, non-institutional punishments resonated both with the wider layers of racial thought and feelings and with the mildest forms of colonial paternalism. Illegal physical violence, whether perpetrated by colonial officials or settlers, was often couched in the crudest terminology of colonial racism. In this respect, the testimony of the African employee previously mentioned who was living in the quarters of the Kipsigis Local Native Council vividly expressed the entangled roots of biological racism, humiliation and psychological subjugation.⁸⁰² One morning, the District Commissioner came to his quarters at 6am and started beating at the door, when he and his family were all asleep. As no-one answered, the incensed District Commissioner continued beating at the door and shouting: "Come out quickly you swollen headed, you think that you are very important that the District Commissioner, who goes round in the morning while you are still lying in bed, where are you? (...) Am I going to stand out here all the time waiting for a bloody nigger?".⁸⁰³ On hearing the District Commissioner shouting, the African employee woke up, dressed up and came to open the door. On seeing him, the District Commissioner poured out an unspeakable litany of derogatory names and racist insults, which he had seemingly made a regular practice of: 'You bloody bastard, silly idiot, brute, dirty pig, do you think you are very important because you are in the agricultural department, on my order, I want you to clean round your kitchen or you will find yourself in jail'.⁸⁰⁴ In some other cases, corporeal violence resonated with a more common paternalist attitude legitimatising flogging as an appropriate and efficient way to deal

⁸⁰⁰ Ibid.

⁸⁰¹ Ibid.

⁸⁰² Ibid.

⁸⁰³ Ibid.

⁸⁰⁴ Ibid.

with child-like and undisciplined African subjects. From this perspective, the District Commissioner Mr Hunter equated local political dissidents operating in the vicinity of Nyakash township with irresponsible young men amusing themselves instead of working: 'They just wished to create trouble as if it was rather fun and much more satisfying than getting on with an honest job of work in their shambas or outside the reserve'.⁸⁰⁵ Drawing upon racist discourses about African inadequacy and development, colonial administrators legitimised illegal beatings against Africans and their own excesses to a very wide extent.



12.— His Excellency the Governor addresses a *baraza* of Wakamba in the Machakos district.

POLICE VIOLENCE AND OPPRESSION

Bodily coercion and brutality reached high peaks in the hands of European and African police officers, from both the colonial police operating in the white and urban areas and the Tribal police, responsible for the control of African reserves until the late 1940s. In colonial territories, 'policing concentrated on imposing public order, suppressing political opposition and extracting revenue. This paramilitary mandate complicated the relationship between police and colonial subjects and sometimes created profound resentment' in local African groups.⁸⁰⁶ In colonial Kenya, it was a definite practice of the police force to instil fear within the whole community through the constant harassment of tax defaulters and minor offenders against local by-laws. However, it is difficult to be precise about the extent of police persecution and control. In under-policed areas, African residents could probably evade arrest and harassing legislation quite easily. Yet, it seems that in most parts of the colony, police officers resorted to intimidating, illegal and indiscriminate arrests on a very wide scale, with a particular emphasis on offenders transgressing the Native Registration Ordinance and the Native Hut and Poll Tax Ordinance. This reflected the colonial state's obsession with the collection of tax and revenues, with the regulation of African labour and mobility and with the control of the territory through racial segregation into delineated reserves and a compelling system of passes and registration. Before the Bushe Commission, many African witnesses accused both the colonial and Tribal police 'of abusing their right of arrest' and voiced the general feeling of resentment that police attitudes and persecution had created in many African communities.⁸⁰⁷

Police searches and raids in African villages and huts also led to regular pilfering, corruption, assaults and abuses. According to the District Commissioner of Central Kavirondo,

⁸⁰⁶ J. Alexander and G. Kynoch (eds), 'Special Issue: Histories and Legacies of Punishment in Southern Africa', *Journal of Southern African Studies*, 37, 3 (2011), p. 520.

⁸⁰⁷ TNA CO 822/53/3, Report of the Commission of Enquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika in Criminal Matters, May 1933.

police corruption, thieving and abuses during raids and searches were rife in the area and had resulted in a widespread loss of popular confidence in the force among the African communities of his district.⁸⁰⁸ The pursuits and arrests of African suspects provided opportunities for many irregularities and the unleashing of police brutality. As police officers experienced considerable difficulties in catching African suspects, they often indulged in physical mistreatment of the few unlucky ones who fell into their hands. Archdeacon Owen mentioned several instances 'where he was distressed at the manner colonial police manhandled natives' and publicly clobbered and pummelled Africans, in a situation where they had already been arrested.⁸⁰⁹

Police assaults and mistreatment also stretched out into police cells and were used against African defendants and witnesses during police investigations to extort confessions. Coercion and mistreatment could take many forms based upon promises, inducements, threats, beatings and more elaborate forms of physical coercion and humiliation. In 1928, the much-publicised Wagishu murder case shed light on police intimidation and the mistreatment of African accused people and witnesses in the colony and was mainly responsible for the appointment of the Bushe Commission in the early 1930s, tasked with reforming criminal law towards Africans.⁸¹⁰ After due enquiry, judges of the Supreme Court disclosed the various irregularities in procedure and found that Police officers had extorted false confessions by means of intimidation and violence, through a daily regimen of beatings, short food rations and forced labour.⁸¹¹ Police violence and mistreatment of African accused people and witnesses carried on during the 1930s and 1940s, as illegal shortcuts to extract confessions and secure punishment. In settled areas, local police officers sometimes helped settlers lead punitive expeditions in the neighbouring African villages to find out evidence and extort

⁸⁰⁸ KNA DC/KSM/1/24/50, Letter from the District Commissioner, Central Kavirondo, to the Superintendent of Police, Kisumu, 29 October 1949.

⁸⁰⁹ TNA CO 822/53/3, Report of the Commission of Enquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika in Criminal Matters, May 1933.

⁸¹⁰ See TNA CO 533/391/10 and BNA CO 533/412/16.

⁸¹¹ TNA CO 533/412/16, 'Report of the Commission of Enquiry into the Bagishu Murder', 1929.

confessions.⁸¹² By and large, it seems that illegal confinement and mistreatment in police cells were common occurrences in the colony. Many examples can be found where police officers confined African suspects for days without any warrant being issued and subjected them to various forms of physical and psychological humiliation, strain and violence.⁸¹³ In 1949, for instance, an African Constable of the Sondu police station arrested a resident of the Nyakash location who owed a debt of 120 shillings to his former employer.⁸¹⁴ Although insisting that he would pay the debt if escorted back home, he was illegally locked in the local police cell for five days without any warrant being issued. While held in confinement, he was daily forced to ‘clear human waste’ and was refused meals during the two last days, as he became ‘inquisitive about the charges held against him’.⁸¹⁵

Yet, only a few instances of torture by policemen, either from the colonial or Tribal police surface in the archives and it is consequently very difficult to assess their incidence. Members of the Bushe Commission mentioned a case, which occurred in 1932, where ‘third degree methods’ were used to extract testimonies. Red pepper was put in the eyes of the victim to induce a confession.⁸¹⁶ In the early 1930s, the District Commissioner of South Nyeri reported a case where a policeman had savagely beaten a witness during the prosecution of a criminal case of stock theft.⁸¹⁷ The facts had been confirmed by two other African witnesses, confined in the neighbouring cell who had heard the shouts and the blows over the walls. From their admission, the accused had been beaten at intervals by the police officer from 3pm to sunset, to the point that he eventually ‘fell down unconscious’ and had to be ‘revived with cold

⁸¹² KNA PC/NZA/3/15/45, Letter from the Secretary of the Native Welfare Club to the Provincial Commissioner, Nyanza, 27 December 1942.

⁸¹³ See KNA PC/NZA/3/15/146.

⁸¹⁴ KNA PC/NZA/3/15/146, Letter from an African person to the Superintendent of police, Kisumu, 5 December 1949.

⁸¹⁵ Ibid.

⁸¹⁶ TNA CO 822/53/3, Report of the Commission of Enquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika in Criminal Matters, May 1933.

⁸¹⁷ KNA AP/1/1546, Letter from the District Commissioner, South Nyeri, to the Provincial Commissioner, Rift Valley, 3 February 1933.

water'.⁸¹⁸ In both cases, police officers were not brought to trial and were only reprimanded and punished departmentally.

During the 1940s, police violence excited discontent, trouble and fear among some African and Indian communities of the colony. In 1948, the Luo Thrift and Trading Corporation had received several complaints from Africans against European police officers, who freely and openly indulged in the illegal beatings of Africans during public meetings: 'Our managing director and our accountant were pushed and beaten about by a European police officer. Some other members were also treated the same way. (...) We fail to understand why rough treatment comes from European Officers. Moreover we hear that in Europe, police officers are friends to the ordinary members of the public. Why is that not being practised in this country? (...) Whenever one is beaten about like that and before the public and without any proper reason, one really becomes angry and badly insulted and thus may easily fight'.⁸¹⁹ On a more general scale, it seems that over the 1940s, Africans grew increasingly critical of police abuse and mistreatment and vocal in expressing their discontent and distrust to the colonial government.⁸²⁰ In some African and Indian communities, colonial policemen were perceived as a mere embodiment of colonial repression and iniquity and lost all legitimacy as guardians of the social order and civilian society: 'The general public should expect at all times whether they are actually in execution of their duty or otherwise, every sort of protection from officers but instead we are much surprised at and much concerned with their threatening attitude and misbehaviour'.⁸²¹ This widely-shared feeling of distrust of the colonial police was exacerbated by the wartime increase in illegal physical assaults and abuse perpetrated by European police and military officers, whether on duty or not, against colonial subjects from both African and Indian communities.⁸²² The wartime enlistment of the best European police recruits in the army had led to a significant lowering of the standards of

⁸¹⁸ Ibid.

⁸¹⁹ KNA PC/NZA/3/15/146, Letter from the Luo Thrift and Trading Corporation to the Provincial Commissioner, Nyanza, 20 December 1948.

⁸²⁰ See KNA PC/NZA/3/15/145 and KNA PC/NZA/3/15/146.

⁸²¹ KNA PC/NZA/3/15/146, Letter from an Indian shopkeeper to the Superintendent of police, Kisumu, 14 August 1946.

⁸²² See KNA PC/NZA/3/15/146.

recruitment and training in the force and to an increasing number of police irregularities and assaults against civilians.

Police excess was part of a wider economy of physical violence perpetrated at different levels of the state and colonial society, promoting expedient, informal and violent means of punishment to make up for the shortcomings of criminal justice and resonating throughout the various layers of racial ideology. In colonial imagery, it was normalised and condoned by dominant racial theories according to which Africans were at a different stage of civilisation, similar to Western societies in the last centuries, and were used to public displays of violence and physical chastisement during the pre-colonial period. Police mistreatment and false confessions were primarily a structural matter, and not merely the result of violent individuals and isolated actions. High-ranking European police officers were instrumental in normalising or encouraging irregularities and mistreatment and perpetuating the sub-culture of police violence. As pointed out by Archdeacon Owen, police abuses were often perpetrated by African police constables in the presence of European superiors, who condoned, incited or ordered that it be done in a more or less veiled manner: ‘My feeling is that it filters down from the top to the bottom’.⁸²³ In addition, the African Constable found himself in a structural position where he could earn many obvious privileges by ‘forcing a confession’ or using physical violence, improving both efficiency and his personal career opportunities within the colonial police hierarchy: ‘It saves him the trouble of further close investigation in what may be a very difficult case of mere suspicion. It certainly (according to his ideas) pleases his superior officer and gains himself a reputation for efficiency as a detective, which will no doubt in due course bring him promotion and increased pay’.⁸²⁴ More generally, the structure and dysfunction of the wider judicial and police apparatuses considerably challenged African accused and witness rights and safeguards and multiplied the grounds and opportunities for police violence, whether psychological or physical. During trial proceedings, African

⁸²³ Ibid.

⁸²⁴ KNA AP/1/1660, ‘Confessions to Police Officers’, Memorandum written by the Uganda Chief Justice, 1943.

defendants and witnesses found themselves in a structural position of extreme vulnerability when asked to provide testimony. They often had to travel to a distant court, where they could not rely ‘on the help of their elders or the administrative officers they knew’.⁸²⁵ In the Bagishu case, the Assistant Superintendent of Police taking their statements was ignorant of their language and used ‘as interpreters the native constables they had suffered in the hands of’ in the police cell.⁸²⁶ Therefore, most witnesses were ‘terrorised’ on arrival in court, after having been subjected to mistreatment while in custody and received minimal external help with judicial proceedings.

The complicity of the colonial state not only lay in the fact that its representatives actually perpetrated or encouraged excess, but also in their capacity—at the different levels of the state—to bury the whole scandal and preserve police officers’ impunity. One of the witnesses testifying before the Bushe Commission insisted on the fact that in cases of allegations of police violence, most magistrates and district officers believed policemen and readily dismissed African complainants’ versions. Therefore, most complaints against police officers were unsuccessful and fell on deaf ears.⁸²⁷ In the early 1930s, despite many witness testimonies, police authorities and the Bushe Commission firmly denied the existence of any form of police violence and abuse. In the very rare cases when police officers were brought to trial, the prosecution was often faced with the issue that there was no physical injury on the accuser’s body and therefore no evidence to prove ill-treatment. The testimony of the Uganda Chief Justice before the Bushe Commission could equally apply to Kenya: ‘Not all forms of ‘persuasion’ leave physical marks of injury, and even if they do, it can always be alleged that these were inflicted in the course of a resisted arrest or an attempt to escape. I confess that I have often had an uneasy feeling when such allegations were made to me, and after such

⁸²⁵ Ibid.

⁸²⁶ Ibid.

⁸²⁷ TNA CO 822/53/3, Report of the Commission of Enquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika in Criminal Matters, May 1933.

enquiry as I could make, I was compelled merely to write them down as ‘not proven’.⁸²⁸ More generally, when African victims raised complaints of mistreatment, police authorities and the colonial administration both maintained the same attitude of denial, dismissing allegations or accusing complainants of exaggerating the circumstances of their arrest or confinement. The judiciary was also successful in passing minimal sentences of imprisonment against African police officers. In the Wagishu case, the policeman was brought to trial and sentenced to six months of imprisonment.⁸²⁹ He was already serving a sentence of six months of imprisonment for assaulting witnesses in another criminal case. European police officers generally escaped judicial punishment and were only punished departmentally. In colonial Kenya, European and African police officers could thus freely engage in illegal physical coercion and abuse, with a strong sense of impunity.

Yet, the matter of confessions to the police sparked off considerable discussion and division among colonial circles. In Kenya, according to the Indian Evidence Act, no confessions made to a policeman were admissible in evidence.⁸³⁰ However, there was a strong body of opinion in the colony in favour of a change of legislation to grant the Kenyan police the right to hear the confessions of suspects or witnesses. The Bushe Commission was reluctant to grant it to African policemen, as they were racially perceived as more prone to abuses and irregular behaviour. The Indian Evidence Act was considered a safeguard ‘to avoid the risk of admitting false confessions or confessions improperly extorted’: ‘The rank and file of the police force are drawn from the native population, to whom such niceties as formal caution or abstention from inducement, threat or promise are practically unintelligible’.⁸³¹ The Committee finally suggested allowing any European police officers, or police officers above the rank of a police constable to hear confessions. The Secretary of State decided to leave the problem to the discretion of the colonial government of Kenya and to ‘dissociate himself from

⁸²⁸ KNA AP/1/1660, ‘Confessions to Police Officers’, Memorandum written by the Uganda Chief Justice, 1943.

⁸²⁹ TNA CO 533/391/10, ‘A Murder Trial in Kenya: White Settler Saves Four Natives’, *Times*, 12 September 1929.

⁸³⁰ *Ibid.*

⁸³¹ *Ibid.*

any consideration on the Kenya police'.⁸³² The matter was therefore discussed in the colony in 1935, in view of the drafting of the Criminal Procedure Code Amendment. The colonial magistracy and administration were divided on the matter. The Attorney General and the Commissioner of Police wished to see the recommendations of the Bushe Commission implemented in the colony and to make confessions made to policemen of and above the rank of Assistant Superintendent admissible in court. Yet, the Governor, the Chief Justice and colonial judges all opposed the reform, assuming there was a real risk of 'third degree methods in Kenya' from European police officers towards Africans.⁸³³ In view of the recent Selwyn case in which an African was murdered at the hands of his employer, colonial authorities feared white public opinion would be apathetic in cases of police abuse and that legal strictures had to restrict police powers. The project was finally abandoned after heated controversies and divisions, and the clause 4 on confessions to police officers was withdrawn from the Criminal Procedure Law amendment.⁸³⁴ By seceding from Clause 4, the colonial government implicitly recognised the normalcy of white-on-black violence, not only in the police cells, but within colonial society at large.

⁸³² TNA CO 533/459/11, Dispatch, author unknown, 24 June 1935.

⁸³³ TNA CO 533/459/11, Dispatch by J.E.W. Flood to H.G. Bushe, 24 June 1935.

⁸³⁴ See TNA CO 533/459/11.



Station of the Colonial Police at Chemagel, South Lumbwa District, Nyanza Province.

6 - A CULTURE OF CONFINEMENT?

Over the last two decades, scholarship on state control and punishment has focused on the specifics of imprisonment in colonial contexts, notably in African regions. Recent historical works broke new ground, distancing themselves from the theoretical and methodological Foucauldian framework which had dominated much of the historiography on Western and colonial prisons, following Foucault's seminal work *Discipline and Punish* published in 1975.⁸³⁵ Exemplified by works written by Peter Zinoman, Florence Bernault and Frank Dikötter, this new generation of historians began to sketch out the specific features of colonial control and imprisonment, which bore little resemblance to its Western counterpart as understood by Foucault, and to replace them within wider colonial coercive networks.⁸³⁶ In the recently edited collection by Florence Bernault, *Enfermement, Prison et Chatiment en Afrique du 19e siècle à nos jours*, contributors broadly characterised colonial prisons as 'experiments in hybridity', mixing the disciplinarian features of Western imprisonment and forms peculiar to the colonial experience.⁸³⁷ Historians came to describe colonial prisons primarily as 'the location for physical punishment', in the form of legal whipping and exposure to unhealthy living conditions and extra-legal forms of repression.⁸³⁸ These important contributions initiated historical debates mainly related to the extent to which colonial prisons were successful in taming political, social and economic forms of resistance to colonial rule.⁸³⁹ By and large, these controversies provided historians with the opportunity to discuss the logic,

⁸³⁵ M. Foucault, *Discipline and Punish: The Birth of the Modern Prison* (London, 1977).

⁸³⁶ F. Bernault, 'The Shadow of Rule: Colonial Power and Modern Punishment in Africa', in F. Dikötter, *Cultures of Confinement: A Global History of the Prison in Asia, Africa, the Middle-East and Latin America* (London, 2007), F. Bernault (ed.), *A History of Prison and Confinement in Africa* (Portsmouth, 2003), P. Zinoman, *The Colonial Bastille: A History of Imprisonment in Vietnam, 1862-1940* (Berkeley, 2001), F. Dikötter, *Crime, Punishment and the Modern Prison in China* (New York, 2002). See also: D. Anderson, *Histories of the Hanged: The Dirty War in Kenya and the End of Empire* (London, 2005), J. Alexander and G. Kynoch (eds), 'Special Issue: Histories and Legacies of Punishment in Southern Africa', *Journal of Southern African Studies*, 37, 3 (2011), D. Branch, 'Imprisonment and Colonialism in Kenya, c. 1930-1952: Escaping the Carceral Archipelago', *International Journal of African Historical Studies*, 38, 2 (2005).

⁸³⁷ F. Bernault, 'The Politics of Enclosure in Colonial and Post-Colonial Africa' in F. Bernault, *A History of Prison and Confinement*, p. 29.

⁸³⁸ D. Branch, 'Imprisonment and Colonialism', p. 241.

⁸³⁹ See notably F. Bernault (ed.), *A History of Prison and Confinement* and F. Dikötter, *Crime, Punishment and the Modern Prison*. The expression 'carceral archipelago' belongs to the Foucauldian terminology and covers a set of institutions, comprising not only the prison but also schools, military institutions, orphanages, workhouses, asylums, etc, which resort to various means of regulation, observation, recording, classification and training to transform individuals into disciplined individualities.

contradictions and shortcomings of colonial domination and state control. Florence Bernault singled out South Africa and Kenya as possessing ideological and institutional structures of control that were ‘one of the few in Africa to resemble a carceral archipelago’, standing out from other British colonial territories where state control was much more fluid and vulnerable.⁸⁴⁰

In contrast to Florence Bernault’s assumption, this chapter demonstrates that state control in colonial Kenya through prison institutions was actually much more self-limiting and replete with tensions reflecting the nature and contradictions of colonialism at large. As with other coercive networks, the Kenyan state proved unable to use confinement devices as an efficient way to dominate the population at will. To a certain extent, colonial prisons constituted highly punitive and unsanitary spaces reinstating government authority and imposing upon colonial subjects high levels of state physical violence, which infringed international and colonial standing rules on the care of prisoners and detainees and the legitimate use of force. Colonial corporeality became a central tool to enact state domination, symbolically or in practice, in penal institutions, through the constant exposure of prisoners’ bodies to very unhealthy conditions, regular physical coercion, punitive labour and poor diets. As underlined by the previous scholarship, the punitive effect of the colonial prison did not lie in the ‘very act of the detention, individualisation and surveillance of the individual’ featuring the Western model of the ‘Panoptic society’ as described by Foucault.⁸⁴¹ Colonial control and punishment essentially aimed at transforming African criminal bodies into disciplined individualities through punitive and debilitating forms of physical subjugation, in conditions that were little short of barbaric.

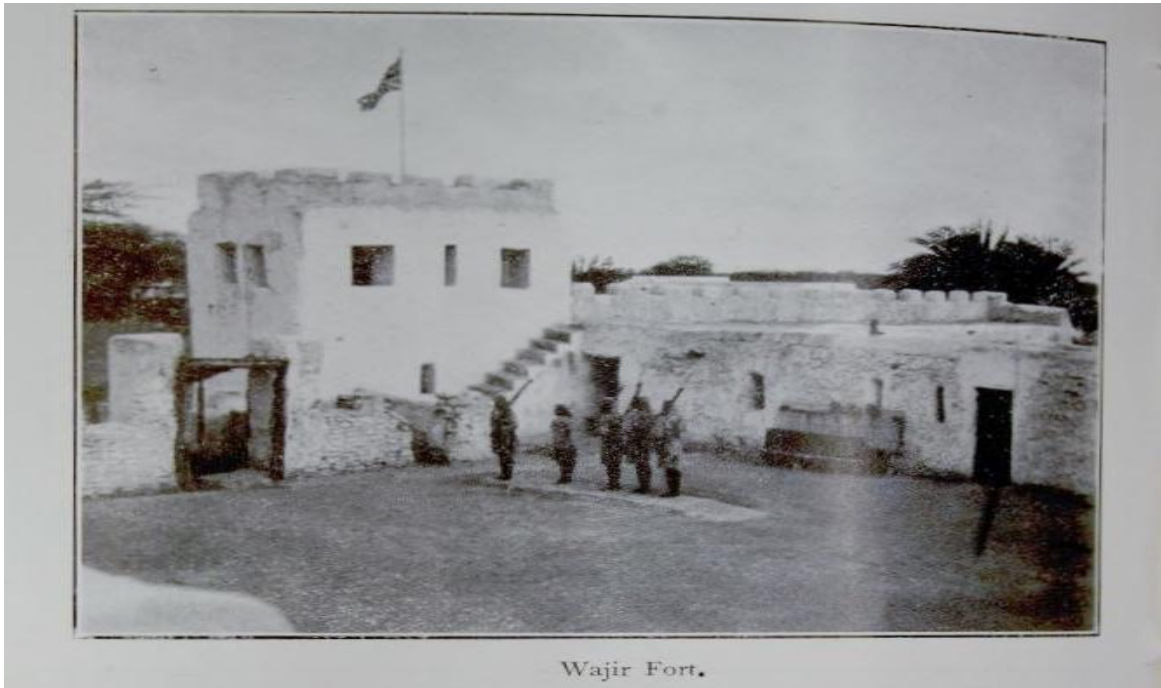
Yet, over the colonial period, the state experienced increasing difficulties in maintaining order behind walls and barbed wires, more significantly after the Second World War and the concomitant arrival of a new generation of political prisoners. In a context of

⁸⁴⁰ D. Branch, 'Imprisonment and Colonialism', p. 240.

⁸⁴¹ *Ibid.*, p. 241.

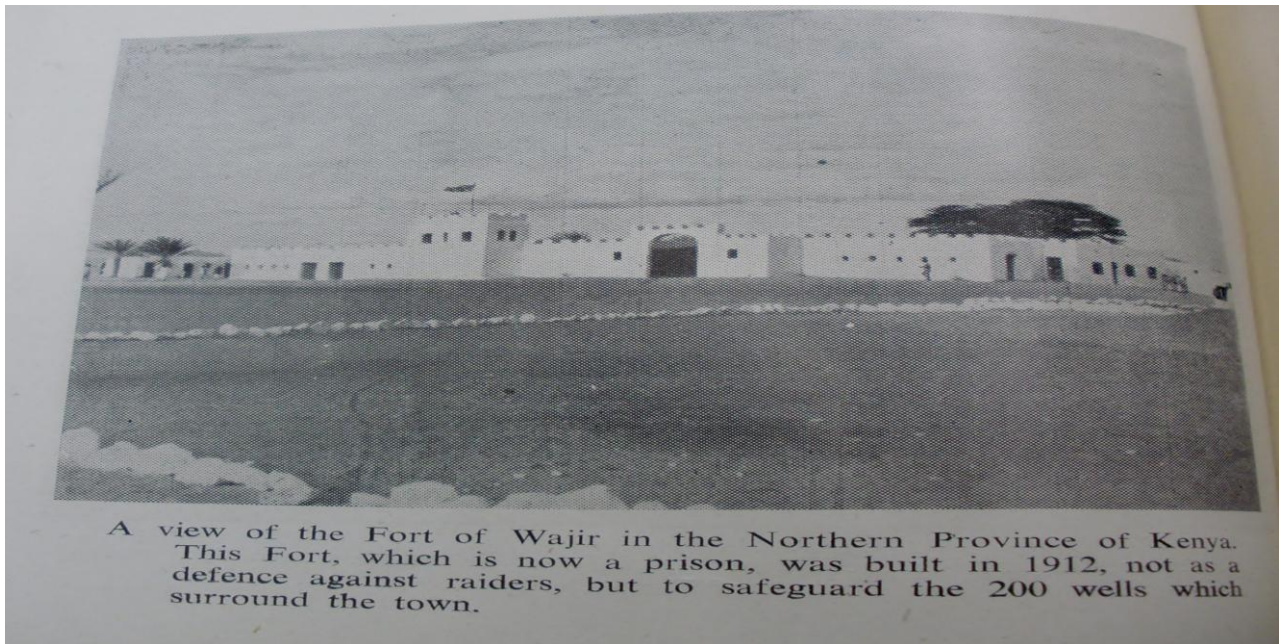
scarce resources, Kenyan prisons actually provided many avenues for agency, escape and resistance and constituted a rising challenge to colonial authorities. Despite many local variations, penal institutions in Kenya were essentially characterised by negotiated forms of order, where prisoners and detainees sometimes held the upper hand. They achieved high levels of escape, a significant level of ‘permeability’ within the wider society and original forms of sub-culture and resistance, sometimes subverting the institutional logics of penal domination. Faced with the difficulty of ensuring stark coercion, the colonial state increased the punitive effect of imprisonment over the period, fuelling prisoners’ discontent and preparing the ground for the Mau Mau counterinsurgency campaign. In this respect, the three main prisons of the colony at Nairobi, Mombasa and Kisumu clearly stood out, showing increased levels of confrontation, physical coercion and repression from the late 1930s. The history of colonial imprisonment in Kenya thus gives fresh insight into the complex and troubled relationship between state legitimacy, penal domination and physical violence. The pre-eminence of corporeal technologies of power in the jail was intimately linked to the need to reify white hegemony through the racial marking, subjugation and debilitation of the African body, with a view to compensating for state frailties and making white settlers believe in their own strength. In other words, ‘penal violence did not celebrate the new ruler’s absolute power over the native body, as much as it aimed at preserving, controlling and re-inscribing onto this very body the defeated laws of the Old Sovereign’.⁸⁴²

⁸⁴² F. Bernault, ‘The Shadow of Rule’, p. 83.



Wajir Fort.

Wajir Prison (inside view), Northern Province, 1931.



A view of the Fort of Wajir in the Northern Province of Kenya. This Fort, which is now a prison, was built in 1912, not as a defence against raiders, but to safeguard the 200 wells which surround the town.

Wajir Prison (outside view), Northern Province, 1949.

THE FAILURE OF PRISON REFORM

From the early 1930s, the Colonial Office pressed colonial governments to initiate a series of prison reforms in keeping with metropolitan policy and the new humanitarian concerns, with a view to improving prisoners' rehabilitative training and 'softening' the most brutal aspects of confinement. From this perspective, the colonial government of Kenya attempted to 'modernize' prison administration and commissioned a series of reports and new legislation, of which the first landmark was the enactment of a new Prison Code in 1930. In the reformist view, African recidivists and serious criminals were to be confined in reformed prisons, with proper classification and segregation, close supervision, complete isolation from society and rehabilitative training.⁸⁴³ On transferral to the colony, the reformist rhetoric of the Colonial Office retained its core principles but mixed with a distinctive colonial discourse on African psychology and punishment. By and large, mainly through lack of funds and political will, prison reforms were only embryonically developed and dramatically failed in their stated purpose.

A pervasive system of confinement

Unknown as institutions to African pre-colonial communities at the time, prisons were established by colonial powers with a frontier perspective in the late nineteenth century, to support the conquest of territory in the outlying areas of the British Protectorate of East Africa.⁸⁴⁴ By the early 1930s, the scale of the prison department had quickly expanded and had been integrated within a regular criminal justice system that included courts and police stations. As we have previously seen, in colonial Kenya, magistrates overwhelmingly resorted to imprisonment to curb delinquency and crime, especially for minor contraventions of local by-laws or tax offences. This led to the quick growth of the penal network and prison

⁸⁴³ TNA CO 859/16/3, Letter from the Commissioner of Prisons to the Chief Secretary, 26 May 1939.

⁸⁴⁴ F. Bernault, 'The Shadow of Rule', p. 56.

department by the 1930s: ‘between 1911 and 1931, the daily average incarcerated population in Kenya more than doubled from 1,546 in 1911 to 3,306 by 1930’.⁸⁴⁵ In order to relieve prison overcrowding, detention camps were introduced in 1926 and quickly multiplied, outstripping the scale of the prison system. In the late 1930s, there were thus a total of 28 prisons and 51 detention camps in the colony⁸⁴⁶. After the Second World War, authorities scaled down the detention system to the size of the penitentiary, with an average of 37 institutions each. Colonial authorities also developed a certain number of additional low-security structures, such as temporary camps and prison farms, notably in places where work was needed for government purposes. A system of Approved Schools, confining children and juvenile offenders, was also gradually established and was dominated by the institutions of Kabete (Class III) and Dagoretti (Class II). In parallel, two Class I Approved Schools were set up in the late 1930s to confine vagrant or destitute children. The institutional landscape of colonial confinement was made more complex by a series of informal houses or small lock-ups, attending tribunals, police stations, administrative offices and chiefs’ headquarters where accused persons or witnesses were confined during police inquests or while awaiting transfer to the nearest prison.⁸⁴⁷ Pending their trials, the great bulk of African suspects were confined for days or weeks in the chief, tribunal or police lock-ups, in a remand house or in a prison ward specifically intended for those on remand. Imprisonment thus constituted an integral part of the African experience of colonial judicial, police and penal apparatuses, from the early stages of a police preliminary inquiry to the infliction of punishment.

Despite official pressures to avoid imprisonment for minor offences, the situation barely evolved over the two following decades. The number of Africans detained and imprisoned was steadily on the rise, with a significant increase during the second half of the 1940s. Kenyan magistrates showed a ‘lingering propensity to imprison and detain’ as

⁸⁴⁵ D. Branch, 'Imprisonment and Colonialism', p. 246.

⁸⁴⁶ KNA JZ/6/5, 'Recidivism in Kenya', Memorandum written by Sir Malcom Hailey, African Research Surveys, 1935.

⁸⁴⁷ On lock-ups, see notably KNA PC/COAST/2/22/1, KNA PC/NKU/2/29/7 and KNA PC/NKU/2/29/10.

compared with those in other British colonies.⁸⁴⁸ As pointed out by Daniel Branch, ‘by 1938, Kenya incarcerated a far greater proportion of its population than British colonies elsewhere in East and Central Africa. With 145 of every 100,000 of its population in a penal institution, Kenyans were significantly more likely to be imprisoned than Tanganyikan (114 per 100,000), Somalis (46), Zanzibaris (66), Nyasalanders (47) and Northern Rhodesians (67)’.⁸⁴⁹ In Kenya, the daily average population in prisons and camps skyrocketed from 3,000 in 1930, to 4,700 in 1938 and more sensibly from 7,215 in 1946 to 11,630 in 1951. In 1950, the Commissioner of Prisons estimated that the number of convicts per 100,000 inhabitants was approximately 160, whereas a ‘normal figure’ in other colonial territories was roughly 60.⁸⁵⁰ As discussed in the previous chapter, the upsurge in the number of committals to prison and camp over the period resulted from a conjunction of global economic causes and political factors specific to the colony. The economic recession of the early 1930s, wartime depression and the agrarian crisis that emerged and developed in scale over the 1940s in the African reserves resulted in a steady increase in crime. The improvement in police functioning and efficiency also contributed to upward trends in the number of reported offences. The excessive number of prisoners in Kenya can also be explained by causes specific to the colony, namely the social anxieties and punitive claims unifying the settler community, the colonial administration and magistracy, the enactment of legislation that permitted punishing a wide range of small offences with detention and imprisonment and heightened punitivity in court for certain economic and political offences.⁸⁵¹

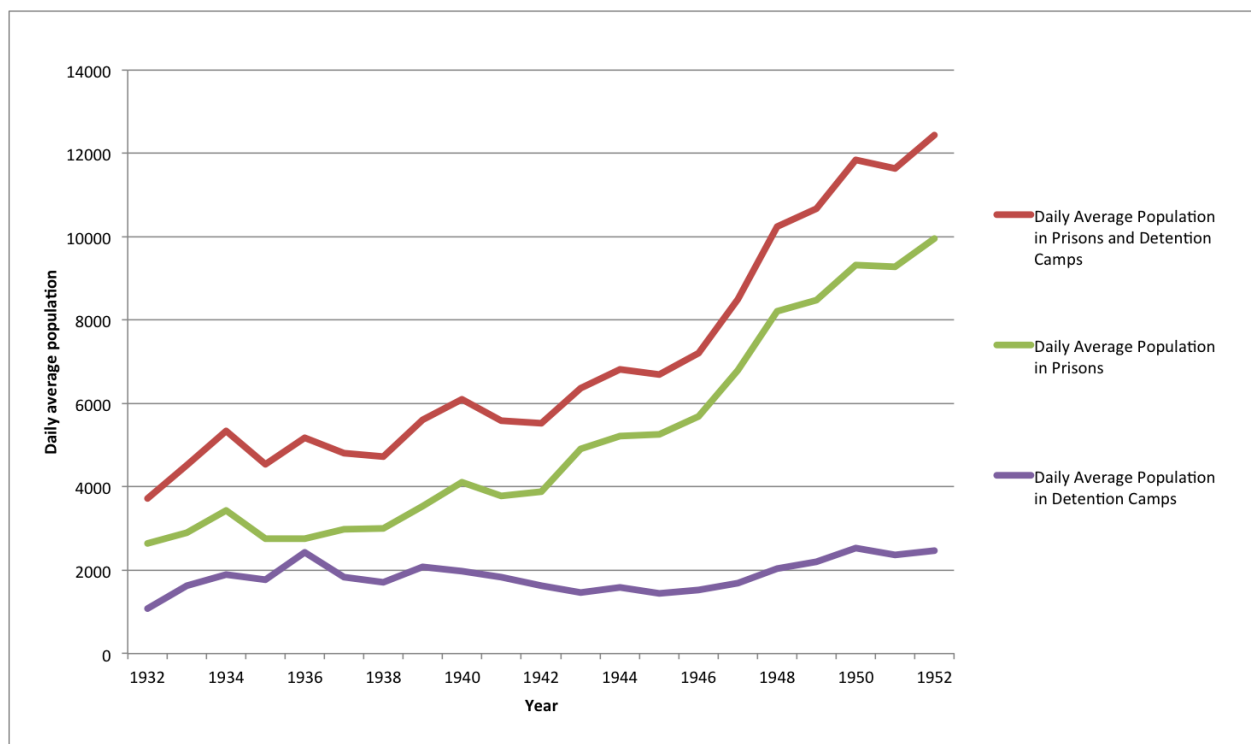
⁸⁴⁸ D. Branch, 'Imprisonment and Colonialism', p. 248.

⁸⁴⁹ Ibid.

⁸⁵⁰ KNA JZ/6/17, 'Precis of Representation made by the Member for Law and Order to the Planning Committee Regarding the Necessity for Increased Expenditure on Prisons', written by the Member for Law and Order, K.K. O'Connor, 28 August 1950.

⁸⁵¹ D. Branch, 'Imprisonment and Colonialism', p. 244.

Daily average population in prisons and detention camps (c.1930-1952)



The lack of classification and segregation

Colonial authorities admitted that the failure of penal reform was mainly due to the state's inability to ensure proper classification and segregation of convicts behind walls or between penal institutions. Prison officials were obsessed with separating various categories of convicts, males and females, adults and juveniles, first offenders and recidivists, Africans, Asians and Europeans, convicts and remands and further divisions according to the length of sentence. Over the whole colonial period, authorities excoriated the mixing of various 'classes of convicts' within the collective wards and association work systems of the colonial prisons. According to Sir Malcolm Hailey, this resulted in a 'frightful contamination' of criminal ideas resulting from the ascendancy professional criminals had over poverty-stricken citizens and small offenders behind walls.⁸⁵² The main concern was to avoid the influence of the town-bred, 'detribalised' and educated African over the young 'uneducated' African coming directly from the reserves and generally sentenced to prison for carrying out 'traditional' activities

⁸⁵² KNA JZ/6/5, 'Recidivism in Kenya', Memorandum written by Sir Malcom Harley, African Research Surveys, 1935.

banned by British authorities, such as stock theft.⁸⁵³ In Kenya, an embryo of classification was made through the division of all prisons into different classes. Class 1 prisons were designed for long term sentences over three years, and also housed ‘lunatics’ and vagrants.⁸⁵⁴ In the early 1930s, there were three Class 1 prisons in the colony, in Mombasa, Nairobi and Kisumu. At the same time, there were four Class II prisons for medium term sentences, including vagrants but excluding lunatics once certified. 21 Class 3 district prisons would take short term prisoners sentenced for up to six months. In the early 1940s, Nairobi ceased to be a mixed prison and was charged with confining recidivists from all other areas of the colony, as well as condemned men and all convicted women.⁸⁵⁵ All men sentenced to death were to be executed there; it was also planned to use the detention camp as a women’s prison. The Ngong Quarry camp and the prison camp of Langata, which was built in 1951, confined around 400 prisoners each and were specifically designed to provide serious criminals and recidivists with punitive work, such as quarrying and building. On the opposite side, the Kitale prison farm, detention camps and prison camps, both permanent and temporary, were meant to detain first and minor offenders only.

For lack of adequate structures and sufficient funds, priority was always given to a racial and gender classification over all other kinds of separation within the jail. In most prisons, segregated wards or cells were used to separate European, Asian and African convicts, as well as male and female ones.⁸⁵⁶ Yet, due to the lack of accommodation in Approved Schools, children and young convicts remained a permanent feature of the prison landscape and were mixed with adults in jails. Dividing prisons into three different classes had little practical effect. Most recidivists or serious offenders were condemned to a succession of short sentences of imprisonment and could thus freely engage with first and minor offenders within the smaller jails, either in the unsegregated collective wards or during working hours.

⁸⁵³ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 13.

⁸⁵⁴ KNA JZ/6/5, 'Recidivism in Kenya', Memorandum written by M. Hailey, African Research Surveys, 1935.

⁸⁵⁵ KNA PC/NZA/2/1/126, 'Some observations, called for and otherwise, on the treatment of the offender in Kenya colony', Memorandum written by A. Paterson, March 1939.

⁸⁵⁶ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 13.

According to prison authorities, the association wards and work systems provided favourable environments for criminals to boast about their past experiences before the youngest ones, to plan their crimes after release, teach ‘their trade’ to first offenders and prepare escapes.⁸⁵⁷ In the prison of Narok for instance, first offenders of the Masai and other pastoral groups were put into the same wards as ‘habitual criminals’.⁸⁵⁸ According to the Assistant Superintendent of Police, there were examples of stock thieves from the Nandi group who, after one or several sentences in prison, started house-breaking and careers of crime they had never contemplated before.⁸⁵⁹ As previously stated, prison authorities and the colonial administration were very concerned about the particular case of remand prisoners. Up until the late 1940s, there were no proper and separate remand facilities in the colony.⁸⁶⁰ Remand detainees or prisoners were generally confined in a hovel in a detention camp or in warders’ compounds, sometimes in a prison cell which ‘had the name ‘Remand Home’ chalked on the door’ and mixed with convicts during daytime.⁸⁶¹ A single remand ‘home’ was eventually built in Nairobi in 1945 but the lack of sufficient accommodation prevented any form of segregation within the institution. This issue took on added significance from the late 1940s, when many political opponents had to be confined in the remand ‘home’ and mixed with first offenders.⁸⁶² Finally, as previously stated, there were neither classification nor proper segregation in detention camps, which in practice confined both first and serious offenders.⁸⁶³

⁸⁵⁷ KNA JZ/11/1, ‘Sentences of Detention on Natives previously in Prison’, Memorandum written by the Commissioner of prisons, 28 February 1933.

⁸⁵⁸ KNA JZ/6/17, Report written by the Committee on Law and Order, 1948.

⁸⁵⁹ KNA AG/7/13, Evidence by the Assistant Superintendent of the Police, Committee on Habitual Offenders, 1946.

⁸⁶⁰ KNA PC/NZA/2/7/12, Letter from the Provincial Commissioner, Nyanza, to the Chief Secretary, 9 May 1944.

⁸⁶¹ KNA AG/7/13, Evidence by a Resident Magistrate, Committee on Habitual Offenders, 1946. In 1946, he had been a Resident Magistrate for 25 years in East Africa, notably in Nairobi, Kisumu and Mombasa. He had also been a Visiting Justice in the prisons of Nairobi, Mombasa, Kisumu and Nakuru.

⁸⁶² KNA JZ/6/50, Prison Department Conference, Minutes, 15 September 1952.

⁸⁶³ See Chapter 4.

Supervision and staff: limitations and failures

The failure of penal reform was also attributed to a lack of adequate supervision and staff in prisons and camps, whether in terms of scale, training, discipline or efficiency. The prison system was a bifurcated system with central prisons within the competency of the prison department and district prisons under the responsibility of district authorities.⁸⁶⁴ In 1931, the six main ones (Nairobi, Mombasa, Kisumu, Nakuru, Kitale and Nyeri) and the Special Quarry prison camp at Ngong were under the control of a European Superintendent who was responsible to the Commissioner of Prisons. In these institutions, European officers and African warders were employed by the prison service. The other prisons were 'district prisons', which fell under the responsibility of the District Commissioner of the district in which the prison was situated. In the early 1930s, colonial authorities introduced a system of 'District Warders' to cut down on expenses, whereby African staff was recruited locally and served under inferior and different conditions of service to those employed in central prisons.⁸⁶⁵ In 1944, most District Commissioners agreed that this system had considerably impaired the efficiency and quality of the service and official approval was given to employ regular prison warders instead. Detention camps were also under the responsibility of the District Commissioner. Barely trained African overseers were employed at varying rates of pay according to the locality.

Due to financial stringency, the prison service was obsessed with holding down staff expenses and employed an insufficient number of warders in every prison. In some cases, to make up for the lack of proper staff, Asian or European convicts were employed in the prison offices. In some places, such as the Lamu prison, the warders had to act as overseers for the local camp.⁸⁶⁶ The problem of staff and supervision reached alarming proportions in detention camps. In 1936, the Commissioner of Prisons told central authorities, alarmed by the quick

⁸⁶⁴ KNA JZ/6/5, 'Recidivism in Kenya', Memorandum written by M. Hailey, African Research Surveys, 1935.

⁸⁶⁵ KNA DC/KSM/1/27/3, Letter from the Commissioner of Prisons to all District Commissioners, 16 January 1944.

⁸⁶⁶ KNA DC/LAMU/2/24/6, 'Report of the Visit of the Lamu Prison', written by the Commissioner of Prisons, 4 October 1936.

expansion of the detention camp system and the impossibility of providing sufficient staff and supervision within the newly-built structures: 'establishing detention camps all over the colony has become a bad habit, because so many of them have been badly administered or left, more or less, to look after themselves'.⁸⁶⁷ Most camps were under the supervision of one or two overworked African overseers, who were in charge both of the administration of the camp and the handling and supervision of detainees. By and large, the District Commissioner was overburdened with multifarious duties and had little time to pay visits to the camp. As a consequence, he often granted a large degree of discretion to barely trained African overseers or was forced to set up haphazard arrangements to make up for the lack of staff, co-opting members from other government departments to provide some assistance. The District Commissioner of the Kisumu-Londiani district admitted that this temporary system had inevitably resulted in a slackening of supervision and discipline in the camp: 'discipline cannot be maintained efficiently thus nor can it be expected' in these conditions.⁸⁶⁸

To a certain extent, control and supervision in penal institutions was primarily a black-on-black matter. European staff was very limited and only administered the main institutions of the colony, with a significant increment in the late 1930s.⁸⁶⁹ In 1938, European officers were in charge of the five main prisons of the colony, which accommodated more than one hundred prisoners each, and of five other prisons with more than 60 convicts each, often more than one hundred due to overcrowding. Their recruitment and training were both very defective, primarily because the positions were so unpopular. Wages paid to the European staff were inferior to those granted to police officers of the same grade.⁸⁷⁰ As a consequence, the best prison service recruits often left their posts to pursue careers in the police service, resulting in high rates of disaffection among European warders in the mid- and late 1940s. Officers were either recruited from ex-soldiers from the Kings African Rifles stationed in East

⁸⁶⁷ KNA PC/COAST/2/22/1, Commissioner of Prisons, quoted in a letter from the Provincial Commissioner, Coast, to the District Commissioner, Voi, 4 May 1936.

⁸⁶⁸ Ibid.

⁸⁶⁹ KNA JZ/6/4, Letter from the Commissioner of Prisons to the Chief Secretary, 14 January 1938.

⁸⁷⁰ KNA AP/1/1190, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 21 March 1931.

Africa or from among younger men transferred from the prison home service in England.⁸⁷¹ The former were used to military discipline, often had a good knowledge of local conditions after some years of service in the region but no or little experience or training in prison administration. Their professional prospects were generally limited to the colony and few had an opportunity to take training courses in England. The latter were more familiar with the theories and practices of British penology, but often had little interest in the African warders and prisoners under their responsibility, did not speak their languages and had scarce knowledge of local conditions and customs. By and large, European prison officers had very limited influence over African warders and convicts, interactions and power relations within carceral institutions reflecting the social, racial and cultural distance that structured black-and-white relationships in the colony at large.

Official concern essentially focused on the problem of the African branch of the prison administration. According to Paterson, 'the heart of the problem was the African warder', who worked under punitive and frustrating conditions and failed to ensure proper discipline and order as understood in the prison headquarters of Nairobi.⁸⁷² Colonial authorities alleged that the daily life of warders was significantly harsher than prisoners' lives, causing a high rate of dissatisfaction and apathy. According to Paterson, overworked African warders had to work up to eleven hours a day and to undergo long hot hours patrolling in and around the prison, 'with a 8 lb. Rifle and in a most uncomfortable uniform'.⁸⁷³ Conditions seem to have become harsher over the 1930s, as prison authorities were unable to increase the staff proportionally to suit the prison population.⁸⁷⁴ Instead of working eleven or twelve hours a day, warders would work up to fourteen hours a day in some places. Finally, warders' wages, housing conditions and welfare facilities left much to be desired and caused considerable discontent within the lower ranks of the prison administration. African warders were paid monthly and often found

⁸⁷¹ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 7.

⁸⁷² Ibid.

⁸⁷³ Ibid.

⁸⁷⁴ KNA AP/1/1190, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 16 January 1937.

themselves in debt before the end of every month. In the opinion of Paterson, this easily led to practices of ‘corruption and disloyalty’ within their ranks.⁸⁷⁵ Warders’ salaries compared favourably with those of other Government servants and were increased over the period but not by the amount of good conduct pay, which was generally resented by the staff.⁸⁷⁶ Warders’ quarters were often a stack of ramshackle huts, without sanitary places or provisions for washing their clothes. As pointed out by Paterson, the position of prison warden was definitely unattractive and only appealed to candidates who had not found any job elsewhere. Colonial authorities also worried about the African warders’ spare time and its effect on prison discipline. While not on duty, warders usually went to the neighbouring village to share some beer with their friends or relatives.⁸⁷⁷ Prison officials sought to introduce social activities to stimulate corporate feelings and reduce the high number of discharges following warders’ drunken misbehaviour. The Kitale prison farm stood out as a successful experiment, providing some recreation and social activities with two clubs for warders and their wives and a small school for their children.⁸⁷⁸ Yet, most prisons had no facilities at all, even in the prison of Nakuru which employed 90 African warders.

Prison authorities also bemoaned the ‘low quality’ of the African staff and failed to address the problems of recruitment and training in the department. In the late 1930s, the system was very patchy and arbitrary: candidates were either interviewed by the Superintendent of the prison or by the District Commissioner.⁸⁷⁹ According to Paterson, Administrative Officers were often extremely busy and ‘did not know the standards of recruits obtainable in other parts of the territory’.⁸⁸⁰ After haphazard selection, the course of training only lasted six months at the training depot in Nairobi and was even reduced to three months

⁸⁷⁵ Ibid.

⁸⁷⁶ KNA JZ/6/50, Prison Department Conference, Minutes, 15 September 1952.

⁸⁷⁷ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 9.

⁸⁷⁸ TNA CO 912/11, Colonial Penal Administration Committee, Minutes, 25th July 1947.

⁸⁷⁹ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 8.

⁸⁸⁰ Ibid.

during the 1940s.⁸⁸¹ The syllabus was disproportionate and inappropriate, with too much emphasis on squad drills and the use of arms, although ‘only a very small proportion of warders would fire a rifle during the course of his service’.⁸⁸² Colonial conceptions were also imbued with racial ideas about the African nature and capacity for control. In the racial hierarchy of the colony, the African warder constituted an intermediary between the European Superintendent and the prisoner but was actually considered nearer to the prisoner in ‘education and ideas, point of view and scales of values’.⁸⁸³ In the colonial imagination, Africans were inherently ‘disinclined to discipline’, accustomed to relations of friendliness rather than distance and domination, and unable to reach the authority, ‘detachment and mastery of an English prison officer’.⁸⁸⁴ African capacity for control and discipline was sometimes differentiated along ethnic lines. Some colonial officials alleged that certain tribes were much more successful in handling authority in colonial territories and that warders should be primarily recruited from these communities. The ethnicisation of colonial control was common to the whole colonial empire. As Paterson underlined, colonial authorities considered that in South Africa, the best prison warders were recruited from among the social group of the Zulus and in India from the Sikh communities.⁸⁸⁵ Colonial authorities were also concerned by the fact that warders, recruited in the same district, were often connected to convicts by blood, tribal or neighbouring relationship and thus exerted milder forms of control and supervision over the convict population.⁸⁸⁶

⁸⁸¹ KNA JZ/6/50, Prison Department Conference, Minutes, 15 September 1952.

⁸⁸² TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 8.

⁸⁸³ Ibid.

⁸⁸⁴ KNA JZ/6/5, 'Recidivism in Kenya', Memorandum written by M. Hailey, African Research Surveys, 1935.

⁸⁸⁵ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 8.

⁸⁸⁶ KNA DC/LAMU/2/24/12, Letter from the District Commissioner, Lamu, to the Commissioner of Prisons, 11 February 1937.

The cosmetic nature of rehabilitative work

Despite the rhetoric of reform, reformatory measures promoting educative, physical or spiritual activities remained nearly non-existent in the prisons and camps of the colony. In the mid-1930s, there were no physical training, no educational courses and very sporadic instances of spiritual activities.⁸⁸⁷ As a consequence, the daily life of prisoners was broken in two, between the hours of work and the ‘long hours of the evening’ in the prison, where they could do ‘nothing more than sit and chat in the dark’.⁸⁸⁸ Reformatory initiatives—and the lack thereof—were intimately linked both to punitive claims prevailing within colonial society and to state financial stringency. Outward activities entailed considerable expenditure and for this reason, even the Committee on Law and Order refused in the late 1940s to make any recommendation in this respect.⁸⁸⁹ Old prison buildings often needed to be extended for this purpose, to permit the removal of prisoners from wards to classrooms or sports areas after lock-up. In addition, such reforms required increasing the number of warders and introducing a double-shift system, in order to postpone the lock-up until after 5.30pm and to offer evening activities. Therefore, prison authorities only timidly introduced a few activities that are worth mentioning. During the 1930s, the only physical activity enjoyed by most prisoners in Nairobi was when they had to walk fifty yards from wards to workshops in the morning, for lunch and in the late afternoon. According to Paterson, in one day, they ‘barely covered 300 yards of grounds’ and ‘exercised a few fingers on a sewing machine’.⁸⁹⁰ In the late 1930s, an experiment was tried in which small squads of prisoners engaged in sedentary occupations were allowed to do a bit of physical exercise. This physical training remained arduous and punitive in form, involving militaristic, ‘systemised and regular’ exercise, such as simple or

⁸⁸⁷ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 10.

⁸⁸⁸ Ibid.

⁸⁸⁹ KNA JZ/6/17, Report written by the Committee on Law and Order, 1948.

⁸⁹⁰ Ibid.

double marching.⁸⁹¹ Prison authorities were dissatisfied with the experience, alleging that convicts ‘took it as an excuse for fooling’.⁸⁹² The Superintendent of the prison feared this might encourage opposition from long-term convicts, require extra staff or interfere with industrial routine and efficiency.⁸⁹³ However, in 1940, an arrangement was eventually introduced to allow convicts working in the tailoring workshops to play football half an hour every morning.⁸⁹⁴

Educational, recreational and spiritual activities also remained in their infancy, initiatives being essentially hampered by the lack of staff and amenities. Literary courses presented many practical difficulties: there was no or insufficient lightening in prisons and it was necessary for Superintendents to find a classroom, a volunteer teacher and a number of convicts wishing to work on the same subject.⁸⁹⁵ Within these parameters, the prison of Kisumu offered a notable exception, with a successful experiment in the early 1940s. Prisoners could attend classes in the evening on various subjects such as agriculture and sanitation.⁸⁹⁶ However, these measures remained very limited and were progressively dismantled over the course of the 1940s due to the wartime shortage of staff: ‘a comprehensive system of education and spiritual care had been in force, but due to the war, shortage of staff, etc., the system had broken down’.⁸⁹⁷ Besides, reading activities were nearly impossible in prisons and camps: most convicts were illiterate, there was no electric lightening in wards and prison libraries had very few books except the Bible and the Koran.⁸⁹⁸ In some prisons, a few handicraft activities where prisoners could carve little objects in wood and bone had been set

⁸⁹¹ KNA PRISON/1/5, Letter from the Superintendent of Nairobi Prison to the Colonial Secretary, 25 July 1939.

⁸⁹² KNA AG/16/234, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 12 January 1938.

⁸⁹³ KNA PRISON/1/5, Letter from the Superintendent of Nairobi Prison to the Colonial Secretary, 25 July 1939.

⁸⁹⁴ KNA AG/16/234, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 13 October 1943.

⁸⁹⁵ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 19.

⁸⁹⁶ KNA AG/16/234, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 13 October 1943.

⁸⁹⁷ KNA JZ/6/50, Prison Department Conference, Minutes, 15 September 1952.

⁸⁹⁸ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 11.

up to fill the spare hours but they remained a very rare occurrence. Arrangements for religious activities were also very chaotic and hazard in the jails of the colony. Due to the 'lack of manpower' in the missions, unpaid ministers from one or different religions coming on a weekly basis were difficult to find, especially in outlying prisons. According to Paterson, the majority of prisoners were 'Pagans', and the remainder was divided between the different Christian missions and the Muslim religion.⁸⁹⁹ Drawing upon typical colonial stereotypes of African psychology, Paterson alleged that religious training and discourses provided 'the deepest agency' for producing obedience and controlling convicts' propensity to rebel, notably when other 'disciplinary methods were having no effect'. As a consequence, the Colonial Office pressed the Kenyan government to appoint a full-time paid chaplain to ensure continuity in religious services. Faith in the disciplinary power of religion was central to the colonial state repertoire of control and later resurfaced during the Mau Mau emergency, with developed forced conversions, fake oaths and psychological torture.⁹⁰⁰

PRISON OVERCROWDING, SANITATION AND HEALTH: A DEATH SENTENCE?

In view of the failure of reform at large, penal institutions in Kenya remained primarily punitive spaces, where prisoners were subjected to very unhealthy and unsafe conditions of confinement. This chaotic and impoverished system should not be understood as a matter of financial stringency only but primarily as an effective strategy used by the colonial state to dominate African subjects through increased levels of punitivity, coercion and neglect. From the 1930s onwards, under a thin veneer of reformist discourse, the prison service deliberately sought to increase the deterrent effect of the colonial prison and markedly increased the harshness of conditions to which African convicts were subjected, whether in terms of medical care, sanitation, dietary regimen or penal work, with a particular emphasis

⁸⁹⁹ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 12.

⁹⁰⁰ D. Anderson, *Histories of the Hanged*.

upon the main jails of the colony. Over this period, the prison therefore emerged as a fundamental tool of state repression which was instrumental in subjecting troublesome and deviant subjects to high levels of irregularities and physical subjugation, in conditions of confinement akin to slavery.

Overcrowding and prison building

In colonial Kenya, most prisons and camps were grossly overcrowded, badly situated and in a critical state of collapse.⁹⁰¹ Despite rising rates of committals, the number of camps and prisons hardly changed during the 1930s and 1940s, as public funds were lacking to support a significant expansion of the penal network.⁹⁰² Funds given by the government for repairs and building works were minimal, and roughly amounting to 650 pounds a year.⁹⁰³ The scarce resources available to the prison department were mostly spent on minor building repairs and thinly stretched over the smaller penal institutions of the colony. As a consequence, overcrowding in penal institutions reached considerable proportions and colonial authorities felt helpless to address the entangled roots of the problem. As Alexander Paterson himself warned in his 1939 report, following his tour of East Africa, ‘a man who digs a prison digs a hole. A hole fills up in time’.⁹⁰⁴ In 1951, there were a total of 8,000 prisoners incarcerated in Kenyan jails intended for 5,000 only.⁹⁰⁵ An up-country prison had raised much official concern, as the Superintendent agreed to confine 343 prisoners in a prison which was designed for 100. Alarmed by the state of affairs, the Commissioner of Prisons sent in the early 1950s an umpteenth circular to urge administrative and prison authorities to find an

⁹⁰¹ KNA PC/NKU/2/29/2, Letter from the Commissioner of Prisons to the Member for Law and Order, 8 May 1950.

⁹⁰² See TNA CO 544, Annual Prison Department Reports. There were 27 prisons in 1930, 37 in 1950.

⁹⁰³ KNA AP/1/1190, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 16 January 1937.

⁹⁰⁴ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 33.

⁹⁰⁵ KNA PC/NKU/2/29/4, Circular by the Commissioner of prisons to all Provincial Commissioners, 22 August 1951.

immediate solution to ‘the deplorable state of overcrowded prisons’.⁹⁰⁶ Over the two previous decades, colonial authorities had tried to find palliative solutions, proceeding to regular transfers of convicts from overcrowded up-country prisons to the Nairobi main prison. Yet, in the early 1950s, the Superintendent of the Nairobi jail was left with no choice but to refuse additional transfers, as the daily average number of prisoners shot up to 1,200 when the prison was intended for 800 only. On a broader scale, the whole prison system was on the verge of implosion and threatened a humanitarian scandal.

This appalling state of affairs also extended to detention camps, which served as alternate ‘tanks’ to make up for prison overcrowding. In 1936, for instance, there were 107 detainees in a camp situated in the Coast province, which was originally designed for 47⁹⁰⁷. It was possible to confine 60 persons within the camp with overcrowding, but 47 were forced to sleep outside in the compound. Living conditions during the rainy season were indescribable. In January 1936, detainees even had to sleep in the rain, as the District Commissioner was unable to provide adequate shelter. Overcrowding in camps reached maximum proportions two or three months a year, during the ‘Hut Tax season’ when the tax was collected and defaulters rounded up.⁹⁰⁸ In 1949, the detention camp of Ngong was so grossly overcrowded that remand detainees had to be accommodated in the local police lock-up.⁹⁰⁹ Remand prisoners were collectively confined in a poorly ventilated and unsanitary stone built cell, situated behind the police office, with no proper latrine or bedding.⁹¹⁰ A rough and ready system was set up to bring food from the camp, which was situated a quarter of a mile from the police station.

The two main prisons of the colony, designed to confine the most serious convicts, were no exception; they remained over the whole period in a striking state of neglect and

⁹⁰⁶ Ibid.

⁹⁰⁷ KNA PC/COAST/2/22/1, Letter from the Colonial Secretary to the Registrar of the Supreme Court, 12 February 1936.

⁹⁰⁸ KNA AP/1/1049, Letter from the Resident Magistrate, Kisumu, to the Resident Magistrate, Nairobi, 7 April 1942.

⁹⁰⁹ KNA PC/NKU/2/29/2, Letter from the District Commissioner, Ngong, to the District Commissioner, Kajiado, 4 November 1949.

⁹¹⁰ KNA PC/NKU/2/29/2, Letter from the District Commissioner, Kajiado, to the Officer-in-Charge, Masai District, 7 July 1948.

decay. Colonial officials were disturbed by the ‘disgraceful condition of the (Nairobi) prison’ and called for the construction of a new one in the vicinity.⁹¹¹ According to the 1948 Committee on Law and Order, the Nairobi jail was ‘antiquated in design and construction’ and overcrowded to a ratio of 70% of the surface available.⁹¹² Wards for African, European and Asiatic prisoners were inadequate both in size and sanitary conditions, and all staff quarters were condemned. In the late 1940s, the prison confined a daily average population of 400 more prisoners than were authorised, for a total figure of more than 1,600 prisoners on one occasion. Proper nutrition was made very difficult, as the prison had ‘very primitive facilities’ in the kitchen and food was cooked ‘with the greatest difficulties’.⁹¹³ Prison Visiting Justices vehemently denounced the appalling state of the main prison, pointing out that the buildings threatened to ‘fall down at any moment’ and had to be urgently repaired.⁹¹⁴ Yet discussions over the construction of a new prison disclosed both the lack of financial provisions and official interest in the matter. Prison authorities made successive proposals, failing to obtain the sanction of the Executive Planning Committee.⁹¹⁵ The construction of a maximum-security prison, such as the one in Nairobi, required 100,000 pounds, which far exceeded the state purse and capacity for investment in penal affairs.⁹¹⁶ In 1947, prison authorities were successful in obtaining financial provisions for a revised scheme, in view of the construction of a new prison at Kamiti Downs. Although land had already been purchased, the scheme was abandoned because of errors and neglect in the expertise on the adequacy of the site. Prison authorities realised that the water supply from bore holes would be insufficient and that additional water would have to be brought from elsewhere, at prohibitive expense. In view of these official splutters and incoherences, the most prominent institution of the colonial

⁹¹¹ KNA AP/1/1190, Meeting of the Visiting Justices at Nairobi prison held at the Law Courts at Nairobi, Minutes, 21 March 1931.

⁹¹² KNA JZ/6/17, Report written by the Committee on Law and Order, 1948.

⁹¹³ KNA AP/1/1193, Letter from the Superintendent of Nairobi Prison to the Commissioner of Prisons, 16 January 1953.

⁹¹⁴ KNA AG/16/234, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 12 January 1938.

⁹¹⁵ KNA JZ/6/17, Report written by the Committee on Law and Order, 1948.

⁹¹⁶ Ibid.

architecture of repression remained the dilapidated and unsanitary Nairobi jail, which had been built more than fifty years before, to support the colonisation of the territory.

Similarly, the Mombasa prison raised considerable official concern as it fell victim to colonial economics. The prison had been established in the late nineteenth century within Fort Jesus, an Portuguese-built monument at the end of the sixteenth century to secure their position on the coast of East Africa.⁹¹⁷ Colonial authorities were seriously alarmed by the 'grave state of decay' and unsanitary conditions of the prison and decided to make the construction of a new prison in Mombasa a priority on the agenda.⁹¹⁸ The Mombasa prison had an authorised capacity of 440 prisoners, which was reduced to 340 as a part of the prison was condemned as 'unsafe for occupation'.⁹¹⁹ In the late 1940s, the jail crumbled under alarming peaks of overcrowding. The daily average population of prisoners in 1948 amounted to 467 and shot up to 600 at some points of the year. In 1951, the prison accommodated a daily population of 845 prisoners, which was nearly three times more than its authorised capacity. Prison overcrowding reduced facilities for warders and convicts to a skeleton of insalubrious wards and insufficient sanitary devices. The kitchen was too small and the few latrines in a deplorable state. European prison officer quarters, which were right in the middle of the prisoners' lines, prevented the introduction of facilities for the physical exercise or recreation of prisoners. The lack of adequate accommodation also had a serious bearing on supervision. Some of the warders were forced to sleep in the prison as there was no proper accommodation available for them in the vicinity.⁹²⁰ The remainder of the staff occupied quarters on Makupa Road, which made intervention in case of disturbance more difficult. The Commissioner of Prisons and Prison Visitors were vocal in condemning the dilapidated state of the prison and called for repairs and reconstruction. In 1951, one of the prison's Official Visitors, A.B. Patel, severely denounced the 'neglect of repairs of this building' as 'unpardonable'.⁹²¹ Despite

⁹¹⁷ D. Branch, 'Imprisonment and Colonialism', p. 252.

⁹¹⁸ KNA JZ/6/17, Report written by the Committee on Law and Order, 1948.

⁹¹⁹ Ibid.

⁹²⁰ Ibid.

⁹²¹ Ibid.

official pressures, the authorities contented themselves with removing European prison officers and their families from the Fort and only completed the construction of a new prison in 1953.⁹²²

Beyond these two major penal institutions, up-country prisons and camps also fell dramatically short of the minimum requirements for the safe custody and good health of prisoners and detainees. From the early 1930s, prison authorities raised the alarm bell, setting up a list of small outlying prisons declared 'unsafe', where poor and antiquated buildings threatened the lives of prisoners.⁹²³ In many small jails of colonial Kenya, prisoners were exposed to a serious threat of injury or death under the crumbling blocks of dilapidated prison walls and roofs. The Commissioner of Prisons himself condemned the passive attitude of the colonial government and its irresponsibility in perpetuating this alarming state of affairs: 'I don't think the Government can continue to endanger the lives of prisoners by incarcerating them in a building which has been condemned as unsafe'.⁹²⁴ Living conditions were particularly dangerous in the district prisons of Machakos, Kericho, Embu, Meru, Eldoret, Eldama Ravine and Nyeri. Many small outlying prisons were made of wood, stone or corrugated iron with thatched roofs and thus presented a high risk of fire, against which prison warders were not prepared, not knowing what to do in case of fire.⁹²⁵ Most district prisons lacked regular fire-drills and a sufficient supply of fire buckets of sand and water. Detainees were exposed to similar risks of building collapse and fire. As the Commissioner of prisons admitted, most camps in the colony were beyond repair, required immediate destruction and needed to be replaced with newly-built permanent structures. According to the District Commissioner of Elgayo, at the Tambach detention camp, the stonework of the walls was 'so

⁹²² D. Branch, 'Imprisonment and Colonialism', p.253.

⁹²³ KNA PC/NKU/2/29/2, Letter from the Commissioner of Prisons to the Member for Law and Order, 8 May 1950.

⁹²⁴ KNA PC/ERD.60/39/20, Letter from the Commissioner of Prisons to the Colonial Secretary, 29 November 1929.

⁹²⁵ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 20.

rough and ready that it is a wonder they have not fallen down'.⁹²⁶ Detention camps were generally made up of temporary buildings of mud and wattle with a grass roof, which could easily catch fire.⁹²⁷ In view of financial stringency, conditions of confinement barely changed over the whole colonial period and there was still a long list of prisons and camps 'in a state of collapse' in the early 1950s, which lay in vain on the desk of the Commissioner of Prisons.⁹²⁸

Medical and sanitary conditions

Sanitary conditions in prisons and camps also left much to be desired. Sanitary facilities often amounted to an insufficient number of unhealthy latrines, which were neither fly and vermin proof nor in a good state.⁹²⁹ According to the local Medical Officer, the five pit latrines of the Kisii prison were in a 'disgraceful, unhygienic and unsanitary condition', with earth floors 'fouled by urine and faeces'.⁹³⁰ In the late 1930s, no toilet paper was given to prisoners and the alternatives used were definitely unhygienic, some prisoners tearing and using their own blankets as a substitute.⁹³¹ Prisoners and detainees had often only one suit of clothing or very worn-out shorts which hardly covered 'their private parts adequately'.⁹³² They usually wore the same uniform every day to perform hard labour under the hot sun and could wash it at best once a week.⁹³³ According to Paterson, sanitation was better in the few recently-built prisons, which comprised a large central hall where prisoners could assemble for recreational or washing activities, mainly on Sundays. In the older prisons, facilities for the

⁹²⁶ KNA PC/NKU/2/29/7, Letter from the District Commissioner, Elgayo, to the Commissioner of Prisons, 26 July 1932.

⁹²⁷ KNA PC/NKU/2/29/2, Letter from the Commissioner of Prisons to the Member for Law and Order, 8 May 1950.

⁹²⁸ Ibid.

⁹²⁹ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 20.

⁹³⁰ KNA PC/NZA/2/6/11, Letter from the Medical Officer to the Officer-in-charge of the Kisii prison, 21 May 1934.

⁹³¹ KNA PC/NZA/2/1/126, 'Some observations, called for and otherwise, on the treatment of the offender in Kenya colony', Memorandum written by A. Paterson, March 1939.

⁹³² KNA JZ/10/4, Letter from the District Commissioner, Kilifi, to the Commissioner of Prisons, 24 January 1950.

⁹³³ KNA PC/NZA/2/1/126, 'Some observations, called for and otherwise, on the treatment of the offender in Kenya colony', Memorandum written by A. Paterson, March 1939.

washing of convicts and clothes were considered seriously inadequate. Paterson instanced a large prison of East Africa, where convicts could wash themselves once a week only and got the opportunity to wash their clothes even less frequently. Hygienic conditions worsened markedly in the detention camps, where authorities experienced considerable difficulties in piping or draining water. At the Eldoret camp for instance, there was only one latrine for 47 detainees in 1938, no place for the washing of bodies and clothes, no piped water supply and no provision for the drainage of rainwater.⁹³⁴ As a consequence, water was brought from the neighbouring jail in buckets for washing detainees. By and large, this haphazard system provided only one collective bucket of water for the washing of ten detainees, encouraging the spread of diseases and epidemics. Besides, many prisons and camps wards were not waterproof, poorly ventilated and isolated.⁹³⁵ Convicts and detainees were exposed to the hazards of outside climate conditions and suffered from long hours of confinement in unsanitary collective wards. At the Ngong Quarry Camp, for instance, prisoners were confined in overcrowded quarters made of very old iron buildings without sufficient ventilation or electric light, from 4–5pm to 6am every day.⁹³⁶

The spread of diseases in penal institutions was reinforced by the lack of segregation and medical facilities. For instance, in the Nairobi prison, convicts suffering from chickenpox, measles and mumps were segregated in one ward, although they had to share the same latrines with others.⁹³⁷ Latrine buckets were improperly disinfected and contaminated other prisoners, leading to epidemics, in particular of dysentery.⁹³⁸ This bacteria developed through the flies coming into contact with faeces. Other diseases, such as tuberculosis, spread quickly through the physical proximity and spitting of convicts. Due to overcrowding and unsanitary conditions, prison wards and beds were infested with bugs, which prison authorities constantly

⁹³⁴ KNA PC/NKU/2/29/7, Letter from the Medical Officer, Eldoret, to the Commissioner of Prisons, 21 January 1938.

⁹³⁵ KNA PC/NZA/2/1/126, 'Some observations, called for and otherwise, on the treatment of the offender in Kenya colony', Memorandum written by A. Paterson, March 1939.

⁹³⁶ KNA AP/1/1190, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 15 January 1944.

⁹³⁷ KNA AP/1/1190, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 16 January 1937.

⁹³⁸ Ibid.

failed to get rid of. The majority of prisoners were housed in temporary buildings constructed of sisal poles, with thatched roofs (*makuti* roofs), both of which constituted an ideal living environment for this sort of insect. Sanitation was far worse in certain detention camps, which were made up of rough and ready temporary structures, where the confinement and administration of detainees was little short of barbaric. In the opinion of the District Commissioner of Elgayo, dreaded conditions at the Tambach detention camp made the environment unfit even for the confinement of animals.⁹³⁹ As a consequence, detainees fell prey to severe epidemics and diseases, particularly during the wet season: ‘To force detainees to sleep in this edifice during the rainy season is to condemn them to Pneumonia (to which disease the tribe is distinctively prone). (...) One would decline to stable a mule or pony in it, let alone human beings’.⁹⁴⁰ By and large, the percentage of convicts on the sick-list and the number of deaths were very high in the prisons and camps of the colony.⁹⁴¹ The Nairobi prison was singled out for its alarmingly high overall number of deaths and sick prisoners in comparison with smaller penal institutions, although a slight improvement was noticeable during the year 1947.⁹⁴²

This is partly explained by the fact that the Nairobi prison mixed together convicts coming from a great variety of areas, with diverse climatic conditions and diets.⁹⁴³ The Nairobi prison had the highest prevalence of tuberculosis among prisoners, particularly those belonging to pastoral groups. Tuberculosis first developed in the urban centres of the colony and affected many prisoners in the early 1930s. For prison authorities, convicts originating from up-country areas, where epidemics of this type were non-existent, were consequently ‘more liable to tubercular infection than others’ and fell an easy prey to epidemics within the

⁹³⁹ KNA PC/NKU/2/29/7, Letter from the District Commissioner, Elgayo, to the Commissioner of Prisons, 26 July 1932.

⁹⁴⁰ Ibid.

⁹⁴¹ See TNA CO 544, Annual Prison Department Reports.

⁹⁴² TNA CO 912/13, Colonial Penal Administration Committee, Minutes, 23 February 1949.

⁹⁴³ KNA AP/1/1190, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 21 March 1931.

unsegregated and unsanitary wards of the prison.⁹⁴⁴ In the early 1930s for instance, a group of 15 prisoners from the Rendile group were sent to Nairobi prison, where climate conditions and food allowances differed radically from what they had previously experienced.⁹⁴⁵ The gloomy history of this group of convicts, affected by a particularly high incidence of tuberculosis and pneumonia, is telling. In April 1930, after a few months of confinement in the Nairobi prison, three of the fifteen convicts had died, including two from tuberculosis. Two others were confined in the prison hospital; one had developed tuberculosis and the other was suspected of having it. Another convict had been affected by serious mental trouble and transferred to Mathari Mental Hospital. The Director of Medical Services admitted that the five remaining convicts, whom he nicknamed ‘the survivors’, were highly liable to develop tuberculosis in the short term. In his view, all were in a very bad physical condition due to poor diets, unusual climatic conditions and unhealthy conditions of confinement and two of them had caught pneumonia.⁹⁴⁶ Afterwards, prison authorities tried to send convicts originating from outlying areas to prisons and camps established within the same region, although the incidence of tuberculosis among prisoners remained high over the whole period.

The high prevalence of epidemics and diseases at the Nairobi jail was exacerbated by the deplorable state of the prison hospital. Some Visiting Justices criticised the unsanitary conditions prevailing in the building and called for its demolition.⁹⁴⁷ The prison hospital had been built in the early 1920s and was made up of temporary mud huts and two additional stone buildings. Colonial authorities showed renewed concern over the matter in 1937, following two heavy epidemics of influenza and a consequent upsurge in the annual death rate at the Nairobi prison. In 1937, there were 35 deaths, as compared to 32 in 1936, 22 in 1935, 31 in 1934 and 12 in 1933.⁹⁴⁸ The steady increase in the death rate in the main prison of the colony

⁹⁴⁴ KNA AP/1/1190, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 21 March 1931.

⁹⁴⁵ KNA AG/16/257, Letter from the Director of Medical Services to the Chief Native Commissioner, 17 April 1930.

⁹⁴⁶ Ibid.

⁹⁴⁷ KNA JZ/6/17, Report written by the Committee on Law and Order, 1948.

⁹⁴⁸ KNA AP/1/1190, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 8 July 1937.

was due not only to gross overcrowding and unsanitary conditions, but also to the fact that most convicts were in a state of ill-health on admission to prison and were sent to the local prison hospital which was ‘entirely insanitary and bad in every way’.⁹⁴⁹ Over the period, the administration of the Nairobi prison hospital was indeed little short of inhuman. In 1937, the institution comprised 55 beds, of which only 24 were proper hospital beds, while the daily average number of patients amounted to 73. Sick men had to sleep on the floor in unsanitary buildings, not even bed-boards being provided. Epidemics of influenza were recurrent in prisons and camps, but the one in 1937 at the Nairobi prison was singled out for its deadly impact. Within a period of 48 hours, 57 convicts confined in Nairobi jail went down with influenza in the prison hospital. The local medical officer, Dr Carman, felt desperate about this alarming state of affairs and begged the government to ensure proper medical care and the humane treatment of prisoners: ‘the rest of the patients were housed in buildings that in England would not be considered fit for animals’.⁹⁵⁰ Yet, despite harsh criticism from both Visiting Justices and prison authorities, the colonial state failed to reconstruct the site or improve the situation. In the late 1940s, there was still a dramatic shortage of beds in the old Nairobi prison hospital, where sanitation was far below international standards.⁹⁵¹

By and large, the medical supervision and administration of penal institutions in the colony was seriously inadequate and partly responsible for high over-all figures of sickness and death among prisoners and detainees. For instance, during the 1930s, the Nairobi prison had no full-time medical officer in charge of the prison hospital. Medical supervision was managed by one Sub-Assistant Surgeon and the occasional visits of one local European medical officer, Dr Carman.⁹⁵² By way of comparison, the Wormwood Scrubbs Prison in England, which had a similar daily average of 1,000 convicts, employed five European full-time Medical Officers. Because of the lack of funds, most prisons of the colony had no full-

⁹⁴⁹ Ibid.

⁹⁵⁰ Ibid.

⁹⁵¹ KNA AP/1/1193, Letter from a Visiting Justice to Nairobi Prison to the Registrar of the Supreme Court, 20 August 1948.

⁹⁵² KNA AP/1/1190, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 16 January 1937.

time Medical Officer and only received quick and occasional visits from busy European Medical Officers operating in the neighbourhood. At best, the enormous task of recognising and treating the medical conditions of prisoners devolved upon an overworked and less-qualified Assistant-Surgeon working half or full-time in the prison. This problem reached considerable proportions in detention camps, where medical arrangements were much more haphazard. Despite regulations, overworked European medical officers often had no opportunity to pay regular (or any) visits to the local detention camp.⁹⁵³ Medical supervision in camps lay in the hands of an untrained and overworked African dresser, who struggled to ensure daily sick parades, provide minimal medical care and spot the early stages and symptoms of diseases and epidemics among detainees.

As a consequence, detainees and prisoners were often sent to hospital in the late stages of a disease or, in cases of extreme urgency, when the disease was ‘fully developed’ and nothing could ‘be done any more’⁹⁵⁴. Some Medical Officers blamed the lack of proper medical supervision for a certain number of annual deaths of prisoners and detainees, which could have been avoided otherwise. For instance, on 21 March 1932, a European Medical Officer received at the Kisumu hospital a detainee who was suffering from a tuberculosis of the lungs.⁹⁵⁵ In the early 1930s, there was no medical supervision in the detention camp of Kisumu; detainees were not examined by a Medical Officer and there was no regular sick parade to check and report on the detainees’ state of health. As a consequence, the sick man had been confined in the very unhealthy conditions of the camp for weeks and brought to the hospital only in the final stages of the disease. As the Medical Officer himself confessed, the disease was ‘long-standing’ and the death of the detainee in hospital could have been prevented, had there been proper medical care and supervision in the camp: ‘I think that this

⁹⁵³ See KNA AP/1/1393 and TNA CO 533/484/7.

⁹⁵⁴ KNA AP/1/1393, Letter from the Resident Magistrate, Kisumu, to the Registrar of the Supreme Court, 28 July 1932.

⁹⁵⁵ KNA AP/1/1393, Evidence by the Medical Officer of Kisumu Hospital, Criminal Case N 11 of 1932, 20 July 1932.

death might have been avoided by earlier treatment and healthy surroundings'.⁹⁵⁶ Another similar case notably occurred in the same hospital, later in the year. At that time, daily sick parades had been reinstated, although no Medical Officer was appointed to check and report occasionally on detainees' health. The Resident Magistrate of Kisumu himself recognised the lack of proper medical supervision in the Kisumu camp and 'the possible necessary loss of life in the result'.⁹⁵⁷ Yet, despite lengthy official discussions on the matter, these fatal abuses of the health and physical integrity of detainees did not develop into scandals, neither did they speed up the pace of reforms. Mainly because of a lack of funds and official interest, medical staff and supervision in the camps and prisons remained very limited both in scale and efficiency over the whole colonial period.

More generally, the dire conditions prevailing in penal institutions were arguably an integral part of a wider penal philosophy shaped along punitive lines. As was the case with other patterns of punishment, prison and camp conditions in the colony were significantly influenced by the punitive claims and social fears that dominated large sections of the settler community.⁹⁵⁸ There was a belief that prisons' alleged lack of stigma and deterrent effect had to be compensated for by increasing the punitive effect of imprisonment. As pointed out by Daniel Branch: 'It appears that the harshness of colonial prisons described below was, in part, an attempt to placate settler opinion. In terms of the size of the prison service and conditions within the institutions, the Kenyan penal system resembled that of the settler colony of Southern Rhodesia rather than the other colonies of East and Central Africa. The presence of settlers appears to have significantly influenced the form of imprisonment in colonial Africa'.⁹⁵⁹ For most colonial officials and settlers, the key to carceral punishment did not lie in the deprivation of liberty, but in the subjection of the criminal body to arduous work, punitive living conditions and other forms of physical subjugation. A sentence of imprisonment was

⁹⁵⁶ Ibid.

⁹⁵⁷ KNA AP/1/1393, Letter from the Resident Magistrate, Kisumu, to the Registrar of the Supreme Court, 28 July 1932.

⁹⁵⁸ See Chapter 4 and Chapter 6, sections on penal labour.

⁹⁵⁹ D. Branch, 'Imprisonment and Colonialism', p. 245.

meant to be physically and psychologically painful for the person subjected to it, regardless of whether this had serious consequences for the prisoner's health or mental integrity. In responding to a demand for a remission of sentence on medical grounds of an Indian convict named Ansell, diagnosed with psycho-neurosis and sentenced to two years detention for manslaughter, the Attorney General explicitly recognised, in an official letter to the Chief Justice, the centrality of suffering and physical debilitation in the colonial philosophy of punishment: 'I have not the slightest doubt as to the cause of Ansell's present condition. The reason he is losing weight and suffering from mental worry is because he is in prison, but then prisons are not established in order to benefit the health of criminals. It is part of the punishment inflicted by the state for an offence against the state'.⁹⁶⁰

State-inflicted physical destruction also lurked in the layers of prison documentation relating to remissions of sentences on medical grounds. Medical reports supporting the request generally stated that these sick convicts, mostly affected by very serious heart or infectious diseases, would only have a chance to recover if they were released and cared for in medical institutions or healthier environments outside.⁹⁶¹ European Medical Officers made it clear that the health of these convicts was likely to deteriorate in the unsanitary and confined context of the prison, resulting either in long-term physical suffering or in the loss of their physical integrity. Yet, on the grounds of 'dangerousness', many of them were refused remission and condemned to lengthy physical debilitation or probable death behind colonial walls. Similarly, colonial authorities considered the psychological damage caused by confinement, including chronic depression, anxiety diseases and other psychiatric syndromes to be part of state punishment and nearly systematically refused requests for remission on these grounds. In the view of the Attorney General, everyone would feel 'no peace of mind' if he had committed a murder or another serious offence.⁹⁶² These dominant conceptions of punishment were imbued with wider colonial considerations on crime, race and insanity and influenced by current

⁹⁶⁰ KNA ARC/MD/1/4/32, Letter from the Attorney General to the Chief Secretary, 23 August 1940.

⁹⁶¹ Ibid.

⁹⁶² KNA ARC/MD/4/1/9, Letter from the Attorney General to the Chief Secretary, 6 May 1941.

eugenic ideas, which associated criminal acts with the expression of deep mental disorders: ‘In my opinion, most murderers are either insane or have a tendency that way and should be detained in prisons or mental hospital provided they are detained’.⁹⁶³ Safe custody and punitive requirements thus prominently influenced prisoners’ mental and physical care. As a consequence, prison authorities were highly paranoid about prisoners suspected of malingering to avoid hard labour. During one of his visits to the Nairobi prison in August 1948, one Visiting Justice met a prisoner with bad eyesight who had been under medical review from October 1947.⁹⁶⁴ The medical authorities strongly suspected, but were unable to prove, malingering. Despite the lack of any evidence showing that he was lying, the convict was compelled to carry out rough carpentering; prison authorities refused to send him to the workshop to perform lighter work.

Finally, the health of convicts and detainees was significantly affected during the 1940s by the conditions of the Second World War and the consequent food and water shortages. During the war years, food shortages were general throughout the colony and most convicts newly admitted to prison were already suffering from malnutrition and ill-health. In addition, resources-trapped prison authorities increasingly failed to produce required food allowances in jail. This resulted in a state of generalised malnutrition in prisons and a higher rate of mortality among convicts.⁹⁶⁵ Over 50 % of prison deaths during the war years occurred among prisoners who had been incarcerated for three months or less and were already physically very weak on admission to prison. Food shortages were usually more acutely felt in the Nairobi prison than in smaller district ones, where substitute food could always be grown or found. According to the Visiting Justice, Captain Tisdall, a similar situation had affected the Mathari Mental Hospital in the early 1940s, with a significant increase in the number of deaths among patients. In this case, medical authorities strove to improve the diet and eventually managed to curb the

⁹⁶³ Ibid.

⁹⁶⁴ KNA AP/1/1193, Letter from a Visiting Justice to Nairobi Prison to the Registrar of the Supreme Court, 20 August 1948.

⁹⁶⁵ KNA AP/1/1190, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 15 January 1944.

death rate. Yet, despite lengthy correspondence on the matter at the highest levels of the colonial state, colonial authorities were unable or unwilling to undertake similar measures within penal institutions. They contented themselves with expecting the general food situation to improve, which finally occurred in 1944. Droughts and water shortages could also have dramatic consequences for the health and lives of prisoners and detainees. In Nairobi prison, for instance, there was a shortage of water from 1948 to 1953.⁹⁶⁶ Over this period, the prison was consequently full of lice and the health of prisoners deteriorated to a significant extent.

In the shadowy frontier spaces of the penal system

Irregular and unhealthy conditions and sanitation reached alarming proportions in penal spaces which were not subjected to prison and camp rules and thus escaped any form of external supervision and control. There was in colonial Kenya, along with official structures of confinement such as prisons, camps and police cells, a whole nebula of confinement devices with no proper legal status, usually called houses of detention or ‘lock-ups’, which could either be camps which had not been gazetted as such or small cells attached to tribunals or administrative centres.⁹⁶⁷ Ungazetted camps and lock-ups were structures of confinement where detainees were sent, and which, for financial reasons, could not be provided with the basic administrative staff and medical requirements. They failed to comply with camp regulations and required a different legal status.⁹⁶⁸ Ungazetted camps were actually under the same special status and legislation as prisons in the Northern and Turkana province, and thus escaped the regular forms of supervision and formal regulations prevailing in other prisons. In 1938, for instance, the Maralal detention camp was still an ungazetted lock-up. Prison authorities were only responsible for prisoners’ food, bedding and stores, but not—as in other

⁹⁶⁶ KNA AP/1/1193, Letter from the Superintendent of Nairobi Prison to the Commissioner of Prisons, 16 January 1953.

⁹⁶⁷ KNA PC/COAST/2/22/1, Letter from the Provincial Commissioner, Coast, to the Chief Secretary, 30 October 1944.

⁹⁶⁸ KNA PC/NKU/2/29/7, Letter from the Commissioner of Prisons to the Provincial Commissioner, Rift Valley, 25 February 1938.

camps and prisons—for ‘the welfare and the safe-guarding of prisoners’.⁹⁶⁹ At the Maralal camp, many improvements would have been required for the camp to be gazetted as such: there were no medical facilities, no secure accommodation, no books and forms for record, no proper equipment such as cooking utensils, no permanent overseer and no medical staff. A dispensary with an African dresser was eventually established in March 1938, but the Medical Officer of Rumuruti only came in case of extreme urgency. In parallel, tribunal, police and chiefs’ lock-ups were smaller structures, made of one or two cells, and meant to hold remand prisoners for a few hours or days pending their hearings.⁹⁷⁰ Sometimes, they offered a temporary solution when time was needed to sort out transport issues involved in transferring prisoners to the District Commissioner jail. According to the Commissioner of Prisons, there were around 145 lock-ups in the colony in 1944.⁹⁷¹ These places were not registered as prisons and camps, otherwise prison authorities would have to comply with prison rules and provide adequate staff, equipment, inspections and food, resulting in prohibitive expenses.⁹⁷²

These structures of confinement were consequently maintained in a lawless zone, avoiding any form of external control, inspection or formal minimum rules. They were equipped and maintained by Local Native Councils who had to ‘foot the bill’ and pay for any improvements in supervision or conditions of confinement.⁹⁷³ As a consequence, conditions in lock-ups and ungazetted penal institutions often verged on inhuman treatment, infringing international standing rules for the proper care of prisoners. Arrangements to feed prisoners were ‘sketchy’: many prisoners had actually to be fed by relatives responsible for bringing food to the cell.⁹⁷⁴ Many lock-ups consisted of a small thatched hut, had no equipment at all

⁹⁶⁹ Ibid.

⁹⁷⁰ KNA PC/COAST/2/22/1, Letter from the Provincial Commissioner, Coast, to the Chief Secretary, 30 October 1944.

⁹⁷¹ KNA PC/NKU/2/29/7, Letter from the Commissioner of Prisons to the Provincial Commissioner, Rift Valley, 25 February 1938.

⁹⁷² KNA PC/COAST/2/22/1, Letter from the Provincial Commissioner, Coast, to the Chief Secretary, 30 October 1944.

⁹⁷³ Ibid.

⁹⁷⁴ KNA PC/COAST/2/22/1. Letter from the District Commissioner, Kilifi, to the Provincial Commissioner, Coast, 13 January 1944.

and lacked lamps, blankets, plates and latrine buckets.⁹⁷⁵ In 1943, the Commissioner of Prisons reported to the District Commissioner of Rumuruti the case of three vagrants, confined in the local house of detention, who had been found in a critical physical condition.⁹⁷⁶ The three convicts were found near starvation and one of them later died in hospital. In this case, the repatriation procedure was not properly followed and the three convicts were kept in the house for ‘months and months’ as they did not have the six pence required to be repatriated to their reserve.⁹⁷⁷ Since 1935, a maximum duration of three months had been prescribed for the procedure of repatriation to be completed. According to the Commissioner of Prisons, with due regard to legal procedure, vagrants were generally repatriated in a matter of days. Yet, due to the lack of proper supervision and control in houses of detention, irregularities of this sort were probably not uncommon.

In the mid-1940s, the colonial administration in Nyanza began to denounce the irregular conditions of confinement prevailing in these places and to call for the government to establish proper lock-ups and remand homes, or at least to carry out inspections: ‘The system is admittedly rough and ready and there is need for its replacement by a properly built remand house, with a trained warder and facilities for feeding’.⁹⁷⁸ Yet, the colonial government and prison authorities were reluctant to reform this parallel, chaotic and poorly supervised system of confinement, as it helped to reduce state expenses. Lock-ups served to relieve prison overcrowding by absorbing a group of remand prisoners, entailed minimal investment in maintenance and supervision and protected the state from any form of external control. Similarly, as in the case of detention camps, the Commissioner of Prisons openly and repeatedly refused to allow Visiting Justices into these places, fearing that they might disclose wide-scale irregularities and spark off a scandal.⁹⁷⁹ In his view, Visiting Justices were likely to

⁹⁷⁵ KNA PC/COAST/2/22/1, Letter from the Provincial Commissioner, Coast, to the Chief Secretary, 30 October 1944.

⁹⁷⁶ KNA JZ/8/9, Letter from the Commissioner of Prisons to the District Commissioner, Rumuruti, 16 August 1943.

⁹⁷⁷ Ibid.

⁹⁷⁸ KNA PC/COAST/2/22/1, Letter from the District Commissioner, Kilifi, to the Provincial Commissioner, Coast, 13 January 1944.

⁹⁷⁹ KNA PC/COAST/2/22/1, Government meeting on Native Tribunals Lock-ups, Minutes, 24 December 1943.

‘embarrass the government’ as their reports would be based upon ‘standards which could not be made to apply to these lock-ups’.⁹⁸⁰ Lock-ups also gave chiefs and headmen increased powers of repression and punishment. As a consequence, African authorities resented the government’s interference with the administration of chiefs’ lock ups.⁹⁸¹ One of the chiefs of Central Kavirondo threatened to resign when Archdeacon Owen complained about the conditions prevailing in the Boro lock-up and pressed either for its improvement or demolition. As regards African tribunals’ lock-ups, some regulations were finally issued in 1949, providing for the minimal supervision, protection and care of detainees.⁹⁸² Yet, with the forthcoming Emergency, these rules remained dead-letter, leaving space for an unregulated system of confinement and discreetly permitting the unleashing of penal irregularities and physical violence during the 1950s.

PENAL DIETS

Beyond conditions of confinement, colonial authorities also imposed increasingly poor and punitive penal diets upon African convicts. Colonial authorities in Kenya had very little interest in taking care of prisoners and were infamous for strikingly poor penal diets, in comparison with other British colonies.⁹⁸³ Reformist penological strands of thought developing in the United Kingdom, according to which convicts’ health should be a matter of concern and responsibility for the state, found little purchase in the colony. The punitive conditions of living outside prison were used to justify abuses against prisoners and the harshest considerations over their health. Prison authorities were keener to embrace the penal philosophy which prevailed in Europe in previous centuries, advocating meagre and monotonous diets and based upon the principle that ‘every day in prison should be a day of

⁹⁸⁰ Ibid.

⁹⁸¹ Ibid.

⁹⁸² KNA PC/NKU/2/29/10, Letter from a Native Court Officer to the Provincial Commissioner, Central Province, 3 March 1949.

⁹⁸³ TNA CO 912/8, 'Defects of some Colonial Prison Diets', Memorandum written by the Colonial Penal Administration Committee, January 1944.

punishment'.⁹⁸⁴ By and large, these considerations were fuelled by the dominant public perception in East Africa that the prisoner had an easier time than the 'honest' unconvicted labourer, the police officer who arrested him or even the warder who looked after him in prison, particularly during food shortages.⁹⁸⁵ According to Paterson, in some situations, the Kenyan government paid more for the daily food of the prisoner than for the daily ration of food allocated to free labourers working for the Public Works Department far away from their homes.⁹⁸⁶ In his opinion, prisoners in East Africa enjoyed better dietary conditions than warders. The former ate three meals a day, whereas the latter, after a cup of tea in the morning, might eat their first meal only in the late afternoon. Finally, colonial authorities feared that improvements to the prison dietary regimen might constitute too heavy a burden upon taxpayers and arouse public discontent.

With the reformist impetus of the 1940s, the Colonial Office increasingly pressed the colonial government to comply with international standards on prison nutrition and diets. In the early 1940s, the League of Nations established minimum caloric requirements, whereby an adult male or female living a normal life in a temperate climate and not engaged in manual work should be provided with a daily allowance of 2,400 calories.⁹⁸⁷ In Kenya, colonial medical authorities translated these standards along racial lines and recommended a daily allowance of 2,100 calories for Africans in tropical countries, 'on grounds of smaller stature and hot climate'.⁹⁸⁸ These considerations were viewed with great suspicion at the Colonial Office. Dr Pratt, from the Medical Research Council, warned colonial authorities that an allowance of 2,100 calories constituted the lowest standard and could only be given to prisoners not engaged in any form of manual work. In his opinion, it was only 'sufficient to prevent the development of clinically recognisable signs of nutritional ill health', but not

⁹⁸⁴ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 26.

⁹⁸⁵ Ibid.

⁹⁸⁶ Ibid.

⁹⁸⁷ TNA CO 912/8, 'Defects of some Colonial Prison Diets', Memorandum written by the Colonial Penal Administration Committee, January 1944.

⁹⁸⁸ Ibid.

‘sufficient to attain optimal physiological efficiency at all times and under stress’.⁹⁸⁹ In other words, a penal diet below this level of calories would ultimately impair a man’s health. As a consequence, in the mid-1940s, the Colonial Office pressured colonial governments to improve prison diets and recommended the introduction of additional protein, vegetables and oil. In its view, a low calorie diet resulted in mental unrest and affected prisoners’ discipline and morale. This reformist discourse on penal diets gained wider influence in the late 1940s within progressive sections of Kenyan society. As pointed out by the Resident Magistrate of Nakuru, the principle, according to which the state had, on ‘humanitarian grounds’, to be responsible for the good care and proper feeding of prisoners, was increasingly accepted, at least within official spheres.⁹⁹⁰

Yet, despite the reformist rhetoric, the nutritional situation of convicts and detainees in colonial Kenya steadily deteriorated, standing far below international requirements and other colonies’ dietary scales. Over the 1930s, the prison department purposely impoverished prison diets to reduce prison expenses and make conditions more punitive in practice.⁹⁹¹ As a consequence, they reduced food quantities for African convicts in all prisons of the colony. The state policy on prison diets was largely influenced by the position adopted and the pressure exerted by the Expenditure Advisory Committee, which considered prison food for African convicts ‘too generous’, leaving ‘room for economies’.⁹⁹² In the mid-1930s, prison authorities thus significantly altered penal diets for African convicts, reducing the quantity of maize for short-term prisoners and of potatoes for long-term prisoners in all penal institutions. They led successive experiments in the main prisons of the colony and then extended these new dietary scales to smaller outlying jails. Prison authorities worried that these changes might spark protests among convicts and detainees. As pointed out by the Commissioner of Prisons ‘there is nothing so apt to cause discontent, and possibly trouble, as experimenting

⁹⁸⁹ Ibid.

⁹⁹⁰ KNA AP/1/1637, Letter from the Resident Magistrate, Nakuru, to all Special Magistrates, 31 August 1948.

⁹⁹¹ KNA JZ/10/4, Letter from the Commissioner of Prisons to the Colonial Secretary, 25 May 1935.

⁹⁹² Ibid.

with prison dietary'.⁹⁹³ At the opposite end of the spectrum, prison authorities refused to modify penal diets for Asian and European convicts, assuming they could not be reduced 'without hardship to the prisoner'.⁹⁹⁴ Diet policy and rationing was thus racially informed and African convicts' health and bodies became the variable cost to reduce state expenses and prison budgets. The overhaul of the prison diet in the mid-1930s both deprived Africans of their most basic nutritive requirements and resulted in state savings amounting to 200 pounds per month. Prison authorities also had the power to alter prison diets and cut down on fat allowances. Under prison rules, the Commissioner of Prisons was permitted to alter the dietary scales in line with local circumstances and fluctuations in food prices.⁹⁹⁵ In May 1934, for instance, due to the scarcity of potatoes in the whole colony, potatoes were withdrawn and replaced with very poor substitutes in most prisons. Over the Second World War, detainees and prisoners' nutrition continued to worsen to a considerable extent, generating high rates of ill-health and deaths.⁹⁹⁶ Due to the wartime food shortage, each prison superintendent was given wide discretion to modify and decrease the ration scales according to supply difficulties. As a consequence, in the mid-1940s, the Colonial Office singled out Kenya, along with Fiji, for the poorest prison diets among all British colonies.⁹⁹⁷

PENAL LABOUR

State-inflicted punitivity against convicts grew to greater proportions within the complex machinery of penal labour. Prisons and camps were instrumental in providing cheap, disciplined and economically efficient workers and were deeply involved in wider networks of economic coercion and labour recruiting. Penal labour was considered the most powerful tool for fulfilling the three main functions of punishment, setting aside the requirement of safe

⁹⁹³ Ibid.

⁹⁹⁴ Ibid.

⁹⁹⁵ KNA JZ/10/4, Letter from the Commissioner of Prisons to the Colonial Secretary, 13 October 1934.

⁹⁹⁶ KNA DC KAPT/1/17/21, Circular by the Commissioner of Prisons to all Superintendents of Prisons and Officers-in-charge of Detention Camps, 5 February 1943.

⁹⁹⁷ TNA CO 912/8, 'Defects of some Colonial Prison Diets', Memorandum written by the Colonial Penal Administration Committee, January 1944.

custody, i.e. deterrence, economic usefulness and reform.⁹⁹⁸ In colonial contexts, the policy on the employment of prisoners and detainees was shaped in accordance with three principles.⁹⁹⁹ The first one was that prison labour should be construed as a form of punishment: it was meant to be laborious, monotonous, unpleasant and possibly painful. Hard penal labour aimed to deter—by its punitive aspect—offenders and would-be offenders from committing further offences and to turn criminals into ‘useful’ citizens for society. Secondly, penal labour was designed to be a financial asset to the state and to provide a mass of free labour to sundry government departments and municipal agencies. It primarily served to create revenue for the colonial government, which was set against the cost of lodging, supervision and maintenance of prisoners and detainees. In Kenya, detainees’ labour was also used as a convenience by the most privileged members of the colonial society, ‘to cut grass, to brush the paths and generally add to the amenities and emoluments of those who have the prescriptive right to command their services’.¹⁰⁰⁰ This practice was severely condemned by the Colonial Office, notably in the person of Paterson.¹⁰⁰¹ Indeed, in 1932, Great Britain had issued a bill following the ratification of the Convention on International Labour, under which colonial governments were forbidden to place convict labour at the disposal of any private individual, company or association. However, in colonial Kenya, the free labour of detainees was widely used to provide ‘cheap amateur gardeners’ at the service of local chiefs, or of the wealthiest members of the neighbouring village or community.¹⁰⁰² Thirdly, penal labour was meant to be reformatory and to teach prisoners skills, working discipline and trades they would be able to use on their release.¹⁰⁰³ In the colonial official rhetoric, convicts had to leave the prison better qualified and be able on discharge to find employment and earn an ‘honest living’.¹⁰⁰⁴ Over the whole colonial period, only the two first principles were actually pursued. As a

⁹⁹⁸ KNA MD/4/1/1, ‘Report of the Committee to Enquire into the Use of Prison Labour’, 31 March 1949.

⁹⁹⁹ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 17-18.

¹⁰⁰⁰ Ibid.

¹⁰⁰¹ KNA DC/KAPT/1/17/21, Letter from the Commissioner of Prisons to all Provincial Commissioners, 27 October 1941.

¹⁰⁰² TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 38.

¹⁰⁰³ Ibid.

¹⁰⁰⁴ Ibid.

consequence, three long-term historical trends can be roughly identified: the steady increase in punitivity and the progressive economic rationalisation of penal work, contrasting with the striking absence of any reformatory developments.

Increasing the punitive effect

In colonial Kenya, there was a belief that penal work was insufficiently harsh and partly responsible for prison's lack of deterrent value among African communities. For most colonial officials and settlers, prisoners and detainees were not working hard or long enough each day; they behaved like 'Guests of Government' and took advantage of the lack of supervision to lead a leisurely life and to work lazily.¹⁰⁰⁵ In the colonial imagination, prisoners enjoyed better living and working conditions than free manual workers outside. During a debate in the House of Commons, Mr Hopkins vehemently denounced the common perception in Britain that colonial prisoners worked eleven hours a day in East Africa. In his opinion, their daily working day rarely exceeded eight hours and proved no deterrent whatsoever to crime. Similarly, detainees' labour was considered too light, ill-organised and too much in the service of local residents.¹⁰⁰⁶ Detainees were often employed in agricultural work or on general station upkeep and township tasks such as grass cutting and clearing, under the supervision of an African headman employed by the township authorities. As alleged by the Provincial Commissioner of Nyanza Province, this type of work had little punitive or deterrent effect: 'the labour normally consisted of cutting grass on Crown land, which, although saving the government funds, is not arduous. Further, owing to the minimum amount of supervision provided and the locality of the Crown Land, there is far too much contact with the outside world'.¹⁰⁰⁷ Because of the overcrowding and lack of proper supervision, the colonial authorities were not able to assign to all convicts hard labour, such as quarrying, building, road

¹⁰⁰⁵ KNA MD/4/1/1, 'Extract from Hansard Report', Speech of Mr. Hopkins, [undated, c. December 1937].

¹⁰⁰⁶ KNA MD/4/1/1, 'Report of the Committee to Enquire into the Use of Prison Labour', 31 March 1949.

¹⁰⁰⁷ Ibid.

construction and aerodrome making.¹⁰⁰⁸ Discipline and reformation were meant to act through hard and deterrent work, transforming tired criminal bodies into disciplined individualities. As one colonial official explained, the duty of every District Officer was to make sure prisoners and detainees performed a full day of difficult and unpleasant work and went ‘properly fatigued’ to bed.¹⁰⁰⁹ White settlers and colonial officials regularly deplored the ‘softness’ of penal work, reviving the overused stereotype of prisoners and detainees lazing around overcrowded wards and eager to revolt against prison discipline: ‘many prisoners hang out day after day doing practically nothing, and instead of being tired out with hard physical labour when they are locked up in their overcrowded dormitories, they are restive and troublesome and constitute a permanent threat to discipline’.¹⁰¹⁰ According to the Commissioner of Prisons, a mutiny had been avoided twice at the Nairobi prison in 1951 ‘by a narrow margin’, due to ‘enforced idleness’ and lack of tiring physical work for convicts.¹⁰¹¹

In order to increase the punitive effect of imprisonment, prison authorities deliberately cranked up the pace and harshness of penal work over the period, with a particular emphasis upon the main prisons of the colony. From 1932 to 1937, the Commissioner of Prisons pressed Superintendents of prisons to augment the hardness of prisoners’ work ‘to the utmost’.¹⁰¹² By his own admission, in 1937, the work given to convicts in the first class prisons of the colony was 50 % harder than five years before. According to the Visiting Justice Dean Wright, the state policy on convicts’ labour partly accounted for the steady increase in the annual number of deaths and diseases among prisoners over the period. The reality of penal labour in District prisons, which had no European Officer in charge, remained much more heterogeneous.¹⁰¹³ Short-term prisoners were generally employed on stone-breaking, agriculture and gardening, mat-making, bush-clearing, grass-cutting or prison domestic duties. According to the

¹⁰⁰⁸ Ibid.

¹⁰⁰⁹ Ibid.

¹⁰¹⁰ KNA PC/NKU/2/29/4, Circular by the Commissioner of Prisons to all Provincial Commissioners, 22 August 1951.

¹⁰¹¹ Ibid.

¹⁰¹² KNA AP/1/1190, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 16 January 1937.

¹⁰¹³ KNA MD/4/1/1, ‘Report of the Committee to Enquire into the Use of Prison Labour’, 31 March 1949.

Committee enquiring into the use of penal labour, in some of these prisons, ‘the convicts (worked) extremely hard and in some others, they (lived) a life not of ease, but certainly not of toil’.¹⁰¹⁴ The Ngong Quarry prison camp, designed to confine the most serious criminals of the colony, had a particularly punitive regimen. The camp was situated in proximity to Nairobi and confined between 400 and 500 serious convicts and recidivists.¹⁰¹⁵ In this camp, colonial authorities openly aimed at subjecting convicts to highly painful and deterrent work, in order to ‘teach them a lasting lesson’ and make them never want to return.¹⁰¹⁶ All detainees were thus employed daily on a large production of ballast and stone for the Railways and Harbours. They performed arduous work under strict supervision and most difficult conditions, working barefoot and daily cutting their feet on the building site stones.¹⁰¹⁷ Outside working hours, detainees were herded together, from 4pm to 6am, in overcrowded and poorly ventilated wards made of corrugated iron, with no physical or recreational occupation and no lightning.¹⁰¹⁸ In 1943, even the colonial government began to express concern over the increasingly harsh work imposed upon these detainees and to press the Railways and Harbours Administration to improve both living and working conditions.

Penal labour and economic rationalisation

Secondly, the penal labour policy was regarded as a convenient source of free labour and was largely dictated by the needs of the economy.¹⁰¹⁹ Prisoners and detainees worked to benefit the colonial state economically, by providing cheap labour to other government departments and agencies and by performing tasks which were useful to ‘the whole

¹⁰¹⁴ Ibid.

¹⁰¹⁵ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 18.

¹⁰¹⁶ KNA AG/7/13, Evidence by a Resident Magistrate, Committee on Habitual Offenders, 1946. In 1946, he had been a Resident Magistrate for 25 years in East Africa, notably in Nairobi, Kisumu and Mombasa. He had also been a Visiting Justice in the prisons of Nairobi, Mombasa, Kisumu and Nakuru.

¹⁰¹⁷ KNA AG/16/234, Meeting of Visiting Justices at Nairobi prison held at the Law Courts at Nairobi, Minutes, 6th July 1938.

¹⁰¹⁸ KNA MD/4/1/1, Letter from the Chief Secretary to the General Manager of the Kenya Railways and Harbours, 28 July 1937.

¹⁰¹⁹ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 18.

community or sections of it'.¹⁰²⁰ In order to increase prison output, prison authorities tended to rationalise it and to favour tasked and hard labour in the open.¹⁰²¹ They had a marked preference for quarrying works, which both provided hard labour to prisoners and could be easily tasked to maximise output. Prison labour was mainly used by the Public Works Department, the Railways and Harbour Administration, the municipal boards, the District Commissioners on station and township upkeep, and in the maintenance of the prisons themselves.¹⁰²² The prison department benefited from the external employment of penal labour, as it provided useful labour for detainees and prisoners and relieved overcrowding by dispatching a part of the penal population to labour camps. Above all, it enabled them to reduce the cost of prison labour through special arrangements with those employers who—in exchange for a free and disciplined labour force—provided accommodation for prisoners, supervision and even sometimes a small payment for the employment of convicts. More generally, the colonial state had a definite economic interest when providing free prison labour to other government departments or agencies, as stations' and departments' budgets were consequently reduced to a minimum every year. In some cases, the state could undertake large-scale works which would have been too costly if carried out by free paid workers. By and large, as the Committee on the Use of Prison Labour acknowledged, prisoners were definitely 'making a return to Government', 'though it may not be as substantial as it could become'.¹⁰²³

From the mid-1930s, colonial authorities became obsessed with the cost-effectiveness and rationalisation of penal labour. In 1939, Paterson recommended working closely in collaboration with the agricultural department and making full use of the farming convict labour force to carry out large-scale agricultural experiments.¹⁰²⁴ More generally, colonial authorities had a clear sense that the work of prisoners and detainees was not used to its fullest

¹⁰²⁰ Ibid.

¹⁰²¹ KNA PC/NZA/2/1/126, 'Some observations, called for and otherwise, on the treatment of the offender in Kenya colony', Memorandum written by A. Paterson, March 1939.

¹⁰²² KNA MD/4/1/1, 'Report of the Committee to Enquire into the Use of Prison Labour', 31 March 1949.

¹⁰²³ Ibid.

¹⁰²⁴ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 18.

capacity and that both output and economic profitability should be maximised.¹⁰²⁵ At the Conference of District Council Representatives held in Nakuru on the 20 October 1948, the resolution was passed to hire penal labour for approved agencies, including District Councils, Municipal Boards and Government Departments, at the economic rate.¹⁰²⁶ Colonial authorities paid particular attention to District Councils, which were responsible for the construction of roads and represented a potentially important employer of convict labour. The colonial state increasingly aimed at hiring and negotiating penal labour with state agencies to ensure the best economic profitability. The only direct payment received by the prison department was from the Railways and Harbour Administration.¹⁰²⁷ The amount of the payment was determined on the basis of the daily cost to government per prisoner. Other state departments, such as the Public Works Department and the Agricultural Department, generally did not pay for the labour of prisoners which was put at their disposal. Yet, within these economic negotiations, state departments and boards definitely held the upper hand to keep the cost of convict labour free. As underlined by the General Manager of the Railways Administration, if the convict labour was withdrawn from the quarry or labour camps, this would raise more serious issues for the prison department—which would be forced to build very expensive additional buildings to accommodate them—than for other state departments which could employ civilian labour very easily.¹⁰²⁸ Despite official discussions to make it paying and lucrative, penal labour consequently remained free for most municipal boards and district offices, particularly when convicts were employed on station upkeep.

In this respect, the conflicts and negotiations with the Railways and Harbours Administration are telling. In 1937, the government challenged the arrangement with the Railways and Harbours Administration regarding convict labour at the Ngong Quarry camp,

¹⁰²⁵ KNA MD/4/1/1, 'Report of the Committee to Enquire into the Use of Prison Labour', 31 March 1949.

¹⁰²⁶ Ibid.

¹⁰²⁷ KNA MD/4/1/1, 'Report of the Committee to Enquire into the Use of Prison Labour', 31 March 1949.

¹⁰²⁸ KNA AP/1/1192, 'Memorandum to the Visiting Justices Committee', written by the General Manager of the Kenya and Uganda Railways and Harbours, 20 January 1944.

with a view to increasing economic benefits.¹⁰²⁹ Under the existing arrangement, the Prison Department had to provide food, clothes, blankets and fuel for cooking, while the Railway reimbursed warders and provided and maintained accommodation. In July 1937, the Chief Secretary pressed the Railways Administration to feed and cloth these detainees and reimburse the Prison Department for its expenses during the first half of the year. This proposal violated the provisions of the circular 13/43, binding authorities to pay for prisoners' rations and it was consequently withdrawn. With the requirements of the Second World War, the issue of the Railways and Harbours' contribution was postponed and discussed again in 1943, generating palpable tension between the Prison Department and the Railways administration.¹⁰³⁰ In a most unusual manner, the colonial government voiced its anxieties over the care of detainees confined at Ngong and pressed the Railways and Harbours Administration to improve their conditions of confinement and work. This humanitarian discourse barely veiled state concerns about reducing prison expenses and negotiating financial and economic advantages from the Railways Administration. The latter had few illusions and responded to state criticisms in purely economic terms. According to the General Manager of the Railways and Harbours Administration, lack of funds and staff were problems 'of prison administration not a question of the Railway to solve'.¹⁰³¹ Given this perspective, the Railways Administration decided to contribute only up to the amount of money they would have to invest to employ paid civilian workers: 'the contribution by the Railways Administration would be limited to the cost for which it could obtain the stone and ballast under ordinary economic conditions, and it would not be influenced by the requirements of the Prison Administration'.¹⁰³² Yet, prison authorities, although complaining that the Public Works Department was definitely 'unhelpful', had no alternative but to comply with the Railways' position and the primacy of

¹⁰²⁹ KNA MD/4/1/1, Letter from the Chief Secretary to the General Manager of the Kenya Railways and Harbours, 28 July 1937.

¹⁰³⁰ KNA AP/1/1192, 'Memorandum to the Visiting Justices Committee', written by the General Manager of the Kenya and Uganda Railways and Harbours, 20 January 1944.

¹⁰³¹ Ibid.

¹⁰³² Ibid.

market rules and prices.¹⁰³³ Prison reform was thus intrinsically embroiled in the local wage economy and the competitive dynamics and rates of the free labour market, leaving little room for considerations of penal administration and reform.

Embryonic developments in reformation work

As far as reformation was concerned, penal labour provided little valuable training or skills to convicts and detainees. Agricultural training in penal institutions was meant to spread Western agricultural knowledge and notions of labour discipline and to improve agricultural work and proficiency among African communities. In the colonial perception, agricultural techniques used by Africans were ‘of the crudest description’: ‘they have no idea of fertilisation and crop rotation’ and ‘the variety of crops grown is strictly limited’.¹⁰³⁴ Officials and settlers generally pictured African males as lazy labourers who had not fully accepted capitalist notions of labour discipline and efficiency and abusively relied on their wives’ cultivation of foodstuffs. Setting aside the three main prisons at Nairobi, Mombasa and Kisumu, the great mass of convicts and detainees had to perform agricultural work, either directly for the benefit of the Agricultural Department or to grow foodstuffs for the prison itself. Yet, the efforts of the colonial state ‘to make the African agriculturalist more efficient’ were less enthusiastically perceived over the 1940s.¹⁰³⁵ As described by Sir Hailey, agricultural training in prisons and camps was highly limited and only resulted from the prisoners’ observation of ‘proper methods of growing crops for food’.¹⁰³⁶ He recognised that, from the information given by prison and administrative officers, the number of ex-convicts who could use ‘the knowledge and proficiency gained in prison’ on release seemed very

¹⁰³³ KNA AP/1/1192, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 26 February 1944.

¹⁰³⁴ KNA JZ/6/5, ‘Systems of incarceration suitable for the African’, Memorandum written by M. Hailey, African Research Surveys, 1935.

¹⁰³⁵ KNA AG/7/13, Evidence by a Resident Magistrate, Committee on Habitual Offenders, 1946.

¹⁰³⁶ KNA JZ/6/5, ‘Recidivism in Kenya’, Memorandum written by M. Harley, African Research Surveys, 1935.

small.¹⁰³⁷ After a comprehensive inquiry, the Report of the Committee into the use of prison labour reached the same conclusions thirteen years later.¹⁰³⁸ On the admission of one Resident Magistrate testifying before the Committee on Habitual Offenders and relying on his own past experience, agricultural work in prisons and camps had not resulted in any improvement in the agricultural production of the reserves. Similarly, as far as detention camps were concerned, many colonial officials admitted that they had no reformatory influence at all and were only able to keep minor offenders away from serious ones to a certain extent.¹⁰³⁹ In the late 1940s, the general output of agricultural work was still very low and the number of 'recidivists' (with four or more sentences) was steadily on the rise, shooting up to 662 in 1947.

Industrial training in prisons had also little reformatory value in colonial Kenya. Industrial work was limited to the main prisons of the colony and essentially concentrated within the prison workshops of the Nairobi prison.¹⁰⁴⁰ Kenya had few light industries in the 1930s and 1940s and the majority of Africans used very few commodities, such as clothes or shoes. The market for such articles was thus limited to the white-dominated urban centres and was largely in the hands of Indian traders and shopkeepers. Indians had long been in charge of most shops and trades in Nairobi, had established efficient networks of sales within various cities and gained long-term experience in manufacturing and marketing.¹⁰⁴¹ Within this highly competitive market, African ex-convicts had little chance to thrive in similar businesses. As the aftercare committees admitted, only a very small minority of ex-prisoners returned to town, managed to set up their own activities and earned a living from them.¹⁰⁴² The government thus forced hundreds of prisoners to perform mechanical and repetitive operations in the manufacture of articles within prison workshops only to maximise industrial output and revenue in the interests of the colonial state. After his tour, Alexander Paterson denounced the

¹⁰³⁷ Ibid.

¹⁰³⁸ KNA MD/4/1/1, 'Report of the Committee to Enquire into the Use of Prison Labour', 31 March 1949.

¹⁰³⁹ KNA AG/7/13, Evidence by the Labour Commissioner, Committee on Habitual Offenders, 1946.

¹⁰⁴⁰ KNA JZ/6/5, 'Recidivism in Kenya', Memorandum written by M. Hailey, African Research Surveys, 1935.

¹⁰⁴¹ KNA JZ/6/5, 'Systems of incarceration suitable for the African', Memorandum written by M. Hailey, African Research Surveys, 1935.

¹⁰⁴² See section on Aftercare in Chapter 4.

development of industrial workshops at the Nairobi prison as a 'short-sighted policy'.¹⁰⁴³ In his opinion, after years of confinement, long-term prisoners had only learnt to make boots for the Army and Police Forces, although on their return to their villages, they would never see a boot again and would have little opportunity to use these skills. Similarly, ex-prisoners could not perform tailoring or mat-making on release as there was no demand for these products within African reserves. As a consequence, Paterson strongly encouraged prisons to develop industrial activities, such as quarrying and the reclamation of land, which prisoners would be likelier to perform after discharge. By and large, the penal administration played a significant role within the larger economic machinery of the colonial state and markedly favoured output and efficiency over questions of training, reformation, discipline and care of prisoners: 'the training of the prisoner for his future on discharge, even questions of his health or of workshop discipline were of little consequence compared with pace and output'.¹⁰⁴⁴

In this institutional landscape, two exceptions stood out in the matter of reformation work, the prison farm established at Kitale for minor and first offenders and the various labour camps established throughout the colony. Labour camps established on the Nyeri-Nairobi road were recognised by Visiting Justices as the most reformatory and instructive penal experiments in Kenya.¹⁰⁴⁵ Four camps were introduced in 1940 on the Sangana-Nanyuki road and two additional camps on the Nanyuki-Thika road, with a similar camp at the Theta Swamp.¹⁰⁴⁶ These camps were first established to relieve overcrowding at the main prisons and to provide a cheap labour force for specific state building works. After four years of experience, authorities considered this experiment a success, particularly from a reformatory point of view. Most convicts became stone masons and were able to exercise their trade on release.¹⁰⁴⁷ Kitale, however, was a farm established in the early 1940s to segregate first offenders and

¹⁰⁴³ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 18.

¹⁰⁴⁴ Ibid.

¹⁰⁴⁵ KNA AG/16/234, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 13 October 1943.

¹⁰⁴⁶ KNA AP/1/1192, 'Kenya Prison Development Plan', Memorandum written by the Commissioner of Prisons, 29 July 1944.

¹⁰⁴⁷ KNA AG/16/234, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 13 October 1943.

make punishment more rehabilitative in practice. The farm was started as a camp and the prison building was built by the convicts, as well as staff amenities and buildings. Prisoners daily performed agricultural labour and were taught skilled trades of brick and tile making and house building as well as intensive techniques of agriculture. Prison authorities acknowledged that this had resulted in an improvement of prisoners' agricultural knowledge and efficiency at work. In the late 1940s, the institution was practically self-sufficient and had produced in seven years a total value of crops amounting to 15,446 pounds. According to the Colonial Penal Administration Committee, few discharged prisoners from this prison farm returned to court, the skills taught generally enabling them to earn their own living on release.¹⁰⁴⁸ As a consequence, colonial authorities planned to build a similar penal institution at Kakamega, in keeping with the official reformist rhetoric. Yet, in the late 1940s, the building of the prison had not even started, disclosing the private lack of official interest in the project and in reformatory policies generally. Authorities admitted that—although the scheme had proved very useful from an economic and reformatory point of view—work on the farm was not perceived as punitive enough: 'the life of some of the prisoners, necessarily bucolic, seemed somewhat leisurely'.¹⁰⁴⁹ Colonial authorities also bowed to settlers' economic concerns; they feared that this type of project might interfere and unfairly compete with their own farming interests, as they themselves had to rely on free and paid labour. As a general rule, timid reformation-oriented policies remained hampered or diluted by the dominant punitive and economic concerns prevailing in white colonial society.

THE SOCIAL SPACE OF THE PRISON

Despite increased punitiveness, the colonial state was unable to completely dominate the convict population and impose absolute order and discipline within jails and camps. To a certain extent, prison authorities were successful in reifying the social identities and racial

¹⁰⁴⁸ TNA CO 912/11, Colonial Penal Administration Committee, Minutes, 25 July 1947.

¹⁰⁴⁹ KNA MD/4/1/1, 'Report of the Committee to Enquire into the Use of Prison Labour', 31 March 1949.

divides necessary to preserve white hegemony. Penal institutions were racially segregated orders, where European and Indian prisoners were given wider discretion to negotiate privileges and shape the nature of their imprisonment. State-inflicted punitivity was racially informed and primarily targeted African subjects. Yet, penal institutions were also characterised by a curiously stable environment where African warders and convicts could establish independent rules not officially prescribed. They sometimes found daily arrangements to suit their own interests and demonstrated original forms of agency and independence from central prison authorities and their European hierarchy. To a certain extent, punishment and discipline could be a matter of inter-personal negotiation, and varied greatly across institutions. From the late 1930s, prisoners confined in the main jails began to express increasing discontent in the face of deteriorating conditions of confinement and work; they threatened to revolt and organise some form of collective resistance. This was the beginning of a two-fold movement within jails, which was only temporarily undermined during the Second World War. Prison authorities steadily lost control and legitimacy among the African convicts in the main prisons of the colony and fell back on state-sanctioned forms of improvised or violent repression. Riots and revolts were generally quelled by the use of force and never resulted in any improvement or quickening in the pace of reforms. From this perspective, the intensity of repression should not be read as a demonstration of the state's strength, but rather as an attempt to bolster colonial authority and control that was faltering in the face of growing African opposition.

Prison conditions and racial privileges

Prison life and its internal order were markedly structured along racial lines, whether in terms of spatial partitioning, living conditions or disciplinary regimen. As previously stated, segregation in jails reflected strict gender and racial separations. When convicted, European and Asian prisoners were temporarily kept in a single cell in the local prison awaiting transfer

and quickly sent to one of the three main jails of the colony, at Nairobi, Mombasa or Kisumu. The three main prisons provided them with two separate wards or cells, respectively for Europeans and Asians, and preferential treatment. Beyond spatial segmentation, conditions of confinement, in the form of diets, bedding and privileges were deeply racialized and reified, behind walls, the racial distinctions and hierarchies that prevailed outside. Within their wards, European and Asian convicts were generally given a bed, a mosquito curtain, a chair and a table.¹⁰⁵⁰ African convicts, regardless of their social position outside, were herded into overcrowded and unsanitary wards and slept only with a mat when one was available or more frequently, directly on the concrete floor. Over the 1930s, the reformist rhetoric increasingly put racial and social privileges into competition. In his 1939 report, Paterson expressed concern over the increasing number of educated Africans used to sleeping on some sort of bed or mattress at their homes before being committed to prison. According to him, these prisoners constituted 25% of the African prison population and should be provided with the same bedding as Asian convicts. More generally, the Colonial Office considered that prison conditions should evolve jointly with the improvement of living conditions for the average free citizen. In theory then, punishment did not aim to affect prisoners' social habits and was meant to reflect their previous standard of living. In practice, gross overcrowding prevented the authorities from introducing any reforms or from dismantling the racial architecture of conditions of confinement.

Racial divisions were sometimes used by Indian convicts to improve their own condition and claim further privileges while in prison. Their daily average population at Nairobi, Mombasa and Kisumu prisons were respectively 9.03, 6.24 and 0.03 in 1937.¹⁰⁵¹ In 1938, nine Indian prisoners went on hunger strike at the Nairobi prison and wrote a joint petition to claim improved conditions of confinement and racial privileges. In contrast to the Africans' strikes, authorities and Visiting Justices paid attention and gave some credit to their

¹⁰⁵⁰ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 28.

¹⁰⁵¹ KNA AG/16/234, Letter from the Chief Secretary to the Registrar of the Supreme Court, 14 October 1938.

grievances, admitting there was a 'certain amount of ground for complaint'.¹⁰⁵² Strikers' grievances revolved around two major points: the improvement of the penal diet for Asian convicts and strict separation from African prisoners. On a larger scale, their demands resonated within wider racial feelings and fears over miscegenation and proximity with black people prevailing within colonial society at large. Being already confined in a separate ward, they pressed to have both separate latrines and bathrooms and to establish them, along with sleeping cells, as far as possible from sanitary devices and wards used by African prisoners.¹⁰⁵³ According to them, they suffered from noxious odours emerging from African latrines, which 'infested their own separate environment'.¹⁰⁵⁴ Indian convicts also resented having to take showers in the same bathroom as African prisoners, even though they were allocated different timeslots and never met with them. In July 1952, Asian prisoners at the Nairobi prison complained that food was served on the same plates and utensils as for African prisoners and asked to be served with separate ones¹⁰⁵⁵. As far as the prison diet were concerned, they pressed to get their daily food allowance increased, especially the quantity of milk, salt and spices. Indian prisoners were particularly dissatisfied with the food quality: the rice often contained a lot of dirt and faecal matter of rats.¹⁰⁵⁶ As a matter of principle, prison authorities were reluctant to improve penal diets, although they agreed with the need to ensure strict segregation between Asian and African convicts, notably in the prison hospital.¹⁰⁵⁷ In practice, racial separation thus prevailed within the reformist agenda, within other kinds of initiatives.

It will not be surprising that official attention focused on the question of European prisoners. In colonial contexts, the effect of prisons conditions on the morale and health of prisoners was racially conceived. Prison life in colonial jails was considered too punitive for

¹⁰⁵² KNA AG/16/234, Meeting of Visiting Justices at Nairobi prison held at the Law Courts at Nairobi, Minutes, 6 July 1938.

¹⁰⁵³ KNA TRANS/JZ/1/7, Petition by Indian prisoners to the Commissioner of prison, 10 May 1938.

¹⁰⁵⁴ Ibid.

¹⁰⁵⁵ KNA AP/1/1193, Letter from the Superintendent of Kisumu prison to the Commissioner of Prisons, 24 July 1952.

¹⁰⁵⁶ KNA TRANS/JZ/1/7, Petition by Indian prisoners to the Commissioner of Prisons, 10 May 1938.

¹⁰⁵⁷ KNA TRANS/JZ/1/7, Notes by the Superintendent of Nairobi Prison, 1938.

European prisoners, who suffered from a significant change in social habits and living conditions, especially in cases of long-term imprisonment.¹⁰⁵⁸ In the colonial perception, carceral punishment for white offenders should exclusively involve the loss of liberty and not result in any deterioration of living standards. In 1930, the Elected Members of the Legislative Council expressed great concern over the confinement of white prisoners in Kenya, in view both of the stern and unhealthy conditions prevailing in colonial jails and the dangers of racial proximity between black and white convicts. They consequently proposed that all European prisoners sentenced to more than one year of imprisonment should be sent outside the colony to serve their sentences, using the provisions of the Colonial Prisoners Removal Act of 1884. Over the period, the colonial state undertook considerable effort and expense to send white long-term convicts to the United Kingdom. In 1934, the fate of Mr Geoffrey Selwyn, who was detained at the Kisumu prison pending his trial, gave rise to renewed controversies on the matter. After a few days of confinement, Mr Selwyn developed malaria in the prison and died at the Eldoret hospital.¹⁰⁵⁹ His brother vehemently accused authorities of failing to provide adequate conditions of confinement for European prisoners in the colony, notably as regards sanitary facilities or provisions to safeguard them from mosquito bites: ‘My brother was a delicate man. (...) Authorities took great risks in sending him to Kitale’.¹⁰⁶⁰ The discourse of Mr Selwyn’s brother discloses a particular colonial rhetoric that assumed different bodily sensitivity, whether biological or cultural, to pain and unsanitary environments between white and black people. In view of the constant shortage of European prison staff, colonial authorities were very anxious about white convicts being supervised by African warders, as this openly subverted the core of racial supremacy.¹⁰⁶¹ In Nyanza province, all European prisoners were systematically transferred to the Kisumu prison.¹⁰⁶² The Commissioner of Prisons refused to authorise the confinement of white convicts at the Kakamega prison, which

¹⁰⁵⁸ KNA AG/1/241, Letter from the Commissioner of Prisons to the Colonial Secretary, 3 March 1930.

¹⁰⁵⁹ TNA CO 533/450/8, Letter from G. Selwyn’s brother to the Chief Secretary, 24 October 1934.

¹⁰⁶⁰ Ibid. Afterwards, it was discovered G. Selwyn had actually caught malaria before being admitted to prison.

¹⁰⁶¹ KNA AG/16/225, Letter from the Commissioner of Prisons to the Chief Secretary, 18 February 1932.

¹⁰⁶² KNA PC/NZA/2/6/10, Letter from the Commissioner of Prisons to the District Commissioner, Kakamega, 1933.

had no resident European Officer. Similarly, prison overcrowding threatened to challenge racially-segregated prison orders and to damage the face of white supremacy and colonial rule. Due to the increasing number of European prisoners over the period, Africans and Europeans were likely to be mixed in some district prisons, especially during working hours. As claimed by the Commissioner of Prisons, the authorities highly resented racial proximity in prison as undesirable 'either in the interests of the state or of the individual'.¹⁰⁶³ The confinement of white offenders and their visible subjection to similar penal rules threatened to reverse the racial hierarchies and power relations prevailing outside.

White convicts' racial dominance was thus reinscribed into the carceral space through a series of privileges, in terms of diet, accommodation, labour and prison rights. European convicts were few in number and accommodated in separate single cells, scattered in the main prisons of the colony.¹⁰⁶⁴ As a general rule, they benefited from lighter forms of work or complete idleness, prison authorities being reluctant to mix them with African convicts in the workplace and unable to provide them with hard labour.¹⁰⁶⁵ While prison authorities deliberately degraded penal diets for African convicts over the 1930s, they refused to undertake similar measures for European ones. White convicts were also granted special racial privileges, such as smoking cigarettes, the provision of luxury items and time for physical exercise, which were denied to African and Asian prisoners.¹⁰⁶⁶ At the Nairobi prison, whites were given access to a separate library and recreational activities during non-working hours. They were also provided with additional clothes and khaki helmets to protect them from sun while at work during the hot season. With a view to the increasing number of white convicts over the 1930s in Kenya and East Africa, colonial authorities contemplated setting up a common detention farm for the European prisoners of Uganda, Tanganyika and Kenya, to be

¹⁰⁶³ KNA AG/1/241, Letter from the Commissioner of Prisons to the Chief Secretary, 3 March 1930.

¹⁰⁶⁴ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 29.

¹⁰⁶⁵ TNA CO 859/73/9, Letter from the Commissioner of Prisons to the Chief Secretary, 2 November 1940.

¹⁰⁶⁶ KNA AG/16/225, Letter from the Commissioner of Prisons to the Chief Secretary, 18 February 1932.

established in the colony of Kenya on the model of the prison farm of Kitale.¹⁰⁶⁷ The proposal, which was fully supported by Paterson in 1939, was meant to reduce state expenses, ensure complete segregation from Asian and African convicts and provide a healthier environment and hard labour to European prisoners. This project also had the definite advantage of withdrawing European convicts from the view of the African public, as some of them were daily working in out-gangs and could be easily seen by Africans living in the neighbourhood.¹⁰⁶⁸ Yet, mainly for lack of funds and staff, the scheme was never implemented and the small number of short-term white convicts remained essentially confined in the Nairobi, Mombasa and Kisumu jails up to the early 1950s.

Discipline and punishment

From a wider perspective, it seems that prison disciplinary orders and social atmospheres significantly evolved according to their areas, depending on the personality of the Officer in charge or District Commissioner and on specific disciplinary rules regulating prison life. According to Paterson, the disparity was wide between different prisons, with little uniformity in the hierarchy of offences and severity of punishments.¹⁰⁶⁹ Yet, two major trends can be roughly identified within this landscape, the main prisons of the colony developing stricter, disciplinarian internal orders, as opposed to the smaller outlying jails which provided more avenues for prisoners' agency. From a perusal of prison statistics, punishments were mainly awarded in the three main prisons of the colony, where long-term prisoners were confined.¹⁰⁷⁰ In some of them, prison authorities had a definite habit 'to handle prisoners with the toughest hand' and impose dire punishments for the most menial breaches of prison rules:

¹⁰⁶⁷ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 29.

¹⁰⁶⁸ TNA CO 859/19/1, 'Note of the Comments of the Colonial Penal Administration Committee on the proceedings at the Conference of East African Commissioners of Prisons', written by the Colonial Penal Administration Committee, April 1939.

¹⁰⁶⁹ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 21.

¹⁰⁷⁰ See TNA CO 544, Prison Department Annual Reports.

‘some appear to regard tearing up prison property, to wit a blanket, as being as just as serious as trying to ‘tear up’ a prison warder’.¹⁰⁷¹ A ‘chatty attitude on parade’ could be severely punished to avoid any further misbehaviour and re-establish symbolically the prison warders’ authority.¹⁰⁷² It seems that disciplinary and coercive measures were much less resorted to in smaller jails, due to both of the type of prisoners confined and to the lack of punishments available to prison officers. Every year, more than three quarters of reported punishments for prison offenses were awarded in the three main prisons of the colony.¹⁰⁷³ At the opposite end of the spectrum, a group of small outlying prisons including between ten to twenty institutions were characterized by very stable environments and reported no offense against prison discipline.

Over the 1940s, prison authorities stiffened the punishment and repression of convicts in the main jails of the colony. They increasingly resorted to the sternest forms of punishment for serious breaches of prison rules. These included the ‘loss of remission’, a ‘reduced’ or ‘penal’ diet, the confinement in a single cell or a combination of these. Solitary confinement could not always be used and presented many disadvantages. The very few individual cells located in the main prisons of the colony were generally occupied either by condemned prisoners, persons diagnosed with ‘mental trouble’ or ‘violent’ convicts. In addition, it was believed that this form of punishment offered some kind of ‘relief’ to the ‘lazier’ prisoners, as they did not have to work and continued to benefit from the full food ration¹⁰⁷⁴. In the later 1930s, Paterson argued for increasing the deterrent effect of solitary confinement by forcing prisoners to perform an arduous task, such as beating rope or coir, in their single cells. In practice, prison authorities found alternative ways to make solitary confinement more punitive and increasingly combined it with two other severe sanctions: the reduction in prisoners’ food allowances and in periods of remission. Under prison rules, convicts could obtain a shortening

¹⁰⁷¹ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 21.

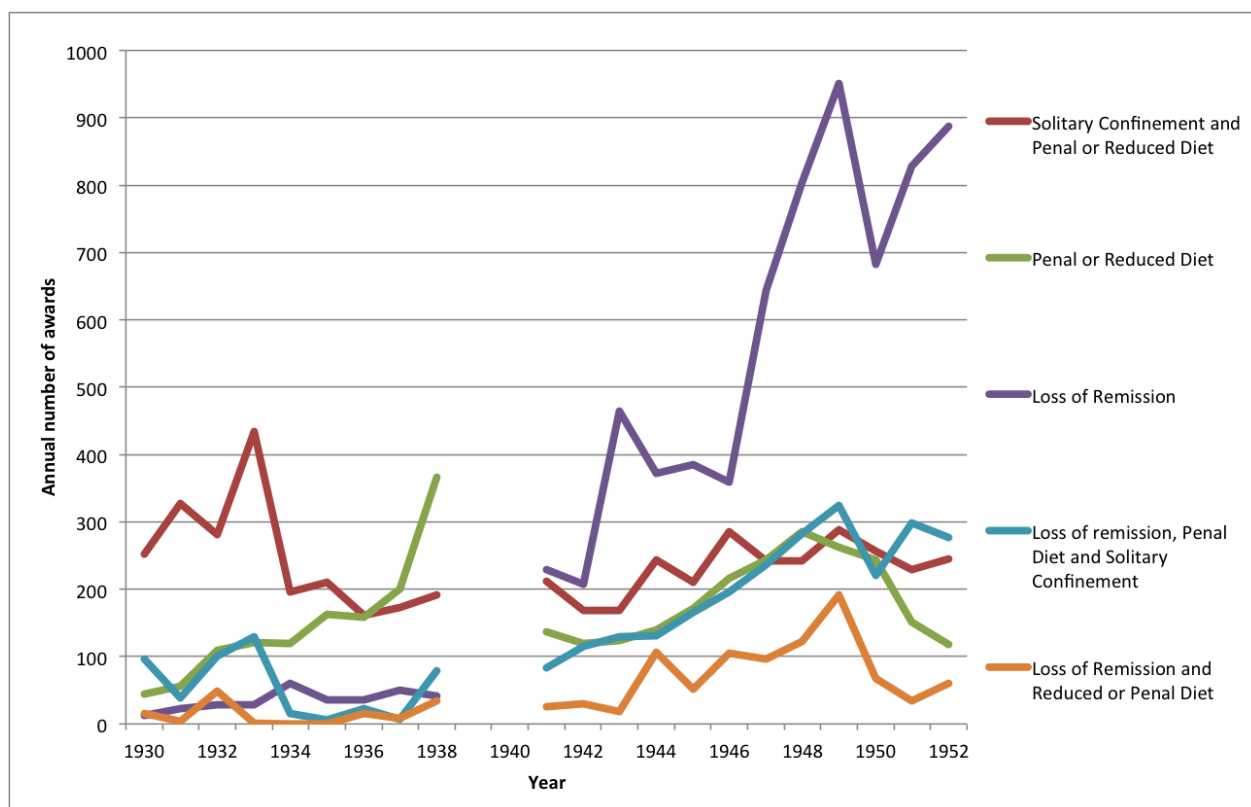
¹⁰⁷² Ibid.

¹⁰⁷³ See TNA CO 544, Prison Department Annual Reports.

¹⁰⁷⁴ Ibid.

of their sentence, for good conduct. Those who committed any breach of the prison rules were, at the discretion of the Superintendent, liable to forfeit, in whole or in part, the earned remission. The loss of even one day of remission was considered a very severe punishment and Superintendents were reluctant to impose it for small offences against prison discipline and used it very sparingly.¹⁰⁷⁵ Yet, from the forties onwards, prison authorities massively used it to impose strict discipline and punish recalcitrant prisoners. Keeping up with their general policy on the feeding of convicts, prison authorities were also much willing to use reduced or penal diets as a common punishment for all sorts of breaches against prison discipline. From the forties onwards, they showed a marked preference to award ‘combined’ punishments, involving generally a shortening of their remission period and the imposition of a period of solitary confinement with a reduced diet, with a view to impose highly punitive sanctions and stiffen discipline.

Main punishments used in prisons for breaches against discipline (c. 1930-1952)



Physical violence and punishment remained an enduring feature of the prison system over the 1930s and 1940s. In the 1920s, corporal punishment for prison offences was meted

¹⁰⁷⁵ Ibid.

out every few days in the main jails of the colony.¹⁰⁷⁶ From the early thirties, annual figures of corporal punishment for prison offenses stabilised between thirty and fifty, and months could pass without any such entry on the records of the main prisons. Yet, from the forties onwards, they shot up from 21 in 1942 to 50 in 1950, reflecting probably hardened attitudes towards serious or political prisoners in the main jails of the colony. In parallel, it seems that European officers' illegal violence and floggings of prisoners had also considerably decreased from the 1930s, both in incidence and severity. Though the reality was probably far from the bucolic picture sketched out by Paterson in his 1939 report, the indiscriminate use of the lash in prisons was much more strictly regulated and limited in extent: 'There are memories of a European twelve years ago striding through his prison, with a 'kiboko' on his hand, striking prisoners as he went. An African warder would be amazed if he saw a European Officer touch a prisoner today, and if he did it himself, he would be dismissed forthwith'.¹⁰⁷⁷ Yet, echoing the objectification of the African body within colonial society and the widespread acceptance of illegal practices of physical subjugation, improvised physical violence in the form of beatings, slapping and kicking was probably a common occurrence in the jails of the colony. Physical punishment could also be applied through the use of mechanical restraints, such as chains, cuffs and 'leg irons'.¹⁰⁷⁸ In colonial Kenya, it was still allowed under prison rules and occasionally practiced to cuff a prisoner to a ring in the wall. The use of mechanical restraints as a punishment was forbidden by rule 39 of the Standard Minimum Rules for the Treatment of Prisoners established by the League of Nations. Following a circular from the Secretary of State to all colonial governments enquiring into the matter on the 12th January 1935, the Governor justified the illegal use of mechanical restraints upon prisoners in Kenya on the grounds that they were sparingly resorted to and that they constituted a practical means to

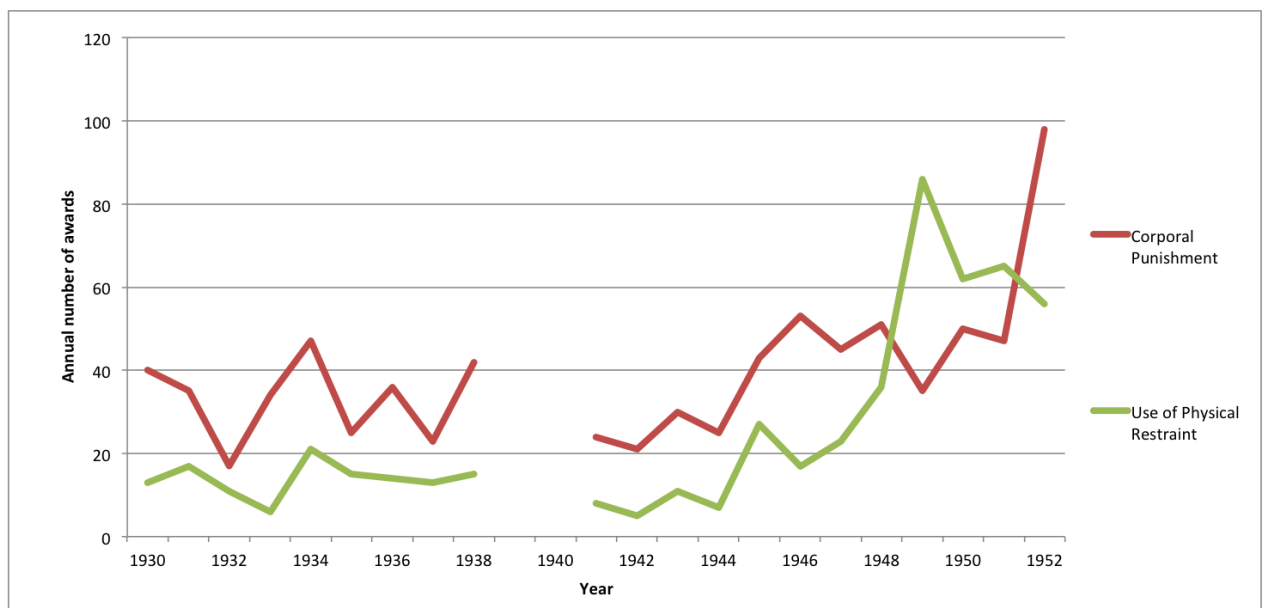
¹⁰⁷⁶ Ibid. See also: TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 21.

¹⁰⁷⁷ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 21.

¹⁰⁷⁸ TNA CO 912/9, 'Use of Mechanical Means of Restraint in Colonial Prisons', Memorandum written by the Colonial Penal Administration Committee, 6 October 1945.

prevent some convicts from escaping.¹⁰⁷⁹ Despite pressure from the Colonial Office to abolish this practice, it remained significantly used over the colonial period against the most ‘hardened’ convicts. In 1947, 23 prisoners were still kept under physical restraint in the Kenyan prisons. With the arrival of a new generation of political dissidents in jails in the late forties, prison authorities increasingly resorted to physical coercion in jails, both as a means of discipline and punishment. The number of convicts detained under physical restraint notably shot up to 86 in 1949 and stabilised around sixty in the early fifties.

Use of physical punishment and coercion in prisons (c. 1930-1952)



Colonial authorities also maintained discipline through the grant of particular privileges to convicts who had committed no offence against prison regulations or who collaborated with prison authorities. Good conduct badges were granted to prisoners who had had a ‘clean sheet of conduct’ over the two last years, and entitled them to small privileges.¹⁰⁸⁰ A charge strip could also be given to convicts who had already received a good conduct badge, with increased responsibilities and limited supervisory powers over other convicts. While this was implemented in other British colonies of East Africa, no convict warders’ system was introduced in Kenya. In most prisons, privileges mainly consisted of increased food rations or

¹⁰⁷⁹ Ibid.

¹⁰⁸⁰ KNA PRISONS/1/6, Letter from the Commissioner of Prisons to the Superintendent of Nairobi prison, 19 July 1933.

specific luxuries such as tea and sugar.¹⁰⁸¹ This was considered the only material benefit actually appreciated by African convicts, as the ordinary food allowance was generally poor and unappealing. It was alleged that extra visits and letters meant little to the African prisoner. African convicts were often illiterate and experienced considerable difficulties in communicating through mail. Besides, their relatives generally lived a long distance from the prison and could rarely pay a visit. Prison authorities also refused to grant African prisoners the same privileges as European prisoners, such as the provision of a couple of cigarettes per day. They considered it impracticable in view of the lack of segregation and supervision within the wards.

Social orders and prisoners' agency

Relationships between African warders and convicts present diverse, complex and conflicting features, mixing coercion, collaboration and consent. Several examples suggest that colonial prisons in Kenya were actually characterised by relative stable and negotiated orders between African warders and convicts, from which the higher ranks of the prison administration were barred. First, the archives unveil an extended and underground system of extortion and corruption among the lower ranks of the prison administration. It seems that warders indulged in systematic pilfering and extortion, either of prisoners' food allowances or personal items. Paterson acknowledged that many of the diet sales figures were inaccurate in East African prisons.¹⁰⁸² Unchecked procedures left the door open to 'regular and systematic corruption' between those delivering food and those receiving and putting it in the stores.¹⁰⁸³ Pilfering of prisoners and detainees' property by warders and dressers was also endemic. There was a great deal of complaint from discharged convicts that their clothing and other possessions, which had been confiscated on admission to prison, were missing and not

¹⁰⁸¹ KNA PRISONS/1/6, Letter from the Superintendent of Nairobi prison to the Commissioner of Prisons, 6 August 1933.

¹⁰⁸² TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 26.

¹⁰⁸³ Ibid.

returned on their discharge.¹⁰⁸⁴ Even the prison authorities strongly suspected warders of stealing on a regular basis. Yet, for lack of evidence and probably political will, they failed to identify and punish the warders at fault, who continued their regular extortion market without fearing any form of reprisal or dismissal. In parallel, in some prisons, warders established original forms of illegal cooperation and negotiation with convicts, with extended black markets providing special goods and luxury items. In 1942, for instance, the Work Superintendent of Nakuru prison discovered African warders to be manufacturing and selling alcohol to convicts.¹⁰⁸⁵ Prison authorities had strongly suspected that liquor was consumed by prisoners for a long time, but had never had any proof of it or of its origin. For years, they had complained about the poor quality of and the lack of discipline within the local prison staff, who were accused of cooperating with convicts on a regular basis: ‘discipline and loyalty are qualities entirely lacking among the members of the local prison staff’.¹⁰⁸⁶ Infuriated by rumours of alcohol smuggling, the local Work Superintendent decided to spy on the prison lines for four weeks and eventually discovered that ‘Nubian Gin’ was brewed by some local warders, who had hidden materials for its preparation in the ground in front of the prison.¹⁰⁸⁷ The African Sergeant responsible for the manufacturing and distilling of gin in his hut was arrested and brought to court.

Other histories documented in the archives allow us to scratch the surface of prisoners’ relations, subcultures and opinions, disclosing original forms of agency, negotiation and resistance to authorities. According to colonial officials, African detainees and convicts over the 1930s were quite ‘amenable to control and discipline’, and tended to adopt a ‘stay put’ attitude to avoid trouble and punishment.¹⁰⁸⁸ On a wider scale, incidents, assaults, strikes or riots were a very rare occurrence in Kenyan jails. Yet, this passive and law-abiding attitude

¹⁰⁸⁴ See KNA DC/KSM/1/27/40.

¹⁰⁸⁵ KNA PC/NKU/2/29/4, Letter from the District Commissioner, Nakuru to the Provincial Commissioner, Rift Valley, 28 April 1942.

¹⁰⁸⁶ Ibid.

¹⁰⁸⁷ KNA PC/NKU/2/29/4, Letter from the Work Superintendent, Municipal Board of Nakuru, to the District Commissioner, Nakuru, 28 April 1942.

¹⁰⁸⁸ KNA JZ/11/1, ‘Sentences of Detention on Natives Previously in Prison’, Memorandum written by the Commissioner of Prisons, 28 February 1933.

thinly veiled a dominant sub-culture of defiance and antagonism unifying convicts in the face of prison authorities. According to the Commissioner of Prisons, the general trend was to 'regard all authority as inimical' while much of prisoners' thoughts were 'concentrated, in non-working hours especially, upon measures to outwit and defeat it'.¹⁰⁸⁹ In the official view, a handful of hardened convicts played a leading role, as they had gained thorough knowledge of the functioning and shortcomings of prison administration and could easily dispense advice and tricks to the youngest or minor offenders on how to evade authority, whether in prison or outside once released: 'Here the experienced criminals compare notes, lay their plans for the future, teach the younger prisoners by telling stories of their adventures, hold each other up to the admiration of the less experienced, divulge to each other the weak parts of the preventive measures taken against crime and the loop-holes in the Law which have enabled them to escape punishment for their crimes in the past'.¹⁰⁹⁰ Colonial authorities were most anxious about this specific transmission of knowledge and related sub-cultures of resistance and crime, and feared they would stretch to the confines of detention camps. They usually blamed a minority of 'hardened' offenders for exerting a high degree of symbolic domination over other convicts and spreading subversive ideas behind walls. For administrative convenience, different badges or details of dress were used in prisons to distinguish recidivists from others. In the 1940s, a Resident Magistrate consequently proposed before the Habitual Offenders Commission putting badges of distinction on first offenders too, in order to give them legitimacy to 'scorn recidivists'.¹⁰⁹¹ Yet, the same Magistrate readily admitted that recidivists were much more experienced and alert than others and would manage anyway, in 99 % of the cases, to influence or dominate others despite symbolic separations.

¹⁰⁸⁹ Ibid.

¹⁰⁹⁰ KNA PC/NZA/2/6/15, Memorandum on the segregation and training of stock-thieves and other prisoners from Native Reserves.

¹⁰⁹¹ KNA AG/7/13, Evidence by a Resident Magistrate, Committee on Habitual Offenders, 1946. In 1946, he had been a Resident Magistrate for 25 years in East Africa, notably in Nairobi, Kisumu and Mombasa. He had also been a Visiting Justice in the prisons of Nairobi, Mombasa, Kisumu and Nakuru.

The colonial period was characterised by an increasing number of escapes from camps and prisons.¹⁰⁹² Over the course of the 1930s, colonial authorities were often surprised at the low number of escapes in prisons, taking into consideration the lack of adequate security in buildings and among supervisory staff.¹⁰⁹³ It was usually believed that the African was not a ‘runaway’ and that maximum-security establishments should be restricted to the most serious offenders only.¹⁰⁹⁴ Sometimes, the propensity to escape was considered along ethnic lines. According to the District Commissioner of Laikipia-Samburu, magistrates had a clear sense that there were some ‘tribes’ more prone to escape than others.¹⁰⁹⁵ The Masai, the Samburu, the Lumbwa and the Turkana were generally designated as ‘tribes with criminal tendencies’ regarding detention ‘as a farce’ and seizing every opportunity to escape.¹⁰⁹⁶ He argued that these ethnic groups should be sentenced to imprisonment rather than detention, whereas Kikuyu, Kavirondo and ‘other semi-civilised tribes’ were much less willing to evade control and should be given detention instead.¹⁰⁹⁷ According to the Commissioner of Prisons, those who escaped were generally long-term convicts confined away from their homes and among ‘the worst characters’ in the prison population.¹⁰⁹⁸ Depending on areas, only one third or less were generally recaptured. The problem reached considerable proportions in detention camps, where security infrastructures were blatantly defective and sometimes non-existent. For instance, the Maseno camp, in the Central Kavirondo district, had no fence until 1937.¹⁰⁹⁹ Afterwards, custody facilities were limited both in extent and efficiency. The windows and doors of the dormitories were not adequately secured and, due to the lack of supervision, detainees could easily slip through the wires unobserved or escape while at work. At the Port Victoria detention camp in Nyanza province, the number of escapes reached high peaks in

¹⁰⁹² See TNA CO 544, Annual Prison Department Reports.

¹⁰⁹³ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939, p. 36.

¹⁰⁹⁴ Ibid.

¹⁰⁹⁵ KNA AP/1/1393, Letter from the District Commissioner, Laikipia-Samburu, to the Registrar of the Supreme Court, 2 October 1935.

¹⁰⁹⁶ Ibid.

¹⁰⁹⁷ Ibid.

¹⁰⁹⁸ KNA AP/1/1393, Letter from the Commissioner of Prisons to the Registrar of the Supreme Court, 22 May 1933.

¹⁰⁹⁹ KNA DC/KSM/1/27/46, Letter from the Officer-in-charge of the Maseno Detention Camp to the District Commissioner, Central Kavirondo, 18 August 1948.

1936, with an annual figure of 97.¹¹⁰⁰ This camp was built in 1935 to relieve overcrowding in the Maseno and Kisumu camps. In view of the alarming numbers of escapes, the Commissioner of Prisons even contemplated closing the camp and pressed authorities to provide additional African supervisory staff.¹¹⁰¹

Prison and police authorities highly resented the leniency of the judiciary upon escapees and called for heavier sentences. When prisoners were recaptured, the average sentence was only 3 months and ten days for the whole colony, whereas a penalty up to two years could be awarded under law.¹¹⁰² Escapees from camps were usually cautioned or punished with a few additional days of detention only. The leniency of the judiciary stirred up the wrath of police officers, who felt that their work in detecting crime and punishing offenders was undermined. The Superintendent of Police instanced the vain efforts of the police to dismantle gangs in the Eastleigh areas of Nairobi.¹¹⁰³ In the mid-1940s, the main criminals operating in the area had been caught after months of police research and sentenced to heavy sentences of imprisonment. The escape of one of the gangs' ringleaders in 1945 had the most discouraging effect upon local policemen, who feared the ex-convict would 'muster another gang' and reembark into criminal activities.¹¹⁰⁴ Escapes created particular anxieties when they revealed the warders' negligence or complicity with convicts. When prisoners were sent to the Nairobi Prison Hospital, the Native Civil Hospital and the Infection Disease Hospital, they had great opportunities to escape, whether during transportation or from these places, which were devoid of proper security facilities, most being surrounded by a mere barbed wire fence.¹¹⁰⁵ As a consequence, prison authorities tended to reduce the transfers of

¹¹⁰⁰ KNA DC/KSM/1/27/11, Letter from the Officer-in-charge of the Port Victoria Detention Camp, 12 January 1937.

¹¹⁰¹ KNA DC/KSM/1/27/11, Letter from the Commissioner of Prisons to the Officer-in-charge of the Port Victoria Detention Camp, 12 January 1937.

¹¹⁰² KNA PC/NZA/2/6/14, Letter from the Commissioner of Prisons to the Provincial Commissioner, Nyanza, 1 April 1935.

¹¹⁰³ KNA AH/14/18, Letter from the Superintendent of Police, Nairobi, to the Commissioner of Police, 13 April 1945.

¹¹⁰⁴ Ibid.

¹¹⁰⁵ KNA AH/14/18, Letter from the Commissioner of Prisons to the Chief Secretary, 17 April 1945.

prisoners to outside places and medical institutions over the period and recommended that only very urgent cases be sent to hospitals.¹¹⁰⁶

In view of the shortage of staff, penal institutions also presented a significant 'level of integration within colonial society' and failed to ensure the safe custody of convicts and detainees.¹¹⁰⁷ At the Maseno detention camp for instance, only one African overseer was in charge of the administration of the camp and the supervision of the whole detainees' population.¹¹⁰⁸ As a consequence, detainees were working everyday as an out-gang for the Agricultural Department under the supervision of the Agricultural Officer, and went and returned from work on their own. On their way, detainees could freely collect items, alcohol or bangh from friends living in the neighbouring area or find a short time during which to drink beer with relatives and friends nearby. During the nights, they were not locked up in the dormitories in order to give them access to sanitary devices and could thus freely move within the camp and collect beers and bangh through the barbed wire fence. In addition, it seems that detainees could easily escape the supervision of the overseer on Sundays and go for a stroll out from the camp. In some places, detainees or convicts thus managed to evade or subvert penal authorities to a significant extent and to establish their own rules of daily life for the prison or camp population, notably in small outlying areas. Taking advantage of the loopholes of supervision and control, they set up negotiated forms of order, imposing their own forms of social and recreational activities and asserting their implicit right to move freely within and sometimes outside the institution. Setting aside the particular case of First Class prisons, central authorities were more willing to implicitly permit a certain level of African agency and autonomy within the jail. In view of the shortage and lack of training of the staff, prisoners' independent forms of social organisation provided alternate structures of regulation and order and relieved African warders from a part of their supervisory duties. Highly aware of the shortcomings in control, the Commissioner of Prisons was generally reluctant to impose stern

¹¹⁰⁶ KNA AH/14/18, Letter from the Commissioner of Prisons to the Member for Law and Order, 4 April 1952.

¹¹⁰⁷ D. Branch, 'Imprisonment and Colonialism in Kenya', p. 254.

¹¹⁰⁸ KNA DC/KSM/1/27/34, 'Inquest into the death of Anuyo Olayo', carried out by the First Class Magistrate, Nakuru, 4 July 1941

punishments on warders who had failed to ensure proper supervision as this would thin out their already depleted ranks.¹¹⁰⁹

Resistance, revolt and repression

Although few in number, prisoners' strikes and revolts revived official anxieties over African political opposition and were brutally repressed. A series of complaints and collective mobilisations broke out in the late 1930s in the most repressive institutions of the colony, disclosing the widespread discontent that state-inflicted punitivity and degradation in conditions of confinement had generated among convicts and detainees since the beginning of the decade.¹¹¹⁰ Two subjects generally became sources of tension and the stumbling block for organised resistance: the pace and organisation of work, and relations between convicts and European prison officers. According to the Visiting Justice Dean Wright, the policy initiated by the Commissioner of Prisons in 1933 generated wide discontent among prisoners and significantly degraded prisoners' relationship with warders, resulting both in an increasing number of punishments for convicts failing to keep up with higher demands in the workplace and in an increasing number of reported assaults against prison staff.¹¹¹¹ In his (probably highly idealized) view, in the early 1930s, there was 'an enormous amount of respect and regard between prisoners generally and the officers'.¹¹¹² Though few in number, revolts against warders or overseers broke out in the second half of the 1930s, disclosing a general feeling of frustration and persecution among convicts, particularly in the main prisons or camps of the colony. In 1937, an improvised strike immobilised the tailors' workshops at the

¹¹⁰⁹ KNA AH/14/18, Letter from the Commissioner of Prisons to the District Commissioner, Moyale, 15 May 1948.

¹¹¹⁰ See the strikes at the workshops of Nairobi prison and at the Ngong Quarry prison camp (1937), as well as convicts' revolt in one of the working outgangs of the Kisii prison (1936).

¹¹¹¹ KNA AP/1/1190, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 16 January 1937.

¹¹¹² KNA AP/1/1190, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 8 July 1937.

Nairobi prison.¹¹¹³ The Commissioner of Prisons wrote up a lengthy report to study the causes of the disturbance and an inquiry was later led by Paterson, who was granted interviews with all the officers concerned. From both studies, it appeared that the protest primarily stemmed from the increasing pressure put on convicts to crank up the output and pace of work, with a view to boosting benefits to the state. Paterson himself regretted that in the tailors' and carpenters' prison workshops of Nairobi, technical prison instructors had become obsessed with production quotas and economic concerns, at the expense of both prison discipline and training. As he pointed out, they had come to think that the primary aim of prison industries was to 'execute orders at high pressure with a resultant profit to government. Production came to be thought as more important as discipline'.¹¹¹⁴ According to Paterson, the Chief Instructor supervising prisoners in the tailors' shops was 'a loyal and conscientious public servant, more accustomed to the rush of a factory life than to the more static conditions of a prison workshop, where the proper disciplinary control of prisoners and the opportunities for teaching them a trade are paramount consideration'.¹¹¹⁵

Another similar trouble took place in 1936, in a prison mason out-gang working in the vicinity of the township of Kisii in Nyanza province and responsible for building a new detention camp.¹¹¹⁶ On 29 April, prisoners refused to go to work, exasperated by the threatening and persecuting attitude of the Lance-Corporal in charge of their supervision. From their testimonies, he made a definite habit of harassing them at work and punished them for alleged offences against penal labour discipline on a regular basis: 'they said that they did not want to work under the supervision of the Lance-Corporal Ongore as he frequently laid charges against them and had threatened to lay further charges and to have their sentences enhanced'.¹¹¹⁷ This morning in April, the convicts refused to work, gave their tools to the warder and began to protest, brandishing hammers. One of them advanced towards the

¹¹¹³ TNA CO 912/4, Report on a Visit to the prisons of Kenya, Uganda, Tanganyika, Zanzibar, Aden and Somaliland, written by A. Paterson, M.C., 1939.

¹¹¹⁴ Ibid.

¹¹¹⁵ Ibid.

¹¹¹⁶ KNA PC/NZA/2/6/16, Letter from the District Commissioner, Kisii, to the Commissioner of Prisons, 26 April 1936.

¹¹¹⁷ Ibid.

Corporal and struck him on the shoulder. The other guards immediately came to the assistance of the injured warder, quelled the revolt and forced convicts to return to work. Anxious over this unusual revolt, local prison and administrative authorities intensified repression against prisoners, blatantly exceeding their legal powers of punishment. During the same day, the District Commissioner arrived at the spot, interviewed the six convicts concerned and decided to impose unlawful sentences of flogging, in the form of 15 strokes with a cane for the ringleader and 4 strokes each for others. The lashes were inflicted immediately in his presence, infringing the rules according to which any sentence of corporal punishment exceeding 12 strokes should be submitted to the governor for approval prior to being carried out, and prescribing that in all cases, the prisoner had to be previously certified fit by a medical officer. The District Commissioner latterly justified his decision by saying he acted in the interests of public safety, in order to uphold the authority of the African warders, avoid an outbreak of wide-scale revolt and prevent further disturbance in the future. The severity of the repression actually resonated with wider anxieties over the increasing number of imprisoned political activists and their influence over prison discipline and order: ‘There was a nasty Bolshevistic attitude apparent among the convicts’.¹¹¹⁸ Though openly illegal, the attitude of the District Commissioner was retrospectively sanctioned by the higher ranks of the prison administration. The Commissioner of Prisons decided to ask the Governor to confirm the sentences of corporal punishment and the District Commissioner was neither dismissed, punished nor cautioned for exceeding his powers.

In 1937, a strike was also organised at the Ngong quarry prison camp, which was designed to detain the most serious offenders of the colony.¹¹¹⁹ The strike was started following a confrontation between a European prison officer and a convict during which the latter eventually died. According to official reports, this prisoner had been previously found by the camp Officer with a tin of snuff within a short distance from the officer’s house. On being

¹¹¹⁸ Ibid.

¹¹¹⁹ KNA AG/16/234, Meeting of Visiting Justices to Nairobi Prison held at the Law Courts at Nairobi, Minutes, 12 January 1938.

ordered to hand it over to the officer, the prisoner refused, opened the tin, swallowed some of the snuff and began to choke. The Officer consequently ordered his cook working in the neighbouring house to bring something to drink to the suffering convict. In the official version, the death of the convict resulted from a mere incident, in which the confused cook brought boiling milk in haste and where the prisoner eventually died of a throat burn: ‘the cook snatched a saucepan of milk from the stove and after the man had swallowed some of the milk, it was discovered that it was practically boiling. This caused a bad burn in the throat and the man unfortunately died’.¹¹²⁰ Yet, detainees of the Ngong camp gave little credence to the official version and widely believed the European officer was directly responsible for the convict’s death. The event kindled ‘an extraordinary feeling of resentment throughout the prison’ and sparked off the organisation of the strike.¹¹²¹ By and large, the prisoners’ revolt and protest probably resonated with a wider feeling of distrust and discontent towards European prison officers, who had subjected convicts to an increasingly punitive regimen of physical subjugation since the early decade.

The prison administration was strikingly successful in dismissing and dismantling African convicts’ collective movements of protest, complaints and claims, under the thin veil of lawful procedure and transparency. Following the beginning of the strike at the Ngong camp, the Commissioner of Prisons came to the prison, interviewed a deputation of strikers and took ‘pencilled notes’ of the different testimonies.¹¹²² Unsurprisingly, the report concluded that the African convicts had no genuine grievance and the strike was consequently broken by the use of force. Yet, some Visiting Justices, notably Dean Wright, seemed dissatisfied with the conclusions of the inquiry and pressed to be given further information on the matter. At a meeting of the Visiting Justices to Nairobi prison in January 1938, the Commissioner of Prisons openly confessed that the notes had all been destroyed and that Visiting Justices would not have access to the detailed evidence. As a consequence, Visiting Justices had no choice but

¹¹²⁰ Ibid.

¹¹²¹ Ibid.

¹¹²² Ibid.

to give up on further enquiry. At the end of the meeting, they contented themselves with asking to be made aware of the notes next time such incident occurred. The vague and suspicious conditions of the death of a prisoner had thus been safely buried. In the following weeks, Visiting Justices received further complaints from various persons detained in the Ngong camp and decided to visit them and enquire into the matter, as their official position commanded them to proceed. On their arrival at the camp, the Officer-in-charge refused them access, on grounds that the detainees were among the worst criminals of the colony. In his opinion, the convicts 'would probably come along with a lot of frivolous complaints which would create a certain amount of unrest', if they were asked to voice grievances and opinions.¹¹²³ Though some Visiting Justices appeared much more fiercely critical of colonial prison administration from the late 1930s, their legal right to report convicts' complaints and disturbances was in practice severely restricted.

Prison order and discipline seemed to evolve quickly and radically under the influence of a new generation of political prisoners in the late 1940s. Prison authorities were obsessed with isolating political activists within the jail; the latter seemed to exert significant influence over other prisoners and were successful in challenging prison disciplinary orders. Therefore, Superintendents of prisons proceeded to regular transfers and subjected political opponents to stricter rules and supervision. In early 1951, authorities of the Nairobi prison were concerned about the attitude and influence of 60 prisoners sentenced 'for belonging to illegal societies' over other convicts and decided to transfer them to Naivasha prison 'so that they could no longer have any contact with their fellow prisoners'.¹¹²⁴ In July 1951, the warders of Mombasa prison also felt greatly disturbed by the attitude of 30 newly-admitted 'Mau Mau prisoners', who had just been transferred from Nairobi Prison.¹¹²⁵ Local prison warders had a strong sense they had lost control over convicts and asked the authorities for additional staff in order to deal

¹¹²³ Ibid.

¹¹²⁴ RH Mss. Afr. s. 746 (Archives Blundell), Letter from the Member for Law and Order to Michael Blundell, 18 April 1951.

¹¹²⁵ KNA DC/LAMU/2/24/12, Letter from the Officer-in-Charge of Mombasa Prison to the Commissioner of Prisons, 15 July 1951.

with ‘the threatening attitude of the prisoners’.¹¹²⁶ Among those convicts, six were accused of being the ring-leaders and instigating trouble against the prison administration. They had taken the initiative to send a petition to the colonial authorities, to complain about the prison conditions they had been subjected to and request the enactment of political prisoners’ rights. To a certain extent, these convicts had managed to reverse the prison internal logic of domination and to get the upper hand over local warders. As stated by the Officer-in-Charge, they ‘have put the ‘wind up’ to the officer and this had spread to the staff which is bad for discipline’.¹¹²⁷ One of the warders, namely the Corporal-in-Charge, did not ‘appear to be holding the control of prisoners’ and the whole prison staff had a sense that their authority and legitimacy had consequently deteriorated among convicts.¹¹²⁸ The Officer-in-charge consequently asked the colonial authorities to transfer this warder to the Nairobi prison in order to restore the local warders’ legitimacy and control.

In the face of the political radicalisation of a part of the convict population in the late 1940s, prison officials began to panic and speak out, disclosing the actual purposes of state punishment and related logics of objectification. Colonial perceptions of Mau Mau ‘savagery’ justified the harshest treatment of political activists in the jails of the colony: ‘all your liberal policies will die like a summer breeze if we continue much longer to treat human hyenas like naughty boys’.¹¹²⁹ In July 1951, the Officer-in-charge of the Mombasa prison did not mince his words in the official letter he wrote to the Commissioner of Prisons, regarding the six political dissidents who had recently managed to subvert prison discipline: ‘We were not interested in who they were and what they were in for. They only represented a number to us and they were to clearly understand that they were to do what they were told and eat the food given to them (very good food indeed including pure ghee) and if they refused to do this, the

¹¹²⁶ Ibid.

¹¹²⁷ Ibid.

¹¹²⁸ Ibid.

¹¹²⁹ RH Mss. Afr. s. 746 (Archives Blundell), Letter from Mr Two to Mr Blundell, 23 September 1952.

Officer-in-charge had no option to punish them'.¹¹³⁰ On a global scale, this particular case reflected two intermingled trends affecting at least the three main institutions of the colony from the late 1940s, revealing on the one hand the control the colonial state had progressively lost over prisoners within a few years, and on the other hand the consequent stiffening in the repression and punishment of convicts when colonial authority was being challenged.

¹¹³⁰ KNA DC/LAMU/2/24/12, Letter from the Officer-in-Charge of Mombasa Prison to the Commissioner of Prisons, 15 July 1951.

7 - CONCLUSION

Within the expanding field of research on state violence and punishment, this study provides one of the very rare comprehensive analyses of colonial penalty and bodily violence, broadly defined. The previous scholarship essentially explored individual forms of punishment and largely focused on colonial imprisonment. This thesis breaks new ground, adopting a more holistic approach and locating colonial punishment within the wider discourses, practices and infrastructures of criminal justice and the development of colonialism. This research has thus many ramifications in several areas of scholarship on Kenyan, African, imperial and global history and contributes to wider academic debates over state governance, penal excess, and colonial order. More precisely, the thesis constitutes an effort to historicise and understand the emergence of a strong punitive sense and a common reliance on coercion within Kenyan state and society during the two decades preceding the counter-insurgency of the early 1950s, with a view to sustaining colonial domination and white supremacy.

Let me emphasise first the main historical trends in punitive patterns in colonial Kenya. Contrary to the ideal of penal reform defended in Europe, state punishment in Kenya did not assume the form and function of an all-encompassing ‘carceral archipelago’, aiming—at least *in theory*—at socializing citizens into the proper social conduct, through individualised confinement, general surveillance and a complex and homogenised set of disciplinary tactics, which featured Foucauldian modernity. In this colonial background, several features labelled by the previous scholarship as ‘premodern’ seemed to revive the long-forgotten spectre of the ‘barbaric’ punishments typical of the *ancien régime*, during which the ‘Old Sovereign’ exerted power through public displays of violence and chastisement. In Kenya, colonial powers on the one hand introduced confinement devices within the repressive landscape in the form of prisons, camps and other coercive institutions and on the other hand permitted or initiated the development of punitive policies and a large spectrum of violent practices, whether collective or corporeal, institutional or not, which tended to offend national or

international sensibilities. Whilst singing the reformist tune of the Colonial Office, the colonial state proved unable or very reluctant to invest in penal matters and modernise the whole apparatus of criminal justice, with a view to rehabilitative developments. Authorities first sanctioned—or sometimes encouraged—the use of ‘exceptional’ forms of punishment, to which metropolitan and Kenyan liberals took exception, such as judicial whipping in court and prison, collective punishment, the use of ‘leg irons’ and physical coercion against African convicts. Secondly, the state condoned the maintenance and development of a whole set of clandestine jails, informal lock-ups and private forms of incarceration, which escaped external control and constituted a mere lawless zone extending its reach. State-sanctioned public violence also took on many extra-legal forms, whether in police and official quarters or within colonial society at large, notably with stark demonstrations of white rough justice and private vengeance on settlers’ farms. Beyond the purview of the state, a parallel and informal economy of violence thus relegated confinement to a marginal position in the coercive landscape and played a crucial role in maintaining social control and white supremacy in the colony.

Long after the ‘pacification’ of the territory in the late nineteenth century, state punishment in Kenya was essentially meant, from a frontier perspective, to subjugate Africans and territories, and to produce obedience toward the colonizers’ economic, political and racial hegemony. On transferral to the colony, the reformist agenda of the Colonial Office merged with local economic concerns and social attitudes, creating an original brand of penological thought and practice. Whilst local reformist discourses retained the core principles of metropolitan developments in social welfare and penal administration, they were twisted by a doctrine of domination primarily shaped by racial, economic and punitive concerns, which appealed to large sections of white public opinion and was instrumental in maintaining colonial supremacy. In view of budget shortfalls, the modernisation of penal facilities was often consigned to the last line of state priorities and national budgets. Therefore, the lengthy official discussions and reports barely veiled the cosmetic nature of state ‘modernizing’ action

during the period and the dramatic failure of penal reform at large. Up to the early 1950s, penal institutions remained in a striking state of neglect and decay, putting the lives of thousands of convicts and detainees in clear danger. They were characterised by high levels of bodily violence in the form of exposure to unsanitary, overcrowded and unsafe environments, poor diets and physical coercion, the basic task of maintaining convicts' health being partly and deliberately ignored. More blatantly, they disclosed the primacy of the economic and repressive functions of colonial punishment over rehabilitative concerns and the state's faltering responsibility for social protection and the proper care of convicts. Beyond its punitive role, penal labour primarily aimed at serving state and settlers' economic interests and maintaining an 'artificial' colonial economy based on very low wages.¹¹³¹ Besides, penal repression was an articulated part of wider networks of economic coercion and compulsory labour. Whereas a small number of black-on-white assaults and property offences fuelled the settlers' bouts of moral panic, the great mass of African offenders brought to court were condemned to imprisonment or detention for offences against statutory and pass laws, employment ordinances or other regulations relating to state economic extraction and the settler economy of the colony. Similarly, colonial punishment was instrumental in stifling African political opposition and 'getting rid of' dissidents opposed to the colonial order or local powers, through heavy sentences of imprisonment, deportation or detention in mental institutions.

This thesis also illustrates the complex ways in which punishment reified or reordered racial divisions and inequalities, sustaining imperial dominance. As pointed out by Florence Bernault, the penitentiary in Africa 'sought to consolidate the profound upheaval of the conquest' and primarily constituted 'a front-line bastion' of white supremacy; penal policy aimed 'to reinforce the social and political separation of the races to the sole benefit of white authority by assigning the mark of illegality to the whole of the dominated population'.¹¹³² In Kenya, along with urbanisation and the development of capitalist forms of production, debates

¹¹³¹ F. Bernault, 'The politics of Enclosure', p. 22.

¹¹³² Ibid., p. 16.

over penal reform and legislation consolidated or reworked racial categories and colonial hierarchies, defining new types of 'threats' and 'enemies' and criminalizing increasing parts of African ordinary life and mobility. Colonial judicial and penal systems were structurally shaped along racial lines, with white offenders enjoying preferential treatment and relative impunity when faced with criminal justice. The punitive regimen served to further cast Africans, sometimes with Indians, as a subordinate racial category, confining them in overcrowded, unhealthy and dilapidated collective wards and subjecting them to harsher sentences, to whipping (both judicial and extra-legal) and to exceptional forms of sanctions, in the form of collective punishment, banishment and confinement in mental institutions. Penal institutions were poorly-resourced, very unhealthy and disease-ridden spaces. They resulted in a deliberate 'loss in life force', sometimes in convicts' deaths, disclosing the state ambition to debilitate and break down African social deviants or dissidents who threatened the dominant order, and to exert a racialized control through the damaging and suffering of the body. Beyond judicial punishment, systemic police brutality and extra-legal violence were also key pillars of racist rule. Policing essentially served to protect white properties and bodies, to extract tax revenue and repress minor offences against an expanding array of punitive legislation that applied in practice exclusively to Africans. The centrality of corporeal techniques within state or popular strategies of control essentially resonated with various strands of racial thought, which conflated biological and cultural objectifications and assumed 'blackness was intimately tied to criminality and punishment, whiteness to righteousness and welfare'.¹¹³³ The few cases of flogging administered by white employers on their estates which resulted in fatalities were closely connected to settlers' notions of racial privilege and claims for further political independence from metropolitan authorities and were handled with complacency by magisterial courts and white juries. Similarly, administrators' physical abuses against African subjects were couched in the same terminology of crude racism and colonial paternalism and generally went unpunished. The penal system also helped to stabilize and

¹¹³³ Gillepsie quoted by S. Pierce and A. Rao, 'Discipline and the Other Body', p. 12.

reorder the geography of difference by regulating African mobility to town centres with a view to industrialisation and labour requirements and to harass and punish those who challenged colonial boundaries of racial proximity.

More precisely, the period was markedly characterised by a 'punitive turn', notably from the 1940s onwards, which made itself visible through heightened punitivity against political and economic offences in court, increased police persecution and increasingly dire conditions of work and confinement in prisons. In court, a whole set of offences against white political and economic dominance were punished with increasingly severe sentences of imprisonment. Though patterns of prosecution and sentencing greatly varied across areas and districts, lay magistrates tended to build up the length of sentences for a wide array of offences against local ordinances, tax collection and economic regulations, with a particular emphasis upon stock thieving, drug and alcohol manufacturing and marketing, black market operators and other African illegalities that threatened white interests in local economies. In parallel, state-sanctioned punitive policies extended to the precincts of penal institutions, notably within the main prisons of the colony which confined the most serious offenders. Over the 1930s, the Commissioner of Prisons explicitly sought to raise the punitive and deterrent effect of the prison and initiated a long-term policy of physical subjugation of African convicts, instating depleted dietary regimens, cranking up the pace and harshness of penal work and leaving confinement buildings and spaces in a striking state of decay. Generally speaking, although prison records disclosed fairly low figures for corporal punishment, colonial jails exposed convicts to increasing levels of physical coercion, in the form of unhealthy conditions, the denial of basic nutritive and sanitary requirements, and debilitating penal work. On the admission of the Commissioner of Prisons, the harshness of prison life had shot up in the late 1930s and further intensified over the 1940s with wartime conditions and regular water and food shortages. Police harassment and violence against African civilians also rose during the 1940s, mostly on the borders of the reserves, around markets, in the outskirts of cities or during localised raids to track down illicit manufacturers of alcohol and drugs. These

long-term historical trends primarily reflected the entrenchment of a common punitive sense across official and non-official circles of white power and society and called out for further research to grasp the underlying logics of domination at work.

This study on the particular case of Kenya breaks new ground in the historiography of colonial punishment, whether in African territories or across the whole empire, providing two major contributions to previous academic debates. First, it proceeds to a careful re-examination of the nature of the state in the settler colony and engages with wider debates over the efficiency and success of the colonial penitentiary in other parts of the empire. In recent works, historians have discussed at length the extent of state domination through penal institutions and begun to challenge previous assumptions in the scholarship which tended to take the strength and coherence of the colonial repressive system for granted. Kenya, along with South Africa, was often singled out for possessing an entrenched culture of control and confinement unrivalled in other British dependencies in Africa and resembling the Western model of a ‘carceral archipelago’ as understood by Foucault. In contrast, this thesis rather insists on the state constraints, shortcomings and limitations and argues that the penal system, though fundamentally coercive, was markedly characterised by its irregularity, vulnerability and endemic violence. John Lonsdale and Bruce Berman have already demonstrated how the ‘Janus-faced’ state in colonial Kenya manifested itself as an alternation of potency and weakness and exerted only intermittent control on ‘the ground’.¹¹³⁴ These contradictions also played out in legal and coercive apparatuses in the colony and the punitive regimen thus presented many avenues for negotiation and pragmatic compromises. In the judicial sphere, colonial power delegated some form of authority through a parallel system of native courts in which African agents were tasked with rendering justice, drawing both upon British and customary law. Though archival documents on the subject are quite scarce, it seems that district officers had only limited supervisory influence and allowed a significant degree of autonomy in the precincts of these courts, or within traditional structures of adjudication. To a

¹¹³⁴ B. J. Berman, *Control and Crisis in Colonial Kenya, The Dialectic of Domination*, (London, 1990).

certain extent, despite enduring shortcomings in the advocacy system, African accused people seemed to have acquired an improved knowledge and grasp of colonial codes and judicial proceedings over the 1940s and probably gained wider discretion to defend themselves in court and influence positively the outcome of their case. In parallel, in view of the lack of staff, funding and local commitment, most outlying prisons and camps were not structured along unilateral relationships of domination, but rather through negotiated orders between convicts and warders, where parties established their own rules, yielded to significant sharing of power and shaped original forms of confinement and integration within the wider social fabric to suit their respective interests. The deficiencies in policing also persuaded some groups of Africans to propose alternate structures of social defence or control and to compete with state networks of coercion.

From the late 1930s, Africans increasingly resented judicial and penal persecution and police brutality and began to view state punishment as a mere embodiment of colonial iniquity. Despite the official rhetoric that African public opinion called for increased punitivity from the state, archival material tends to emphasise the opposite idea. Native courts failed to comply with district authorities' recommendations to impose imprisonment for criminal offences and showed an enduring preference for fines and compensatory practices, revealing the gap between African and European conceptions of punishment. In prisons also, the policy initiated by the Commissioner of Prisons in the early 1930s to increase the punitive effect of imprisonment, through harder work, dire conditions of confinement and an impoverished dietary regimen, sparked off widespread discontent among African convicts and detainees and gave way to sporadic instances of revolt or strikes within the main jails. On a global scale, the events of the late 1930s reflected both an escalation of conceptions about harsh punishment and the beginning of progressive degradation in jail disciplinary orders and relationships between convicts and warders. Outside the prison walls, Africans' growing discontent over colonial punishment also found public outlets in some communities, which were subjected to rising police harassment and persecution during the 1940s. Yet, despite significant levels of

African agency and resistance, colonial authorities were often successful in restoring order through increased levels of repression, illegal uses of force and violence, and an enduring reliance on exceptional coercive measures, inside or outside the jail. This policy was partly effective in creating and consolidating social and political divisions within African opinion and communities, markedly between local appointed authorities and dissidents refusing their legitimacy. From the 1940s onwards, the policy of systemic collective punishment was notably instrumental in breaking down local solidarities and co-opting the support of elders, chiefs and headmen in specified groups.

Secondly, this research expands critically the scope of the academic field on colonial punishment, elucidating colonial control and punitivity by locating its discourses and practices within broader moral, social and political economies. In this respect, the study of colonial Kenya proves particularly illuminating, the colony standing out in the British empire, along with South Africa, for a highly politicised settler community infamous for its obsession with racial control and its propensity for the lash. Both colonies possessed an extensive administrative bureaucracy and complex judicial, police and penal systems. Colonisers' bouts of moral panic over African crime, entrenched racism and political agency within the state multiplied tensions, contradictions and conflicts in punitive networks and helped to turn state punishment into a critical focus of contestation, where wider ideological, political and economic battles were waged. As a consequence, the settler colony of Kenya provided a fruitful ground for research on colonial punishment, as tensions and convergences within the state were very clear and prominent. In parallel, the central position of the colonial administration within the institutional and ideological landscape of the colony provided provincial and district officers on the spot, along with African appointed authorities and settler corporative organisations operating in their executive area, with considerable latitude and discretion to influence local patterns of prosecution, policing and punishment. District Commissioners held both executive and judicial mandates and influenced patterns of punishment, often with a view to local political circumstances. Both the Colonial Office and

central authorities had limited influence on the ground and were generally reluctant to offend the settlers or to limit magistrates' discretionary powers. In this particular context, colonial punishment remained dependent upon local politics and interest convergence, disclosed conflicts and collusions within the state itself and presented opportunities for original forms of support, collaboration and alliances between various sections of colonial society.

Therefore, the holistic approach of this thesis renews the theoretical framework of the scholarship on colonial punishment and traces back the emergence of a common punitive sense within the Kenyan state and settler society. Colonial punitivity, rather than representing a mere adherence to ancient penological principles or a hybrid form, borrowing from African custom, served specific objectives common to various sections of colonial society, both official and non-official, European and African. From this perspective, it seems necessary to break away from previous academic distinctions between 'premodern' and 'modern' forms of sanctions, which could suggest that the impact of the Western penitentiary had merely failed its stated purpose or supplemented enduring forms of pre-colonial violence. The scholarship has long interpreted the institutionalizing of penal violence in a colonial background in terms of 'retardation' (incapacity of 'underdeveloped' societies and states to reach the Western model of the penitentiary) or 'return' (to pre-colonial punitive practices).¹¹³⁵ In contrast, this research argues that the normalisation of physical violence in Kenya was not a mere accident or failure but primarily resulted from a consortium of dominant interests and ideological ramifications within colonial society at large. In this sense, it constituted an integral part of an imperial agenda of domination, backed up by strong demands from the white ruling class—sometimes with African elites—and sanctioned or encouraged by the state. Being limited in extent by financial, ideological and institutional constraints, penal coercion thus tended to focus on the geographical and ideological centres of white supremacy, following Cooper's arterial model of the diffusion of power in Africa, and leaving significant spaces of African agency and autonomy when colonial interests were less directly involved. Yet, in the face of

¹¹³⁵ F. Bernault, 'The politics of Enclosure', p. 3.

growing African political opposition and the state's faltering legitimacy, colonial power increasingly relied upon the threat and application of physical violence and outsourced the task of enforcing legitimate violence across various spheres of colonial society, with a particular emphasis on areas where its political and economic interests were engaged.

In colonial Kenya, the presence of a minority of settlers who felt psychologically or materially insecure in the face of a population of about three million Africans influenced local patterns of punishment to a significant extent. Settlers condemned state 'leniency' in detecting and punishing African offenders and regularly indulged in episodes of moral panic over the 'crimes waves'. They generally wished colonial punishment to serve their own economic interests and labour concerns, and deeply resented the Colonial Office's interference and reformist influence, especially in penal affairs. In colonial Kenya, settlers' communities were highly politicised and acted as a strong lobbying force on the colonial government, both by their presence within state and legislative bodies and through the medium of local agricultural and industrial corporations. Their political agency partly depended on the personality of the acting Governor, some of whom refused to bow easily to the settlers' pressures and interests. Given the labour shortage, white farmers pressured colonial officials to help them in recruiting and securing African labour for their estates. Therefore, white colonizers were loud in advocating a tougher approach to crime, especially for labour offences such as desertion or drunkenness while on duty. As David Anderson has shown, the settlers were instrumental in maintaining the most punitive provisions within criminal labour law, such as Master and Servants ordinances, up to the early 1950s.¹¹³⁶ More generally, they shared a common sympathy for rough justice and bodily punishment of African subjects, which openly resonated in the wider layers of racial ideology and colonial paternalism. Behaving as 'lords of their manors', they felt entitled to freely chastise and discipline African workers on their farms, illegal floggings sometimes resulting in casualties and much-publicised white-and-black murder trials. Colonisers also established original forms of collaboration with local police

¹¹³⁶ D. M. Anderson, 'Master and Servant in colonial Kenya, 1895-1939', *Journal of African History*, 41 (2000): 459-485.

forces and autonomous forms of private defence to make up for state shortcomings and to protect white privileges in African areas neighbouring their properties.

The colonial administration generally reflected settlers' racist views and was quite willing to bow to their pressures and to support the coercion of African subjects, their political and economic interests tending to converge. District Commissioners were keen to defend settlers' interests in court, impose the sternest possible sentences for economic and political offences and deploy exceptional measures such as collective punishment or deportation to deal with political dissidents or Africans indulging in stock theft who were perceived as a threat both to colonizers' interests and properties and to the maintenance of law and order in their district. Both the white magistracy and juries demonstrated a high degree of racial connivance with white offenders brought to court and helped to consolidate a judicial system structured along racial lines. Over the 1940s, lay magistrates increasingly imposed heavy sentences for labour and economic offences and breaches against alcohol and drug ordinances, which boosted African illegal economies and competed with colonisers' agency in the developing capitalist economy. Acting on their administrative capacity, District Commissioners were generally keen on instituting proceedings for collective punishments against stock theft in areas bordering on European farms, with a view to calm down settlers' social fears and secure convictions when the local court failed to do so for lack of reliable evidence. They were also tasked with preserving the balance of local powers and the legitimacy of African appointed authorities in their area. The colonial administration was much willing to secure the authority of African elites and authorities and punish political dissidents in their area, through means of bodily violence, deportation and public shaming. Finally, the colonial administration in Kenya was infamous for indulging in illegal beatings of African subjects, whether on duty or within most ordinary day-to-day relationships. Barazas held on safari in outlying areas provided many opportunities for penal excesses and illegal canings. When incidents were brought to light, officers generally benefited from complete impunity and from the conniving attitude of central authorities in Nairobi.

In the face of faltering legitimacy and financial stringency, the colonial state had a very strong interest in sharing the task and cost of repression and discreetly permitted infringements to the established rules on the use of force, particularly in peripheral areas. In addition to settler and police brutality, this illegal economy of bodily violence constituted a significant extension of the state monopoly on violence and was widely normalised within white society by racial and ethnic prejudices, as an appropriate means of discipline and punishment for Africans. On a global scale, local agents of the administration, the police and settler communities were thus an integral part of state ideological and repressive apparatuses and significantly contributed to the generalisation of racial and bodily violence within colonial society at large. In some areas, colonial authorities also established alliances or discussions with African elites and authorities, with a view to obtain their collaboration and support or to outsource a part of state repression. They tended to permit and legitimize—in a more or less veiled manner—indigenous practices of violence and punishment, which helped to assert generational or patriarchal domination and strengthen their control over African women and young persons. In rural areas, administrators experienced sometimes great difficulties in securing the back-up of African elders and prominent figures of local communities. Therefore, punitive practices could serve to obtain or reinforce their obedience and loyalty, either through coercion (notably with a policy of collective fines and punishment) or consent (by granting special privileges or turning a blind eye to unlawful indigenous practices of coercion and policing). In urban centres, colonial authorities notably adopted an ambivalent attitudes towards African extra-judicial punishments, which were enacted by conservative young men belonging to urban ethnic associations upon African ‘wayward’ women suspected to challenge customary law and gendered norms. Faced with the failures of the repatriation policy, colonial officials were happy to be relayed up by ethnic organizations that controlled African migration to towns and promoted social discipline in the African areas of the white-dominated cities.

Under a veneer of reformist respectability, both the Provincial administration and the colonial government tacitly permitted or encouraged these multifarious forms of local coercive

convergence, arrangement and collaboration, in every area where white economic and ideological interests were involved. Although Provincial Commissioners and judges—often with Resident Magistrates—usually deplored settlers’ and administrators’ excesses and abuses, they tended to recast and legitimate the same punitive concerns through the euphemised language of political necessity and moral repugnance. Yet, both official circles had a significant restrictive influence over penal practice, the former creaming off collective punishment orders to be approved by the Secretary of State, the latter reducing the severity of sentences upon revision in the High Court. Despite this moderating role, they usually subscribed to the punitive agenda of the lower administrative and police ranks and settler communities and often acted as mere conduits of reactionary opposition in the face of Colonial Office interference. The attitude of the colonial government reflected similar tensions, contradictions and ambiguities. The colonial state penal structures, policies and discourses largely belied the reformist wishful thinking which dominated official reports and inquiries. Whilst singing the praises of liberal developments, colonial officials were either doomed or willing to keep in tune with dominant punitive and economic concerns prevailing in white society. In this respect, the history of the Prison Department over the two decades preceding the Emergency is very revealing. Despite the enactment of a new Prison Code in 1930, the Commissioner of Prisons deliberately sought to increase the punitive effect of the prison during the 1930s and eventually reduced the reformist agenda to a skeleton of scattered initiatives, which progressively fell apart with wartime conditions and the shortfall in funds. After the Second World War and under the influence of metropolitan liberalisation, the new Commissioner of Prisons broke ground with reformist-oriented discourses keeping up with the Colonial Office propaganda and encouraging the development of probation or aftercare work. However, his personal investment in penal reform found little purchase in official circles and remained very limited in influence and impact. Similarly, the law officers of the Colonial Office, although dedicated in principle to the reformist cause, were unable or extremely reluctant to interfere with settler opinion and politics in the colony. Despite confidential

despatches condemning the abuses of racial justice and violence in Kenya, they often found themselves helpless to change local practice or punish white offenders, even less to initiate an overhaul of the whole criminal justice system.

This research finally engages with broader debates relating to the global history of state domination and violence. It constitutes first and foremost an attempt to historicise and chronicle the emergence of penal excess and bodily violence within colonial penalty, drawing upon the particular case of Kenya. The historiography on the subject already demonstrated how modern penal reform, as understood by Foucault, dramatically failed in its stated purpose, both in a Western or colonial context. In Europe, the new culture of discipline, general surveillance and social control and the pre-eminence of the penitentiary did not replace or supplement existing forms of state violence but created new forms of modern governance integrating, within a wider pattern, various technologies of power based simultaneously on social protection, disciplinarian strategies of social coercion and less visible forms of physical subjugation. In other words, what is at the heart of modern strategies of governance does not so much lie in the worldwide ‘colonisation’ of the Foucauldian penitentiary but in the continuing paradox and tension between state protection and violence, between human rights developments and physical destruction of the ‘other’ subject, notably at times and places when state legitimacy is eroding. These conflicting and coexisting trends in penalty are consubstantial to modernity as previously defined, evolve over time and can take distinctive forms across places, reworking locally the contours of modern governance, social control and citizenship.¹¹³⁷ In the colonial context, as patently disclosed by the study of state violence in colonial Kenya, the theory of indigenous inadequacy and racial structures of power only made more visible the actual contradictions and paradoxes in modern modes of governance; it thus provides fruitful perspectives to study the revival of institutionalised forms of bodily violence in Europe and Africa.

¹¹³⁷ S. Pierce and A. Rao, 'Discipline and the Other Body'.

As a possible matrix for further research, this study provides major contributions to two fecund areas of academic excavation, which will be briefly mentioned below. First, this research can shed light on the complex ways in which humanitarian discourses serve as justifications for political projects in Western countries and permit the redrafting of the boundaries of citizenship and ‘worthy humanity’.¹¹³⁸ The study of penalty in colonial Kenya vividly reveals the complex and conflicting ‘relationship between the political career of bodily violence and its ideological basis in colonial reason’.¹¹³⁹ State governance in Kenya relied on ideologies of colonial corporeality and institutional apparatuses which simultaneously marked the African body as a racialized and subaltern other and as a locus of pain and suffering for discriminatory governance. In parallel, colonial authorities produced new humanitarian categories of personhood and rights to preserve state legitimacy against the backdrop of changing political sensibilities. These conflicting trends in penalty and governance similarly play out in actual liberal democracies, which tend to justify new forms of repression and social exclusion drawing more or less implicitly upon theories of embodied difference and racial inadequacy. Therefore, some parallels can be usefully drawn to understand the treatment of post-colonial subjects, whether at the frontiers of Europe or in regions or neighbourhoods perceived as a threat to Western nation-states’ legitimacy and dominance. For instance, the riots of 2005 in the ‘French banlieues’ constituted primarily a political protest against the racial dynamics and discrimination to which children of immigrants from former French colonies were systematically subjected.¹¹⁴⁰ In these supposed ‘lost territories’ of the French Republic, state strategies of governance freely take inspiration from colonial history, through spatial relegation, discriminatory practices at school or in the work place based upon racial and cultural stigmatisation and police lethal violence against immigrants or residents of these neighbourhoods. Examining colonial precedents thus appears crucial to understanding the unstable and contradictory deployment of modern power in a Western context and to explain,

¹¹³⁸ Ibid, p. 10.

¹¹³⁹ Ibid., p. 3.

¹¹⁴⁰ G. Mauger, *L'emeute de Novembre 2005: une révolte proto-politique* (Paris, 2006).

as phrased by Steven Pierce and Anupama Rao, the ‘scandalous emergence of the other’ and ‘the move of corporeal technologies into and then out of the biopolitical state’ by relocating theories of racial and cultural inadequacy at the heart of Western logics of governance.¹¹⁴¹

Finally, this research appears crucial for understanding the post-colonial fate of state repression in Africa. In most countries, penal discourses and structures of independent states were largely modelled upon colonial precedents and further research is urgently needed to underline these continuities, commonalities and changes. As pointed out by Florence Bernault, much of current penal violence in Africa represents a gloomy legacy from the colonial period and provides striking similarities, in the form of corporal violence, punitive labour, illegal beatings and deplorable conditions of confinement.¹¹⁴² Human rights abuses in prisons denounced by the KHRC are common to all post-colonial territories in Africa and can largely be partly read as an extension or intensification of state violence during the colonial period. Independent states continue to resort to physical subjugation and elimination within or outside the jail on a very wide extent, as disclosed by the extreme example of Rwanda: ‘The filth and material degradation of the jails, and the judicial disorganisation of the country, have already worked as ‘anonymous tribunals’ carrying death sentences on a massive scale’.¹¹⁴³ In Kenya, colonial violence, penal excess and the racial politics of the 1930s and 1940s also prepared the ground for the unleashing of state brutality during the Mau Mau counterinsurgency and largely shaped post-colonial repressive policies. Since Independence, police brutality and penal excess have become facts of life for the majority of Kenyans, through the maintenance of high levels of illegal bodily violence, corruption, political imprisonment and punitivity for certain offences against property. Therefore, in Kenya, state violence and current tough policies on crime control can only be understood in view of the history of colonial punishment, which reveals the long-term maturation of the actual penal system, the logics of domination through

¹¹⁴¹ S. Pierce and A. Rao, 'Discipline and the Other Body', p. 28.

¹¹⁴² F. Bernault, 'The politics of Enclosure', p. 29.

¹¹⁴³ Ibid, p. 30.

penal institutions and the lingering issues that continue to shape criminal justice in contemporary Kenya.

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KNA – AM: Police Department

KNA – AP: Judicial Department

KNA – BW: Ministry of Home Affairs

KNA – BZ: Probation and After Care Department

KNA – JZ: Prison Department

KNA – MAA: Ministry of African Affairs

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