

TEACHING LAW IN KENYA: A PERSONAL FOOTNOTE

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On 26 May 1975 a major riot took place on the campus of the University of Nairobi. There has been a history of rioting and disturbance at the University of Nairobi since its formation in 1970.<sup>1</sup> In those periods when it was actually open, the University was troubled by demonstrations, student strikes, protests, police interventions, and so on. During the two years that I was employed by the University (June 1973-June 1975), it was closed as a result of disturbances on a number of occasions. For example, the 1974-75 academic year began on July 1974. On 15 August, as a result of a student strike, the University was closed, not to be opened again until 6 January 1975. Riots had become a normal occurrence at the University of Nairobi. There was nothing out of the ordinary in seeing police chasing students, or students chasing police, through clouds of tear gas.

The riot in question was the culmination of a period of growing unrest following revelations of the apparent murder of J.M. Kariuki, a member of the Kenya National Assembly. The students were generally sympathetic to many of the populist and radical ideas which Kariuki had propounded.<sup>2</sup> Although Kariuki was expressing a widespread national distaste for the government of Jomo Kenyatta, he was in fact the representative of opportunistic petty-bourgeois elements in the country. He was attempting to manipulate popular dissatisfaction in order to serve political aims which had little to do with the interests of the mass of the Kenyan people. In my view Kariuki was a demagogue, was fundamentally dishonest, and was expressing political views which had significant fascist tendencies. I dissociated myself from pro-Kariuki student political activity and indeed spent a great deal of time trying to persuade both students and staff of the validity of my interpretation of Kariuki's political philosophy and the dangers involved in that philosophy.

Rioting developed out of disturbances which began in the area of the student halls of residence on Saturday, 24 May. At this time, for reasons which related to the proliferation of tribal societies among the students, there was a confrontation between plainclothes police and a number of Kikuyu students. During this confrontation one or more police officers were beaten and their identity documents were taken from them. It was subsequently agreed between students and the police that the police officers involved would come back to the campus on Monday, 26 May, at which time these documents would be returned to them. This agreement broke down, and by about 2:00 p.m. on Monday afternoon a major riot was in process. Groups of students,

shouting and throwing stones, were engaged in see-saw battles with the police. The police had originally concentrated at the Central Police Station near the University and moved onto the campus to attempt to quell the disturbance. A great deal of tear gas was used. The majority of the University's employees found it necessary to leave their offices as the gas was making it impossible to work. I had been trying to clear up a personal matter in one of the administrative offices. Leaving this building I was unable to return to my office in the Law Faculty. While I was wondering what to do, an English colleague came by and suggested that we walk around the campus and observe the riots. The presence of rioting students and police and tear gas on the campus was by this stage looked upon by most members of the University as a sort of diversion. By approximately 4:15, we had enough of watching these riots and decided to collect our mail and go to the Boulevard Hotel, approximately 300 yards from the University, to have a beer. When we reached our offices to pick up our mail, we were informed that members of the General Service Unit (GSU) were forming up at the Central Police Station preparatory to entering the campus. This indicated that the ordinary police had been unable to deal with the situation. The police had fired shots into the air to disperse groups of students and had chased a number of them into the center of the city. However, there were still large numbers of students on the campus.

The GSU is a special para-military unit within the Kenya police created to deal with civil disturbances. Its membership is almost entirely Kikuyu. It is hand-picked and it is no exaggeration to say that the members of the GSU are brutes whose only qualification is fanatical loyalty to President Kenyatta. The GSU uniform, different from that of the rest of the police, is military in character, reflecting the nature of their duties. We watched a group of thirty GSU members, presumably a platoon, line up in three ranks outside the Central Police Station. Unlike the riot police who were poorly equipped, each GSU member carried a respirator, a steel helmet with chin strap, a metal-tipped club, tear gas grenades, and either a rifle or a pistol. They were, it must be admitted, an extremely impressive group of men. Given their reputation for savagery, everyone in the area realized that the consequences of the GSU's arrival on the campus could be very serious. My colleague and I left for the Boulevard Hotel. We arrived there before 5:00 p.m., talked together and drank beer, spoke to no one else, and left shortly after 6:00 o'clock. I went straight home and remained there that evening.

The next morning I purposely did not go into the University until almost noon, hoping to avoid any continuation of the riots. I arrived at the University and met a group of colleagues just inside the main entrance. They were speaking in astonished tones about the degradation caused by the GSU in their assault on the campus. The damage was particularly evident in the education building which, according to my informants, had been badly damaged. In addition, there were several areas in this building where furniture, walls and floor were splashed with blood. This seemed

to be indicative of the ferocity of the attack which the GSU had launched on the campus. I told my colleagues that I wished to go to my office briefly and would then meet them for lunch at the Norfolk Hotel across the street from the University. As we were talking a group of six or seven men wearing plain trousers and sport shirts passed us and I remarked to one colleague, "Those are plainclothes men." They proceeded into the main entrance of the Gandhi Wing, the building where the Law Faculty is located. I too entered the Gandhi Wing to go up to my office, but on reaching the third floor I found the stairs to the fourth floor Law Faculty blocked by this same group of men. I attempted to find a way through them, thinking that they were simply standing there chatting, when I was stopped and informed that I was under arrest. It was not my impression when I was arrested that these persons, who then identified themselves as policemen, were completely sure who I was. I enquired as to the reasons for my arrest and no reply was offered. Knowing something of the Kenyan police I decided it would be fruitless and unwise to pursue the matter further. My hands were placed behind me and I was handcuffed and led back down the stairs. This arrest was improper in a number of respects. The Constitution of Kenya requires that a person arrested should be informed of the reasons for his arrest "as soon as reasonably practicable".<sup>3</sup> In practice this means that where no resistance is offered, reasons should be given at the time of the arrest.<sup>4</sup> Further, where no resistance is offered, the person arrested should not be handcuffed or subjected to other forms of physical restraint.<sup>5</sup>

Some of the colleagues to whom I had been talking were at this time coming up the stairs and were somewhat surprised to see me in handcuffs. I said to them, "I have been arrested; get me a lawyer." I was marched by the police through the door of the Gandhi Wing, out of the University, and across the road to the Central Police Station. At the station I was taken into a room outside the cells and told to remove my shoes and hand over my keys. These were placed in a locker and I was taken to the cells and put inside a cell by myself to wait. After half an hour I was led out of the cell and into the office of the police superintendent who was in charge of Central Police Station. I was confronted by a man approximately forty-five years old. On the left breast of his uniform he was wearing the ribbon of the General Service Medal awarded by the British to all those who had assisted in suppressing the nationalist uprising in the 1950s. He said to me, "What were you doing yesterday?" and before I had a chance to reply, he continued, "I know -- nothing." He then said, "You think you can come here and insult the President, you bastard." I was then escorted out of his office and back downstairs. In the area outside the cells I was fingerprinted and asked for my name, age, address, and other personal details. Some very perfunctory questions were asked, but I was still unaware of the precise nature of the charges against me. A policeman took me back upstairs to another office. There a man by the name of Inspector Charles Njeru Mwangi charged me with creating a disturbance in a manner likely to cause a breach of the peace<sup>6</sup> in that on 26 May, at the University of Nairobi, I said to Ser-

geant Musyoka of the Kenya police, "You police you are stupid like your father Kenyatta". I was asked to make a statement which I did. In my statement I denied making these remarks. I also denied any knowledge of Sergeant Musyoka. This appeared to end the questioning. During the questioning and charging I had been seated in a chair. Inspector Mwangi then shouted at me, "You are not a guest here, sit on the floor." I sat on the floor while the police officers present made various derogatory comments about me in Swahili, a language they assumed I did not understand.

During this meeting, and at other times when the police either referred to me or spoke to me directly, they called me a "kaburu". Kaburu is a Swahili word which is a corruption of the word Boer, that is, white South African. To call a white a kaburu is roughly similar to calling a black a nigger.

After the interview with Inspector Mwangi and company I was taken back downstairs and put in a cell. I waited there for approximately half an hour. I was then taken from the cell to the anteroom where I was told to retrieve my keys and put my shoes on. Standing in the room were Inspector Mwangi, two uniformed policemen, and about five policemen in riot gear. Each of the riot policemen was carrying a long club. As I attempted to get my wallet from the locker, Inspector Mwangi began punching me in the face. The others joined in by kicking me while the riot police beat me with their clubs. It seemed to me there was little point in trying to resist. I was in fact extremely frightened. It was possible that they were in the process of murdering me. I continued, as best I could under the circumstances, to put on my shoes. When I had managed to do this, Inspector Mwangi and his associates became bored with beating me and I was led out of this room to the back of the Central Police Station. Behind me was a riot policeman who kept prodding me in the back and the neck with his club and shouting insults at me. We moved in the direction of a car which I surmised would take me to court. I had been handcuffed and because of the beating I was finding it difficult to walk. When we reached the car, Inspector Mwangi opened the door and shouted at me to get in. Before I could do so he said, "Martin, you have very lovely hair," and grabbing my hair began to beat my head against the roof of the car. He gave this up and I was pushed into the back seat. A group of policemen stood around the car shouting at me and taunting me. After a few minutes Inspector Mwangi and two other plainclothesmen got into the car and we drove to the Law Courts building in downtown Nairobi.

On arrival at the Law Courts,<sup>7</sup> I was told to get out of the car and directed to walk into the building. The Law Courts is a rather complicated building full of hallways and stairs and twists and turns and I was unclear as to where the police wished me to go. Inspector Mwangi stood behind me and said, "When I punch you in the left side you turn left, and when I punch you in the right side you turn right." In this fashion we arrived at the police charge office. I sat on the floor while awaiting my hearing in court. Inspector Mwangi and various other policemen took this

opportunity to insult me. I was then taken from the charge office down to Court Number One. In the hall outside of Court Number One, I discovered a number of my colleagues from the Faculty of Law at the University waiting. They attempted to say some cheering words to me. Once inside the court my colleagues were allowed to talk to me, although the handcuffs were not removed. A Kenyan colleague who was to represent me at this appearance, attempted to discover the nature of the charge against me. He spoke with the uniformed police inspector prosecuting the case and initially attempted to persuade him to withdraw the charge. This was refused, but the charge was amended by the deletion of the final word "Kenyatta," so that the particulars now read that I had said to Sergeant Musyoka, "You police, you are stupid like your father".

The most obvious thing about the framing of the charge is that a native English speaker simply would not use such words. It was quite clear from the nature of the charge and from the words used that there were words manufactured by an African speaker of English. With the deletion of the word Kenyatta, the particulars of the charge made even less sense.

After some minutes, the Resident Magistrate, Mr. Abdallah, entered the court room. The amended charge was read to me and I pleaded not guilty. My counsel then applied for my release on bail, noting that there were a number of members of the University Law Faculty who were willing to act as sureties in my behalf. Mr. Abdallah stressed the seriousness of the situation at the University, dismissed this application, and ordered me remanded in custody until 3 June. I was then taken from the court room to be placed in the cells in the basement of the Law Courts to await transfer to a remand prison. I was put into a small cell with about ten other persons whom I immediately realized were University students arrested during the riots. These students were in an utterly deplorable and sickening condition. They had been severely beaten by the police. Many were wearing shirts soaked with blood, their heads badly cut, while several obviously had broken bones. They were dazed, in a state of physical shock in many cases, and psychological shock in almost every case. They had been mistreated in a barbaric manner. The more serious cases had received preliminary first-aid at the Kenyatta National Hospital. The most badly beaten of the students were still convalescing there. I was informed that among those beaten were a number of women students and that some of these women students had been raped by members of the GSU. The students were, of course, eager for news, but there was in fact very little that I could tell them. We waited in the cell for several hours and had our names recorded by the prison officials who were in charge of this lock-up. We watched the women students being transferred to another prison and we could see as they were led out of the cells that they had been beaten as badly as the men. We were then handcuffed together in pairs and led out of the cells to trucks waiting outside the Law Courts. These trucks had been backed up to the door of the Law Courts and the area was ringed by riot police carrying clubs and, in several cases, sten guns.

It was obvious from the very tight security covering our movements that the government was taking the whole matter quite seriously. We were herded into the waiting trucks, and it was difficult for many of us, because of the severity of our beatings, to climb up into them. I had to be lifted by a number of students in order to get into the back of a truck.

Once full, the trucks drove to the Industrial Area Prison. The prison is located in an industrial park in one of the suburbs of Nairobi. On arrival we left the vehicles and assembled in the main courtyard inside the prison. We were a sorry sight, resembling nothing so much as a defeated army. We were required to surrender money, watches, and belts and were issued two blankets each. These were of a foul nature, old and threadbare, stinking, and, if not crawling, at least infested with lice. After receiving our blankets we were stripped and searched by prison guards. We were directed to the block which we would occupy and given a meal. In the case of the students, this was the first food they had eaten in over twenty-four hours. The meal consisted of biscuits and cold tinned beans. Prison guards locked us into a long building where we were to spend the night. There were 67 of us and we filled the main room in this building. For sleeping arrangements we spread out blankets on the cement floor and made ourselves as comfortable as possible. There was one toilet provided at the end of the building. Although the surroundings were not cheerful, and many of us were in rather poor physical condition, it was a relief to be left alone and allowed to relax.

In discussing matters with many of the students, the random nature of their arrests became apparent. One of the persons arrested, for example, was not even a student. He was an employee of Air France in Nairobi who was being sent at the expense of his employer to attend a French course at the University. He arrived at the University just as the GSU came onto the campus, was apprehended by the GSU, severely beaten, and arrested along with the students. The students had been charged with "rioting after a proclamation," an offence which carries a maximum penalty of life imprisonment under Kenyan law.<sup>8</sup> Many of the students had been totally unconnected with the riots and in several cases had been in classrooms when they were arrested and assaulted by the GSU. While a number of the students were undoubtedly participating in the riots, it seemed to me from discussion with those in prison that many were innocent bystanders.<sup>9</sup> This factor, of course, had been irrelevant to the GSU. After making ourselves as comfortable as possible we settled down for the night, everyone silently uneasy about what the morning might bring.

We were awakened before dawn and immediately the process of counting began. This takes up a considerable amount of one's time in a Kenyan prison. One is counted innumerable times each day and at the slightest provocation. During counting prisoners are required to squat in rows of five. After being counted and recounted we were fed breakfast. Each person was given a tin dish and we lined up in front of a large cooking pot filled with

uji. Uji is a sort of porridge made out of cornmeal, variable in texture and without taste. A convicted prisoner ladled uji into our dishes and we drank it. Breakfast over, our sorry group was herded to the prison office to be processed. The first step in this processing was a medical examination for those who had been more severely mistreated. We were photographed and identification numbers assigned to us. During this exercise I was three times called out to meet with visitors. The first visitor was an official from the British High Commission in Nairobi who understood that I was British. On being informed that I wasn't, he gave me his best wishes and left. The next visitor was a woman from the United States Embassy who was under the impression that I was a citizen of the U.S. The third visitor was an official from the Canadian High Commission in Nairobi who took down various particulars. He told me that the news of my arrest had been picked up by the Canadian Broadcasting Corporation and that it would be advisable for the Department of External Affairs to notify my mother in Toronto of the situation, rather than have her hear about it through the press or on radio or television. I gave my permission for this and returned to being processed. As this was finishing, I was informed that I was to be moved to a different cell block away from the students. I was told that this was for security reasons. Since, as far as I could determine, I was the only lecturer who had been arrested at the University, I assumed that there was a theory circulating that I was in some way responsible for the riots and that I was being segregated from the students in order to prevent my stirring up further trouble.

After eating lunch with the students I was taken to E Block, the prison punishment block. Here I was placed alone in a cell. The interior of the cell was about 10 feet square with walls 12 feet high. There was a barred grate near the ceiling on one side of the cell and at the entrance to the cell a steel door with a slit in it about 3 feet long and 2 inches wide. The only furnishings in the cell were my two blankets and a plastic chamber pot.

The conduct of the prison guards towards us generally, and towards me in particular, was in striking contrast to that of the police. The police, to use the words of a prison guard, were animals. The prison guards, given the nature of the job they performed, treated me with considerable humanity and consideration. During the morning, when we were being processed, the Prison Commander had addressed us all and answered questions from the students in a most friendly fashion. He also distributed small pocket bibles. During the time I was in prison I became grateful for this as it was the only reading material that I was allowed to have.

It was becoming evident to us from comments of prison officials, and particularly from the remarks of the Prison Commander himself, that there was a strong feeling of revulsion engendered by the conduct of the police, and particularly of the GSU, at the University. The prison officials certainly were not

sympathetic toward what the police had done, and it became clear from various hints that there was a widespread public outcry against the actions of the police. Later that afternoon I was called out of my cell to meet visitors. Prisoners on remand were allowed to see up to three visitors twice a day. One met visitors in a room next to the main prison office. The visitors stood on one side of a thick wire screen and the prisoner on the other side in a cubicle. Normally one could talk to visitors for about 2 or 3 minutes. That afternoon my wife, accompanied by two colleagues from the Faculty of Law at the University, came to see me. They told me that they had retained a leading criminal advocate, Mr. A.R. Kapila, and that Mr. Kapila was planning to institute an appeal on my behalf against the refusal of bail.<sup>10</sup> The appeal was to be heard on Friday, two days hence, by the Acting Chief Justice of Kenya. After being informed of this by my wife and colleagues and also being informed that the international press had picked up the story of my case, I returned to my cell.

When a person is first brought before a court on a criminal charge a disposition of the case is made by a magistrate. At this time the magistrate will either release the accused person on bail or remand him in custody until his trial. Although the law concerning the granting of bail in Kenya is essentially English,<sup>11</sup> the practice is much different. In the normal English procedure an accused person is granted bail, while only in the special case should he be remanded in custody. The practice in Kenya today is quite the reverse. It is most unlikely that a magistrate will actually grant bail to anyone accused of a crime. Accused persons are remanded in custody as a matter of course, often for extremely long periods of time. For example, while I was in remand custody I encountered a number of people who had been kept in remand for periods of three or six months and, in two cases of which I was aware, for one year. In many cases people remain in remand for a period longer than the maximum sentence that could be awarded if they were eventually found guilty. This practice is clearly unlawful. The Criminal Procedure Code<sup>12</sup> prohibits anyone from being remanded in custody for longer than 15 days at one time. This requirement can, of course, be circumvented by bringing an accused person before a court once every 15 days in order to be remanded again ad infinitum. However, the Constitution of Kenya<sup>13</sup> provides that where an accused is not brought to trial within a "reasonable time" he is to be released.<sup>14</sup>

Against the refusal of bail by a magistrate an accused person may appeal to a judge of the High Court. A number of judges of the High Court had been prone to allow such appeals and release accused persons on bail. According to information which I believe to be reliable, this situation was not acceptable to the Attorney General and he made his opposition to the granting of bail very clear to the Chief Justice. The response of the Chief Justice, Sir James Wicks, was to order that all bail appeals would go to him personally to be dealt with in chamber. In my opinion, the purpose of this ruling was to ensure that no mistakes would be made, and that prior to hearing bail appeals, the



Chief Justice could consult with the Attorney General to receive instructions.

The day in prison began at approximately 5:30 a.m. when we were awakened to be counted.<sup>15</sup> We were then allowed out of our cells to empty our chamber pots. At this time it was possible to attempt a perfunctory washing. In an open area surrounded by a wall at the back of E Block were toilets and a single standing tap at which the prisoners in E Block washed. I was not allowed a toothbrush or comb or shaving equipment and it was possible to wash only my hands and face at the tap behind the cell block. During the period that I was in prison I was unable to change my clothes or take a bath. After washing we were lined up and counted again, then ate our first meal, the familiar dish of uji. Sometimes we were allowed to stroll about the area behind the cell block and talk to each other until the time allotted for the meal was finished. All this was utterly dependent on the guard. One guard would require that we eat our uji squatting in rows of five without talking and return immediately to our cells. During the morning meal the regular prisoners, persons who had already been convicted of offences, washed out our cells, and despite the unpleasantness of life in prison the physical surroundings were clean. After returning to our cells, persons who wished to see the doctor or who were required to make an appearance in court that day were taken up to the prison office. The rest simply waited until the next meal, unless one was allowed to see visitors. The advantage of having a visitor was that you were taken out of your cell and allowed to walk up to the main prison office and sit in the sun talking to other prisoners while waiting. During my time in prison I was very fortunate in that I invariably had visitors in both the morning and the afternoon. My wife came to see me at least once a day and other friends and colleagues visited on a regular basis. Prisoners were not allowed to smoke at any time.

At approximately 11:00 o'clock we were herded outside for the second meal of the day. This consisted of a tin dish half-filled with ugali. Ugali is a moist cake made out of corn flour, tasteless but filling. At the midday meal a handful of wet cabbage was scattered on top of the ugali. Again during this meal we were at the mercy of the guard regarding how we ate the meal and whether we were allowed to talk with each other. Usually at this time the remand prisoners were permitted to attempt to wash their clothing. As can be imagined, there are problems involved in seventy people trying to wash their clothing standing in mud around one tap. We were permitted soap. Once a week a small piece of soap and a handful of toilet paper were issued to each prisoner. These were the only amenities with which we were provided. After this meal was finished we again returned to our cells. During the afternoon there was another visiting period. We stayed in our cells till approximately 4:00 o'clock at which time we were taken outside for the evening meal. The evening meal was tin half-filled with ugali with some brown beans spread on top of it. No utensils were provided and meals were eaten with the fingers. After the evening meal we were once again

locked in our cells. At approximately 6 o'clock, if the guard was a decent man, he would permit us out to empty our chamber pots. We were also allowed a drink of water. With a good guard the cell door would be opened and a cup of water would be passed to each prisoner. When there was a more difficult guard, each prisoner would be required to put his mouth up to the slit in the door of the cell and water would be poured through. After our drink we were counted once again and the day was over. The lights in the cells were left on 24 hours a day. Even at night there was a continual parade of persons passing the cell door, looking through the slit to see who was there and sometimes demanding that you stand up to be counted, or simply stopping to pass the time of day.

On Thursday morning an excited guard came to my cell, congratulated me and informed me that the President had ordered the release of all the persons arrested at the University.<sup>16</sup> This was pleasant news, but not totally unexpected. All of us from the University had been hoping that this would happen, as it had been the case that people arrested at previous riots were ultimately freed by order of the President. In fact, it had been rumoured in the city that the President had ordered the arrest of a large group of students so that he could pardon them and thereby give a boost to his waning popularity. After a time, another guard came along, unlocked the cell door, and told me to collect my blankets and head up to the prison office. From the office I was ushered into a courtyard where the students who had been brought from their block were assembled. They were in an extraordinarily good mood and there was a general hubbub of well-wishing. The prison officials were, without exception, also very pleased with the course that events had taken. In the middle of all this my wife came to visit and I was called over to speak to her. She left the prison expecting that I would shortly be coming home. On returning to where the students were being processed for departure I got into line to hand in my blankets and get back my belt, money, and watch. After I had handed in my blankets, but before receiving any of my property, a prison officer called me to one side and told me in an apologetic manner that my name was not on the list of persons to be released. I would therefore have to return to my cell. He was as decent as possible about this and promised that he would telephone my wife to inform her that I was not to be released. He instructed me to pick up another set of blankets. I had noticed that the students had been provided with cocoa-matting to sleep on plus new blankets, and I was able at least to take one of these mats and two new blankets.

Returning to a cell after having been so close to freedom was a discouraging experience. The prison authorities assured me that they would check to see whether the omission of my name from the list of those to be released was intentional. When I was back in my cell, I tried for a few hours to believe that there had been an error and that I would shortly be released. At time passed, however, it became obvious that there had been no mistake. This was confirmed later when two students from the

University were put into the same cell with me. They had been arrested on the afternoon of Tuesday, 27 May, outside the student halls of residence. They were charged with creating a disturbance on Saturday, 24 May, during meetings of Kikuyu students. It was surprising that we three who had been charged with creating a disturbance, an offence carrying a maximum prison term of 6 months, remained in prison, while the students charged with rioting, carrying a maximum sentence of life imprisonment, had been released. My new cell-mates informed me that it was alleged that they had assaulted a policeman. It now began to appear that it was intended to fix the blame for the disturbances at the University on me and these two students. They were thinking very similar thoughts. We spent a worrisome night in the cell together.

The next morning, Friday, was scheduled for my appeal against the refusal of bail. After the morning meal I was taken to the prison office, given back my belt, watch and money, handcuffed, and put into a truck for transportation into Nairobi to the Law Courts. On arrival at the Courts I found my wife, most of my colleagues from the Law Faculty, an official from the Canadian High Commission, a few law students, and my advocate, Mr. Kapila, waiting for me. The official from the Canadian High Commission assured me that it was the view of the High Commission that I was being victimised.<sup>17</sup> Mr. S.B. Rao, Senior State Counsel from the Attorney General's Chambers who was prosecuting my case, was also present. He had suggested to Mr. Kapila that I should plead guilty to the original charge in the hope of getting a fine and being released. He now specifically offered me the choice of pleading guilty in exchange for a fine and told me that if I agreed he would take me before a magistrate immediately and I would be freed upon payment of the fine. I discussed this offer with my lawyer and my wife and my colleagues who were there. I was persuaded that as I was not guilty I should not plead guilty. Mr. Kapila then informed Mr. Rao of my decision and of my intention to go ahead with the appeal. Mr. Rao replied, "Of course, if the appeal is successful, there is no guarantee that he wouldn't be placed directly in preventive detention." If I were placed in preventive detention I would be beyond the reach of the courts and would remain in detention at the discretion of the President of Kenya.<sup>18</sup> This appeared to be an attempt to intimidate me and to subvert the administration of justice. In fact, Mr. Rao's conduct hardened my resolve to continue with the bail appeal.

Accompanied by a police constable, my wife and I were ushered into the Chief Justice's chambers for the hearing of the appeal. Also in the Chief Justice's chambers were Mr. Rao and Mr. Kapila, assisted by the Kenyan colleague who had first represented me. Mr. Kapila delivered an argument in favor of the granting of bail which, in my opinion as a lawyer, was unanswerable. He noted that the offence with which I was charged was a minor one, that I had no criminal record, that the University had been closed by order of the President so that there was little likelihood of any further disturbance taking place, and finally, that all the students involved, who had been charged with a far more serious offence, had been released. He added that I was

willing to deposit my passport with the authorities so I could not leave the country, that I would agree to remain in my flat until my trial was held, and that, if necessary, I would report to the nearest police station as required. He concluded by saying that there were standing outside of the Chief Justice's Chambers at least ten persons, lawyers and academics, who would be willing to act as sureties for me. Mr. Rao replied. He began by noting that the Head of State was involved in this matter, although it will be recalled that the name of the President had been deleted from the charge against me. He mentioned that I was not a citizen of Kenya, although this is not a proper matter to be taken into account by a court when deciding the question of bail.<sup>19</sup> He called me "a serious threat to the security of the state." This was improper in that the state, when opposing bail, is required to provide factual evidence, as opposed to making mere assertions, about the negative effects of granting bail.<sup>20</sup> The main thrust of his argument, however, was that he had been instructed to oppose strongly the granting of bail. When a prosecutor in Kenya says these words he is letting the judge or magistrate involved know that the Attorney General does not wish bail to be granted. This was sufficient to convince Acting Chief Justice Madan.<sup>21</sup> The Acting Chief Justice's oral judgment rejecting my appeal was astounding. It was illogical, it was evasive, and demonstrated that the Chief Justice was intimidated and determined to accommodate himself to the wishes of the Attorney General.

I had hoped at least to be able to have a cigarette during the morning's proceedings. This did not happen, but my wife managed to slip me a few candies which were a welcome change from ugali. After leaving the Chief Justice's chambers I was once again handcuffed and escorted to the cells in the basement of the Law Courts to await transport to the remand prison. Back at the prison I was returned to the E Block and again placed in a cell by myself. By this time the two students with whom I had been sharing a cell had been moved. They were released the next day on the orders of the President. There was nothing to do except wait until the following Tuesday when the hearing was scheduled for my case. The guards in the prison were very much amazed that I was still being held in custody. Considering the matter myself, I was less and less amazed. I was to be made the scapegoat for all the difficulties at the University. Further, my hearing before the Chief Justice had made me increasingly doubtful that there was any possibility of obtaining a fair trial, despite the fact that my English colleague would appear as a witness and would be able to testify that I had not uttered the words in question. A junior from Mr. Kapila's chambers came to visit me on Saturday morning in preparation for the trial. It was his opinion that if the trial proceeded there was a considerable likelihood that I would be convicted and set to prison. Accepting the prosecution's original offer to allow me to plead guilty in return for a fine was being forced upon me as the only course of action.

After this interview I returned to my cell to puzzle over the question of what I should do when my trial took place. However,

I had not yet completely abandoned the hope that through one instrumentality or another I might be released prior to the trial. As I observed the conditions under which convicted prisoners lived I became convinced that almost any alternative was better than being sent to prison in Kenya. Convicted prisoners are dressed in a uniform which consists of a light, collarless, short-sleeved, unbleached cotton shirt worn over a pair of shorts of the same material. They do not wear shoes and their heads are shaved. They are not provided with beds. Their food is the same as that which I had been eating. They appeared to be subjected to continual bullying and harassment by the prison guards. I was appalled and amazed that human beings would be kept under such conditions. I was struck by the fact that these conditions were very clearly part of the colonial policy which attempted to make life in prison as brutal and unpleasant as possible. This approach was based on the theory that "natives" lived such a miserable existence anyway that if there were any comforts or amenities available in prison the natives would rather be in prison than out of it. Prison life had therefore to be made as awful as possible. That an independent African government would maintain such conditions is grotesque, although not surprising to one with any knowledge of the present government of Kenya.

The previous day when I had been at the Law Courts for the hearing of my bail appeal I had asked my advocate if he could arrange for some reading material, clean clothes, toothbrush, comb, and so forth to be brought to me at the prison. His junior brought these articles and handed them over to the prison authorities. I was in fact never permitted to have them. The reason given for denying me the books was that they had to be censored. This meant the laborious exercise of a prison official reading every page of every book. The books, which had been gathered together by my wife, included two or three in French. These, one of which was a dictionary, were flatly refused me by the prison officials who had decided that, since the books were in French, they must be dirty.

As time went by the various visitors who came to see me indicated that there was support developing for me both within Kenya and internationally. What support existed in Kenya was largely the result of my wife's efforts. Following a brief mention of my name in the press on 27 May, there had been no reference to me in the Kanyan news. It was generally assumed that I had been released along with the students. The government was preventing any reporting about me in order to maintain this assumption. Staff members outside the Law Faculty and most students at the University were unaware that I was still in prison. My wife and a number of friends worked very hard to inform people of the true story. This was not an easy task. For example, on the days preceding my trial the Registrar of the High Court refused to give callers the date and time of the hearing. Nonetheless, as it became clear that the government was not going to release me as it had released the students, I realised that it was the intention of the government that my case should actually proceed to trial. I discovered further that the Canadian High

Commissioner had gone to the Attorney General of Kenya to complain to him about the way I was being treated. It seemed to the High Commissioner that the government intended that I should be convicted and imprisoned and that the only way to avoid this would be to plead guilty to the charge against me.

On the morning of Tuesday, 3 June, I was transported with other prisoners to the Law Courts. I would never have believed it possible that so many human beings could be crammed into the small space inside the prison vehicles. We arrived at the Law Courts and were distributed in the various cells according to the court in which we were to appear later that day. I was to appear in Court Number Thirteen, a court held by a District Magistrate grade three, the lowest ranking judicial officer.<sup>22</sup> I was informed that the magistrate who was to try me was a recent appointment to the bench. This fact made me even less optimistic about a fair trial since I felt that a person recently appointed to the bench by the government of Kenya would likely be corrupt.

Eventually I was taken from the cells to the court. There was a considerable crowd outside the court. Almost all my colleagues from the Law Faculty were there plus a number of students. On being taken inside the court to await the beginning of the trial, I was informed by Mr. Kapila that the prosecution, which was being headed by Mr. Rao, planned to add an additional charge to the one already pending against me. This was to be a charge of undermining the authority of a public officer, arising out of the same facts as the original charge, but carrying a maximum sentence of three years imprisonment.<sup>23</sup> At this point there could no longer be any doubt that the government wished to send me to prison, and in fact Mr. Kapila said, "If they proceed to try you on this charge you will go to prison for at least a year." I made up my mind to plead guilty and instructed Mr. Kapila to approach Mr. Rao with such an offer. Mr. Rao would be asked to agree not to add the additional charge and to accept a punishment of a fine in return for a plea of guilty to the original charge. Mr. Kapila said he would do this. Apparently Mr. Rao's initial reaction was an arrogant one in which he expressed the feeling that, as I had already had my chance to plead guilty and had refused this chance, there was no reason to offer me a second chance. However, Mr. Rao agreed to consider the matter.

When the trial began the spectacle in the court was very interesting. In this most junior grade of magistrate's court there were assembled: for the state, Mr. Rao, senior state counsel, assisting him Mr. Rebelo, a state counsel, and a police prosecutor; representing me were Mr. Kapila, the junior from his office, and my Kenyan colleague from the Faculty of Law. All this legal talent was assembled to deal with a charge involving a maximum sentence of six months imprisonment, a charge which normally arises out of barroom brawls. Mr. Rao immediately asked the leave of the court to change the venue of the trial as he wished to add another charge. This was necessary because the

level of punishment available under the charge which he wished to add was sufficient to take the matter beyond the jurisdiction of a District Magistrate grade three. The magistrate consented to this change of venue and the hearing was scheduled to take place downstairs in Court Number One at 11:30 a.m. As we left the courtroom it was indicated to me that Mr. Rao would in fact not add an additional charge, and would accept my guilty plea. He and Mr. Kapila would go to see the magistrate in chambers to conclude this agreement. Both Mr. Kapila and I were a little doubtful because Mr. Rao had a history of renegeing on plea bargains.<sup>24</sup> Mr. Kapila assured me that if he received a specific assurance from the magistrate that I would only be fined this would be sufficient for him and I could then go ahead and plead guilty.

A revealing incident took place outside Court Number One, just before the trial. Mr. Rao was standing in the hallway, pleased with his success, and my wife, who was by now seething with rage and frustration, approached him and very quietly whispered, "Mr. Rao, you are the scum of the earth". At this, Mr. Rao lost his temper and began shouting at my wife and abusing her and, in the hearing of all present, threatening to have her placed in preventive detention. This incident made Mr. Rao's character and professional deportment evident to all the persons who had come to watch the trial.

Mr. Kapila, his junior, and I were allowed to wait during the time before the second hearing commenced in the police charge office in the Law Courts. The police had initially wanted to return me to the cells in the basement, but Mr. Kapila had managed to persuade them otherwise. As the time drew near we went downstairs for the resumed hearing. Many people were assembled in the hall outside the courtroom, among them plain-clothes members of the Kenyan Special Branch. It was in fact only possible for a limited number of spectators to attend the trial. My wife was prevented by the police from entering the courtroom, apparently due to instructions issued by Mr. Rao. Prominent among those allowed inside was the Canadian High Commissioner, who sat in the front row in the court flanked by two officials from the High Commission. These three had also been present upstairs in Court Number Thirteen. Before the trial began approximately 25 accused were led manacled into the dock with me. Some of these prisoners were in a terrible state, one of them soaked with blood from head to foot. This appeared to be a matter that neither the police, then, nor the magistrate, subsequently, found to be of great significance.

The magistrate, again Mr. Abdallah, entered the court and the trial began. The charge was read to me. It had been further amended by the deletion of all the particulars, so that I was simply charged with creating a disturbance at the University of Nairobi on 25 May 1975. I entered a plea of guilty to this charge.<sup>25</sup> Mr. Rao made some remarks on behalf of the state, mentioning the serious state of affairs at the University, my position as a senior lecturer in law, and so on. Mr. Kapila

spoke in reply, noting that I had no criminal record, that the President had released everyone else connected with the unfortunate events at the University, that I was married with two children, and that in any case my contract with the University was coming to an end and I was planning to leave the country shortly. As there are no transcription facilities available in Kenyan courts the magistrate had to take this all down in longhand. When counsel for both sides had finished their submissions he began laboriously to write out a judgment. Throughout this whole process I was wondering whether or not the magistrate would live up to his bargain. He began to deliver his judgment orally and the first part of it seemed to be unremarkable and indeed neutral. He stressed the fact that the court had no way of knowing whether or not I was in any way responsible for, or even connected with, the riots which had taken place at the University. However, half-way through his judgment he said: "The accused is a senior lecturer at the University and has a responsibility to set an example to the students." The magistrate concluded by saying that this was a case in which a fine would be appropriate and awarded me a fine of 1,000.00 Shillings, roughly the equivalent of 150.00 U.S. dollars. I was given two weeks to pay the fine or suffer imprisonment for a period of two months. In a brave gesture, a former Chairman<sup>26</sup> of the Law Society of Kenya, who happened to be present in the court, stood up and agreed to guarantee payment by me. A policeman escorted me to the top floor of the Law Courts, where I paid the fine and received a receipt. I was then free to go.

If the trial had proceeded on the basis of the original charge, what would have been the result? Four police officers were prepared to swear that I had said, "You police you are stupid like your father Kenyatta" to Sergeant Musyoka. Although I had not said these, or any other, words to the police and had another witness to testify to this effect, I have no doubt that a Kenyan magistrate would have accepted the word of the police. I was later informed by a reliable source that Sergeant Musyoka had admitted in private conversation that these words had not been spoken to him and that he had in fact never seen me before I was arrested and brought to the Central Police Station on 27 May. Nonetheless, would the uttering of these words in the circumstances of the case amount to the offence of "creating a disturbance in a manner likely to cause a breach of the peace" under s.95(1)(b) of the Penal Code? Two questions are involved here. First, did such conduct constitute "creating a disturbance", and secondly, if it did, would this disturbance be "likely to cause a breach of the peace"? On the first point, while it is recognised that certain words may in themselves be sufficient to create a disturbance,<sup>27</sup> it has been stated in one East African case<sup>28</sup> that the police should be assumed to be less sensitive to verbal abuse than members of the general public. In any event it is difficult to see how the words I was supposed to have spoken could have caused a breach of the peace since there was already a full-scale riot underway.<sup>29</sup>



I was not ordered to leave Kenya, although I assume that the only reason for this was that it was common knowledge that I had been planning to leave the country within a matter of weeks. I immediately began to try to arrange my affairs and get over the various bureaucratic hurdles necessary in order to leave Kenya. In just over two weeks my family and I left the country. Some of the students assaulted by the GSU were still recovering in hospital.

The obvious question is why all of this should have happened. I will begin to attempt to answer this question by sketching in some general background.

The government of Kenya was at this time experiencing a major crisis in public confidence. Jomo Kenyatta, a major nationalist leader, became the Prime Minister of Kenya in December 1963 and its first President one year later. He was for many years a sanctified figure in Kenya. By mid-1974, however, both he and his government had lost the considerable legitimacy which they enjoyed at independence. Indeed, significant popular animosity and resentment toward the government and toward President Kenyatta had begun to develop. The degree to which the members of the government of Kenya used political power in order to further their private economic ends was notorious. Public power was used in the most flagrant fashion to serve personal gain. President Kenyatta gave the lead. He and the members of his family acquired vast holdings in land and business interests and were determined to permit no opposition to the further growth of their economic power. Corruption had become rampant, extending from the lowest levels to the President himself. Jomo Kenyatta personally set an example in establishing corruption as a part of basic political process in Kenya.<sup>30</sup> Since it devoted its energies almost exclusively to enriching its members, the Kenyan ruling class had done little or nothing since independence to improve the plight of the mass of the Kenyan people. Landlessness, unemployment, lack of access to health services, and lack of access to education continued to be the common condition of the mass of the Kenyan people. Having failed in its responsibilities to its people and having clearly demonstrated its selfishness and rapaciousness, the government of Kenya increasingly found it necessary to rely on crude repression in order to maintain itself in power.<sup>31</sup> Inevitably the government became more and more alienated from the people. The phenomenon represented by the emergence of J.M. Kariuki was indicative of the depth of feelings of opposition and outright hatred felt toward the government by large sections of the Kenyan people. With Kariuki's murder the ruling class forfeited all claims to legitimacy and fell back on dishonesty and brutality as its basic techniques of governing.

The University of Nairobi was in many respects a microcosm of Kenyan society. Its leadership was corrupt, oppressive and incompetent. The Vice-Chancellor, Dr. J.N. Karanja, was arrogant and autocratic, incapable of providing leadership to either staff or students. He had not the slightest interest in the

welfare of the University as an institution. His energies were devoted primarily to the furtherance of his various business interests. Vital matters concerning the running of the University --the inefficient distribution of student bursaries, serious overcrowding in the student halls of residence, abysmal food in the student refectory, chaos in the bookshop, a crippling lack of academic staff in many departments, appalling mismanagement in the library--were all beneath him. When the University reopened in January 1975, after its semi-annual enforced closure, the Vice-Chancellor remarked at a press conference: "I'm doing a splendid job."

The attitude of the University's administration naturally affected the members of its academic staff. Among many local members of staff this seemed to lead to one of two possible courses of action. Either they engaged in the general free-for-all of corruption which surrounded them and devoted themselves to careerism and business pursuits, or they gave up and spent most of the working day drinking in the senior common room. Indeed, the senior common room at the University was probably its most depressing aspect. From 10:00 o'clock in the morning until late at night one could see academics standing or sitting around the bar drinking themselves into a state of paralysis. Many of the expatriate academics regarded the University as a place wherein they could enjoy a pleasant two-year holiday. They may well have been adopting the only sensible approach. This is not to say that there were no serious academics on the staff. But such people, whether local or expatriate, tended to become enervated by the environment in which they were required to operate. The students at the University, largely ambitious and petty-bourgeois in their orientation, were nonetheless disgusted by what they could see around them. They were alienated from the University and especially from its administration. Their alienation often expressed itself violently and by May 1975 students were ready to demonstrate or riot at the slightest provocation.

I began teaching at the University of Nairobi in the Faculty of Law in June 1973 on a two-year local contract. The subjects I taught were Constitutional Law, Administrative Law and Family Law. I was editor of the East African Law Journal. Prior to coming to the University of Nairobi I had taught at the University College, Dar es Salaam from 1967 to 1969 and at the University of Botswana, Lesotho, and Swaziland from 1971 to 1973. During 1970-71 I completed a Master of Laws program at the School of Oriental and African Studies of the University of London, concentrating on various aspects of law in Africa. In my teaching and research I was concerned with developing analyses of legal phenomena and legal institutions which addressed themselves to the problems of underdevelopment in African states. I attempted to develop a historical analysis of law and to fit such analysis into the general framework of Marxist theory. Basically then, my teaching approach was not so much concerned with simply imparting rules of law as with establishing analytical frameworks within which law students could begin to confront underdevelopment. In the academic year 1974-75 my main teaching commitment

was Constitutional Law, a course offered to second and third year LL.B students. Besides attempting to develop a generalized historical analysis of public law and to deal with it in the specific social contexts of contemporary African states, I also tried to be honest about some of the realities of the way African states are governed. More specifically, I was concerned with the extent to which the Constitution of Kenya was observed in the administration of the Kenyan state.<sup>32</sup>

Given this general background, it is now possible to speculate as to the reasons for my arrest. The first possibility, of course, is that the police simply made a mistake in arresting me and as the matter developed the government was unwilling to lose face by admitting its error. I doubt this. I know that after the riots on 26 May the police discussed the question of arresting me with the Vice-Chancellor and other authorities at the University. Further, since the President of Kenya released all the students arrested it would have been no great matter, had there in fact been a mistake, to release me at the same time. A second, more likely, explanation is that the authorities were attempting to find a scapegoat on whom to blame all the University's difficulties. This would have been preferable to accepting that there was anything wrong at the University, or in Kenya generally. It could simply be stated that things were going fine and that the riots and disturbances were the fault of one foreign lecturer and his subversive ideas. The authorities would have been assisted in this by copies of my lecture notes which were being regularly handed over to the police by a student in my Constitutional Law class. Such an argument assumes that students at the University were nothing but intellectual children. This was basically the way the administration of the University and the government of Kenya viewed the students. The authorities did not, in fact, pursue this line of argument after my release. This can be explained by the fact that the day I was released a parliamentary committee which had been inquiring into the murder of J.M. Kariuki tabled a report implicating a number of senior government officials. The government found itself having to deal with matters considerably more serious than me or disturbances at the University. As a third explanation, it is likely that both the government and the University administration were trying to use me as an object lesson for other members of the academic staff. They were using my arrest and imprisonment in order to make it clear to staff members that honesty in the presentation of subject matter and the development of progressive analyses of social reality in Kenya would not be tolerated. It was obviously easier to use an expatriate lecturer in order to create such a lesson. Further, I believe that I had alienated many colleagues by my criticism of what I saw to be their essentially fascist approaches to their particular disciplines. A fourth possible explanation is that the University authorities and the government were simply trying to get rid of me personally. Given the points already noted, this is possible, but it seems unlikely since it was known that I was leaving the University and had a job which I planned to take up in Canada in August of 1975. On balance, my conclusion is that the reasons for my arrest were a combination of the second and third

factors noted. That is, that the authorities wished to find a scapegoat for the troubles at the University at the same time provide an object lesson to other academics.

The experience described in this paper should raise questions about teaching in African universities. In spite of what I have said about it, the University of Nairobi is not, in my experience, fundamentally different from many universities in Africa. There is little tolerance for either objective accuracy or socially-oriented analysis. Despite the tedious mountain of papers and articles calling for "relevant" education in African universities, for a descent from the ivory tower to deal with the real social problems of African states, it can only be my conclusion that efforts to achieve these ends will be suppressed.<sup>33</sup>

FOOTNOTES

<sup>1</sup>University of Nairobi Act, 1970, No. 16 of 1970.

<sup>2</sup>See J.M. Kariuki, Mau Mau Detainee, 2nd ed., Nairobi, 1975.

<sup>3</sup>Constitution of Kenya, Act No. 5 of 1969, s. 72(2).

<sup>4</sup>Juma v. R., [1964] E.A. 107; Mwangi s/o Njeroge v. R. (1954), 21 E.A.C.A. 377; Christie v. Leachinsky, [1947] A.C. 573.

<sup>5</sup>Criminal Procedure Code, Ss. 21(1), 21(2), 24. Beard v. R., [1970] E.A. 448. On criminal procedure see generally Douglas Brown, Criminal Procedure in Uganda and Kenya, 2nd ed., London, 1970.

<sup>6</sup>Contrary to S. 95(1)(b) of the Penal Code, Cap. 63.

<sup>7</sup>In this instance the letter of the law was being observed by bringing me before a court so quickly. See Constitution of Kenya, S. 72(3).

<sup>8</sup>See Penal Code, S. 82. I cannot say for certain that the necessary proclamation was not read, but I did not encounter anyone who witnessed this happening. The courts in Africa have generally been willing to accept an official statement that a particular disturbance amounted to a riot. See Marias v. R. [1959] (II) R. & N. 13, and Hermes v. R. [1961] R. & N. 34.

<sup>9</sup>The cases cited in note 8 indicate that the courts will not be overly concerned with the niceties of police conduct during a riot.

<sup>10</sup>See Criminal Procedure Code, Ss. 123, 131, 132, 357.

<sup>11</sup>See ibid, S. 126 and R. v. Abdullah (1913), 1 E.A.L.R. 166.

<sup>12</sup>Section 205.

<sup>13</sup>Section 72(5).

<sup>14</sup>For a discussion of remand practice in East Africa, see O.K. Rugimbana, "Various Aspects of the Imprisonment System in East Africa," (1966) 2 East African Law Journal 21.

<sup>15</sup>For a useful discussion of prison life in East Africa, see R.E.S. Tanner, "The East African Experience of Imprisonment," in Alan Milner, ed., African Penal Systems, London, 1969.

<sup>16</sup>In exercise of his powers under S. 27 of the Constitution, Jomo Kenyatta is also Chancellor of the University of Nairobi and possesses broad powers concerning its administration. See University of Nairobi Act, S. 8.

<sup>17</sup>I later discovered that the special consideration which I received from the Canadian High Commission was the result of their decision that mine was a political case. In such cases Canadian consular officials are prepared to exert themselves far beyond the rather perfunctory responsibilities involved in what are deemed to be ordinary criminal cases. As my wife is a U.S. citizen she sought the assistance of the U.S. Embassy in Nairobi. This was denied. The U.S. Embassy demonstrated no concern whatsoever with her predicament.

<sup>18</sup>Under the provisions of the Preservation of Public Security Act, Cap. 57. The Kenyan courts have shown themselves unwilling to attempt to control the President's power under this Act. See Ooko v. The Republic (unreported), High Court of Kenya at Nairobi, Civil Case No. 1159 of 1966.

<sup>19</sup>Jaffer v. R., [1973] E.A. 39.

<sup>20</sup>Ibid.

<sup>21</sup>Mr. Justice Madan was acting as Chief Justice while Sir James Wicks was on leave.

<sup>22</sup>See Magistrates Courts Act, 1967, No. 17 of 1967.

<sup>23</sup>See Penal Code, S. 132. A search through the law reports does not reveal a single reported case dealing with this offence. I am personally unaware of any instance where a charge under this section has been laid. I also have no idea what is involved in the offence. While the prosecution is permitted to amend a charge (Criminal Procedure Code, S. 214), this is not to be done arbitrarily or capriciously. The prosecution may not add an additional charge arising out of the same facts as an existing charge where the effect of so doing would be to prejudice the accused in his defence. Ludovico v. R., [1967] E.A. 673.

<sup>24</sup>Plea bargains are not recognised in Kenyan law and, therefore, have no legal status.

<sup>25</sup>It was very likely improper for the magistrate to accept a plea to a charge in this form. Generally speaking a charge is bad unless it contains a statement of the necessary particulars constituting the offence. Criminal Procedure Code, Ss. 134, 137. Mwendwa s/o Mamunde v. R., [1957] E.A. 429; Menzour Ahmed v. R., [1957] E.A. 386; R. v. Himo, [1971] E.A. 351. Other cases suggest, however, that where the charge lacks sufficient particularity this is a "curable irregularity." Mukindia v. R., [1966] E.A. 425; Mwasya v. R., [1967] E.A. 345; Seidi v. R., [1969] E.A. 280; Nzioka v. R., [1973] E.A. 91.

<sup>26</sup>Previously, the head of the Law Society had been styled "President." Recent Kenyan legislation provides, in effect, that term "President" is reserved solely for the President of the Republic. Nothing demonstrates more clearly the monarchical nature of the Kenyan presidency. Statute Law (Miscellaneous Amendments) Act, 1973, Act No. 4 of 1973.

<sup>27</sup>Volter Hopp v. R., [1967] T.H.C.D. n. 91.

<sup>28</sup>R. v Kimanga, [1973] E.A. 42. In this case language insulting to Sheikh Karume, the former President of Zanzibar, was used in the presence of police officers. The person who made these remarks was acquitted on a charge of creating a disturbance.

<sup>29</sup>Although a recent Kenyan case seems to suggest that merely being present at a "riot" is sufficient to support a charge of creating a disturbance. Wainaina v. R., [1973] E.A. 238.

<sup>30</sup>An article in the Globe and Mail (Toronto) of 5 August 1975 politely scratches the surface of official corruption in Kenya. For more detailed information concerning the growth and development of the Kenyan national bourgeoisie, see Colin Leys, Underdevelopment in Kenya, London, 1975.

<sup>31</sup>It is often imagined in the West that Kenya is a functioning liberal-democracy. Leaving aside the important question of whether such a political system is appropriate in Third World states, Kenya is a liberal-democracy only in formal terms. See generally, Y.P. Ghai and J.P.W.B. McAuslan, Public Law and Political Change in Kenya, Nairobi, 1970. For more recent examples of how Kenyatta has destroyed Kenya's constitution, see Robert Martin "Legislatures and Economic Development in Commonwealth Africa", Public Law, forthcoming.

<sup>32</sup>Generally I believe that I was following the approach to law teaching advocated in a report of the International Legal Center, Legal Education in Changing World, Uppsala, 1975. This paper indicates some of the consequences of adopting that approach in the real world. See my review of this report in Melanesian Law Journal, forthcoming.

<sup>33</sup>Events which took place at the University of Zambia in January 1976 and which led to the detention of a number of progressive scholars tend to substantiate this conclusion. For a rather bizarre analysis of this problem, see Kariuki "African Scholars versus Ali Mazrui," (1974) 45 Transition 55. Mazrui himself has made a significant contribution toward mystifying the whole issue. See his "Academic Freedom in Africa: The Dual Tyranny," (1975) 74 African Affairs 393.

## RESUME

Cet article décrit la situation politique générale au Kenya et en particulier le climat social et intellectuel de l'Université de Nairobi. Se concentrant sur les émeutes qui ont eu lieu à l'Université en mai 1975, l'article décrit l'arrestation de l'auteur et sa détention par les autorités nationales, présentant ainsi l'opération du système juridique du Kenya de la perspective d'une de ces victimes. Il suggère des conclusions concernant les caractères de l'état bourgeois du Kenya.