

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO. HQ09X02666**

**QUEEN'S BENCH DIVISION**

**B E T W E E N:-**

**(1) NDIKU MUTUA  
(2) PAULO NZILI  
(3) WAMBUGU WA NYINGI  
(4) JANE MUTHONI MARA  
(5) SUSAN NGONDI**

**Claimants**

**-AND-**

**THE FOREIGN AND COMMONWEALTH OFFICE**

**Defendant**

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**PARTICULARS OF CLAIM**

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## **I. SUMAMRY OF CLAIM**

1. The Claimants bring this claim for damages for personal injuries caused by repeated assaults perpetrated by employees and agents of the British Colonial Administration in Kenya (“the Colonial Administration”) when they were detained in screening centres, prisons, detention camps and under a programme known as “villagisation”. The assaults took place as aforesaid during the course of the State of Emergency declared by the Colonial Administration in the face of the uprising of African resistance to colonial rule in Kenya. The events with which this claim is concerned took place between 1952 and 1961.
2. The Defendant is the Department of State to which legal liability for the acts and omissions of the servants and/or agents of the Colonial Office has been transferred.
3. The assaults perpetrated upon the Claimants were part of a system of torture, inhuman and degrading treatment applied by police, Home Guards and other members of the security services (“the security forces”) with the knowledge of the Colonial Administration. The Claimants case against the Defendant particularised herein below is that:-
  - a) The Defendant is directly liable for the acts of assault; or
  - b) In the alternative, the Defendant owed the Claimants a duty of care to prevent the use of systematic and institutionalised violence, and negligently failed to discharge that duty causing them injury.

## **II. FACTUAL BACKGROUND – THE UPRISING AND THE METHODS USED TO QUELL IT**

4. In October 1952 a State of Emergency was declared in Kenya on the authority of the United Kingdom Government and at the same time that government decided to commit British troops there. These actions followed an escalation in the course of

that year in activities by Kenyan insurgents, including more than 25 murders. The escalation in the uprising was attributed by the Colonial Administration and white settlers to the growth in the size and activities of a group known as the “Mau Mau”. The Mau Mau was mainly comprised of Kenyans from the Kikuyu tribe though Africans from Kenya’s other tribes were also members of the group. Adherence to the Mau Mau was believed to be cemented by the swearing of a secret oath by each member (“the Mau Mau oath”).

5. The Government, both in Kenya and in the United Kingdom, responded to the perceived threat by introducing a swathe of measures which in combination, over the next eight years, subjected anyone suspected of having taken the oath, or having assisted others who had, to conditions of extreme deprivation and oppression. Collective punishments were introduced whereby, for example, the livestock of a particular community would be seized on the ground that some of its members were thought to be in league with Mau Mau. The criminal law of evidence was changed to reduce fair trial guarantees and so facilitate successful prosecutions against suspected Mau Mau insurgents and the death sentence was extended to many more offences. Where there was insufficient evidence to try a suspect, the measure of detention without trial was introduced and deployed increasingly from 1953 onwards, supported by a system of interrogation to identify suspects, known as ‘screening’. Many convicted of offences were subjected to detention without trial as soon as they became entitled to release under their sentences.
  
6. A screening process was deployed both at the outset to determine whether a detainee had Mau Mau sympathies and, thereafter, within the camp system in order to ascertain any weakening of the detainee’s allegiance. The detention camp system consisted of a series of camps which became known as the Pipeline (“The Pipeline”). At the top of the Pipeline were the “Special Camps” with the most restrictive conditions to which were sent the most committed Mau Mau adherents, categorised as “black” or “Z”. Those categorised as “grey” or “Y” were sent to work camps lower down the Pipeline where conditions were a little less harsh. Those graded

“white” were released and sent to the Kikuyu reserves. Movement down the Pipeline and progress towards release depended upon a detainee confessing to having taken the Mau Mau oath and persuading the relevant authorities that they had repented. In order to bring about confessions the screening process was repeatedly applied to detainees during the course of their incarceration in a camp.

7. Many detainees were subjected to the systematic application of acts of gross abuse and torture during the screening process. Such abuse included whippings, beatings, castration and sexual abuse of men and women including by sodomy, the insertion of sand into men’s anuses and the insertion of glass bottles filled with hot liquid into women’s vaginas. In many cases the abuse and torture was so brutal and dangerous that the detainees died.
8. In the first year of the Emergency in 1952, 147,830 African Kenyans were arrested on suspicion of being members of Mau Mau. Of those 125,099 were screened. At the peak of the detention process in 1955, 53,000 Kenyans were detained in some 40 separate camps. This was in addition to the 16,000 who had been convicted in the Courts of offences connected to Mau Mau. Altogether official figures at the time estimated that some 79,000 Kenyans had been held in detention during the Emergency. A conservative estimate is that at least one in four Kikuyu adult males were imprisoned or detained at some time between October 1952 and 1958.
9. The pace of implementation of the policy of detention without trial was greatly accelerated on 24 April 1954 when the Colonial Administration launched “Operation Anvil”. In June 1953 Sir George Erskine was appointed Commander-in-Chief General and assumed full command of all military units and operational control of the Kenya Police and Home Guard. When he arrived in Kenya on 7 June 1953 he had in his possession a letter from the then Prime Minister, Sir Winston Churchill, authorising him to declare martial law and assume control of the Government at any time. Under his command, British soldiers and local security forces were deployed to round up and detain the Kikuyu, Meru and Embu population of Nairobi who were

considered to be “passive supporters” of the Mau Mau. Once rounded up detainees were held in temporary barbed wire enclosures and screened to ascertain the extent of their affiliation to the Mau Mau. In the course of the following two weeks more than 20,000 Mau Mau suspects were sent for further screening to Langata Camp. Nearly 30,000 more were forcibly sent to the Kikuyu reserves. Those whose detention was continued were screened (a process which took a full year to complete) and sent to camps appropriate for their grading.

10. In anticipation of the huge swell in detainee numbers Operation Anvil would bring about, the Secretary of State for the Colonies had given authority for the expansion of the detention camps and for the introduction of forced labour. Both the matter of large-scale detention of Mau Mau supporters and forced labour were discussed and approved by the British Cabinet on 17 February 1954. This was despite the fact that the Cabinet specifically recognised that this would potentially breach the United Kingdom’s obligations under international law.<sup>1</sup> William Mathieson, who held the position of head of the East Africa Department in the Colonial Office during the Kenyan Emergency, would later reveal that both the Colonial Office and the Secretary of State for the Colonies realised that there was “an infringement of basic legal rights going on in one of Her Majesty’s colonies”.<sup>2</sup> The expansion proved insufficient and the provisions for sanitation woefully inadequate. For example, Manyani Camp was built to accommodate 6,600 detainees but by September 1954 it had a detainee population of 16,000. Due to poor sanitary conditions and overcrowding, typhoid broke out and spread within the camp. Both the camp commandant and then the Colonial Administration prevaricated in addressing the health disaster. By the end of 1954, 1,151 typhoid cases had been reported in Manyani Camp and 115 of those had proved fatal. Throughout the ensuing years poor sanitation and standards of hygiene remained gravely problematic in the camps, as did a failure to provide sufficient and/or sufficiently nourishing food to the detainees. Diseases such as pellagra were rife.

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<sup>1</sup> [C.C. 9 (54)] [Appendix 1]

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

11. Almost all of those convicted or detained were men. Separate measures were introduced to limit the perceived threat that women might assist Mau Mau insurgents who were hiding in the forests by, for example, providing them with food. Their detention was effectively ensured by a process introduced in June 1954 named villagisation. Villagisation was introduced throughout Central Province and involved the enforced resettlement of village populations into newly constructed, centralised and regulated villages which were deliberately situated along busier roads. Between June 1954 and October 1955, 1,077,500 Kenyans were forcibly resettled into 854 villages and were forced to burn down their previous homes to prevent their use by the Mau Mau. Villages believed to contain Mau Mau sympathisers had trenches and barbed wire fences constructed around their perimeter. There was a single point of entry and exit which was guarded by personnel such as Home Guards acting as servants or agents of the Colonial Administration. The villagers were effectively detained within the camps, not able to come and go of their choosing, but only when permitted to do so by their custodians. They were unable to tend the lands they had left and unable to obtain employment except in so far as this was permitted by their guards. Such was the speed of implementation of the villagisation process and lack of planning that the newly created villages fast became hazardous to health. Many of those detained within them suffered great hunger and illness, leading in many cases to death. Violence and forced labour were also endemic. If a villager was late for the communal labour roll call, walked too slowly or failed to complete their daily work quota they would be sent to the Home Guard post. There they would be assaulted and abused by the Home Guards. Abuses included squeezing and mutilating women's breasts with pliers, pushing vermin and rifles into their vaginas, and forcing them to run naked around the post while carrying a bucket of excrement on their heads. Women were also raped, often repeatedly by several guards. Resistance could lead to summary execution or further torture.

12. There were a number of bodies charged with enforcing law and order including by way of detention, screening and villagisation policies on behalf of the Colonial

Administration. These were the Kenya Police, the Kenya Police Reserve, prison guards, the Special Branch and the Home Guard. Both the police and prison guard had been in existence before the start of the Emergency but had expanded exponentially, particularly in the first three years. The Home Guard was officially recognised in 1953 and by that spring numbered some 15,000. Its members were provided with uniforms and arms. Those in day to day charge of the Home Guard were not trained military personnel but local settlers or junior career colonial officers.

### **The Dilution Technique**

13. By early 1957 a specific system had been developed in one of the camps on the Mwea plains, the object of which was to break the will of the most hardened Mau Mau adherents newly arrived in the camp from Manyani camp. On arrival these detainees were placed in small numbers in compounds where cooperative detainees were being held. Systematic brute force was then deployed until detainees cooperated with orders and ultimately confessed and repented of their alleged Mau Mau allegiance. This method was known as the “dilution technique”.
14. On a date unknown one detainee was severely beaten and died. Jasiel Njau (an African rehabilitation assistant) and five local detainees were charged with murder. The death of the detainee together with a number of other developments caused a temporary cessation of the processing of detainees at the camp concerned. Despite the obvious dangers which the killing made manifest, the Governor sought to maintain the dilution technique by introducing a number of measures to safeguard against future abuse.
15. However, by June 1957 the dilution technique had recommenced and been extended to all five camps at Mwea under the charge of Administrative Officer Terence Gavaghan. This followed a recommendation from Jake Cusack, the Minister for Defence of the Colonial Administration, who witnessed the use of the dilution technique and recommended that it should be extended to other detention camps.

Under Gavaghan, the assaults were perpetrated by European staff in response to a detainee who refused to obey an order. Upon refusal force would be applied not only as was necessary for the officers to ensure compliance with the order, but by way of beating and other assaults to break his resistance. The assaults ranged from beatings to putting the detainee on the ground, placing a foot on his throat and stuffing mud in his mouth, to knocking a detainee unconscious.

16. On 25 June 1957 the Governor of Kenya, Sir Evelyn Baring, wrote a letter to the British Secretary of State for the Colonies, Alan Lennox-Boyd, in which he explained the importance of the dilution technique and the need to amend legislation to permit the use of “a phase of violent shock” on detainees. Enclosed with the letter was a secret memorandum from the Minister for Legal Affairs of Kenya entitled “*Dilution*” *Detention Camps – Use of Force in Enforcing Discipline*, in which he described the guards’ actions to ensure detainee compliance with orders in the following terms:

“In some cases, however, defiance was more obstinate, and on the first indication of such obstinacy three or four European officers immediately converged on the man and “rough-housed” him, stripping his clothes off him, hitting him, on occasion kicking him, and, if necessary, putting him on the ground. Blows struck were solidly, hard ones, mostly with closed fists and about the head, stomach, sides and back...a resistor who started [“the Mau Mau moan”] was promptly put to the ground, a foot placed on his throat and mud stuffed in his mouth; and that a man whose resistance could not be broken down was in the last resort knocked unconscious.”<sup>3</sup>

17. The memorandum goes on to state that: “With possibly a few exceptions they [the Z intakes] are of the type which understands and reacts to violence and offers no appreciable prospect of responding to gentler treatment.” On 16 July 1957, as a result of his decision to allow the systematic implementation of the dilution technique, the Secretary of State approved an amendment to Prison Regulations proposed by the

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<sup>3</sup> Measures for rehabilitation of intractable Mau Mau adherents in Kenya. [Appendix 2].



Minsiter of Legal Affairs of Kenya, and permitted the use of overpowering force by beating to compel a detainee who refused to obey an order.

### **The Hola Incident**

18. Determined Mau Mau adherents whose resistance did not break on being assaulted in the dilution process were sent back up the Pipeline to detention camps such as the Hola Camp in the Tana River District of Coast Province, where they were subjected to a method for breaking their resistance known as the Cowan Plan. This was a refined version of the dilution technique used in the Mwea Camps which was developed by Senior Prisons Officer John Cowan in consultation with Terrence Gavaghan ("the Cowan Plan"). A group of 20 such detainees would be taken to an irrigation project and ordered to work. If they refused overwhelming force would be used to compel them to do so. On 4 March 1959 eleven detainees were beaten to death by camp guards when they refused to obey orders to work. Many more were severely injured. In the inquest report in 1959 by the Senior Resident Magistrate of Kenya, W.H.Goudie, the finding was that each death was caused by shock and internal haemorrhage as a result of multiple bruising caused by violence at the hands of camp officials. In addition, a government appointed committee reported on the Emergency Detention Camps in July 1959 ("the Fairn Committee") and recommended the ending of "shock" treatment of detainees forthwith and recorded longstanding allegations that violence had been used by "screening teams" to compel confessions from detainees. Governor Baring subsequently sought to repress these allegations by writing to the Secretary of State for the Colonies. No criminal prosecutions followed the killings at Hola and the British Government resisted demands for a full scale judicial inquiry.

19. As a result of the systematic torture employed by the Colonial Administration it is estimated that many thousands of Kenyan citizens were killed in detention camps by the actions of employees and agents of the Colonial Administration.<sup>4</sup>
20. Following political condemnation in the United Kingdom and abroad, on 12 January 1960 the Emergency was brought to an end and detainees were gradually released. Kenya gained independence on 12 December 1963.

### **III. THE ASSAULTS PERPETRATED ON THE CLAIMANTS**

#### **(1) The First Claimant - Ndiku Mutwiwa Mutua**

21. In about January 1956 the First Claimant, who was a herdsman employed by white settlers, began work on the farm of a settler called Mr Dunman (also known as "Luvai") in Lukenya, Eastern Province. In addition to farming, Luvai worked as a police officer in the district force.
22. While working on the farm, the First Claimant and three other African herdsmen regularly supplied food-stuffs to Mau Mau fighters hiding in the nearby forests. This came to the attention of Luvai on or before 17 September 1957 and on that date the First Claimant and the three other Africans were arrested by Luvai who was assisted by five African police officers.
23. The First Claimant was assaulted and battered by Luvai and his assistants and later at Lukenya Detention Centre by other men acting in the capacity as servants or agents of the Kenyan Police and/or Home Guard.

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<sup>4</sup> Britain's Gulag, Professor Caroline Elkins, Pimlico Books [2005] p.366

### PARTICULARS OF ASSAULT/BATTERY

- a) On 17 September 1957 the First Claimant and the three other herdsmen were asleep in the house they shared when they were awoken by a knock on the door.
- b) The First Claimant rose and opened the door whereupon Luvai who was present outside together with five other African police officers immediately ordered these officers to beat the First Claimant and his three fellow herdsmen.
- c) The First Claimant was subjected to a beating by the officers on the head, arms and legs with gun butts and batons, the severity of which caused him almost to lose consciousness.
- d) The First Claimant, together with the other three men was then transported to the Lukenya Detention Centre, a distance of about 6 k.m from Lavai's farm. During the journey the African officers continued to beat them.
- e) Upon arrival at the detention centre the First Claimant was again beaten to force him out of the vehicle. He was further beaten and pushed with guns to force him into a cell where the beating to his body continued, particularly around the head, limbs, and joints. At one point he was struck with great force on his jaw. The First Claimant was unable to identify whether his assailants were colonial police officers or Home Guards. The First Claimant was rendered unconscious.
- f) The First Claimant became conscious again as the sun was rising. After a short time the cell door was opened and a guard entered and forcibly removed him from the cell. The prison officer beat the First Claimant again forcing him to a building where he was given porridge.
- g) The First Claimant was then taken to a place where he was ordered to work hewing stones. The injuries he had sustained by reason of the repeated beatings particularised herein before, rendered him incapable of doing so but he was forced to continue by being further beaten every time he slowed down.
- h) On the second day of his detention in the Lukenya Detention Centre, the First Claimant was again subjected to a lengthy ordeal of brutal beating. This occurred over the course of about an hour and was perpetrated by both European and African officers.

- i) After an hour, the First Claimant was led by a group of both European and African officers to a tent and forced to enter whereupon he was blindfolded. The First Claimant was then held by one or more officers and stripped of his trousers. The First Claimant was completely terrified not knowing what the officers would do next and whether he was going to die.
- j) Handcuffs were applied to his wrists and he was forced to lie on his back by officers who pinned him to the ground. His legs were pulled apart and strapped or tied so as to prevent him moving them. The First Claimant then felt a force on his chest which he assumed was an officer's foot.
- k) Having been rendered completely powerless and vulnerable, the First Claimant was castrated by one or more of the officers present.
- l) While in a state of semi-consciousness he was unstrapped, assisted to his feet by the officers and his trousers were put back on. He was half lifted still blind-folded and dragged back to his cell where the blindfold was removed.
- m) The First Claimant was not taken to hospital or provided with any other form of medical treatment by officers in the Camp. He was left in his cell for the remainder of that day and the next.
- n) The following night the First Claimant was liberated from the camp by Mau Mau freedom fighters and he made his way to the Iveti forest where he remained for the next three and a half years before making his way back to his home.

**(2) The Second Claimant – Paulo Nzili**

24. On a date unknown, but in about 1958, as the Second Claimant was walking near to Kamiti Prison, near to Nairobi, when he was arrested by a three African police officers. He was driven to Embakasi Detention Camp near Athi River which, at the time, was run by a white settler, Mr Dunman (also known as "Luvai"), who was in the Police.

25. In the ensuing months the Second Claimant was detained at Embakasi Detention Camp, Manyani Detention Camp, Malindi Prison, and Naivasha Prison. In the first

two Detention Camps the Second Claimant was assaulted and battered by servants or agents of the Kenyan police and or Home Guard. In Naivasha prison he was forced to labour. At no point during his detention was the Second Claimant charged with an offence or brought before a court of law.

#### **PARTICULARS OF ASSAULT/BATTERY**

- a) At about 8.00 a.m, on about the fourth day of his detention at Embakasi Camp, the Second Claimant was called over by Luvai who was in the company of another police officer named Kwatanze. While other detainees were in the vicinity, Luvai stripped him of his clothes and ordered Kwatanze to pin him down on the ground. Kwatanze then pulled the Second Claimant's right arm from behind him, through his legs and caused him to somersault landing on his back. Both Luvai and Kwatanze then tied his legs in chains and Kwatanze pinned down his arms. Luvai then approached the Second Claimant holding a pair of pliers and castrated him by cutting the veins and vas deferens leading to the testicles but leaving the testicles in place.
- b) The Second Claimant lost consciousness and awoke to find himself in the King George Hospital, Nairobi where he remained for a period of about two weeks. Thereafter he was placed in a police vehicle and transported back to Embakasi where he remained for a week before being transferred to Manyani Detention Camp.
- c) The Second Claimant was detained in compound 6 where he saw others forced to labour and being beaten by officers on a daily basis using gun butts and sticks. The Second Claimant was exempted from such treatment because of his recent castration.
- d) After about two months detention at Manyani, the Second Claimant was transferred to Malindi prison where he worked sweeping or collecting rubbish. He remained there for a further two months before being transferred for less than a month to Kamiti prison and then to Naivasha Prison. There was much overcrowding in Kamiti and all the detainees were infected with lice. In Naivasha

prison, where the Second Claimant remained for about four weeks, he was forced to labour to find firewood for cooking.

- e) The Second Claimant was then transferred to Nairobi Prison from where he was released.

### **(3) The Third Claimant – Wambugu wa Nyingi**

26. At about 1.00 a.m. on 24 December 1952 the Third Claimant, who was a local leader of the Kenya African Union (know as “KAU”), was arrested at his family home by the Kenya “Ngombe Squad”, a group of white officers from the Kenya Regiment. The Third Claimant was assaulted and battered by officers upon his arrest, and repeatedly in the years that followed by servants or agents of the Kenyan Police, Home Guard, or detention camp authorities in the course of his transit along the pipeline and detention at Kia Riowa police station, Lodwar, Kodiaga, Mageta Island, Athi River, Manyani, Mwea, Nairobi Temporary prison and Hola. In Lodwar and Mwea camps he was subjected to forced labour. At no point was the Third Claimant charged or brought before a court of law.

#### **PARTICULARS OF ASSAULT/BATTERY**

- a) As the regimental soldiers entered the Third Claimant’s home, they attacked him with their bayonets, jabbing him on his left collar bone and pushed him to the ground. The Third Claimant was accused of taking the Mau Mau oath. In fact, the Third Claimant had never taken the Mau Mau oath.
- b) The Third Claimant was pushed out of the house by the soldiers together with his brother, Kinyua and three others.
- c) He was transported by the soldiers to Kia Riowa police station which was situated in Aguthi Location near Muthinga where he was informed that he was the subject of a Governor’s Detention Order (“GDO”) on the ground that he was causing trouble in the country and demanding freedom. He was not shown or provided with a copy of the Order.

- d) The police station served as a screening centre and the Third Claimant was detained there for interrogation purposes for a period of between six and eight months.
- e) The Third Claimant was subjected to inhuman and degrading conditions and regularly beaten in order to induce him to confess. Detainees were kept in small, heavily overcrowded cells. No sanitation was provided and they were forced to defecate and urinate inside the cells. No washing facilities were provided. Each morning the Third Claimant would be awoken and beaten by screening camp guards. He would then be provided with a bowl of porridge, his only meal of the day. A head count would then take place during the course of which one European guard would stab at the legs of detainees while counting them. While this officer did not stab the Third Claimant, he did beat him.
- f) In addition to the physical assaults perpetrated by camp guards upon the detainees, including the Third Claimant, the guards also engaged in psychological abuse. Dead bodies were brought in from surrounding villages and the detainees were told by the guards that they would meet the same fate if they did not surrender. On occasions, the Third Claimant was forced to witness the torture and murder of other detainees.
- g) After about six to eight months the Third Claimant was put in a truck and taken to Nairobi. He was beaten both as he boarded and alighted. After a day in Nairobi he was again beaten and forced into a different truck and taken to Athi River Camp where he remained for a year in conditions of relative decency. He was not beaten while at Athi River.
- h) The Third Claimant was next transferred by aeroplane together with about 25 other detainees, to Lodwar in northern Kenya. Just before his transfer he was placed in leg manacles, with a connecting chain only six inches in length. The chain bruised the Third Claimant's legs causing pain and injury. The manacles were not removed for the next two years.
- i) Upon arrival at Lodwar the Third Claimant (together with the other detainees) was beaten severely by both European and African guards as he came off the plane and while he was being directed to his cells.

- j) During the period of his detention in Lodwar, which lasted for between two and three years, the Third Claimant was caned with at least five strokes daily, both morning and evening by Corporal Kamende. On a daily basis, in the intensive heat, he was required to perform hard labour, hewing rocks with heavy mattocks. Even when ill with malaria, the Third Claimant was required to work as aforesaid. While working, or about the camp, the Third Claimant was subjected to routine, arbitrary beatings, mainly to his back, with sticks. Two men in particular perpetrated these beatings: the first, was the District Commissioner, named Whitehouse, and the second, a European officer nicknamed, "Jua Kali", which means "scorching sun" in Kiswahili.
- k) On a date unknown, some two or three years after his arrival at Lodwar the Third Claimant, together with other detainees, was transported by aeroplane out of Lodwar and held for a week in transit at Kodiaga camp. He was beaten by camp guards as he alighted from the plane and made his way to the camp.
- l) After about a week the Third Claimant's leg irons were removed and he was transported by truck and then boat to Mageta Island on Lake Victoria.
- m) On arrival the Third Claimant was put in compound number 2 which held about 120 detainees. He remained in Mageta for about eight months. During this time the detainees, including the Third Claimant, were regularly beaten by a number of white officers, including an officer nicknamed "Goliath". This occurred during a two week period. For twelve of those days the detainees, including the Third Claimant, were denied food. During the remaining period on Mageta Island, the detainees, including the Third Claimant, continued to be beaten on the arbitrary whim of Goliath, albeit not regularly.
- n) The Third Claimant was then transported back to Athi River Camp via Kodiaga in Nyanza Province and manacles were reapplied to his legs before he embarked on the journey. During the course of the one day train journey from Kodiaga to Athi River the detainees, including the Third Claimant, were not provided with any food.
- o) Upon arrival at Athi River Camp the detainees, including the Third Claimant were severely beaten by prison guards. There were about 200 detainees in the camp



who would be taken one by one for interrogation. The Third Claimant's turn came after about three or four months. His interrogation was supervised by a white prison officer and about seven African officials were also present. He was dragged away by camp officers and then turned upside down and suspended by his feet from the hut roof. He was then subjected to a severe beating over a period of about thirty minutes, while cold water was poured onto his face and into his mouth so that he could not breathe.

- p) Sometime after this interrogation the Third Claimant was taken for further interrogation because the interrogators did not believe that he had not taken the Mau Mau oath. He was subjected to the same methods of torture and ill-treatment.
- q) About three weeks later the Third Claimant, together with about fifty other detainees, was taken to Manyani Camp. From the moment they disembarked from the train, all the way to the camp, they were severely beaten by camp guards with, among other things, sticks, whips, batons and boots. On arrival at the Camp he was allocated to B Camp where he remained for the next six months or so.
- r) On one occasion, at about 5 p.m. when the detainees were in their respective cells, a large number of camp guards dressed in riot gear came and for the following few hours subjected the detainees to a severe beating.
- s) There were a few other occasions when the Third Claimant was beaten.
- t) After a period of about three months the Third Claimant, together with about 12 other detainees were transferred to the Mwea Camps. They were told that the purpose of the transfer was to interrogate them until they confessed to taking the Mau Mau oath and denounced the Mau Mau.
- u) Upon arrival he was met by several African and European officers, including Terence Gavaghan, Isaiah Mathenge (Gavaghan's deputy and a screening officer) and an African prison officer named Galgalo. Immediately, he was beaten with 25 strokes of the cane which caused him to lose consciousness. After this, for five days Gavaghan made the detainees, including the Third Claimant dig trenches to a depth and width of eight feet. They would then be required to fill them up again, rendering the work pointless. The Third Claimant was also made to carry on his head a bucket which had holes in the bottom. The bucket was filled

with sand and stones and the Third Claimant was forced to walk with it on his head for hours at a stretch. While he was doing so one or more officers would, from time to time, hit him in the face, causing the bucket to become unstable on his head. He would be forced to run on gravel with his bare knees and feet for hours at a time, until his knees bled. During this period the Third Claimant was subjected to the same brutal assaults always in the presence of Gavaghan and the other officers identified above who were present on his arrival.

- v) Throughout this period the detainees, including the Third Claimant, were given very little food. No washing facilities were provided and they were required to defecate in a bucket.
- w) After 24 days, the level of physical abuse began to diminish and after about six weeks in Mwea the Third Claimant was transferred temporarily to Kandongu camp where he was beaten and forced again to carry buckets with sand on his head until a sore developed which became infected. The Third Claimant was not offered any medical treatment.
- x) After about five days, on 19 February 1957, the Third Claimant together with Githumbi Gachuhi, Mureithi, Mbarafu Wachira and Kirori Mutoku and a number of other detainees who had been at Mwea, were taken to Nairobi Temporary Prison where they were told by a European prison officer that they had been brought there to be hanged by order of the Colonial Government.
- y) The Third Claimant was terrified and said his last prayers.
- z) About a week later the Third Claimant was transferred together with about 80 other detainees to Hola Camp. He was located in the closed camp for detainees who were considered to be "hard core" members of the Mau Mau.
- aa) On a day in early March 1959, the detainees were left in their cells beyond the usual 8.00 a.m unlock. At about 10.00 a.m. camp guards dressed in riot gear opened the cell door and ordered the detainees in the Third Claimant's cell to move out of the Camp. Outside the Camp, they were given hoes and shovels and ordered to work. The order was given by a British official named Sullivan. The detainees, including the Third Claimant, refused. The guards then started to beat the detainees. The Third Claimant was repeatedly beaten with a club on his lower

back and about his head in the area of his neck, eventually causing him to lose consciousness following a blow to the back of his head. As stated at paragraph 18 above, in the course of the assault eleven detainees were killed, including the Third Claimant's close friend Migwe Ndegwa.

- bb) The Third Claimant was mistakenly believed to have been killed and was removed by camp guards and placed with the eleven corpses. A European doctor later realised he was alive and he was transferred to hospital where he regained consciousness.
- cc) The Third Claimant remained in hospital for a week and was then transferred after a short interval back at Hola, to Shimo la Tewa Prison in Mombasa where he was held in order to give evidence at the inquest which was opened following the massacre at Hola.
- dd) He remained in Shimo la Tewa for a period of about two weeks and was then transferred to Manyani where he remained for about four months. He was then transferred to Mweru camp in South Tetu Division of Nyeri district where for the following three months he was held in solitary confinement. On a day unknown he was placed in a lorry with a mat, two blankets, one cup and one plate, and taken to Gatitu and dropped on the roadside to make his own way home.

#### **(4) The Fourth Claimant – Jane Muthon Mara**

27. On a date unknown in about 1954 when the Fourth Claimant was about 15 years old the inhabitants of her village at Ngugini were ordered by Kenyan Home Guards to leave their village immediately. They were ordered to demolish their houses. The villagers were taken to a new village which was named Kianjiru. Kianjiru was established as part of the villagisation programme. The villagers, including the Fourth Claimant, were required to build a trench around Kianjiru and within this a barricade constructed of bamboo spikes. They built a solitary bridge across the trench. They were then required to build compounds, each of which would house three or four homesteads. The Fourth Claimant and the remaining visitors built the prison village in which they were then held captive by the Home Guards.

28. One morning at about 7 a.m. a month or so after her arrival in Kianjiru, the Claimant was accused by the village chief of being a Mau Mau sympathiser and transported by truck together with a number of others to Gatithi Screening Camp which was situated about a mile from Kianjiru.
29. At the screening camp and thereafter at Embu and Kamiti prisons, the Fourth Claimant was subjected to repeated assaults and batteries by one or more of the guards or prison officers acting as the servant and/or agent of the Kenya Police and/or Kenya Home Guard and/or Prison Service. The Fourth Claimant was also forced to labour as particularised below.

#### **PARTICULARS OF ASSAULT/BATTERY**

- a) The Fourth Claimant was arrested and brought to Gatithi Screening camp. She was taken to a nearby river and ordered to get into the water and wash, while fully clothed. When she emerged out of the water she and other detainees were ordered to sit in groups of five with their legs outstretched in front of them. The white district officer, nicknamed Waikanja, who was short, bald-headed and sported a handlebar moustache, together with his assistant a black guard named Edward, then walked back and forth over their outstretched legs while wearing heavy boots. Despite the detainees' cries of pain, they and other officers who joined them, repeated the assault again and again. The detainees, including the Fourth Claimant were then ordered to get up and walk to their sleeping quarters which consisted of a number of tents. As they attempted to make their way there they were whipped.
- b) On the morning of the following day, the Fourth Claimant was awoken in her tent when one or more members of the Home Guard began to beat her with a truncheon. She and the other women in the tent screamed and the guards threatened to beat them further if they continued. The guards were acting under the command of Waikanja who was standing outside the tent issuing orders.

- c) The Fourth Claimant was then taken together with three other women detainees to a new tent where Waikanja, Edward and some other Home Guards were present. She was ordered to come into the centre of the room and sit on the floor. The other women were ordered to sit at the sides of the tent.
- d) The Fourth Claimant was then subjected to a brutal interrogation. She was repeatedly asked when she took the Mau Mau oath and asked about the location of her brother and other local members of the Mau Mau. She was repeatedly beaten and was also kicked. The Claimant repeatedly denied that she had taken the oath.
- e) Four guards then pinned her to the floor. One held her shoulders, one held each arm, and one prised her thighs apart and held them open. Edward placed himself on a chair directly in front of the Fourth Claimant's spread legs. He stepped onto her feet. The Fourth Claimant screamed and tried to break free but was completely overpowered. Then, Edward produced a glass bottle which, under orders from Waikanja, he forced into the Fourth Claimant's vagina. He used the sole of his foot to direct the path of the bottle deep into her vagina. The Fourth Claimant experienced excruciating pain and realised the bottle was full of hot water. While this was happening the other guards hit the Claimant.
- f) The bottle was removed and the Fourth Claimant was ordered to sit at the edge of the tent and compelled to watch the torture to which she had been subjected repeated on the other three women.
- g) The Fourth Claimant was subjected to further beatings repeatedly over the course of the ensuing week and was deprived of food. The beatings took place on a daily basis as she and other women detainees emerged from the river in which, as on the day of their arrival, they were required to bathe.
- h) On one occasion the Fourth Claimant was hit with the butt of a gun on the side of her neck with such force that she was barely able to stand afterwards.
- i) The Claimant was then transferred by truck under the supervision of a white officer to Kerugoya. In the course of the journey she was repeatedly beaten about the head by guards who were using clubs. On the second day at Kerugoya camp the Fourth Claimant, together with about 250-300 other detainees, was lined up in

front of a judge. The Judge sentenced them all to three years imprisonment for membership of the Mau Mau. No charges had previously been preferred and no trial took place.

- j) The following day, the Fourth Claimant, together with all the other detainees who were not injured, was transported to Embu prison where she remained for the next three months.
- k) At Embu prison the Fourth Claimant was subjected to a cruel and inhuman regime and repeatedly assaulted. Each morning she was woken at 4.00 a.m. when guards came into the cell which she shared with about 10 other women. Four or five guards would beat her and the other women using sticks and whips.
- l) The women were then given porridge and ordered to sweep the prison compound. They were then ordered to line up and were beaten again.
- m) The daily labour would then begin. The Claimant was required to carry heavy bricks on her head to Kangaru School. She laboured in this way from 8.00 a.m. to 5 p.m. Monday to Friday, with a single 15 minute break at lunch-time. No protection was provided to minimise the risk of injury to the Fourth Claimant's neck or head. The guards repeatedly beat the Fourth Claimant.
- n) The Fourth Claimant was frequently beaten in the evenings after she had returned to the camp from work. The guards used sticks and whips to beat her.
- o) The Fourth Claimant received inadequate food both in amount and nutrition; porridge for breakfast and either lunch or supper but not both. The Fourth Claimant was permitted to bathe only once every three days.
- p) The Fourth Claimant was transferred after three months to Kamiti prison where she remained for the next two years. The Fourth Claimant was again woken daily at 4.00 a.m and beaten repeatedly by the guards who used truncheons and whips.
- q) At Kamiti the Fourth Claimant was forced to labour by digging muram stones and rocks using basic tools and carrying them over great distances to be used for road construction. She was beaten frequently and arbitrarily by prison guards, both African and European.
- r) She laboured all day every day save for a short lunch break.

- s) After two years, the Fourth Claimant was transferred to Athi River Detention Camp and forced to labour constructing dam walls. She was required to carry stones on her head. She remained in Athi River for seven months where she worked from 7.00 a.m. to 1.00 p.m. when she took a short lunch-break and then again until 4.00 p.m.
- t) The Fourth Claimant was deliberately deprived of food and water, sometimes for days save for a small amount of porridge which was provided each morning.
- u) After seven months the Fourth Claimant was transferred back to Kamiti where she was held for a month and then transferred to Embu where, for the remaining four months of her sentence, she was subjected to the same regime outlined hereinbefore at paragraphs (k) to (o) above.

**(5) The Fifth Claimant – Susan Ngondi**

30. Two years after the Emergency began, in about 1954, the Fifth Claimant together with her family and other families in her village, was forced by members of the Home Guard to move to Karia village from Kirigonini, Kiine Location, Ndia Division in the Kirinyaga District. The Home Guard was acting under orders of the District Officer (Waikanja) under the villagisation programme. The Third Claimant's food store was deliberately burnt to the ground. She remained detained in the village and thereafter at a number of detention camps, as particularised hereinbelow, where she was subjected to brutal assaults/batteries.

**PARTICULARS OF ASSAULT/BATTERY**

- a) At Karia the Fifth Claimant, her family and about 400 other villagers from surrounding villages who had also been forcibly brought there were forced to construct the village where they were to be detained. This included digging trenches 12 feet deep and 10 feet wide which encircled the village. The Fifth Claimant and the other 'villagers' were kept inside the village by a combination of the trench encircled with sharp bamboo spikes, barbed wire and a number of Home Guards who stood watch.

- b) Throughout her time at Karia the Fifth Claimant was forced to labour. Over that time she was required to slash the bushes around the village to ensure no Mau Mau were hiding there, build huts for her and the others to reside in and build the Nyeri-Kerugoya-Karatina road. The Fifth Claimant was forced to labour from the early hours until about 3 p.m. without a break and without the provision by the camp guards of any food or water. The supervising Home Guards frequently assaulted the Fifth Claimant using whips and sticks.
- c) For the first two years those detained in the village, including the Fifth Claimant, were not permitted to work on their own land, nor was food provided to them by those responsible for their detention. No opportunity was afforded to the village detainees to earn money. Over time villagers used up all the money they came with and sold all their other possessions for food. They were beginning to starve. Accordingly, a decision was taken by the Colonial Administration to permit them to grow food and plots of land were allocated to the villagers, including the Fifth Claimant.
- d) At all times the Fifth Claimant's movements were controlled and directed by the guards who detained her in the village. She was not permitted to tend her plot save under escort of a Home Guard.
- e) Soldiers and white settlers regularly came into the village and raped the women. This was done under the authority of Waikanja. During one night the Fifth Claimant was the victim of one such rape.
- f) In 1957 the Fifth Claimant was arrested on suspicion of assisting the Mau Mau fighters by providing them with food. She was taken together with about fifteen male villagers by truck to Gatithi camp. During the journey about fifteen to twenty guards beat the detainees using batons.
- g) At Gatithi the Fifth Claimant was subjected daily to severe and brutal assaults and torture. She and other women detainees were ordered to kneel on the ground and shuffle for a mile and a half to the river where they were then required to wash while the guards threw stones at them.
- h) On other occasions the Fifth Claimant would be required to sit in a line with other women, their legs stretched out in front of them. Waikanja and his assistant



guards then walked back and forth over their legs while wearing their heavy spiked boots. If they cried out in pain, they were whipped by the guards.

- i) The Fifth Claimant was repeatedly subjected to brutal interrogation upon the orders of Waikanja. The object of the interrogation was to obtain from the Fifth Claimant a confession that she had taken the Mau Mau oath and assisted the Mau Mau by providing them with food. The Fifth Claimant was questioned and when she refused to answer was beaten by police officers.
- j) On the third or fourth day of her detention at Gathithi, the Fifth Claimant was placed in a tent with a number of guards whose identities are unknown save for an officer named Peter Edward Kianjege. Waikanja stood at the entrance to the tent and remained there watching. The Fifth Claimant was repeatedly asked whether she had taken the Mau Mau oath. She repeatedly denied that she had. Suddenly four guards took hold of her, one by her shoulders, and one on each side of her body and a fourth prised open her legs and held them. Peter Edward Kianjege sat down in a chair so that he faced her open legs. Using his feet he shoved a glass soda bottle as far as he could into her vagina. She was again asked, by Peter Edward Kianjege, whether she had taken the oath. She screamed “yes, yes”. The Fifth Claimant’s sexual torture took place at the direction of Waikanja.
- k) The Fifth Claimant was provided with no medical attention following her sexual torture.
- l) The Fifth Claimant was held in Gathithi for about three weeks after which she was taken to Kerugoya police station where she remained for about two weeks. At Kerugoya police station the Fifth Claimant was beaten by police officers using whips. This occurred twice daily at the morning and evening call ups. Further, the detainees, including the Fifth Claimant, were made to clean the police compound and fetch water for the station.
- m) The Fifth Claimant was then transferred to Embu police station where she was charged with having taken the Mau Mau oath. She was convicted without trial and sentenced to a term of 3 years imprisonment.
- n) The Fifth Claimant served her sentence at Kamiti where she was held for 18 months.

- o) While detained in Kamiti the Fifth Claimant was forced, together with other prisoners, to perform hard labour and was beaten several times a day by the prison wardens while she worked. She was made to dig out stones using her hands and to load the stones into buckets. She was then required to place the bucket on her head and run. Frequently the stones would fall from the buckets. There was a short break at lunch-time following which she would be required to mix mud with her hands and build bricks.
- p) After 18 months the Fifth Claimant was transferred to Athi River camp where she remained for six months before being returned again to Kamiti where she was subjected to the same conditions and treatment set out hereinbefore at paragraph (o) above.
- q) After two short stays at Embu prison and Kerugoya police station, the Fifth Claimant was released having completed her sentence. She returned to her home in Karia village.

#### **IV. GOVERNMENT OF UNITED KINGDOM'S RESPONSIBILITY FOR ASSAULTS**

31. It is averred that the Government of the United Kingdom through the Defendant is liable for the acts and omissions of the Colonial Administration and the members of the security forces acting under that administration's direction and control by reason of all and/or some of the following:-

- a) The Government of the United Kingdom had ultimate responsibility for and exerted effective control over the functions of the Colonial Administration (which, at the time, had the status of a British Crown Colony)<sup>5</sup> together with its security forces. As such it had the power to direct the Colonial Administration on the manner in which it prosecuted the Emergency, including the manner and circumstances in which force was used against suspected insurgents. Such power included the power to overrule laws passed by the Kenyan legislature.

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<sup>5</sup> Kenya Annexation Order-in-Council and the Kenya Colony Order in Council of 1921.

- b) The acts of assault complained of herein below constituted a mode by which those security forces discharged their functions of arrest, interrogation and detention.
- c) The official inquiries into the Hola incident acknowledged that much of the force used that day was illegal. On 4 June 1959 the Cabinet discussed the Hola incident and the Cabinet Conclusions from that meeting state that “The general feeling of the Cabinet was that on the considerations before them the Government would not be able to defend the action of the Kenya Government but should concede that the Cowan plan ought never to have been formulated or approved”.<sup>6</sup> Furthermore, a secret memorandum which was prepared by the Secretary of State for the Colonies on the Hola incident and considered at the Cabinet meeting, stated that “There is no doubt that detainees were on that day illegally beaten”.<sup>7</sup> The Cabinet discussed the Hola incident again on the 11 June 1959 and the Cabinet Conclusions to that meeting state:
- “As regards the legality of the policy of rehabilitation by forced labour, which the Cabinet approved in 1954, it was open to question whether the Kenya regulations constituted a breach of the Forced Labour Convention of 1930, or the Convention of Human Rights. But there could be no doubt that the way in which the regulations were put into effect at Hola on this occasion involved a breach of both Conventions”.<sup>8</sup>
- d) Further or in the alternative, the Government of the United Kingdom authorised implicitly and/or expressly the institutionalised and systematic abuse of detainees by way of assaults in the form of beatings, whipping, sexual abuse and the like.
- i) Implicit authorisation was given by reason of the deliberate failure of the United Kingdom Government to take any or any reasonable steps to bring an end to the violence perpetrated by the security forces in the face of overwhelming evidence that such violence was institutionalised and systematised under the authority of the Colonial Administration. The basis

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<sup>6</sup> [C.C. 39 (59)] [Appendix 3]

<sup>7</sup> Memorandum C. (59) 92 [Appendix 4]

<sup>8</sup> [C.C. 34 (59) at page 5]. [Appendix 5]

upon which it is averred that there was overwhelming evidence as aforesaid is set out in Particulars of Knowledge at paragraph 39 below. For the avoidance of doubt it is averred that the failure to take any or any adequate steps to prevent the violence was a deliberate omission, the consequence of which was known by the Secretary of State for the Colonies and Colonial Office to be the continuation of institutionalised violence, leading to serious injuries and death.

- ii) Express authorisation was given on 16 July 1957 for the use of overwhelming force to be used to punish recalcitrant detainees during the dilution process. Such force as was authorised included repeated beatings of detainees, on occasion to unconsciousness, and the knocking detainees to the ground and forcing sand in their mouths.

#### **V. DUTY OF CARE (NEGLIGENCE)**

32. In the alternative, it is averred that the Defendant owed a duty of care to take all reasonable and necessary steps to prevent the use of unlawful violence in the form of excessive force by members of the security forces responsible for enforcing law and order in the course of the Emergency, including in the detention camps, prisons and screening centres operated by and/or under the authority of the Colonial Administration. The said duty arose in law by reason of the Government's ultimate responsibility on behalf of the Queen for the Colony of Kenya and for the discharge of her duty of protection towards Her subjects therein. Further and/or alternatively it is averred that the Defendant assumed a responsibility for the Claimants by virtue of (i) the Government's ultimate responsibility as particularized above and/or (ii) their knowledge as to the abuses and/or (iii) their power to prevent such abuses.

#### **Standard of Care**

33. As to the standard of care, the United Kingdom was a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the

Geneva Convention (III) relative to the Treatment of Prisoners of War [1949]. By Articles 3 of both Conventions torture, inhuman and degrading treatment or punishment are prohibited.

**THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS [1950]**

34. Article 3 of the European Convention prohibits torture and or degrading treatment or punishment:

**“Article 3 – Prohibition of torture**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

35. Further, there is no derogation from Article 3:

**“Article 15 – Derogation in time of emergency**

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.”

**GENEVA CONVENTION (III) RELATIVE TO THE TREATMENT OF PRISONERS OF WAR [1949]**

36. Further, Common Article 1 applies to all the Geneva Conventions 1949 and provides:

**“Part I. General Provisions**

**Art 1.** The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.”

37. Common Article 3 applies to all four of the Geneva Conventions 1949 to all armed conflicts not of an international character and provides:

**“Art 3.** In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

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

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

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

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

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

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

39. The Defendant knew or ought to have known that systematic, institutionalised unlawful violence was being applied in order to defeat the insurgency and in particular in the course of arrests, screenings and detention in the camps to compel suspected Mau Mau members to confess and repent their allegiance and comply with

the regime. The Secretary of State for the Colonies and his Office were presented with the overwhelming evidence set out herein below.

### **PARTICULARS OF KNOWLEDGE**

- a) In December 1952 it was acknowledged that 45 prisoners had been badly beaten at a temporary detention camp in Rumuruti ‘with the object of extorting information and confessions’.<sup>9</sup> This information was relayed to the Colonial Office in London by the Kenyan Governor’s Deputy in a memorandum dated 16 December 1952 which also stated that the Kenya Police Reserves were probably involved.
  
- b) In 1952 Mr Fenner Brockway M.P. established the Movement for Colonial Freedom. In the course of the Emergency, through this organisation and in the House of Commons, he raised on numerous occasions cases of abuse by security forces, amounting to torture and, in some cases, resulting in the death of Mau Mau suspects.
  
- c) On 28 January 1953 Canon T.F.C. Bewes wrote to Sir Evelyn Baring, the Governor of the Colonial Administration, setting out a list of alleged torture carried out by white members of the security forces against African members of his church. These allegations were published widely when in February 1953, Canon Bewes held a press conference in London addressing a host of journalists. He accused British security forces of using “the third degree” to extract intelligence and impress on insurgents the strength of colonial power.<sup>10</sup>
  
- d) On 29 January 1953 Elijah Njeru was killed in Embu by two officers of the Kenyan Police Reserve.

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<sup>9</sup> Anderson, D., pp 309, 2005. *Histories of the Hanged: Britain’s Dirty War in Kenya and the End of Empire*. London: Phoenix.

<sup>10</sup> [Appendix 6]

- e) From as early as January 1953, numerous individuals and pressure groups lobbied and campaigned in London to highlight the extent of the atrocities taking place.
- f) In the Spring of 1953, a letter written by Inspector H. Cross to his friends in England was published in the press. Inspector Cross had recently arrived in Kenya to run a police station in the South Nyeri Reserve. In his letter he detailed systematic abuse by the Home Guard when interrogating and detaining suspects. The letter came to the attention of the Secretary of State for the Colonies.<sup>11</sup>
- g) On 5 December 1953, the Governor of Tanganyika provided the Secretary of State for the Colonies with a full report concerning 40 complaints of serious assaults by beatings, whipping and burning using cigarettes that had taken place during screenings of suspected Mau Mau insurgents in October 1953. The screenings were carried out by Kenyan security forces under the supervision of a European officer named Mr Hayward.<sup>12</sup>
- h) Among hundreds of prosecutions brought against suspected Mau Mau insurgents, there was clear evidence of systematic violence perpetrated by the security forces against suspects in 80 per cent of the cases. In many cases the beatings were confirmed by the court. The severity of cases arising in Nyeri in the middle months of 1954 caused Justice Law, who tried many of the prosecutions against suspected insurgents, to write to the Chief Secretary to complain.
- i) On 18 July 1954 Muriu Wamai, a member of the Home Guard, together with five other members, murdered two men suspected of being Mau Mau at a special interrogation centre at Ruthagathi. Prisoners were brought there with the knowledge of British officers to be beaten and tortured. The six men were prosecuted and at their trial Muriu Wamai confessed to the murders and gave evidence about the systematic torture that took place. Muriu Wamai also told the

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<sup>11</sup> [Appendix 7]

<sup>12</sup> [Appendix 8]



Court that he had confessed the crime to the local district officer, Mr Richmond, who had advised him to cover it up and lie. Richmond had assisted him in forging entries in the records to further the cover up. Richmond had further assisted him in the concoction of sworn statements from the other five accused, supporting the defence. Three police officers also provided false evidence. In his judgement of 4 December 1954, in which he convicted Muriu Wamai and his co-defendants of both murders, Acting Justice Cram made public the systematic torture practiced at Ruthagathi as well as the corrupt and dishonest efforts made by the district officer and the police to hide the truth. At Governor Baring's direction an embargo was placed upon the judgment, but copies leaked out and a London based-group named the Federal Independence Party made copies. Governor Baring's attempts to stop the publication of the judgment ought reasonably to have alerted the Defendant to the possibility that he was seeking to hide institutionalised and systemic malpractice, and/or that he was not taking all reasonable and proper steps to ensure that no such malpractice occurred.

- j) As the trial was proceeding, Kenya's new Commissioner of Police Colonel Arthur Young, who had arrived from England in March 1954, became increasingly concerned. He was confronted by the evidence of widespread abuse and concerted and well organised attempts to obstruct the Criminal Investigations Department ("CID") in seeking to investigate and secure prosecutions in such cases. Attention was particularly focused on Nyeri in Central Province. The obstruction came at all levels of the Colonial Administration, from the Central Province Commissioner to the Member for African Affairs. In a series of communications with Governor Baring dated between 22 November and 28 December 1954, he raised his concerns setting out numerous and detailed examples of the most serious assaults by screening and Home Guard officers that had caused the deaths of suspects.<sup>13</sup> In respect of many of these cases he also drew attention to the concerted attempts by officers of the Colonial Administration to interfere with investigations and bring them to a halt. Governor

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<sup>13</sup> [Appendix 9]

Baring did not respond to his communications and in a letter to him dated 14 December 1954, Colonel Young resigned.<sup>14</sup> In giving his reasons, he again relied upon what he described as “the continuance of the rule of fear rather than that of impartial justice”. He stated that two particular features affecting public order had caused him the greatest anxiety: “One is the interference by the Executive with the crime investigations of the Police, and the other is the disregard of the rights of the ordinary African when he is subject to detention in screening camps and in Home Guard posts”. On 28 December 1954 Young wrote again to Governor Baring: “I refer once again to my letter to you of the 22<sup>nd</sup> November last, to my resignation of the 14<sup>th</sup> December and my further letter of the 21<sup>st</sup> December, all dealing with the subject of the brutality committed by the Home Guard under the control of Government’s Administrative Officers. Once again I regret that Your Excellency has not seen fit to acknowledge my communications to you on this subject or to give me an indication that anything effective is being done to remedy this shameful situation”. Following his resignation Young also wrote to the Secretary of State for the Colonies setting out the reasons for his resignation, including that it was prompted by malpractices committed against Mau Mau suspects that “were condoned by officers of the Provincial Administration” and that there had been interference by the Governor himself into one such investigation.

- k) Following Colonel Young’s resignation a debate took place in February 1955 about the circumstances that had given rise to it in Parliament. In the course of the debate allegations of systematic abuse were raised. Extracts from the judgement of Acting Justice Cram were read out in the House of Lords by Lord Jowitt, a former Lord Chancellor, including the following passage: “It appears that there exists a system of guard posts manned by headsmen and chiefs, and that these interrogation centres and prisons to which the Queen’s subjects, whether innocent or guilty, are led by armed men without warrant and detained and, as it

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<sup>14</sup> [Appendix 10]

seems, tortured until they confess to alleged crimes, and then are led forth to trial on the sole evidence of these confessions”.<sup>15</sup>

- l) In 1955 Barbara Castle M.P raised with the British Government another case (“the Kichina case”) where it was overwhelmingly demonstrated that the Administration was involved in a cover up of brutality by two European police officers which resulted in a suspect’s death. Between the preliminary hearing and trial, the charges against the officers had been reduced from murder to causing grievous bodily harm.
  
- m) Barbara Castle visited Kenya in November 1955. Upon her return she wrote in the national press about more cases of systematic abuse that she had uncovered.
  
- n) In May 1956, an article was published in the Quaker periodical *Peace News* by former Colonial rehabilitation officer, Eileen Fletcher entitled “Kenya’s Concentration Camps” and later a pamphlet entitled *Truth about Kenya – an eye witness account by Eileen Fletcher*. In this article she made serious allegations about conditions in prisons and detention camps generally and in particular raised concerns about the illegal detention of girls.
  
- o) In January 1957 Captain Philip Meldon published in *Peace News* and *Reynolds News* an account of his experiences of working in the Pipeline between March 1954 and May 1955, first as a temporary officer in the Kenya Police Reserve and then as a rehabilitation officer. On 4 February 1957 he wrote personally to the Secretary of State for the Colonies listing abuse of detainees in the form of beatings, assault, floggings and overwork. He also provided the names of specific British officers who had perpetrated acts of torture in Kenya’s detention camps.<sup>16</sup>

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<sup>15</sup> *HL Deb 10 February 1955 vol 190 cc1128-204 [Appendix 11]*

<sup>16</sup> [Appendix 12]

- p) A secret memorandum attached to a letter of 25 June 1957, compiled by the then Minister of Legal Affairs of the Colonial Administration, entitled "*Dilution Detention Camps – Use of Force in Enforcing Discipline*". The secret memorandum detailed the dilution technique used by colonial officers including the manhandling of detainees whereby "...a resistor who started ["the Mau Mau moan"] was promptly put to the ground, a foot placed on his throat and mud stuffed in his mouth; and that a man whose resistance could not be broken down was in the last resort knocked unconscious".<sup>17</sup>
- q) A memorandum on 17 December 1957 sent by the head of the Ministry of Community Development and Rehabilitation, Thomas Askwith, to the Governor's Chief Secretary, in which he stated that the violent treatment to which detainees were subjected could lead to death or serious injury.
- r) On 4 July 1958, the editor of the London *Observer*, David Astor wrote to the Secretary of State for the Colonies asking for assistance in relation to a letter he had received from 383 detainees and 25 convicts at Mariira Works Camp. The letter set out a series of serious complaints about the conditions of detention including beatings which had caused two deaths, one in January and one in June 1958. The letter explained that the detainees had written to the Kenyan Government on numerous occasions but received no response.
- s) On 26 September 1958 Governor Baring informed the Secretary of State that on 15 September 1958 a detainee had died in suspicious circumstances at Gathigiriri prison and detention camp in the course of a lengthy screening by experienced interrogators.<sup>18</sup>
- t) Further reports of abuse in the camps came from Victor Shuter, a prison officer in Manyani and Fort Hall who, on 10 January 1959, sent a 15 page affidavit to the

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<sup>17</sup> [Appendix 2]

<sup>18</sup> [Appendix 13]

Colonial Administration outlining abuse and the names of a dozen British officers who had been involved in inhuman and degrading treatment in certain camps.<sup>19</sup> In February 1959, the Daily Mail published an article by Captain Ernest Law entitled “I knew too much”. He described witnessing daily beatings during his first two months as a prisoner in Kamiti where he also saw women being repeatedly brutalised. Further evidence of abuse of African detainees in Kamiti came from two other Europeans who were imprisoned there and provided statements in February 1959: Leonard Bird and Anthony Williams-Meyrick.

- u) The allegations of systematic abuse were further corroborated and brought to the attention of the Colonial Administration and the Secretary of State for the Colonies by the detainees themselves. Over the years of the Emergency hundreds of letters were sent by detainees to them outlining the abuse including assaults and torture by members of the security forces.<sup>20</sup>

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

#### **PARTICULARS OF NEGLIGENCE**

- a) Failed to heed and/or act upon the overwhelming evidence presented to the Colonial Office from early 1953 onwards that the extreme, brutal and lethal assaults perpetrated in the course of arrests, screenings and/or detention were part of an institutionalised system which permitted the use of deliberately excessive force.
- b) Caused or permitted all investigations into allegations of abuse to be conducted by the Colonial Administration.

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<sup>19</sup> [Appendix 14]

<sup>20</sup> [Appendix 15 contains a small selection of letters from detainees.]

- c) Caused or permitted the Colonial Administration to treat all such cases as isolated incidents for which responsibility rested exclusively with the individuals who perpetrated the violence and perhaps their immediate supervisor.
- d) Failed to take any or any reasonable steps to institute investigations that were independent of the Colonial Administration;
- e) Failed to take any or any reasonable steps to institute investigations into the conduct of the Colonial Administration and in particular into the steps it had taken or failed to take to bring the aforesaid violence to an end and to ensure the full and proper investigation of violent assaults as and when allegations came to their attention.
- f) Failed to take any or any reasonable steps to ensure that there were independent unannounced inspections of screening centres, detention camps and prisons.
- g) Caused and/or permitted unlawful violence to be perpetrated on detainees including the Claimants.
- h) Failed to provide adequate resources to train the employees and agents of the Colonial Administration.
- i) Failed to provide adequate supervision of the employees and agents of the Colonial Administration.

41. By reason of the matters aforesaid the Claimants suffered personal injury, loss and damage.

## **VI. PARTICULARS OF INJURY**

### **The First Claimant**

42. The First Claimant who was born in 1932 suffered:-

- a) Severe bruising and injury to his body including his ribs, his wrists and jaw.
- b) Following the assaults on 17 September 1957 the First Claimant was given no medical treatment but put to work thereby exacerbating his level of pain.

- c) The most severe pain the First Claimant experienced was as a result of the castration. Initially the pain was excruciating, at first in his groin but spreading throughout his body. The First Claimant also experienced profound shock.
- d) Following his liberation the First Claimant was cared for by the Mau Mau fighters in the forest as best as they were able given their circumstances. Apart from applying some herbal remedies, the Mau Mau fighters did not know how further to treat the resulting injury. The First Claimant experienced excruciating pain in the groin for a period of about six months. He was unable to walk at all for several months and could not walk unassisted for 18 months. By the time he left the forest in 1961 he still required the assistance of a stick to walk. The First Claimant continues to experience intermittent pain and swelling of his testicles (which remain). If he does not seek medical attention straight away the pain can remain for a month or more. With immediate medical attention the pain resolves quickly.
- e) The First Claimant was rendered infertile as a result of the castration and has suffered a complete loss of libido.
- f) Both his wrists were splinted and the bruises and sores on his body were treated with Aloe Vera leaves. The First Claimant's wrists remained splinted for about a month after which he could not use his wrists properly. He could neither lift nor grip objects. For about a year and a half the First Claimant tried to avoid using his wrists at all. By the time he left the forest in 1961 he was able to lift items but could not hold them for long. The First Claimant's wrists remain very weak and he can only carry for short periods. The left wrist is worse than his right.
- g) Initially the Mau Mau fighters treated the First Claimant's jaw with Aloe Vera but were then able to obtain some medication in the form of tablets. For the following three years the First Claimant experienced excruciating pain if he tried to chew even gently and eat soft foods. The First Claimant continues to experience difficulties eating. He cannot eat his tribal staple food of Githeri, which is a mix of heated corn and beans. To do so causes him severe pain and a sensation that his jaw is about to fall off. He cannot chew meat either.
- h) For the first three months the First Claimant found it very difficult to breathe as a result of the injuries sustained to his ribs. Talking alone caused the First Claimant

pain. The symptoms resolved over time and by 1961 when he left the forest he could speak and breathe without pain though coughing and sneezing brought on pain. This pain continues to date.

- i) The First Claimant has a number of scars on his body including on his right elbow and all over his head and forehead.
- j) The First Claimant has been unable to work and cultivate land given to him by his father upon his return home in 1961.
- k) The First Claimant experienced severe depression. He mourned the loss of his three close companions, the three fellow herdsmen who had been arrested with him and had died as a result of the assaults perpetrated upon them which also included castration. He mourned the fact that he would never have children of his own and never be with a woman. The First Claimant's depression improved slowly over time but by the time he came to leave the forest in 1961 he remained depressed.
- l) During the first three months after the assaults he barely slept, being kept awake by anguish and mental stress. When he did sleep he experienced terrible nightmares in which he relived the castration. These nightmares continue to date occurring most frequently when he experiences a swelling of his testicles. Nightmares will follow such an episode for the following three nights.
- m) The First Claimant suffered intense flashbacks to the episodes of assault including the castration. These would occur at least once a day for the first three months. Over the years the flashbacks became less frequent but they continue occurring unpredictably.
- n) The First Claimant fears that as he grows older he may become unable to help himself and will have no wife or children to help and support him. The First Claimant continues to experience a great sense of loss and sorrow that he never had a wife and family.

Medical report to follow.

#### **SCHEDULE OF LOSS**

To follow.



### **The Second Claimant**

43. The Second Claimant who was born in 1927 suffered:-

- a) Profound shock;
- b) Loss of consciousness;
- c) Excruciating pain and swelling not only in the genital region but over his whole body. The swelling persisted for two weeks;
- d) Shrivelling of testicles;
- e) Complete loss of libido;
- f) Infertility;
- g) Intermittent pain in the area of his groin, which continues to date;
- h) When the Second Claimant was taken back to Embakasi after a two week stay in the King George Hospital he remained extremely weak.
- i) Upon his release from detention the Second Claimant returned to his parents home. For more than a decade he suffered a total loss of enjoyment of life. He was unable to come to terms with the loss of his masculinity. In the first two years he was overcome by a sense of weakness and spent his time sleeping both day and night. After this he remained largely at home. He had no desire to see others and very little appetite. Eventually he began to perform some tasks around the compound, but only those involving light work.

Medical report to follow.

### **SCHEDULE OF LOSS**

To follow.

### **The Third Claimant**

44. The Third Claimant who was born in 1928 suffered:-

- a) Severe bruising to his body consequent on each incident of beating;
- b) Whip marks on his back and neck;
- c) Scars to his lower back, the side of his body, knees and collar bone;
- d) Black marks to his ankles resulting from the long application of manacles;

- e) Ongoing pain to his legs and back which prevents him from standing up from a sitting position on the floor without assistance.

Medical report to follow

#### **SCHEDULE OF LOSS**

To follow.

#### **The Fourth Claimant**

45. The Fourth Claimant who was born in about 1939 suffered:-

- a) Extensive bleeding from her vagina;
- b) Excruciating pain;
- c) An overwhelming sense of violation, humiliation and degradation.
- d) Flashbacks of the sexual torture particularly when her husband sought intimacy with her.
- e) Sexual inhibition.
- f) Bruising to her body following the beatings she received.
- g) As a result of the strike to the side of her neck from a rifle butt, the Claimant has been unable to lift heavy objects without experiencing pain.
- h) Severe neck pain caused by the forced labour at Embu prison.
- i) The Fourth Claimant remains traumatised by the abuse and assaults perpetrated on her during her detention. It has had a profound adverse affect upon her enjoyment of life.

Medical report to follow.

#### **SCHEDULE OF LOSS**

To follow.

#### **The Fifth Claimant**

46. The fifth Claimant who was born in about 1929 suffered:-

- a) Bruising and pain following the beatings she repeatedly received.

- b) Excruciating pain each day while she shuffled on her knees to the river when detained at Gatithi. The daily prospect of such agony led the Fifth Claimant to contemplate suicide.
- c) Bleeding from her vagina accompanied by excruciating pain, swelling and infection. The pain lasted for a week. No medical care was provided to the Claimant.
- d) An overwhelming sense of violation, humiliation and degradation.
- e) The Fifth Claimant was unable to walk for about two weeks, and had to crawl to the river in order to bathe.
- f) The Fifth Claimant suffered from sexual inhibition as a result of the torture she was subjected to.

Medical report to follow.

#### **SCHEDULE OF LOSS**

To follow.

#### **VII. REMEDIES SOUGHT**

47. The Claimants seek damages in tort for (a) personal injuries, (b) consequential damages for past and future loss of earnings, (c) the cost of future medical and other necessary treatment and care. Schedules of loss and damage will be served in due course.
48. The Claimants also claim aggravated and punitive damages. In respect of the heads of additional damages, the Claimants rely on the conduct of the Defendant as set out in this Particulars of Claim at paragraphs 1 to 38 above. Further, the Claimants rely specifically on the following:

- a) In respect of aggravated damages, the fact that the actions of the Defendant were ones of gross brutality, intended to humiliate, debase and break the Claimants' psychological integrity and which did so humiliate and debase them. Further, that no apology has ever been offered to the Claimants by or on behalf of the United Kingdom Government. The Defendant has not admitted liability for the wrongful acts particularised in this claim. If the Defendant persists in this stance, the Claimants will claim further aggravated damages in respect of the Defendant's conduct up to and, if necessary, including trial.
- b) In respect of exemplary damages, insofar as additional to the above, the Claimants claims a sum in respect of (1) the unconstitutional, oppressive conduct of the security forces and the flagrant disregard for the Claimants basic human rights, and (2) the deliberate decision of the crown servants in the Colonial Office and Secretary of State for the Colonies to allow that conduct to occur and continue unabated.

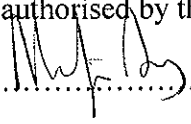
49. The Claimants seek a declaration that the conduct of the Defendant was unlawful as particularised above.

50. The Claimants are entitled to and claims interest on such damages as are awarded pursuant to s. 35A of the Senior Court Act 1981.

RICHARD HERMER Q.C.  
PHILLIPPA KAUFMANN

**STATEMENT OF TRUTH**

The Claimants believe that the facts stated in these Particulars of Claim are true.  
I am duly authorised by the Claimants to sign this statement.

Signed:..........

Name: Martyn Day

Position: Senior Partner, Leigh Day & Co Solicitors

Dated: 22 October 2009

The Claimants' solicitors are Leigh Day & Co of Priory House, 25 St John's Lane,  
London EC1M 4LB, where they will accept service on behalf of the Claimants.