MAU MAU REPARATIONS, MEMORIALIZATION AND
KENYA’S FUTURE

BY

SIRONKA AMY WANJIRU
REG NO: 637671

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STUDENT’S DECLARATION

I, the undersigned, declare that this is my original work and has not been submitted to any other college, institution or university other than the United States International University – Africa in Nairobi for academic credit.

Signed: ___________________________  Date: ___________________________

(Sironka Amy Wanjiru)

This thesis has been presented for examination with my approval as the appointed supervisor.

Signed: ___________________________  Date: ___________________________

(Dr. Duncan Ojwang)

Signed: ___________________________  Date: ___________________________

Dean, School of Humanities & Sciences

Signed: ___________________________  Date: ___________________________

Deputy Vice Chancellor, Academic Affairs
Abstract
The Mau Mau uprising took place between 1952 and 1960 in Kenya. It was a revolt against the British colonial government by the Kenyan local communities. During the uprising, many Africans were tortured and others killed by the colonial government. In 2002, the victims of torture filed a civil case in the United Kingdom. It was opposed by the Foreign Affairs ministry of the United Kingdom on the grounds of lapse of time. The court overruled this objection in 2012 and allowed the case to proceed to full hearing. In June 2013 and before the main hearing of the case could start, the United Kingdom government offered an out of court settlement to the victims of torture to compensate them at the sum of £20 million and the victims agreed to the offer. The United Kingdom in addition to the compensation offered to build a memorial for the Mau Mau war veterans in Nairobi. Being a case that has had numerous developments in the recent past, little has been written on the effectiveness of the compensation in addressing the victims’ concerns. This study takes a deeper look at the effectiveness of the reparations, apology and memorial, in addressing the plight of the victims of torture, for those who died, their families and to the nation as a whole. The study further argues that in order to rectify the wrongs that were done during the colonial period and to mend relations with the victims that suffered the various atrocities, their families and the nation at large, there is need for Britain to continue to support the healing and reconciliation process with the victims in addition to the reparations, apology and memorial.
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<tr>
<td>U.K</td>
<td>United Kingdom</td>
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<td>MMWVA</td>
<td>Mau Mau War Veterans Association</td>
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<td>K.H.R.C</td>
<td>Kenya Human Rights Commission</td>
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<td>K.C.A.</td>
<td>Kikuyu Central Association</td>
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<td>K.A.U</td>
<td>Kenya African Union</td>
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<td>D.C</td>
<td>District Commissioner</td>
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<td>K.A.D.U</td>
<td>Kenya African Democratic Union</td>
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<td>K.A.R</td>
<td>Kings African Rifles</td>
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<td>Y.K.A</td>
<td>Young Kikuyu Association</td>
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<td>D.D.O</td>
<td>Delegated Detention Officer</td>
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CHAPTER ONE

INTRODUCTION

1.0 Background of the Study

The study is centered on the rise of the Mau Mau Movement, a revolt against colonial rule in Kenya. The movement arose as a result of the oppression that the native Africans faced under colonial rule through forceful eviction and loss of their freedom. The movement was opposed by the colonial government, and as a result, many Africans especially those suspected of being members of the Mau Mau movement suffered gross abuses.

The East Africa was opened to colonial domination through the construction of roads and railways. One such railway was the Uganda railway line which opened up the interior of East Africa. Infrastructure projects cost the British government enormous amounts of money. Consequently, it was faced with the task of repaying back its taxpayers money (Elkins, 2006).

In 1902, Sir Charles Elliot, the first commissioner of the British East African Protectorate advised the London Colonial Office that the Africans living along the railroad were uncivilized and hence would not be expected to raise enough money through the payment of the rail services to repay the taxpayers for the cost of building the railway or even through the cultivation of cash crops.

It became necessary for him to encourage his government in London to facilitate the settlement of British settlers who would grow cash crops and use the developed infrastructure to raise money that would be used to repay the funds incurred in construction. Consequently, it became
the preoccupation of the London colonial office to place adverts inviting members of public to purchase land in the colony Kenya at cheap prices. The government gave the representation that its aim of colonization was to slowly civilize the Africans in the colonies by teaching them effective farming methods and taking them through a system of education, they also argued that it was necessary to colonize the people so as to convert them from barbaric religions to Christianity which they argued was the proper religion. According to them, with proper British guidance, and tough paternalistic love, Africans could be made into progressive men and women, though it could take many decades or more likely centuries for such a radical transformation to take place (Elkins, 2006).

Many Britons, persuaded by the supposed underlying aim of their government, left Britain for Kenya where they settled in the fertile highlands. These highlands were mostly occupied by the Kikuyu tribe. This led to mass displacement of the Kikuyu, who had earlier been extensively displaced through the building of the Uganda Railway. The displacement resulted in the build-up of tension between the Kikuyu and the British settlers which would culminate into armed struggle for liberation (Kershaw, 1996).

On making their settlement in Kenya, the settlers formed law making bodies and used their power to formulate laws that required the payment of taxes by the Africans and further required the Africans to work for them in their farms. The new regulations displeased the Africans who began to form organizations that would clamor for protection of their rights to own property.
The settlers were angered by the formation of the rights groups and consequently displaced the Africans previously squatting on the settlers farms. The squatters did not have any places to go having left the reserves in order to squat at the settlers farms and provide labour on the farms (Kariuki, 1963).

The displacement of the squatters further increased the tension between Africans and the settlers. This led to the initiation of an oath ceremony, in which the Africans bound themselves to fight the settlers and retrieve back their land. A group of several thousand Kikuyu squatters who had been forced to leave the White Highlands and settle in an area called Olenguruone are the ones who began the oath ceremony as a means of mobilizing the masses against the white men.

Typically, Kikuyu men had taken an oath to forge solidarity during times of war or internal crises, the oath would morally bind the men to face the challenges. According to Caroline Elkins, mass oathing spread rapidly as African politicians quickly recognized its potential for organizing. The practice spread to many other parts of the country thereby giving rise to the Mau Mau Movement (Elkins, 2006.)

The white settlers branded the movement as barbaric. They argued that it was not representative of the masses but rather the formation of few people that shared barbaric and terrorist attitudes and who were unwilling to embrace the processes of civilization that the British were introducing in the Kenya. To them, the Mau Mau was not a nationalistic movement but rather a demonstration of the naturally weak character of the African who naturally was unable to adapt
to change; it was not as a result of social–economic problems but rather psychological (Padmore, 1956).

The Mau Mau movement was banned by the colonial government in 1950 through Legal Notice number 913 of 1950. When Kenya got its independence in 1963, the existing laws continued to be in force. In 1968, Kenyan parliament passed a Societies’ Act and re-gazetted the legal notice banning the Mau Mau movement. Consequently, the movement remained outlawed in both President Kenyatta and President Moi’s regimes. In President Kibaki’s regime, the ban of Mau Mau movement was lifted through the publication of a legal notice. It is believed that the lifting of the ban on the movement is what paved way for the filing of the case by the members of the Mau Mau, at the United Kingdom.

After filling the case in court, the UK government offered an out of court settlement to the members of the Mau Mau War Veterans Association. The out of court settlement consisted of monetary compensation of about 20 million UK pounds, a public apology and a memorial constructed in Kenya in honour of the victims who suffered during the state of emergency 1952 to 1960.

This study will interrogate the effectiveness of the reparations, apology and memorial offered by the UK to the members of the MMWVA in addressing the plight of the victims and their families. The study will also investigate the relevance of the reparations to the nation as a whole and its impact on the future of relations between UK and Kenya.
1.1 Statement of the Research Problem

In the year 2012, a case was filed by the representatives of the Mau Mau War Veterans Association. The claim was that the UK Government was directly liable to the claimants, as a joint tortfeasor, together with the Colonial Administration and the individual perpetrators of the tortious assaults, for having encouraged, procured, or been complicit in, the creation and maintenance of a system under which the claimants were mistreated.

The liability was said to have arisen out of the role of the military/security forces under the command of the British Commander-in-Chief. Secondly, it was also alleged that the UK Government was jointly liable, through the former Colonial Office, for the acts complained of, because of its role in the creation of the same system under which detainees were knowingly exposed to ill-treatment; and also for negligence in failing to put a stop to what it knew was systematic use of torture and violence upon detainees when it had a clear ability to do so. The claimants hence sought compensation for the torturous acts committed on them by the colonial administration, from the UK government.

The case was opposed by the Foreign Affairs office of the United Kingdom government on grounds of time lapse and further that the obligations and liabilities of the colonial government had been taken over by the Kenyan government, however these objections were overruled by the court hearing the matter and the case was allowed to proceed to full hearing.

In conclusion, the judge stated that the available documentary base was very substantial and capable of giving a very full picture of what was going on in government and military circles in both London and Kenya during the emergency. He stated that a fair trial of the case remained
possible and that the evidence on both sides was significantly cogent for the court to complete its task satisfactorily.

In June 2013, and before the case could proceed to hearing, the United Kingdom government offered an out of court settlement to the MMWVA. The out of court settlement included an apology for the atrocities committed, compensation for the victims at a total of £ 20 million, and a memorial in honour of Kenya’s freedom fighters who suffered torture and ill-treatment at the hands of the colonial government during the Emergency Period from 1952 to 1960.

Making a landmark apology before Britain’s parliament in June 2013, the Foreign Secretary then Mr. William Hague expressed regret over the suffering that Kenyans were subjected to in the hands of the colonial administration and stated that the British government regretted that these abuses took place and that they marred Kenya’s progress towards independence (Gov.uk news, 2013).

The out of court settlement raises various issues on the effectiveness of the reparations, apology and memorial in addressing the plight of the victims of torture, their families and to the nation as a whole. It also raises questions on whether the obligation of rectificatory justice is trans-generational so long as there are, at present, identifiable beneficiaries and victims of past injustice.

The focus of this study is to analyze the reasons for the UK issuing an apology and offering compensation. It will also interrogate the discourse of international relations on global
rectificatory justice to analyze the effectiveness of the reparations, apology and memorial in addressing the plight of the victims of torture, their families and to the nation as a whole.

1.2 Objectives of Study

1. To investigate whether the reparations, apology and memorial was a fair response from the UK government for the harms suffered by the victims and their families

2. To examine whether the claimants have a right to forgive on behalf of the Mau Mau victims and whether responsibility to compensate for past atrocities can be trans-generational

3. To analyze the implications of the reparations, apology and memorial on the future of the relationship between UK and Kenya.

1.3 Literature Review

In his work, J.M. Kariuki discusses the history of the Mau Mau and the days before the Mau Mau movement began, having been a member of the Mau Mau movement. His parents had been pushed into a Reserve after being dispossessed of their land, after which his parents became squatters at a European’s farm who they referred to as ‘Muturi’. J.M Kariuki describes his early years at the farm of the European where his work involved tending after the livestock of the European and cooking for the rest of the workers. He describes the wages at the farm as being extremely low for the Africans working for the Europeans In his work Kariuki describes the issues that led to the rise of the Mau Mau and the manner in which it was began. (Kariuki, 1963)
George Padmore contends that the colonial government had to displace many people mostly the Kikuyus from the Highlands in order to create room for the settlers (Padmore, 1953). According to his work, there were 13 British settlers in 1901, by 1940, the white population numbered 30,000, of whom not more than 3000 were actually engaged in agriculture, others were government, civil and military personnel, missionaries and merchant traders.

The first leader of these colonialists was a well-known empire builder Lord Delamere. Being among the first arrivals, Lord Delamere had the first pick of the best land. He took over one hundred thousand acres of the most fertile country in the Kikuyu region. The Kikuyus alone lost over five hundred thousand acres, for which they received no compensation. The Maasai and the Kamba tribes also lost hundreds of thousands of acres of fertile agricultural and pasture lands. They, too, got no compensation.

Having lost vast areas of their ancestral lands, the dispossessed Kikuyu and other tribes were removed to other parts outside the white Highlands, officially designated "native reserves." Those who were unable to find accommodation in these over-populated areas became squatters on the plantations of the white expropriators.

Another method adopted by the Kenya government in providing the European settlers with an abundant supply of cheap labor was the system of direct taxation. Every able-bodied African over the age of eighteen years had to pay the government a poll tax of about twenty-four shillings a year. Both Padmore and Kariuki allude to the dispossession of land and poor wages as the causes of the Mau Mau revolt.
According to Kariuki, it was in this atmosphere and with the full realization of the sacrifices that might be involved if the pleas of the Africans continued to be ignored by the British Government that the Mau Mau movement was formed. He states that the unity of numbers was the Mau Mau’s strongest weapon and plans for cementing that unity with the Movement of the oath were put in train (Kariuki, 1963).

Kariuki further alludes in his work that the oath was not sophisticated or elaborate and initially was wholly unobjectionable. It started slowly, indeed regretfully, and was an oath of unity and brotherhood in the struggle for our land and our independence (Kariuki, 1963). He alludes that there was no central direction of the Movement which grew from grassroots upwards.

Kariuki describes the wake of the detention of Mau Mau adherents. He states that the Africans suspected of having taken the oath were put in detention camps, and taken through the screening process whether they were forced to confess and denounce the oath after which they would be allowed to go back to their homes and join their families. He describes the screening process as having been most inhuman.

Caroline Elkins further sheds light on the screening process by describing the manner in which it was done. Elkins states that when reflecting on the number of Mau Mau suspects killed from the start of the screening in late 1952 to the end of detention in 1961 one would say there were several hundreds of thousands killed. This was a form of ethnic cleansing on the part of British Government(Elkins, 2006).
Elkins further alludes to the use of the detention camps as a cleansing process by the British colonial government, according to her, the British colonial office in London knew of the goings on in Kenya and the atrocities that were being committed by the government in detention camps and in the reserves but chose to be quiet about it and on several instances misled the House of Commons in Britain that that the incidences of atrocities being reported were simply isolated incidences. According to her, death was a fact of life in the detention, something the detainees conveyed repeatedly to colonial officials. Lennox Boyd was informed in one letter that many of the detainees were sick and people were dying every day from torture and overwork. (Elkins, 2006).

Elkins further alludes to the fact that the colonial government went to extreme lengths to try to stop the letters, including beating and torturing the detainees. Kariuki also describes an incident during his time in detention when he was discovered as having written a letter to the colonial office complaining about the conditions in detention and he was beating to unconsciousness (Kariuki, 1963).

According to Padmore, no such word as "Mau Mau" existed in the Kikuyu language. Mau Mau was not an organized political movement with a regular membership, officers and constitution. It was a spontaneous revolt of a declassed section of the African rural population, uprooted from its tribal lands and driven into the urban slums (Padmore, 1956).
The writers have been successful in bringing to the fore the causes of the uprising, they justify the uprising as having been caused by the suppressive rule of the colonists. The writers also describe the Mau Mau has having been composed of other tribes and hence was not just a Kikuyu uprising. They allude to the Mau Mau as not being merely a tribal group but a movement with a nationalistic outlook to clamor for property rights and freedom from oppression.

The writers’ works are also important to bring to our understanding the composition of Mau Mau War Veterans Association in the case against the U.K government. The association consisted of several other tribes in addition to the Kikuyu. Consequently, the writers’ works are important in helping us understand the composition as having been a unification of Africans most oppressed by the settlers and whose rights to the possession of property had been violated.

Barnett and Njama's account of the ideology of the forest fighters makes it clear that their main objectives were the return of the dispossessed lands and the attainment of self-government for the African majority in Kenya. To them, Mau Mau was a direct development of Kenya African Nationalism. It was a militant response to years of frustration at the refusal of the colonial government to listen to demands for constitutional reform (Barnette & Njama, 1966).

As Oginga Odinga states, Kenya nationalism turned violent because for thirty years it was treated as seditious and denied all legitimate outlet (Oginga Odinga, 1968). Maughan Brown contends that to the ordinary Briton the words 'Mau Mau' conjure up nightmare images of mutilated bodies and bloodied pangas, of remote clearings in the forest lit by flickering fires, and
peopled by shadowy forms engaging in obscene and bestial rituals. In his work, he hopes to demystify the picture of the Mau Mau that had been painted by the colonial government (Brown, 1980).

With the declaration of the State of Emergency, almost 200 African leaders were arrested and detained and a revolt was precipitated. Maughan notes that one immediate result of the declaration was the eviction of thousands of Kikuyu squatters from the White Highlands. On returning to the already overcrowded reserves they were left with the choice of either joining the forest fighters or starving. Another result was that forced confessions, beatings, robbery of stock, food and clothing, brutalities of various sorts and outright killings were frequent enough occurrences to arouse a fear in the hearts of most Kikuyu that the intent of the Government was to eliminate the whole tribe. Maughan Brown, Barnette and Njama and Oginga Odinga have been successful in describing the Mau Mau as a struggle for liberation from the colonial governments rule and oppression.

The settlers based their response to Mau Mau on the assumption that they had to do all they could in their power to restrain it. According to Michael Blundell, the Mau Mau could not be cured until the settlers made it much more painful and distasteful to be a member of Mau Mau than it was to support the government. (Blundell, 1952). The pain and distastefulness were in fact extended, through the 'screening' process whereby those who had taken the Mau Mau oath were supposedly distinguished from those who were merely suspected of having taken it.
In his work, Clayton states that in the first two years of the Emergency of 1952, 290 Africans were hanged for possessing arms or ammunition, often on the strength of one bullet of dubious origin, and 45 were hanged for administering oaths (Clayton, 1976). According to Clayton, the causes of the revolt were economic and social. He concludes that Mau Mau was a peasants' revolt against an unequal economic structure supported by discriminatory laws and institutions (Clayton, 1976).

The British on the other hand, through reports of hired psychologists, represented that the Mau Mau was more of a psychological issue than a social economic issue. Dr J.C. Carothers in his report concluded that Mau Mau arose from the development of an anxious conflictual situation in people who, from contact with the alien culture, had lost the supportive and re-straining influences of their own culture, yet had not lost their 'magic' mode of thinking (J.C. Carothers, 1954).

The colonial government tried to explain the Mau Mau uprising as having been caused by psychological reasons as opposed to social economic reasons. This report is important as it enables one to appreciate the image that the British colonialists had cast of the Mau Mau movement. As Maughan alludes, what was, in fact, a revolt against social and economic oppression had been deliberately mythologized as a return to the past, or 'a collapse of the African mind'. Key words in the mythology were 'primitivism', 'atavism', 'regression', 'darkness' and 'savagery', (Maughan, 1980).
According to Maughan, the myths were applied in order to create a notion in the European mind that the Africans were barbaric and terrorist in nature. This in turn created an exaggerated notion in the European mind of the number of whites killed in the Emergency while there were in fact only 32 European civilian deaths.

Goodhart further explains that during the Emergency more Europeans were killed in traffic accidents within the city limits of Nairobi than were murdered by terrorists in the whole of Kenya. (Goodhart & Ian Henderson, 1958). Consequently, his work enables one to appreciate that the killings by the British settlers and the colonial government of the Africans by far outnumbered the deaths of the settlers killed by the Mau Mau.

Maina-wa-Kinyatti states that the contention by the British that 11,000 Africans died is grossly erroneous. A conservative estimate is that at least 150,000 Kenyans lost their lives, 250,000 were maimed for life and 400,000 were left homeless. (Maina-wa-Kinyatti, 1975) While it was in the colonial government's interests to minimize the number of deaths caused by the security forces it would not seem to have been in their interests to underestimate the number of blacks killed by Mau Mau.

According to Maughan, the colonial government further advanced a myth that the Mau Mau was exclusively Gikuyu and aimed at Gikuyu domination of the other tribes. He alludes in his work that the movement was predominantly Gikuyu because specifically Gikuyu symbols and forms were needed in oathing ceremonies designed to unite the tribe behind the movement. In his work, Corfield admits that thousands of Kamba as well as a number of Luo and Maragoli had
been oathed (Corfield, 1982). According to Barnett, 10% of the hard core detainees in the notorious Hola camp in 1959 were Luo, and Masai also took part. (Barnett, 1980)

According to Maughan, the Mau Mau was not led by Kenyatta. He states that a reading of the transcript of his trial makes it obvious that the findings of the court at Kapenguriá were patently unjust since one of the chief prosecution witness, Rawson Macharía, afterwards admitted that he had been bribed by the police to give fabricated evidence. (Brown, 1980).

In Jomo Kenyatta works explains the oathing ceremony that had been regarded as a witchcraft ritual by the colonial government. Kenyatta describes three important forms of oath in the Kikuyu culture which were so terribly feared, morally and religiously, that no one dared to take them unless he was perfectly sure that he was innocent or that his claim was genuine.’(Jomo Kenyatta, 1979)

The Kenya Human Rights Commission (KHRC) prepared a report on the events leading to the filling of the case and the eventual offer of compensation to the claimants (KHRC, 2013). In its report KHRC described its engagement with the victims of colonial era torture. Prior to 2003 it had not been possible for victims to organize themselves and pursue a claim on behalf of survivors of the detention camps, since it had been unlawful to organize or take part in any activity of or on behalf of the Mau Mau society. It was only once this ban was lifted that those who had suffered during the Emergency were able to form the Mau Mau War Veterans Association (MMWVA).
The formation of the MMWVA saw the beginning of the process of identifying genuine survivors of the detention camps (KHRC, 2013). KHRC began the process of contacting and interviewing victims, and in July 2006 the KHRC interviewed a number of victims who were willing to proceed with their claims against the UK Government. According to KHRC, this group included Wambugu wa Nyingi, Jane Mara and Susan Ngondi.

On 11 October 2006, a letter of claim was drafted and served upon the British Government by Leigh Day, lawyer acting on behalf of the MMWVA. The British Government responded on 2 April 2007 denying liability and flatly refusing requests that it provide the claimants with any evidence it held.

The KHRC conducted further interviews of victims and key documents were retrieved from the National Archives at Kew and Nairobi. In response, the British Government did not deny claims that the veterans had been tortured, but instead relied on legal technicalities to avoid liability and made an application to the Court to have the case struck out and dismissed on the grounds that Britain could not be liable in principle for colonial era atrocities and if anyone was liable it was the Kenyan Government.

According to KHRC, Leigh Day in 2012 together with the KHRC and the MMWVA interviewed 15,000 Kenyans in 50 different locations who claimed they had a case against the British Government. After completing this process 5,200 Kenyans had been identified with strong evidence to show that they had suffered from acts of torture and severe abuse whilst detained by the British authorities these were the Kenyans whom he represented (KHRC, 2013).
The report by KHRC has been important in showing the manner in which the numbers of those entitled to settled had been arrived at 5,200, it also brings to light and answers the question as to why it took so long for the Mau Mau veterans to seek compensation from the U.K for the alleged atrocities committed against them.

On 6th June 2013, the U.K Government announced that they were abandoning their appeal and:

1) Made a statement to Parliament in London and to the victims in person in Nairobi acknowledging for the first time that Kenyans had been subjected to torture and other forms of ill-treatment at the hands of the colonial administration and expressed “sincere regret” that these abuses had taken place.

2) Agreed to pay compensation of £2,600 per claimant, amounting to a total of £13.9 million.

3) Agreed to finance the construction of a memorial in Kenya to the victims of colonial era torture.

4) Agreed to pay the legal costs of the case to ensure the claimants received all the agreed monies. (KHRC, 2013.)

The KHRC has been successful in describing the events leading to the filling of the case and the issuance of compensation by the U.K government.

Though there is comprehensive literature on the Mau Mau movement, there is little written on the effectiveness of the compensation in addressing the victims’ concerns and on its implications on the future of relations between Britain and Kenya.
1.4 Theoretical Framework

With the publication of John Rawls’ work -A Theory of Justice- justice became a main issue in political philosophy and ethics (Rawls, 1971). The theory was intended for justice within nations but as early as in the 1970s, Charles Beitz argued for a global application of Rawls’ theory of distributive justice and Thomas Pogge developed the argument in Realizing Rawls in the 1980s (Beitz, 1979). As a consequence of Rawls’ own contribution to the discussion about international justice in The Law of Peoples, the discussion on global justice was intensified (Rawls, 1999).

Aristotle also distinguishes between distributive and rectificatory justice. Distributive justice focuses on distribution of scarce resources and goods. Rectificatory or corrective justice, on the other hand, is backward-looking and focuses on correction for past deeds (Aristotle, 1980). In explaining rectificatory justice, Aristotle writes:

... for in the case also in which one has received and the other has inflicted a wound, or one has slain and the other been slain, the suffering and the action has been unequally distributed: but the judge tries to equalize things by means of the penalty, taking away from the gain of the assailant ... therefore corrective justice will be the intermediate between the loss and gain.

According to Göran Collste, the present borders between the global rich and poor coincide approximately with the historical borders between former colonial powers and colonies. He argues that during colonial times the economies of the colonies in Asia, Africa, and Latin America were adjusted in the interests of the colonial powers and as a consequence of the Spanish and Portuguese exploitation of Latin America, the British, Belgian, Portuguese and French of Africa, British, Portuguese and Dutch of Asia, etc., Europe and North America prospered while many colonies sank in despair (Collste, 2015).
A theory of global rectificatory justice can also draw from more recent work in philosophy. According to John Locke, justice implies a right of reparation. Someone who is injured has a right to seek reparation from the injurer (Locke, 1977). Building on Locke, Robert Nozick’s entitlement theory is an example of a historical, backward-looking theory of justice. According to Nozick, a person is entitled to his or her property provided that it is acquired in a just way. Hence, property rights depend on justice in acquisition and justice in transfer (Nozick, 1974).

Nozick’s theory is a philosophical justification of libertarianism. However, with some factual assumptions, the theory can justify a demand for global rectificatory justice. If we assume that the present concentration of property and wealth in the rich part of the world at least partly is the result of unjust historical acquisitions, i.e. plunder, theft, and war, one could, also in line with Nozick’s entitlement theory, argue for a global ‘... rectification of injustice in holdings’ (Nozick, 1974). Historical injustices thus beg for rectifying actions.

Aristotle argues primarily for penalizing a wrongdoer by taking away his or her gain. Locke on the other hand argues for a right of reparation and Nozick for rectification of past injustice in acquisition and transfer of property. They have in common, the view that what happened in the past has implications on rectificatory justice, for the nations that benefitted to rectify the wrongs done in the former colonies through financial assistance, reparations, apology, and memorials.

1.5 Research Questions

1. Was the compensation effective in addressing the plight of the victims and their families?

2. Can responsibility for abuses carried out be trans-generational?
3. Does the reparation, apology and memorial improve the future of relations between UK and her former colony Kenya?

1.6 Hypothesis

1. The reparations were not sufficient in addressing the plight of the victims, their families and the nation as a whole for suffering undergone during colonial rule

2. The apology, reparations and memorial made by the UK creates a conducive environment for the victims to reciprocate by forgiving the offenders.

1.7 Significance of the Study

This study comes at a time when the U.K government has only recently made an apology and an offer for compensation to Kenyans who suffered during the state of emergency from 1952 to 1960. It is important to explore the implication of the reparation, apology and memorial to the future of relations between UK and her former colony Kenya. This study is significant in that it seeks to establish whether the offer for compensation is effective in addressing the plight of the victims and their families and whether the offer facilitates good relations between Kenya government and the U.K. government.

1.8 Methodology

In conducting the research, recourse will be made to secondary data being the relevant literature books, journals, articles, internet sources and publications from governmental and non-governmental organizations.
1.9 Chapter Outline

Chapter Two of this research shall be titled, ‘Emergence of the Mau Mau movement in Kenya, and inception of the claim for compensation in UK courts’. This is meant to interrogate the historical background of the Mau Mau, and the advent of the colonial administration in Kenya. The study will retrace the happenings after the settlement of colonialists in Kenya; it will also explore the issues in the claim by the MMWVA before the U.K courts, the technical objections raised by the U.K Foreign Office and the decisions made by the court on each one of the objections, allowing the case to proceed to full hearing. It will be imperative to explain the legal developments in the case as they form the foundation for the compensation that was offered by the U.K. government. This will be important since it will give a bearing and guide the entire research process.

Chapter Three of this research shall be titled, ‘Forgiveness and the right to forgive.’ This chapter will interrogate the discourse on forgiveness in international relations and whether the responsibility for past atrocities is trans-generational. This will be important since it will give a bearing and guide the entire research process.

Chapter Four of the research shall be titled ‘UK government reparation; its relevance to victims of torture, their families and the nation as a whole’ The section will seek to analyze the effectiveness of the reparation in addressing the plight of the victims of torture, for those who died, their families and to the nation as a whole. This section will be critical since it makes up the research topic and the nub and pith of the study.
Chapter five will be titled ‘Conclusion and Recommendations’. This part entails a recap of what has been discovered in the research. On the same token it will sum up the entire research. The recommendations given will be based on the major findings of the research.

CHAPTER TWO

COLONIALISM IN KENYA, THE EMERGENCE OF THE MAU MAU MOVEMENT, AND INCEPTION OF THE CLAIM FOR COMPENSATION IN UK COURTS

2.1 Inception of colonialism in Kenya

Imperialism in Africa was fuelled by industrialization in Europe which stirred ambitions in many European nations who wanted more resources to fuel their industrial production and competed
for new markets for their goods. Many nations looked to Africa as a source of raw materials and as a market for industrial products. As a result, colonial powers seized vast areas of Africa during the 19th and early 20th centuries.

The competition was so fierce that European countries feared war among themselves. To prevent conflict, European nations met at the Berlin Conference in 1884–85 to lay down rules for the division of Africa. They agreed that any European country could claim land in Africa by notifying other nations of its claims and showing it could control the area.

The European nations divided the continent with little thought about how African ethnic or linguistic groups were distributed. No African ruler was invited to attend these meetings, yet the conference sealed Africa’s fate. By 1914, only Liberia and Ethiopia remained free from European control (Conant, 1898).

The East Africa was opened to colonial domination through the building of roads, and railways. One such railway was the Uganda railway which opened up the interior of East Africa. The building of infrastructure cost the British government enormous amounts of money. Consequently, it was faced with the task of repaying back its taxpayers money (Elkins, 2006).

In 1902, Sir Charles Elliot, the first commissioner of the British East African Protectorate advised the London Colonial Office that the Africans living along the railroad were uncivilized and hence would not be expected to raise enough money through the payment of the rail services to repay the taxpayers for the cost of building the railway or even through the cultivation of cash
crops. It hence became necessary for him to encourage his government in London to facilitate the settlement of British settlers who would grow cash crops and use the developed infrastructure to raise money that would be used to repay the funds incurred in construction. Consequently, it became the preoccupation of the London colonial office to place adverts inviting members of public to purchase land in the colony Kenya at cheap prices.

The government gave the representation that its aim of colonization was to slowly civilize the Africans in the colonies by teaching them effective farming methods and taking them through a system of education, they also argued that it was necessary to colonize the peoples so as to convert them from barbaric religions to Christianity which they argued was the proper religion. According to them, with proper British guidance, and tough paternistic love, Africans could be made into progressive men and women, though it could take many decades or more likely centuries for such a radical transformation to take place (Elkins, 2006).

Many Britons, persuaded by the supposed underlying aim of their government, left Britain for Kenya where they settled in the fertile highlands. These highlands were mostly occupied by the Kikuyu tribe. This led to mass displacement of the Kikuyu, who had earlier been extensively displaced through the building of the Uganda Railway.

When the British settlers took the fertile lands, the native Kenyans were displaced to land unsuitable for agriculture and were paid to work as agricultural labourers in the white farms. The colonial state enacted a series of measures to create and maintain labour supply including hut and poll taxes in 1902 and 1903; the Masters and Servants Ordinance 1910, the *kipande* system and
the Resident Native Labour Ordinance (RNLO) in 1918, which defined both the legal status and
the labour obligations of the squatter.

The displacement resulted in the build-up of tension between the native Kenyans and the British
settlers which would culminate into armed struggle for liberation (Kershaw, 1996). This led to the
initiation of an oath ceremony, in which the Africans bound themselves to fight the settlers and
retrieve back their land. A group of several thousand Kikuyu squatters who had been forced to
leave the White Highlands and settle in an area called Olenguruone are the ones who began the
oath ceremony as a means of mobilizing the masses against the white men.
Typically, Kikuyu men had taken an oath to forge solidarity during times of war or internal
crises. The oath would morally bind the men to face the challenges. According to Caroline
Elkins, mass oathing spread rapidly as African politicians quickly recognized its potential for
organizing. The practice spread to many other parts of the country thereby giving rise to the Mau
Mau Movement.

2.2 Beginning of the Mau Mau Movement
The outrage of the Mau Mau manifested in attacking and killing the British loyalists. Among
them was Chief Waruhiu who was murdered on 9th October 1952. For Governor Baring, the
senior chief’s death was an outrage that could not be ignored. In order to deal with the Mau
Mau adherents, the colonial office launched Operation Jock Scott and the state of emergency
directed at Kenyatta and 180 other identified leaders of Mau Mau.
In the early morning of October 21, 1952, scores of Kenyan policemen, white and black, zealously carried out their arrest orders, rousing suspected Mau Mau protagonists like Paul Ngei, Fred Kubai, and Bildad Kaggia, handcuffing them, and hauling them off to Nairobi police station. Kenyatta was transferred to an isolated place more than four hundred miles to the north of Nairobi at a place called Lokitaung, an arid and desolate region where the Turkana pastoralists herded their livestock.

Operation Jock Scott ushered in the colony’s rapid decline. Contrary to the expectation of the colonial office, Mau Mau did not collapse with the arrest of the political leaders, but instead turned more violent as the movement’s leadership passed into the hands of younger men, the same men who for months had been pushing Kenyatta and others to adopt a more radical, revolutionary course.

According to Erkines, Mau Mau was an outgrowth of legitimate complaints rooted in individual circumstances. Outside the forests, Mau Mau adherents organized an intricate, passive-wing operation that would provide intelligence, weapons, food and other supplies to the forest fighters. It was the size of this passive wing organization that reflected the grassroots depth of the movement (Elkins, 2006, p. 37).

The relative calm in the forests was shuttered by a series of gruesome high profile murders. In late October 1952 on the farming plateau above Naivasha the disemboweled corpse of Eric Bowker, a settler and veteran of both world wars, was found in his home, the brutal nature of his murder a sure sign of Mau Mau attack, according to the local whites.
Less than a month later, an elderly couple at the edge of Aberdares forest, near Thomson’s Falls, were sitting down for their after dinner coffee when they were attacked with machetes by Mau Mau guerrillas. The husband, retired naval commander Ian “Jock” Meiklejohns, collapsed while loading his shotgun and died two days later. His wife, a retired doctor, survived despite extensive mutilation of her torso and breasts (Goldsworthy, D. 1991)).

Four days later Tom Mbotela’s body was found in a bloody pool of water near the Burma Market in Nairobi. An outspoken critic of Mau Mau and an African-appointed member of the city council, Mbotela was reviled by many Africans and had already escaped one assassination attempt. During the hustle of morning commuting and trade, hundreds of market goers had passed his body until it was discovered by a European passerby. That evening the Burma market, named in recognition of the Africans who had served on the Burma front during the war, was burned to the ground. According to witness, it was the local police who torched the stalls, infuriated by Mbotela’s death and the defiant indifference, if not complicity of the locals(Edgerton, 1990.).

On March 26, the Mau Mau executed several raids against British loyalists. The first raid took place on Naivasha Police station in the Rift Valley. There, nearly eighty Mau Mau guerrillas executed a well-planned swoop. They broke into the armory, stole large supply of firearms and ammunition, and released close to two hundred Mau Mau prisoners before making their escape. The British security forces had suffered deep embarrassment, and the Mau Mau were finally
recognized by the British military command as a legitimate fighting organization (Newsinger, 1981).

The second Mau Mau strike took place only a few hours later in Lari, a few miles outside Nairobi, where a long-standing dispute over land came to a grisly end. After weeks of threats, Mau Mau attacked the homesteads of Chief Luka a loyalist and beneficiary of a vast land concession from colonial government- his eight wives, and their followers. The Mau Mau insurgents burned the loyalist in their huts and hacked to death those who tried to escape the fires. They mutilated men and women, old and young alike. In total ninety-seven Lari residents died. Scores of others suffered serious disfigurement, and some two hundred huts were burned and several hundred head of cattle destroyed.

With the homesteads still smoldering and the bodies yet to be removed, the colonial government shepherded the press into the area to witness and record the carnage. Official press releases were handed out that described in gruesome detail the carnage resulting from the attack, which the colonial government called the Lari Massacre. These releases, though failed to mention that as many as four hundred Mau Mau were killed by security forces- British and African soldiers, local police officers, loyalists-during a vengeful reprisal (Weiler, J. 1990).

2.3 Declaration of a State of Emergency

Following the massacres, the colonial government now faced immense pressure from the European population to use all means necessary to ‘cleanse’ the native population off the Mau Mau regardless of how it was done. Six months after the start of the war, things were going from
bad to worse in Kenya. Kenyatta’s trial did little to release the mounting pressure of the local eliminationist mentality. Secret documents exchanged between Baring and Lyttelton which described the security force’s attempts to appease the European settler community through killer competitions in order to wipe out Mau Mau members.

There was little in Baring’s or Lyttelton’s speeches that mentioned the atrocities that were being committed by the colonial government in its attempt to wipe out the Mau Mau. There was no mention, for instance, of the vengeful aftermath of Lari, when white and black members of the British security forces massacred as many as four hundred suspected Mau Mau adherents.

In November 23, 1952, in the marketplace of Kirwara village located in the heart of Fort Hall District, present day Murang’a, several hundred Kikuyu had gathered to listen to the prophecies of a young man who claimed to have had a vision of the end of colonial rule. According to numerous eye witnesses, several white police officers arrived on the scene along with policemen and local loyalists. They ordered the crowd to disperse. When no one moved, the white police officer in charge ordered his men to open fire.

Nearly one hundred unarmed people were murdered, and many of their bodies buried in a nearby shallow grave. At the time, colonial officials claimed only fifteen Kikuyu were murdered and twenty seven wounded. Even if these figures are correct, no white or black member of the police force was tried for crimes committed at Kiruara(Elkins, 2006).
Historical revision of events shows that the colonial government in Kenya was willing to go to an extraordinary length to reestablish and maintain its control of the colony. As with its other colonial territories, the British colonized Kenya to exploit its resources, particularly the land and local labour.

Like all colonial governments, Kenya was illegitimate, as it derived its power not from democratic consensus but from a host of repressive laws that forced the local population to obey using taxation, pass laws imprisonment, legal floggings, and terror. In its struggle to maintain control over the African majority, the colonial government became ever more dependent on increasingly arbitrary and oppressive laws, which, in turn, reaffirmed its illegitimacy in the eyes of many Africans.

This was most evident at the start of Mau Mau. Between January and April 1953, Governor Baring empowered his government with dozens of extreme and wide-ranging laws, called emergency regulations. These included provisions for communal punishment, control of individual and mass movements of people (curfews), confiscation of property and land, the imposition of special taxes, issuance of special documentation and passes and detention without trial.

Emergency legislation extended to the control of African markets, shops, hotels and all transport (Savage, 1964). During these early months, Baring established enabling powers for the creation of concentrated villages in the African reserves, barbed wire cordons in African towns and in
Nairobi, and concentrated labour lines on settler farms in the white Highlands. With the draconian legislation passed, these laws worked to reestablish colonial domination.

Forced removals marked the colonial government’s first major assault against the civilian population of Mau Mau suspects, setting an alarming standard of acceptability. In the midst of Kenyatta’s trial in 1952, Governor Baring decided to deport all suspicious Kikuyu living outside of the reserves, particularly those who were living as squatters on Europeans farms, back to Kikuyu districts in central province.

Erkines in her book refers to an interview with one Ndiritu Kibira who remembered the night the forced removals began on the Kiringiti Estate. The farm was in Molo, in the heart of the Rift Valley Province, and its owner decided it’s time to get rid of the “rats” as he called them, that lived on his land. Ndiritu’s family was part of the first wave of Kikuyu deportations that began in 1952 and rolled through other settled areas of Kenya. The removals were massive and indiscriminate, with the deportations often carried out shortly after Mau Mau strikes against Europeans or Loyalists, a clear reaction to the outcry from European settlers (Elkins, 2006).

The largest camps were located in Nakuru, Gilgil, and Thomson’s Falls, and they quickly became notorious for their squalid and overcrowded conditions. Thousands in the transit camps suffered from malnutrition starvation, and disease-hardly surprising given the transit camps inadequate sanitation or clean water and insufficient rations, if any at all. Most deported people had no means of purchasing food, having been deported without compensation for their livestock or outstanding wages. They depended heavily on assistance from voluntary organizations, particularly the Red Cross, for food and medical assistance.
Clearly despite the denials of the colonial government, the social economic basis for the local communities’ anger manifested itself in the Mau Mau demand for land and freedom, was in-fact, a reality. There simply was not enough land, and that which was set aside for the reserves was collapsing ecologically from overuse (Tamarkin. 1976).

2.4 Onset of the ‘Screening Process’

Once suspected of being a Mau Mau adherent, the colonial officers would place the suspect through a screening process to get more information from the suspect. The practice began not long after the start of the emergency when British security forces, European settlers, and the Kenya Police Force together spearheaded a campaign to interrogate anyone suspected of Mau Mau involvement.

According to a number of detainees interviewed by Erkins, electric shock was widely used, as well as cigarettes and fire. Bottles (often broken), gun barrels, knives, snakesvermin, and hot eggs were thrust up men’s rectum and women’s vaginas. The screening teams whipped, shot, burned, and mutilated Mau Mau suspects, ostensibly to gather intelligence for military operations and as court evidence(Elkins, 2006).

By empowering the loyalists within the local communities to participate as equals in the screening operations, the British colonial government was fueling a smoldering civil war in Kikuyu land and providing loyalists with the opportunity to settle old scores. They could identify adversaries as belonging to Mau Mau, torture them during interrogation, and confiscate their
property. In some cases the loyalists’ interrogators stood barefaced in front of Mau Mau suspects, identified them as oath takers, and beat them, sometimes killing them.

In other cases loyalists’ identities were protected, and they became the notorious hooded informants of Nairobi and the White highlands. Their heads covered with a sack, the loyalist would peer out at the accused Mau Mau through the small eyeholes. Colonial officers directed countless screening parades in which lines of Mau Mau suspects filed past the hooded loyalist. His identity protected, the loyalist could send a man or a woman off to a screening center or a detention camp with a nod of the head (Luongo, 2006, p.463).

Though the state-sanctioned terror was directed at eliminating the Mau Mau from the reserves, it did not succeed to do so. The local populations had established, an intricate supply line to the Mau Mau guerrillas in the surrounding Mount Kenya and Aberdares forests. Food, ammunition, intelligence medical supplies, and clothing were all collected and disbursed to the forests fighters. In some instances, women would wrap bullets around the thighs of their infants, tie the young children onto their backs with a cloth, and make a delivery to the forest edge. Older children, too, were used as conduits. Many were scouts, collecting information and passing it to the forest fighters through a relay system.

Despite tightened surveillance, Mau Mau adherents in the reserves organized night time oathing ceremonies, often to indoctrinate the recently arrived repatriates whom the colonial government had forcibly moved from White Highlands, and elsewhere, at the start of the war.
Though hardly a streamlined system, screening made it possible for the colonial government to amass huge files of information about Mau Mau activities. Torture, or fear of it, compelled oath takers to give details about their oathing ceremonies, including names or revealing the locations of the caches of arms or food supplies for Mau Mau fighting the forest war.

Some of this intelligence was accurate and some pure fiction, fabricated on the spot by Mau Mau suspects trying to save themselves. The colonial government nevertheless used the information to convict some thirty thousand men and women of Mau Mau crimes and sentence them to prison, many for life (Brown, 1980).

The vast majority of Mau Mau cases were heard in emergency assize courts, where due process was not followed, for instance, the defense was not given access to the evidence in the case. Defendants were identified for the court not by name but by large numbers hanging around their necks.

Over one thousand Mau Mau suspects were convicted and imprisoned through the makeshift court operations in place throughout emergency. Those sentenced to death were thereafter sent to the gallows. This is a startling number of executions, given the often slim evidence offered by the prosecution. According to Kariuki, the suspects tried, found guilty and sentenced to death by the Kenyan system of justice comprised only a very small percentage of those who ultimately would die at the hands of the British colonial government during the emergency (Kariuki, 1963).
In early February 1953, Canon T.F.C. Bewes of the Church Missionary Society held a press conference in London. Addressing a host of journalist, he accused British security forces of gross human rights abuses. He offered the example of Elijah Gideon Njeru, a former missionary teacher, who had been beaten by one Jack Ruben of the Kenya Regiment and Richard Keates of the Kenya Police Reserve, along with the several of their African askaris, or guards.

Bewes stated that Njeru was suspected of being Mau Mau and was beaten to make him confess of having taken the oath Canon Bewes’s credibility was unimpeachable. He had been a missionary in Kenya for twenty years, from 1929 to 1949, where they lived in Central province and worked extensively with the Kikuyu Bewes communicated his experience to Baring through a report which according to Erkins was available in UK archives as it was not destroyed after independence. (Erkins, 2006, p.102).

The public response in Britain to the beating to death of Elijah Gideon Njeru made a trial difficult to avoid. Ruben and Keates, the two Europeans charged with manslaughter in the case were tried in September 1953. The jury found them not guilty of manslaughter charge though guilty of the much lesser offense of “assault occasioning actual bodily harm.” They were fined fifty pounds and one hundred pounds, respectively.

Detention without trial was a violation of Article 5 of the European Convention on Human Rights and its five protocols, to which Great Britain was a party. The convention had been drafted in the wake of World War II with the intension of averting future catastrophes like that of the Nazi concentration and Japanese POW camps.
The colonial government treated Mau Mau detainees as prisoners of war. While the colonial government could derogate the European Convention on the issue of detention without trial, it could do so only while a state of Emergency was ongoing, and even then any form of torture or inhumane treatment was strictly prohibited not solely by the European Convention but by other international human rights accords as well.

The detention of Mau Mau suspects without trial seemed perfectly reasonable to many colonial officials. Most thought Africans and Asians not yet civilized, and therefore not entitled to the rights and obligations that went along with the postwar notions of international citizenship. Additionally, Mau Mau suspects were thrown into a category all their own. Their bestiality, filth, and evil rendered them subhuman and thus without rights. The British argued that Mau Mau threatened not just the life of the colony but that of British civilization as well. Detaining these subhuman creatures amounted not only to saving Africans from themselves but also to preserving Kenya for civilized white people (Beckerman, 1994).

The colonial government had to justify, at least rhetorically, its use of detention without trial and respond to the allegations of torture being used in a handful of camps already in operation. In Britain, anticolonial critics were beginning to mount an offensive against the emergency regulations in Kenya.

Leading the attack against the conservative government’s colonial policies were Opposition Labour MPs, particularly Barbara Castle and Fenner Brockway. Barbara Castle would come to
spearhead opposition outrage over the British government's policies in Kenya, particularly detention without trial. From the early years of emergency she was relentless in her criticism of the British colonial government.

The colonial government could not, however, silence Labour Opposition quite easily as it did the Christian missionaries. In fact, the postwar period had ushered in a new era of knowledgeable and persistent debate in Parliament over colonial issues. In 1954 Fenner Brockway established the movement for colonial freedom and through this interest group consolidated the work of several labour MPs, as well as organizations like the Congress of People against Imperialism.

Protest against colonial policies throughout Africa, including detention without trial in other British colonies like Nyasaland, became the focus for many in the British government’s opposition. The Labour Party had a history of extra parliamentary organizations that targeted colonialism. The Fabian Colonial Bureau, founded in 1940, was the first of such groups that provided the labour MPs with the research, networking, and publication necessary to influence the nature of British colonial rule throughout the empire. As early as 1953 many other claims of atrocities being committed by the colonial government against the local communities were being made and the British government could not ignore them (Orwin, 1996).

As the imperialism debate went on in Britain, colonial officers on the spot were forcing all Kikuyu men and women to labour, often as a form of collective punishment. Under emergency law the Kikuyu had to work unpaid ninety days an year on communal projects like bracken
clearing, trench digging, and land terracing program. If they refused, they could be fined up to five hundred shillings or imprisoned for six months.

Work refusal cases never made it to court, and Mau Mau suspects instead remember being terrorized by the district officers and the Home Guard, who forced them to work. One Marion Wambui Mwai interviewed by Erkines recalled at her home in Nyeri District how she went out nearly every day to build the terrace under the supervision of the loyalist who would whip them indiscriminately while they worked and according to her treated them like animals.

The colonial government argued that communal labour was for the benefit of the Kikuyu community, and that the Africans actually enjoyed it. However, Kenya’s communal labour regulations were a violation of the International Labour Organization (ILO) conventions, which stipulated that communal labour could be required only for sixty days per year, and only from able-bodied men between ages of eighteen and forty five (Elkins, 2006, p. 105).

**Operation Anvil**

The events of April 24, 1954, irrevocably changed the detention camp system in Kenya and the lives of tens of thousands of Mau Mau suspects. On this day Britain’s military forces, under the command of General Sir George Erskine, launched an ambitious operation to reclaim full colonial control over Nairobi by purging the city of nearly all Kikuyu living within its limits.
The entire population-African, Asians, and European- was caught off-guard. Loudspeakers affixed to military vehicles blared directives: pack one bag, leave the rest of your belonging in your home, and exit into the streets peacefully. In some cases, the targets of the sweep had no time to pack. People were picked up on the streets, places of work or their homes.

All Africans were then taken to temporary barbed-wire enclosures, where employment identity cards were used to determine tribal affiliations. The Kikuyu, as well as the closely related Embu and Meru, were separated from the rest of the city’s African population in preparation for on-the-spot, ad hoc screening, while the members of other ethnic groups were most likely released and returned to their homes or places of work (Kariuki, 1963, p. 67).

Langata screening camp was the temporary destination for many of the Mau Mau suspects rounded up during the operation. Langata’s capacity was expanded over ten thousand, while two new reception centers, one at Manyani and the other at Mackinnon Road, were also established. Both of these camps were located in one of Kenya’s most arid and desolate regions. Manyani was an enormous site, nearly three miles long by half a mile wide. It was, like most camps in the pipeline, surrounded by barbed wire and watchtowers and patrolled by armed guards with dogs (Kariuki, 1963, p. 68).

By May of 1954 there were over twenty-four thousand Mau Mau suspects in the Langata, Manyani, and Mackinnon Road Camps alone, a thirteen fold increase in the number of detainees held at the beginning of the year. Extremely close quarters invariably created unhealthy conditions, and within a few months a major epidemic swept through Manyani camp. The spread
of infectious disease there and elsewhere in the pipeline became common occasioning the death of many detainees.

Camp officials refused to allow detainees to dispose properly of human and other waste outside of the detention wires, and the quantity of the camps’ water supplies were not even close to acceptable standards. Lennox-Boyd reported that 63 people had died of typhoid in Manyani and other 760 were infected with the diseases (Gadsden, F, 1986, p.417).

In an interview by Erkines, one of the former detainees Philip Macharia was part of the burial working party and recalled that one group alone buried over six hundred bodies. According to him, about two thirds of these corpses were result of typhoid because they had no marks indicating torture.

Mau Mau detainees also resulted to writing letters which they smuggled to reach the colonial office in London and other opposition parties’ activists. Kariuki in his book recollects writing such letters and by the end of the Emergency hundreds of these letters had virtually every high level colonial official and many in parliament as well. Several files of these letters managed to escape the official purge. According to Erkines, the Kenya National Archives in Nairobi contains hundreds of letters written by detainees, their contents ranging from indignation over detention without trial, to absolute desperation.

The white settlers branded the movement as barbaric, they argued that it was not representative of the masses but rather the formation of few people that shared barbaric and terrorist attitudes.
and who were unwilling to embrace the processes of civilization that the British were introducing in the Kenya. To them, the Mau Mau was not a nationalistic movement but rather a demonstration of the naturally weak character of the African who naturally was unable to adapt to change; it was not as a result of social–economic problems but rather psychological (Padmore, 1956, p. 358).

The Mau Mau movement was banned by the colonial government in 1950 through Legal Notice number 913 of 1950. When Kenya got its independence in 1963, the existing laws continued to be in force. In 1968, Kenyan parliament passed a Societies’ Act and re-gazetted the legal notice banning the Mau Mau movement. Consequently, the movement remained outlawed in both President Kenyatta and President Moi’s regimes.

2.5 Filling of the case by the MMWVA before UK courts

In the year 2012, a case was filed by the representatives of the Mau Mau War Veterans Association. The claimants claimed that the UK Government was directly liable to the claimants, as a joint tortfeasor, together with the Colonial Administration and the individual perpetrators of the tortious assaults, for having encouraged, procured, or been complicit in, the creation and maintenance of a system under which the claimants were mistreated. Such liability was said to have arisen out of the role of the military/security forces under the command of the British Commander-in-Chief.

Secondly, it was also alleged that the UK Government was jointly liable, through the former Colonial Office, for the acts complained of, because of its role in the creation of the same system under which detainees were knowingly exposed to ill-treatment; and also for negligence in
failing to put a stop to what it knew was systematic use of torture and violence upon detainees when it had a clear ability to do so. The claimants hence sought compensation for the torturous acts committed on them by the colonial administration, from the UK government (KHRC, 2013).

The case was opposed by the Foreign Affairs office of the United Kingdom government on grounds of time lapse and further that the obligations and liabilities of the colonial government had been taken over by the Kenyan government, however these objections were overruled by the court hearing the matter and the case was allowed to proceed to full hearing.

The Foreign Affairs Office being the defendant pleaded that each claim by the claimants was barred by virtue of the expiry of the three year time limit provided for under section 11(4) of the Limitation Act 1980. The Claimant pleaded that fair trial remains possible and urged the court to exercise its discretion under s.33 and permit the claims to proceed. Section 33, of the Limitation Act 1980 provided for discretionary exclusion of time limit for actions in respect of personal injuries and consideration of all the peculiar circumstances of each case.

The defendant also argued that dichotomy that existed between the Colonial Office and Colonial Administrations. The judge after considering both arguments allowed the matter to proceed by exercising jurisdiction under section 33 of the Limitations Act which allowed him to consider the circumstances of the case. He observed that there was sufficient evidence on the side of the claimant to warrant a trial without prejudicing the defendant (KHRC, 2013).

In making his decision, he considered the statements of scholars such as Professor Anderson who in his statement averred to having come across a number of documents giving a clearer and more
detailed view of the extent of abuses in the camps and what was known about them higher up the chain of administration in Britain. Included in the papers were complete minutes of the War Council (on which all the British Commanders in Chief sat), revealing policies on detention, “screening” and interrogation.

In conclusion, the judge stated that the available documentary base was very substantial and capable of giving a very full picture of what was going on in government and military circles in both London and Kenya during the emergency (Leigh Day, 2015). He stated that a fair trial of this part of the case remained possible and that the evidence on both sides remains significantly cogent for the Court to complete its task satisfactorily. In June 2013, and before the case could proceed to hearing, the United Kingdom government offered the MMWVA compensation of £20 million, amounting to Kshs 360,000 for each victim as an apology for the abuses that the colonial government meted on them.
CHAPTER THREE
FORGIVENESS AND THE RIGHT TO FORGIVE

3.1 Reparations, Apology and Unveiling of Memorial in Honour of Victims

The Mau Mau War Veterans Association (MMWVA), an association formed by Kenyans who suffered during the state of emergency in Kenya, filed a case against the UK government seeking compensation for suffering that they went through during the Emergency period from 1952 to 1960.

Initially, the case was opposed by the UK government on grounds of legal technicalities including lapse of time, however, expansive evidence on the atrocities carried out by the colonial government was discovered in archives in the UK and also the national archives in Kenya and this led to the closure of the case through an out of court settlement between the claimant and the defendant (Leigh Day, 2014, p 5).
The out of court settlement included an apology for the atrocities committed, compensation for the victims at a total of £20 million, and a memorial in honour of Kenya’s freedom fighters who suffered torture and ill-treatment at the hands of the colonial government during the emergency period from 1952 to 1960 to be constructed at the cost of the UK government.

While making a landmark apology before Britain’s parliament in June 2013, the Foreign Secretary then Mr. William Hague expressed regret over the suffering that Kenyans were subjected to in the hands of the colonial administration and stated that the British government regretted that these abuses took place and that they marred Kenya’s progress towards independence (Gov.uk news, 2013).

On 12th September 2015, the British-funded memorial was unveiled in Nairobi, in honour of Kenya’s freedom fighters who suffered torture and ill-treatment at the hands of the colonial government during the emergency period from 1952 to 1960. The memorial features a statue of an armed rebel receiving a bag of supplies from a woman.

Speaking at the inauguration, British High Commissioner Dr. Christian Turner underscored the importance of reconciliation. He stated that in order to deal with the present and move forward into the future, there was need for those involved to recognize and learn from the past. He emphasized that the memorial was about reconciliation, to allow the parties involved to move forward together. (Citizen News, 2015).
From the foregoing, this chapter seeks to interrogate the discourse on forgiveness in international relations and whether the responsibility for past atrocities is trans-generational. It will also investigate the impact of the reparations, apology and memorial, and whether they lay sufficient ground for forgiveness and reconciliation.

3.2 Treatment of Mau Mau Suspects during the Emergency Period

The previous chapter has described the human rights abuses that the suspects of Mau Mau were taken through in order to obtain confession from them and further in order to intimidate the greater masses from joining the movement. During the emergency period, many Africans suffered in the course of the war.

Between January and April 1953, Governor Baring empowered his government with dozens of extreme and wide-ranging laws, called emergency regulations. These included provisions for communal punishment, control of individual and mass movements of people (curfews), confiscation of property and land, the imposition of special taxes, issuance of special documentation and passes and detention without trial. Emergency legislation extended to the control of African markets, shops, hotels and all transport (Savage, 1964, p.598).

During these early months, Baring established enabling powers for the creation of concentrated villages in the African reserves, barbed wire cordons in African towns and in Nairobi, and concentrated labour lines on settler farms in the white Highlands. With the draconian legislation passed, these laws worked to reestablish colonial domination.
Native Africans were forcefully removed from their homes and taken to camps which with time became overcrowded. Many Africans suffered malnutrition and disease resulting from lack of clean water and food.

Once suspected of being a Mau Mau adherent, the colonial officers would place the suspect through a screening process to get more information from the suspect. The process involved inflicting pain in order to obtain confessions from the suspects. For instance, electric shock was widely used, as well as cigarettes and fire. Bottles, gun barrels, knives, snakes, vermin, and hot eggs were thrust up men’s rectum and women’s vaginas. The methods used by the colonial government to obtain information, consisted of gross human right abuses, and occasioned irreparable physical and psychological harm to the victims.

The Mau Mau suspects’ cases were also determined in emergency assize courts, where due process was suspended. The defense had little if any access to the evidence in the case and the defendants themselves were often tried and identified for the court by large numbers hanging around their necks. Through the process, over one thousand suspects were found guilty and sent to the gallows.

In 2015, the UK government accepted responsibility for the atrocities committed by the colonial government, and apologized. The UK government also constructed a memorial in honor of those who suffered during the state of emergency. This raises several questions that this chapter seeks to answer through the interrogation of the discourse on forgiveness in international relations. Some of these questions include, what the memorial means for the victims, their children and
Kenyans in general, and whether the reparations and apology set a conducive environment for the process of reconciliation.

### 3.3 Forgiveness in International Relations

Forgiveness in international relations is more understood as an ethico-political practice requiring certain socio-historical conditions: the reconstruction of the past, the acknowledgement of responsibility, the achievement of justice and the move toward reconciliation. According to Kurasawa, to forgive and be forgiven stands as a socio-political dynamic of the work of global justice (Kurasawa, 2007).

Its significance is all the more striking given the particularities of mass atrocities and systematic injustices, for which restitutive measures would be inadequate and retaliatory ones are inappropriate; full ‘compensation’ to victims and their relatives is illusive, whereas the primaeval law of punitive equivalency (‘an eye for an eye’) directly produces vicious circles of vengeance and human slaughter.

Instead of being imposed or sweepingly and instantly mandated from above (by states or international organizations), forgiveness can be seen to represent a laborious social practice from below through which actors in national and global civil societies attempt to confront serious difficulties constantly threatening political viability and ethical soundness.

#### 3.3.1 Role of collective remembrance in addressing past injustices

According to Fuyuki Kurasawa, a case of forgiveness is made through collective remembrance, the reckoning with past injustices by way of their reconstruction and reinterpretation; only when
a society has produced a reasonably comprehensive and just account of its history through participation of perpetrators, bystanders and beneficiaries in public truth-telling exercise can it contemplate forgiveness (Kurasawa, 2007).

By the setting up of the memorial (which features a statue of an armed rebel receiving a bag of supplies from a woman), an attempt is made to reconstruct the past, and the circumstances that surrounded the struggle for independence. It also demonstrates the suffering that the Kenyans went through under the hand of the colonialist and hence for the observer, he can easily understand the request for forgiveness and reconciliation made by the UK government.

States and international organizations have increasingly fostered the institutionalization of official mechanism of forgiveness in societies emerging from situations of structural violence and pervasive abuses of civil-political rights. For instance, in the case of South Africa, the post-apartheid Truth and Reconciliation Committee (TRC) was established in December 1995 and has received both praise and criticism from many legal, historical, philosophical, and political viewpoints.

One of the most contentious issues about the TRC is its conditional amnesty provision for the perpetrators of wrongs under the apartheid, which provided amnesty on the condition that they come forward and tell the truth about what they did (Nguyen, 2015, pg 2). Normally, one of the most common goals of criminal law is to mete out retributive justice, punishing the offenders for the wrongs they have done. However, the conditional amnesty provision, premised on the concepts of truth and forgiveness, turned this notion on its head and pursued restorative justice.
instead. After all, laws are enacted for the good of the nation and the society, and here was one instance where the normal rule of law was bent to, presumably to serve the greater good of the “reconciliation” of the nation.

After centuries as a Portuguese colony and twenty-four years of brutal rule by neighboring Indonesia, the people of East Timor went to the polls in a UN-supervised election in August 1999 to decide whether to continue as a part of Indonesia or to become independent. Although the Indonesian government had agreed to the vote, they were outraged when the East Timorese actually voted for independence.

Anti-independence militias backed by the Indonesian army swarmed across the little half island killing hundreds and burning buildings as they went. Two years after the debacle, with the country approaching independence under UN protection, the East Timor government established the Commission for Reception, Truth and Reconciliation (Comissao de Acolhimento, Verdade e Reconciliacao CAVR (Hodge, 2010, 2). The CAVR was given a broad mandate to establish the truth of what happened between 1974 and 1999, help victims, and foster reconciliation among East Timorese.

These two instances of the institutionalization of worksites of forgiveness are key in demonstrating the importance of setting in motion processes that will prepare ground for forgiveness and reconciliation.
3.3.2 The juridico-political and theologico-philosophical models of forgiveness
Discourses of forgiveness in contemporary domestic and world affairs, bring out two principal paradigm of interpretation of it, these being the juridico-political and theologico-philosophical interpretation. Fuyuki Kurasawa has described the two models of interpretation, attempted to critic the flows of each and also proposed a model of interpretation that considers both approaches.

The Juridico-political model, informs the functioning of modern legal systems dealing with human rights abuses and under this model, forgiveness is premised upon the meting out of punishment to perpetrators of criminal acts in a manner that is precisely calibrated in its proportionality to these acts. For instance, both courts and the general population in the West commonly speak and think in terms of forgiving someone if and when the debt he or she owes to society is paid back, a debt that is measured according to the gravity of the crime, generally converted into length of the period of incarceration.

At this point, I agree with Fuyuki that even in its restorative dimension, the juridico-political model is imbued with a logic of individualized exchange, since forgiveness requires a former perpetrator to carry out measures that restore what a criminal act threatened or violated. In the present scenario, the victims in the struggle for independence may never be able to obtain a level of compensation that would match the suffering that each endured, consequently, the juridico-political model may not suffice in our case.
The Mau Mau case was a representative suit where five claimants represented the MMWVA in court. We consider the sworn testimony (produced in court) of three of the claimants, to evaluate the effectiveness of the juridico-political model.

Paulo Nzili was born in 1927 at Mulumine in Makueni District and was forced to join the Mau Mau in March 1957 but decided to abandon the movement about six months later. As he was travelling home in August 1957, he came across three armed African Policemen who demanded that he surrender to them. They arrested him and took him to the Embakasi Detention Camp.

A few days after arriving at the camp, Paulo was forced to strip naked and squat with his hands between his legs and then castrated with pliers. He stayed in hospital for two weeks before being taken to Manyani Detention Camp. At Manyani Detention Camp Paulo witnessed detainees being beaten with sticks on a daily basis, the beatings were so brutal that some detainees died as a result. After almost a year in detention he was released without charge. At no point was he brought before a court of law. Paulo has never been able to have children following his castration.

Another claimant in the Mau Mau case in UK was Wambugu Wa Nyingi born in 1928 in Nyeri District, Central Province. Prior to his arrest he worked as a tractor driver and was a member of the Kenya African Union (KAU), a political party which advocated freedom, independence and land rights for Kenyans.
On 24 December 1952, Wambugu was arrested at his home by a group of seven white officers from the Kenya Regiment at about 1:00am. He was taken to Kia Riu screening Camp in Aguthi where he was detained for about six to eight months. He was never charged with an offence, nor was he brought before a court during the subsequent 9 years he was detained.

At that camp he witnessed a particular incident where 16 detainees had their names called out. They were all then beaten and 14 were killed by the assistant chiefs with the help of the Home Guards. Wambugu was transferred from camp to camp around Kenya where he was subjected to forced labour and beaten daily with canes and sticks.

He was involved in the infamous Hola massacre where eleven detainees were beaten to death after they refused to dig their own graves. In this incident Wambugu was severely injured and beaten unconscious and left for days with the dead corpses. He was finally released from detention in January 1961. In total he spent 9 years in detention without charge (Leigh Day, 2015).

The third claimant was Jane Muthoni Mara born around 1939 at Nguguini in the Embu District. In 1954, when she was about 15 years old, Jane was taken from her home, accused of being a Mau Mau sympathiser and arrested. She was transported to Gatithi screening Camp and interrogated and interrogators forcefully inserted a glass bottle full of hot water into her vagina. This abuse was supervised by a white officer and was administered to many women. She knew of several women who were seriously injured as a result of the abuse. Jane was then
transferred from camp to camp where she was systematically beaten with whips and sticks and deprived of food and water. She was finally released in 1957.

As previously indicated, the juridico model of forgiveness is premised upon the meting out of punishment to perpetrators of criminal acts in a manner that is precisely calibrated in its proportionality to these acts. For instance, both courts and the general population in the West commonly speak and think in terms of forgiving someone if and when the debt he or she owes to society is paid back, a debt that is measured according to the gravity of the crime, generally converted into length of the period of incarceration.

Considering the testimony of the claimants, the gravity of the crimes committed was great and may not be equated to a particular amount of monetary compensation. Consequently, the juridico-political model may not suffice in our scenario if reconciliation between the parties is to be realized. It may not possible for the offenders to repay in accordance to the crimes committed, and in some cases, the actual offenders may not be traceable or may be dead. It therefore is important for the victims to consider a form of forgiveness that is not entirely tied to monetary compensation in order for progress to be made on the road towards reconciliation.

Though the atrocities committed to the claimants in the case may not be equated to monetary sums, the recognition and acceptance by the UK government that the crimes were committed and the request for forgiveness made by the state on behalf of the offenders to the victims may be persuasive for the victims to forgive. It sets in motion the process of reconciliation.
Referring back to the juridico-political conception, Digeser points out several other limitations that the model of forgiveness has. First and foremost, it does not convincingly account on what is the crux of forgiveness for mass injustices. Regardless of whether it is framed in the language of retribution or restoration, the debt paid by those responsible for systematic human rights violations intrinsically falls short of the calculative norms of full compensation for what is owed; even the sentencing to death of a perpetrator often pales in comparison to the scale and intensity of suffering he or she inflicted others (Digeser, 2001, p.40).

Secondly, the juridico-political model’s focus on the individual’s criminal responsibility is designed to access a specific person’s suitability to be forgiven, in accordance with gravity of the crime, the expression of remorse and the severity of the compensatory measures. It is therefore much less well suited to coming to terms with structural factors, the socio-cultural and political forces that produce mass injustices.

On the other hand, the theologico-philosophical model of forgiveness is represented as an infinite gesture, one without qualification, completely and absolutely releasing the doer from whatever deed he or she has committed in the past. In fact, any expectation of reciprocity or return on the part of the forgiving party, or yet again any attempt to place conditions upon or limit the reach of this gift, corrupt and poisons its essence (Lefranc, 2002, p.145).

The theologico-philosophical view raises a major limitation as Minow points out in that it places the burden of forgiveness on the victim and by so doing advances certain limitations as the
underlying cause of the conflict is not dealt with and the perpetrator may well continue with the atrocities as he is not required to make amends.

According to Minow, the burden of working towards forgiveness does not lie with formerly victimized groups, who are under no obligation to forgive and cannot be legislated to do so from above. On the contrary, it is those seeking to be forgiven who bear most of the burden by attempting to convert previous hierarchies into structural conditions of socio-political and cultural equality in post-transitional setting (Minow, 1998, p.17). Instead, they perform a number of ethico-political tasks (i.e. reconstituting the past, acknowledge responsibility, making amends and participating in reconciliation) that prepare the ground for the possibility of reciprocating on the part of injured parties. Hence, if they inadequately perform these same tasks, their requests for forgiveness may well be successful in swaying public opinion or, more crucially, may be declined by survivors of their crimes (Ricoeur 2000, p 626).

Fuyuki borrows from both the theological and juridical model to advance a more comprehensive approach to forgiveness. According to him, the labour of forgiveness for human rights abuses is intersubjective in that it involves mutual recognition of the ethical merit of the claims of each concerned party, the forgiving (victims and survivors of these abuses) and potentially forgiven (perpetrators and beneficiaries).

Forgiveness functions to the extent that social actors directly involved in the process address, listen and respond to others’ experiences and demands, and through the mechanism of collective deliberations and argumentation, can recognize the validity of their respective roles. Conversely,
if and when a party refuses to ask for or grant forgiveness and thus to recognize appropriately and sufficiently the other party, then the practice fails or remains in suspense.

### 3.3.3 Importance of the participation of ordinary citizens in the process of forgiveness

In order to acquire sufficient symbolic and moral weight, a particular demand to forgive or the granting of forgiveness must include the participation of a critical mass of ordinary citizens through various civic institutions prior to being sanctioned by states or international organizations. In the present scenario, the MMWVA represents over five thousand victims of torture, who have been able to speak publicly on the suffering they went through in the struggle for independence. The process of reconciliation was also sanctioned by both UK and Kenya where representatives on both sides underscored the importance of reconciliation.

Moreover, officially sanctioned mechanisms and rituals of historical reconstruction are essential to ensure the legitimacy of post-transitional regimes in the eyes of injured parties who many grant forgiveness, for full and official disclosure of past injustices and crimes as well as widespread transmission of such findings are prerequisites for forgiveness.

Lastly, the cultivation of vibrant and unrestricted public discourse carries several benefits, as citizens can acquire information about and come to realize the scale and gravity of particular events or systems, as well as discuss and deliberate about the justification for and limits of forgiveness.

Correspondingly, fact-finding institutions play a role in the public discernment of responsibility by attempting to clearly identify perpetrators, beneficiaries and bystanders without falling into
the trap of ‘victors’ justice’ through a disregard for due process and fairness. In the case of Mau Mau, the court played a key role as a fact finding institution together with the KHRC which developed a list of members of the MMWVA including the preparation of documentary evidence for the case.

3.3.4 Challenges in political forgiveness
Political forgiveness as a process faces various challenges as the victims and perpetrators try to reach a common ground. One of the challenges is the wrongdoers’ refusal to believe or accept evidence proving the existence of a system or a series of events, or by pleading ignorance about them (Kurasawa, 2007, p.74). This is similar to the experience in the Mau Mau case with the UK’s initial refusal to accept liability for the atrocities committed during the colonial era, and it was only after documentary evidence was discovered in UK archives that the government accepted and made an out of court settlement with the victims.

Another challenge that the process of forgiveness faces is identified by Murphy and Hampton, as escape from personal responsibility, whereby perpetrators and beneficiaries admit what they did and how they gained (and may even retrospectively come to recognize the wrongness of their ways of thinking and acting), yet try to excuse them away and find attenuating circumstances to reiterate their innocence (Murphy & Hampton, 1988, p.20). They may try to scapegoat other persons, often subordinate or superordinate members of an institution or group onto whom all blame supposedly falls. These challenges often call for patience on both the victim and offenders side and may even require the intervention of other stakeholders for instance civil society groups in order to keep the process alive.
Secondly the offenders may engage in a tactic of bureaucratic diffusion of accountability, according to which they portray themselves as mere cogs in the machine who were following orders from their superiors and obeying the laws, rules and regulations in place at the time, without possessing any decision making power or knowledge of the consequences of their actions; that is what Arendt (1998, p. 45) has termed ‘rule of nobody’.

In addition, they may use notions of collective guilt to societally dissolve their individual responsibility, by proclaiming that all citizens are equally guilty and thus no one ought to be singled out. Each person is represented as a victim of a socio-political environment where ‘ideological brainwashing’, fear and bloodlust were rife, or where respect of human rights was utterly absent (Kiss, 2000, p. 77).

The road to reconciliation in the Mau Mau case faced the challenges pointed out. The British Government on various occasions during the hearing of the case argued that the claims should be dismissed on the grounds that they were time barred and that a fair trial on the evidence was no longer possible as over 50 years had passed since the cause of action arose. The government also argued that the claimants had no claim against it and that any liabilities that had arisen had been transferred to the Kenyan Republic upon independence.

The objections raised were directed at discouraging the victims and posed a further challenge to the process of reconciliation. These challenges further necessitated the intervention of civil societies and individuals for instance Archbishop Desmond Tutu and Graca Machel who
appealed to the UK government to reconsider its stand, and such appeals enabled the process to bear fruit.

The claim by the British government that the government of Kenya at independence inherited the liabilities stemming from colonial rule is similar to what Fuyuki describes as ‘collective amnesia’. It refers to a situation where the offenders regard all players as equally guilty. Scholars in international relations point out that such views are likely to pose a major challenge to the process of forgiveness. As Arendt has tersely stated, ‘[w]here all are guilty, nobody is’ (Arendt, 2003, p 147).

In addition to enabling perpetrators and beneficiaries to hide them from scrutiny by melting into the crowd, the attribution or assuming of collective guilt circumvents the necessary social task of determining differential degrees of responsibility among domestic and global players. By sanctioning the dubious proposition that human rights abuses are exclusively institutional and societal in character, what is thereby effectively exonerated are specific actors’ actions and decisions.

Conversely, collective guilt represents a totalizing and absolutist concept that leaves no room for the possibility of individual innocence and performance of the good; it disregards the fact that, in virtually all situations where human rights have been severely violated certain persons actively resisted or refused to collaborate with unjust or criminal endeavors (Schaap: 2001, p 750).
3.3.5 Distribution of responsibility for past atrocities

Another challenge that the process of forgiveness encounters is one of distributing responsibility for past atrocities. Fuyuki has attempted to distribute responsibility to amend past wrongs among three types of players namely the perpetrators, bystanders and beneficiaries.

According to him, criminal responsibility involves perpetrators, those who directly participated in such violations by planning and ordering them, making relevant decisions and/or directly performing actions. He also states that moral responsibility deals with bystanders, those who were passively complicit and acquiesced or lent their tacit support by deliberately choosing not to know what was occurring, who knew but opted not to intervene (indifference to the suffering of others) or should have known by virtue of their structural position in an oppressive system and their connections of others who knew, in our present scenario, this would be the UK government that constantly received reports from the colonial office on the atrocities that were being committed against native Africans but failed to take any action to bring them to a stop.

Political responsibility concerns beneficiaries, those who accrued unjust advantages and privileges because of their involuntary membership in a political community whose institutions and leaders perpetrated human rights violations and did gain considerably from it socio-economically, politically and culturally. In our present scenario, this would be the present day citizens of Britain that continue to benefit from the accrued advantages of having Kenya as a colony. The argument by Kurasawa means that responsibility for past atrocities can then be transgenerational as long as there is evidence of benefit by one party from the suffering of the other.
3.3.6 Importance of the public acknowledgement of past wrongs
Various scholars on forgiveness have also pointed out the importance of parties who were criminally, morally and politically responsible to acknowledge publicly the wrongness of their past acts, as well as to condemn them unconditionally, without searching to legitimize them. (Murphy & Hampton, 1988, p. 26).

The public acceptance by the perpetrators that wrongs were committed against the victims is important in enabling the victims to gain confidence in the process. Regarding the Mau Mau case, the UK government made public statements acknowledging that human rights abuses took place during the colonial era.

While making a landmark apology before Britain’s parliament in June 2013, the Foreign Secretary then Mr. William Hague expressed regret over the suffering that Kenyans were subjected to in the hands of the colonial administration, and stated that the British government regretted that these abuses took place and that they marred Kenya’s progress towards independence (Gov.uk news, 2013).

In 2015 during the unveiling of the memorial in honour of the victims of the emergency period, Dr. Christian Turner, the then High Commissioner to Kenya underscored the importance of reconciliation. He stated that in order to deal with the present and move forward into the future, there was need for those involved to recognize and learn from the past. He also emphasized that the memorial was about reconciliation, to allow the parties involved to move forward together. (Citizen News, 2015). These statements of acknowledgement increase the confidence of the victims in the process towards reconciliation.
Whether originating from a state or an international organization, the official recognition of wrongdoing carries symbolic weight in its representing the public repudiation of past injustices, as well as its opening up to a new socio-political order that breaks with the previous systems. The offering of an apology and consequent request to be forgiven thus mark wrongdoers’ willingness simultaneously to admit fault and subject themselves to judgment via the state and both national and global public opinion. (Murphy & Hampton, 1988, p 83-85).

3.3.7 Dual model of forgiveness encompassing retributive and restorative justice
Kurasawa advances a dual model of forgiveness that articulates retributive justice for criminal responsibility with restorative justice for moral and political responsibility, in a way that systemizes efforts along these lines in various societies. Rather than portraying these two facets of justice as intrinsically incompatible, this model is designed to tackle the individual and collective dimensions of wrongdoing as well as the symbolic and material aspects of forgiveness; sanctioning holds the person accountable to their actions and signifies collective disapproval of the latter, at the same time as structural redress for past wrong aims to implement a more just social order.

However, to be clear, its restorative dimension supports practices of forgiveness that aim gradually to transform post-transitional moral and social relationship between erstwhile victims, on the other hand, and perpetrators, bystanders and beneficiaries on the other. In the places where it has been implemented, restorative justice feeds off the possibility that repentant wrongdoers are willing to commit not to repeat their crimes and to work to reverse the harm they did and unjust benefits they gained, by either facing legal and socio-cultural sanctions,
repudiating their former worldviews or by helping to alleviate the circumstances of subordinate 
groups over which they previously held sway.

From the advanced arguments and discourse on forgiveness, the importance of restorative justice 
is clearly brought out as a means of legitimizing the process of forgiveness. However, as 
previously pointed out, it may not be possible to entirely restore to the original status the damage 
done. In the case of the Mau Mau, even the monetary compensation may not be satisfactory for 
the suffering undergone by the victims. However, the attempts to compensation carries symbolic 
meaning of remorse for the crimes committed and creates an environment for the victim to 
reciprocate by forgiving the offender.

According to Murphy and Hampton, despite being at best only partially achieved in post- 
transitional societies to date, a restorative principle remains vital to practices of forgiveness that 
contribute to global justice: the implementation of structural reforms geared to redress wrongs 
and unjust advantages accrued by those morally and politically responsible for severe human 
rights violations.

The atrocities committed to the claimants in the case may not be equated to monetary sums, 
however, the recognition and acceptance by the UK government that the crimes were committed 
and the request for forgiveness made by the state on behalf of the offenders to the victims may be 
persuasive for the victims to forgive. It sets in motion the process of reconciliation.
CHAPTER 4
UK GOVERNMENT REPARATION; ITS RELEVANCE TO VICTIMS OF TORTURE, THEIR FAMILIES AND THE NATION AS A WHOLE

4.1 Role of Leigh Day Law Firm in MMWVA Case

In October 2002 Leigh Day Senior Partner, Martyn Day, was approached in Nairobi by Mr John Nottingham, a former District Officer of the Colonial Government during the Kenya Emergency, together with a couple of former members of the Mau Mau. The group explained how many Kenyans still alive had experienced torture at the hands of the British during the ‘Emergency’. This torture had taken place within ‘concentration camps’ run by the British in Kenya.
The firm liaised with eminent historians, Professor Caroline Elkins of Harvard University and Professor David Anderson of Warwick University, as to the historical background to these claims. Before these historians had published their work the full extent of the abuse and torture of those who had been detained by the colonial authorities had not been fully understood. These two historians went on to rewrite this key period of colonial history (Leigh Day, 2015).

The KHRC had been working with the victims of colonial era torture since 2003, shortly after the Mau Mau movement had been un-proscribed. Prior to 2003 it had not been possible for victims to organise themselves and pursue a claim on behalf of survivors of the camps, since it had been unlawful to organize or take part in any activity of or on behalf of the Mau Mau society. It was only once this ban was lifted that those who had suffered during the Emergency were able to form the Mau Mau War Veterans Association (MMWVA).

The formation of the MMWVA saw the beginning of the process of identifying genuine survivors of the detention camps. Working with the MMWVA, the KHRC began the process of contacting and interviewing victims, and in July 2006 the KHRC interviewed a number of victims who were willing to proceed with their claims against the UK Government. This group included Wambugu wa Nyingi, Jane Mara and Susan Ngondi (Telegraph, 2013).

The case proceeded in court and in conclusion, the judge stated that the available documentary base was very substantial and capable of giving a very full picture of what was going on in government and military circles in both London and Kenya during the emergency. He stated that a fair trial of this part of the case remained possible and that the evidence on both sides remains
significantly cogent for the Court to complete its task satisfactorily. Thereafter the UK government offered an out of court settlement to the MMWVA (Leigh Day, 2015).

Consequently, this chapter seeks to interrogate the discourse of international relations on global rectificatory justiceto analyze the effectiveness of the reparation in addressing the plight of the victims of torture, for those who died, their families and to the nation as a whole. It will seek to answer the following questions, whether there is a moral obligation to rectify the consequences of wrongful acts, whether colonialism was on the whole harmful for the colonies; whether the present unjust global structure was constituted by colonialism; and finally whether the obligation of rectificatory justice is trans-generational so long as there are at present identifiable beneficiaries and victims of past injustice.

4.3 Impact of Colonialism in Kenya

Kenya is primarily an agricultural economy. Approximately 75% of Kenya’s population is employed in the agriculture sector (Todaro, 2005). This leaves land as the greatest resource any producer in the economy can have. In the pre-colonial period, diverse tribes co-existed in Kenya, each governed by different chiefs or councils.

At times smaller tribes were conquered and ruled by bigger tribes and tributes would be paid by the ruled to the rulers. Nevertheless rarely did the question of land annexation occur. For most of these communities land use was dictated by the social formations of people and the philosophy as determined by the historical stages of development (that is from hunting and gathering to herding and settled farming). Kenya’s land tenure before the advent of colonialism was
fundamentally different from that in feudal England from which alien law was imported (Smokin, 2000).

Land tenure in the pre-colonial period was what may be referred to as “communal tenure”, where land belonged to no particular individual but to the community (clan, ethnic group) as a whole. Private land tenure on the other hand is a system of ownership where an individual gets title to land thus secluding all and sundry from access and use of the same land.

The private ownership of land as it is in Kenya today was crafted in the Swynerton plan of 1954 (Sorrenson, 1967). This plan sought to change the system of land tenure through land consolidation and registration of individual’s freeholds and improve on commodity production in the reserves. The squatter problem began in 1915 when the colonialists introduced Crown Lands Ordinance. This made them acquire legal security over land.

When the British settlers took the fertile lands, the native Kenyans were displaced to land unsuitable for agriculture and were paid to work as agricultural labourers in the white farms. The colonial state enacted a series of measures to create and maintain labour supply including hut and poll taxes in 1902 and 1903; the Masters and Servants Ordinance 1910, the kipande system and the Resident Native Labour Ordinance (RNLO) in 1918, which defined both the legal status and the labour obligations of the squatter. The colonial system introduced land laws in order to ensure control of the land ownership so that it remains under the colonial masters, consequently, the inheriting of the land laws led to greater land problems that continue to cause conflict between communities.
Unsustainable land use also contributed to environmental degradation. The forceful evictions created land use problems that Kenya has not been able to overcome even 50 years after independence, for instance, the squatter problem has been ongoing leading to conflict between communities. The squatter problem has affected the human resource in separate ways. For example the state of hopelessness that hovers among squatters, does not allow them to get good education, good housing and the returns of their labor are too poor. This is due to the uncertainty of their title to land.

Colonial rule laid the foundations for some elements of the ethnic tensions which exist today. These include: the different labour allocation and description of different labour roles dependent upon the colonialists’ perceptions of various ethnic groups. For example, wages were paid to different groups based on their perceived or characteristic behaviours. The Kikuyu were perceived to be dishonest and therefore unsuited to domestic work, the Kavirondo were perceived to be morally upright hence good for domestic work, and the Somalis perceived to be adaptable and reliable with weapons and hunting, hence useful as bodyguards.

Administrative structures such as provinces and district were created without regard for the wishes of Kenyan communities. These structures were later inherited and retained by the post-colonial administration. The zoning of the country by missionaries and mission agencies has meant that various denominations were associated with certain regions, and thus particular ethnic groups. Independence movements had regional and ethnic foundations and leadership even from an early stage. The foregoing factors contributed to the centrality of ethnicity in everyday life.
The pattern of ethnicity was followed in employment, recruitment in the armed forces, administration and in political life as the country prepared for independence.

Biases and prejudices in development priorities have by and large followed the influence of ethnic identities, making it an institutionalized issue. Some ethnic groups are perceived to be privileged while others are underprivileged leading to the present atmosphere of mistrust and suspicion among regions and ethnic groups. The above phenomenon has led to a deep-rooted consciousness and awareness of ethnicity throughout society. It has also made ethnic identity a form of social capital that that can be used to influence or determine people’s social and economic prospects. Political parties or coalitions, welfare groups and media houses, among other institutions, are propelled by the ethnic factor.

On making their settlement in Kenya, the settlers formed law making bodies and used their power to formulate laws that required the payment of taxes by the Africans and further required the Africans to work for them in their farms. The new regulations displeased the Africans who began to form organizations that would clamor for protection of their rights to own property.

The settlers were angered by the formation of the rights groups and consequently displaced the Africans previously squatting on the settlers farms. The squatters did not have any places to go having left the reserves in order to squat at the settlers farms and provide labour on the farms (Kariuki, 2009, p.1). The displacement of the squatters further increased the tension between
Africans and the settlers. This led to the initiation of an oath ceremony, in which the Africans bound themselves through an oath ceremony to fight the settlers and retrieve back their land.

Chapter two has described in detail the suffering that native Africans underwent on suspicion of having been a member of the Mau Mau movement that was principally fighting for restoration of their land and freedom. The chapter also describes the screening process, detention camps and the many Africans who lost their lives through disease and acts that amounted to gross violation of human rights.

In light of the reparations, apology and memorial, the question that begs is whether what has been done by the UK government is sufficient to rectify the problems that resulted from the colonial system of governance that have continued to affect the country to date including the land tenure systems and deeply entrenched divisions along tribal lines. In addition there are also the human rights abuses that were committed including the deaths that resulted from the abuses some of which were never accounted for, considering that the compensation was only given to the claimants who are alive in present day and registered under the MMWVA.

In addressing the above question, recourse is made to the current discourse on rectificatory justice. With the publication of John Rawls’ work A Theory of Justice, justice became a main issue in political philosophy and ethics (Rawls, 1971). The theory was intended for justice within nations but as early as in the 1970s, Charles Beitz argued for a global application of Rawls’ theory of distributive justice and Thomas Pogge developed the argument in Realizing Rawls in the 1980s (Beitz, 1979). As a consequence of Rawls’ own contribution to the discussion about
international justice in The Law of Peoples, the discussion on global justice was intensified (Rawls, 1999).

### 4.5 Rectificatory Justice in International Relations

Aristotle also distinguishes between distributive and rectificatory justice. Distributive justice focuses on distribution of scarce resources and goods. Rectificatory or corrective justice, on the other hand, is backward-looking and focuses on correction for past deeds (Aristotle, 1980). In explaining rectificatory justice, Aristotle writes:

... for in the case also in which one has received and the other has inflicted a wound, or one has slain and the other been slain, the suffering and the action has been unequally distributed: but the judge tries to equalize things by means of the penalty, taking away from the gain of the assailant ... therefore corrective justice will be the intermediate between the loss and gain.

According to Göran Collste, the present borders between the global rich and poor coincide approximately with the historical borders between former colonial powers and colonies. He argues that during colonial times the economies of the colonies in Asia, Africa, and Latin America were adjusted in the interests of the colonial powers and as a consequence of the Spanish and Portuguese exploitation of Latin America, the British, Belgian, Portuguese and French of Africa, British, Portuguese and Dutch of Asia, etc., Europe and North America prospered while many colonies sank in despair (Collste, 2015, p.12).

A theory of global rectificatory justice can also draw from more recent work in philosophy. According to John Locke, justice implies a right of reparation. Someone who is injured has a right to seek reparation from the injurer (Locke, 1977). Building on Locke, Robert Nozick’s
entitlement theory is an example of a historical, backward-looking theory of justice. According to Nozick, a person is entitled to his or her property provided that it is acquired in a just way. Hence, property rights depend on justice in acquisition and justice in transfer (Nozick, 1974, p.150).

Nozick’s theory is a philosophical justification of libertarianism. However, with some factual assumptions, the theory can justify a demand for global rectificatory justice. If we assume that the present concentration of property and wealth in the rich part of the world at least partly is the result of unjust historical acquisitions, i.e. plunder, theft, and war, one could, also in line with Nozick’s entitlement theory, argue for a global ‘... rectification of injustice in holdings’ (Nozick, 1974, p.152). Historical injustices thus beg for rectifying actions.

Aristotle argues primarily for penalizing a wrongdoer by taking away his or her gain. Locke argues for a right of reparation and Nozick for rectification of past injustice in acquisition and transfer of property. They have in common the view that what happened in the past has implications on rectificatory justice.

Collste uses an illustration of two people living in different set of conditions to argue for a theory of rectificatory justice (for our purposes we’ll name person A and person B). Assume that A lives a life in prosperity and welfare. His next door neighbor, on the other hand, lives in poverty and misery. Let us also assume that many years ago A’s grandparents stole the land from B’s grandparents and the present difference in welfare is the result of this historical fact. Then, it would seems that B with good reasons could demand to get a part of A’s land or income, and
thus, that A has some moral obligations to compensate B. And these obligations are generated by the acts A’s forefather. From this illustration, he argues that the world is a global village and the neighbors signify different countries some of which benefitted from the colonization.

Though there are strong arguments for the theory of rectificatory justice, the theory also faces various objections. Collste discusses a number of objections, firstly, according to ethical presentism, only living individuals matter in discussions on justice. A theory of global rectificatory justice presupposes the possibility of both historical and collective responsibility, i.e. that moral responsibility can be trans-generational. From the point of view of ethical presentism this seems doubtful. One could argue that the oppressor owes something to the oppressed at the time of colonialism, but not that individuals living later, i.e. the grandsons and granddaughters, who themselves neither acted as oppressor nor oppressed, owe anything to each other.

A theory of ethical presentism is developed by Jon Elster. According to ethical presentism, for purposes of justice only the living individuals matter. Injustices done in the past have no relevance for the present. However, Elster accepts one limitation to ethical presentism (Elster, 1993). He writes:

*Injustice done to individuals who are no longer alive may constrain present distributions only if it has left morally relevant traces in the present.*

According to the argument for global rectificatory justice, Elster’s condition is fulfilled. What makes the historical injustices of colonialism relevant for the present discussion on justice is precisely the fact that ‘it has left morally relevant traces in the present’: prosperity in the former colonial powers and poverty in the former colonies. When there are no traces left, there is no
reason to repair. This does of course not rule out that there are also other relevant ‘global justice arguments’, for example, arguments for distributive justice.

Elster’s condition also provides a criterion for deciding which historical injustices are relevant in discussions on rectificatory justice and which are not. For example, would a principle of rectificatory justice imply that the Scandinavian countries should compensate England and France for what the Vikings did toward their ancestors in the ninth and tenth centuries? The answer is no. But not because the harms inflicted by the Vikings took place in the past but because as far as one can notice the Vikings’ ravaging has not left any morally relevant traces in the present.

Ethical presentism shows why Nozick’s theory is insufficient. Nozick is right in pointing at the importance of history for our discussion on justice. However, as the previous example about the two neighbours illustrates, the historical wrong is only important for morality if it has caused a present injustice.

If the historical wrong is not discernable today, it may be interesting for history but not for ethics. This leads us to another problem with a theory of rectification. Assuming that two colonies are treated equally bad by a colonial power. However, after liberation the two former colonies develop differently. Due to hard work and good ideas, after a number of years the former colony A prospers so that the traces of colonialism disappear. In contrast, in the other former colony B the people are idle and blunt and their poverty increases. Then one could say
that there are traces left in B but not in A. This then begs the question on whether it would be reasonable that B should be compensated by their former colonial power and not A.

In response to this objection, Collste differentiates between economic traces and other, for example, cultural. He argues that the idea behind rectification is that there is a causal relation between present-day economic distress and colonialism. If there is no such relation, then there is no reason for rectification either. Hence, B should only be compensated if present poverty is caused by colonialism and not by, for example, idleness. According to Collste, the theory presupposes some empirical information about the causes of poverty. On the other hand, both A and B may suffer from cultural traces of colonialism such as feelings of inferiority and humiliation. If this is the case, the former colonial power has a duty to make good for a history of subjugation.

A demand for rectification presupposes that injustice is done. Regarding a theory of global rectificatory justice, it depends on some controversial factual assumptions: First, it assumes that colonialism implied that injustices were made against the colonies. Secondly, it assumes that this historical injustice has left morally relevant traces in the present, i.e. that the present poverty in the developing world is a consequence of colonialism. Thirdly, it also assumes the counterfactual assumption that the former colonies would have been better without colonialism. One could argue that the need for rectification depends on what would have happened if colonialism had never existed in the first place.
The first assumption implies a problematic generalization. It might be the case that for some colonies at some particular time, colonialism was beneficial. However, there seem to be good reasons for Thomas Pogge’s summing up of the overall consequences of colonialism: (Pogge, 2005)

... most of the existing international inequality in standards of living was built up in the colonial period when today’s affluent countries ruled today’s poor regions of the world: trading their people like cattle, destroying their political institutions and cultures, and taking their natural resources.

Colonialism in many parts of the world had various devastating effects. As regards America, colonialism had devastating consequences for the native population. Due to diseases, starvation, and inhuman working conditions a ‘demographic catastrophe’ followed in the footsteps of colonialism.

There are different estimations of the numbers of native Indians at the time of the conquest (Bethell, 1984). However, a large proportion of the native population died. According to one estimation the number of Indians in Mexico decreased from 25 million in 1519 to 1.9 million in 1580 (Wachtell, 1984). The situation in Latin America is close to the Kenyan situation as suffering and death was occasioned through the forceful evictions, and screening processes especially during the state of emergency.

With regard to the question of assigning responsibility and whether it can be trans-generational, Collste argues that a possible solution to the problem of establishing the agents for rectification is to assign responsibility to the colonial nations involved. As the colonial nations were
themselves deeply involved as agents, homeland of the acting individuals and companies and
provided the juridical framework for their activities responsibility falls back on them.

David Miller makes a distinction between outcome responsibility and remedial responsibility.
When we ask for outcome responsibility we ask which agent that ‘... can be credited or debited
with a particular outcome a gain or a loss either to the agent herself or to other parties,’ Miller
argues(David, 2007, p.98).Remedial responsibility on the other hand asks ‘... whether there is
anyone whose responsibility it is to put that [particular problematic] state of affairs right.’

The former colonial powers still exist as nations, and they still benefit from the earlier period.
Even the former colonies exist by and large today as politically independent nations. Due to the
requirement that there must be ‘morally relevant traces’ left, the beneficiaries of acts of
rectification are the peoples that were former colonies and that still suffer from this historical
fact.

The ideas of ‘equalizing’, restoration or full compensation are not necessary elements of a theory
of global rectificatory justice. Even if it is unfeasible to equalize, restore or fully compensate,
there is still room for measures of rectification. Those who gain from past injustices can
compensate those who are harmed in different ways and they can do their best to try to change
present inequalities that are the legacy of history (Collste, 2015, p.65).

According to theories of global distributive justice, there is a need for global redistribution in
favor of the poor in the underdeveloped countries. A theory of global rectificatory justice has
similar implications. However, as Collste avers, even though the social and economic implications are similar, the motives behind are different.

A theory of rectificatory justice offers additional motivation for redistribution. The reasons behind a moral duty to redistribute are not solely fairness, rationality, or utility as stated in different theories of global distributive justice. There are additional reasons due to the past wrongs committed. Furthermore, rectification may take other forms than economic redistribution, for example, apologies. Hence, a theory of global rectificatory justice is complementary to a theory of global distributive justice and will enable us to develop a more comprehensive understanding of the meaning of global justice.

Some scholars have also raised questions on the theory of rectificatory justice such as; should we not rather strive for reconciliation than for rectification for past wrongs? However, the acts of reconciliation and rectification are not unrelated. Collste argues that reconciliation without rectification is empty. Reconciliation will only be possible if the party that has inflicted past wrongs is willing to repair.

It is indeed impossible to repair for 450 years of colonialism. However, from the theory of global rectificatory justice follows that the former colonial powers (and other nations that benefited from colonialism) have a duty to repair for past wrongs. The aim is not backward-looking to return to a state of relations that existed before colonialism. Instead, the duty to repair for past wrongs is future-looking: it aims at improving the moral quality of future relations. Rectification
for colonialism is thus similar to other examples of corrective justice. As Margaret Walker writes (Walker, 2006, p. 385):

The direct concern of restorative justice is the moral quality of future relations between those who have done, allowed, or benefited from wrong and those harmed, deprived, or insulted by it.

In present global politics this could, for example, imply reformed terms of trade beneficial to the former colonies, cancellation of their debts, transfer of resources from the rich to the poor nations for health care, education and economic development, etc. Not until this happens can the question of reconciliation be put on the agenda.

There have been arguments that the implications of global rectificatory justice are utopian and over demanding, and whether they can be related to the real world, however, the answer to this question would be that even if we are unable to live up to the demands and obligations, they may at least inspire us to realize approximations of them.

From the foregoing arguments on rectificatory justice, I would find that the reparations that have been made by the UK government to the MMWVA are not sufficient in relation to the problems occasioned some of which haunt the country many years after independence for instance the problem of squatters, and land tenure. In addition, there was loss of life and many suffered psychological torture before and during the state of emergency.

As various scholars have argued, traces of these losses can still be seen in present day, and hence my argument would be that Britain would need to do more in addition to the reparations made so
as to rectify the wrongs done during the colonial period. Even if it may not be possible to live up to all the obligations, it would be beneficial for both countries in strengthening bilateral relations and mending relations with the victims that suffered the various atrocities, their families and the nation at large.
CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

On making their settlement in Kenya, the settlers formed law making bodies and used their power to formulate laws that required the payment of taxes by the Africans and further required the Africans to work for them in their farms. The new regulations displeased the Africans who began to form organizations that would clamor for protection of their rights to own property. The settlers were angered by the formation of the rights groups and consequently displaced the Africans previously squatting on the settlers farms. The squatters did not have any places to go having left the reserves in order to squat at the settlers farms and provide labour on the farms (Kariuki, 2009, p.1).

The displacement of the squatters further increased the tension between Africans and the settlers. This led to the initiation of an oath ceremony, in which the Africans bound themselves through an oath ceremony to fight the settlers and retrieve back their land. A group of several thousand Kikuyu squatters who had been forced to leave the White Highlands and settle in an area called Olenguruone are the ones who began the oath ceremony as a means of mobilizing the masses against the white men.

Typically, Kikuyu men had taken an oath to forge solidarity during times of war or internal crises, the oath would morally bind the men to face the challenges. According to Caroline Elkins, mass oathing spread rapidly as African politicians quickly recognized its potential for
organizing. The practice spread to many other parts of the country thereby giving rise to the Mau Mau Movement (Elkins, 2006, p. 25).

The Mau Mau War Veterans Association (MMWVA), an association formed by Kenyans who suffered during the state of emergency in Kenya, filed a case against the UK government seeking compensation for suffering that they went through during the Emergency period from 1952 to 1960.

Initially, the case was opposed by the UK government on grounds of legal technicalities including lapse of time, however, expansive evidence on the atrocities carried out by the colonial government was discovered in archives in the UK and also the national archives in Kenya and this led to the closure of the case through an out of court settlement between the claimant and the defendant (Leigh Day, 2014, p 5).

The out of court settlement included an apology for the atrocities committed, compensation for the victims at a total of £20 million, and a memorial in honour of Kenya’s freedom fighters who suffered torture and ill-treatment at the hands of the colonial government during the Emergency Period from 1952 to 1960 to be constructed at the cost of the UK government.

While making a landmark apology before Britain’s parliament in June 2013, the Foreign Secretary then Mr. William Hague expressed regret over the suffering that Kenyans were subjected to in the hands of the colonial administration, and stated that the British government
regretted that these abuses took place and that they marred Kenya’s progress towards independence (Gov.uk news, 2013).

On 12th September 2015, the British-funded memorial was unveiled in Nairobi, in honour of Kenya’s freedom fighters who suffered torture and ill-treatment at the hands of the colonial government during the emergency period from 1952 to 1960. The memorial features a statue of an armed rebel receiving a bag of supplies from a woman.

Speaking at the inauguration, British High Commissioner Dr. Christian Turner underscored the importance of reconciliation. He stated that in order to deal with the present and move forward into the future, there was need for those involved to recognize and learn from the past. He emphasized that the memorial was about reconciliation, to allow the parties involved to move forward together. (Citizen News, 2015).

From the foregoing, and in conclusion, my opinion would be that the atrocities committed to the claimants in the case may not be equated to monetary sums, however, the recognition and acceptance by the UK government that the crimes were committed and the request for forgiveness made by the state on behalf of the offenders to the victims may be persuasive for the victims to forgive. It sets in motion the process of reconciliation.

Further, considering the current discourse in international relations on rectificatory justice, I would also be of the opinion that the reparations that have been made by the UK government to
the MMWVA are not sufficient in relation to the problems occasioned some of which haunt the country many years after independence for instance the problem of squatters, and land tenure.

In addition, there was loss of life and many suffered psychological torture before and during the state of emergency. As various scholars have argued, traces of these losses can still be seen in present day, and hence my argument would be that Britain would need to do more in addition to the reparations made so as to rectify the wrongs done during the colonial period. Even if it may not be possible to live up to all the obligations, it would be beneficial for both countries in strengthening bilateral relations and mending relations with the victims that suffered the various atrocities, their families and the nation at large.
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