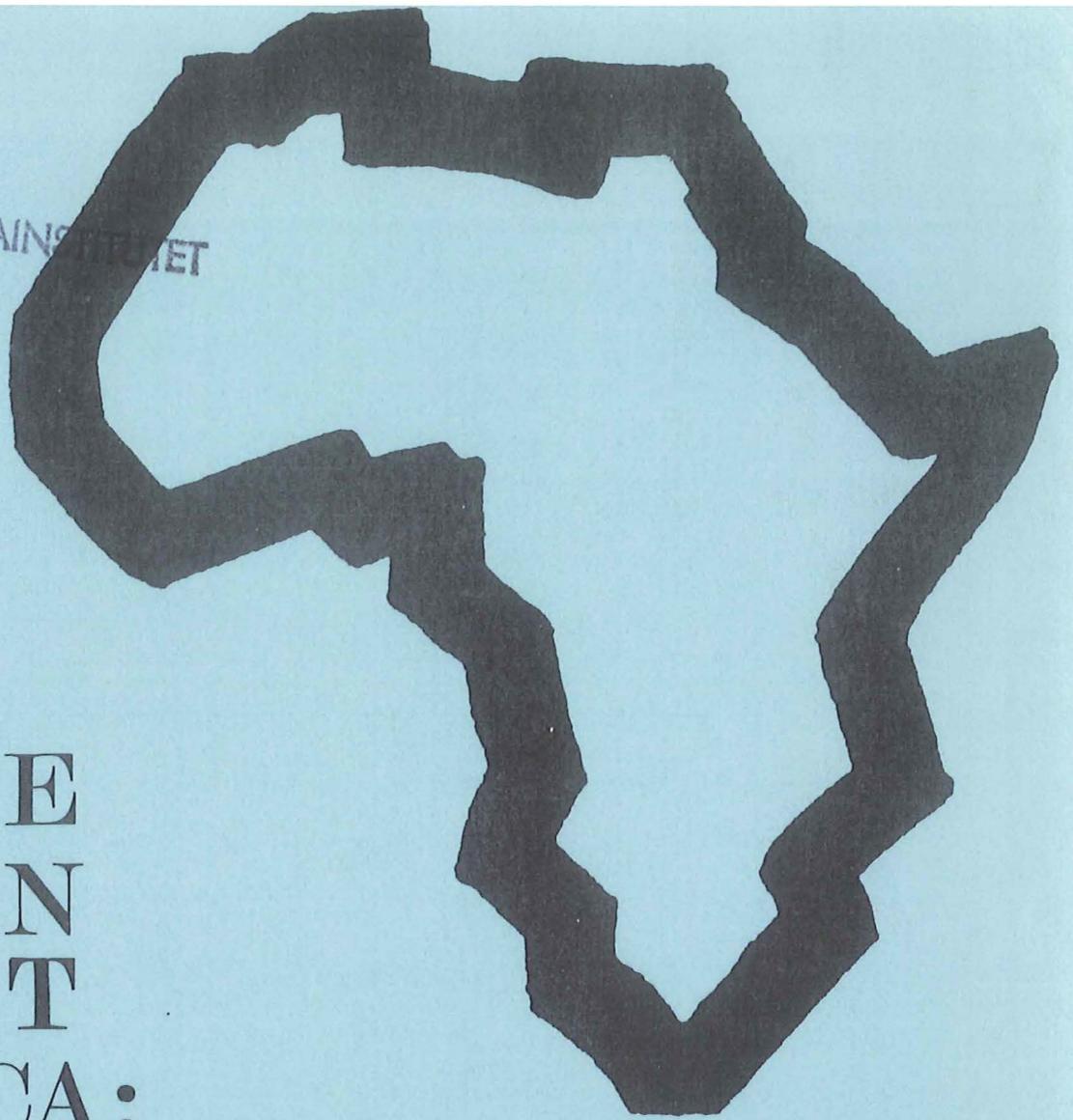


NORDISKA AFRIKAINSTITUTET



CRIME
IN
EAST
AFRICA:

R. E. S. TANNER

THREE STUDIES
IN EAST AFRICAN
CRIMINOLOGY

The Scandinavian Institute of African Studies

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SOME PROBLEMS OF EAST AFRICAN CRIME STATISTICS

THE PROBLEM OF CRIMINAL STATISTICS

Criminal statistics throughout the world are difficult for the sociologist to interpret with any confidence. Leaving aside the possibility of incorrect statistics being deliberately produced by a police force to bolster its own position or to give a particular impression for political purposes, the lack of basic population data and maps prevents accurate comparisons and evaluation.

Kenya, Tanzania and Uganda are such countries although the value of their criminal statistics is enhanced by the fact that all British colonies prior to independence had the same legal and police system in both theory and practice based on British principles. Thus there are no difficulties over the definitions of key words, the burden of proof and the nature of evidence in general and the relationship of the police to the courts.

There are certain basic difficulties connected with crime statistics. Despite a uniformity in procedure in each country each reporting agency will vary in the way it interprets cases, the reliability of such reports and the consistency of their contents. The value of crime statistics decreases as the administrative distance from the crime itself to its procedural solution increases. Such statistics are heavily filled with property offences of which many will be of a relatively minor nature. Variations in rates of crime in different areas may be due to different police procedures and practices and there is little doubt that a high recorded crime rate may be a direct result of police efficiency. In general the police exercise

discretion in what they act or do not act upon which will be the result of their departmental policy and the attitudes of the government and the community.

UNKNOWN CRIME

The principal difficulty in considering crime statistics in East Africa (1) is that they represent a lower proportion of crime than would be the case in the crime statistics of the United States and Western Europe. Since the police cannot plan on the basis of crimes which they suspect may exist there is a tendency to assume that unreported crime is either unimportant or does not exist. Any published crime figures show a highly selected sample of offences reported to the East African central governments' police and, therefore, represent no more than statistics of law enforcement (Sellin 1951:494) and will not represent cases reported to formal tribal authorities and dealt with by local courts except possibly through the judicial returns of such courts listing the numbers and types of cases with which they have dealt and which is not a return of cases reported to the authorities. Similarly these crime statistics will not report cases dealt with by customary law outside these local courts and cases which are not reported to any agency for reasons of distance, modesty, fear and indifference.

The 'dark' figure of unreported crime is likely to be far larger than figures for Europe and America because of the enormous size of these East African states as well as police and legal factors and the preference of most people for criminal offences to be settled by traditional methods in their own environment and according to a procedure which they understand.

(1) East African Crime Statistics have been taken to include from the three countries their published reports for Judiciary, Police and Prisons, internal unpublished reports of serious crime, daily and annual returns of reported crime, and court returns of cases heard and their judgements.

Thus these crime statistics only represent a minority of offences known to the central government police and depend on the following factors.

1. Geography. The convenience of the police station to the injured party is important and there is a hypothetical ratio between the importance of the crime and the distance to the police station which would show in the police figures. Central Government police stations are concentrated in the principal townships and are situated on the main roads. Large areas are without policing in the sense of permanently resident police and there appears to be little regular patrolling outside towns and industrial areas because of staff shortages and problems of cost. A minor theft ten miles from a police station would not be reported but a similar offence at a distance of two hundred yards would. The Uganda police have stated that the immediate consequence of the erection of a new police station is a substantial increase in reported crime. The physical convenience of reporting is of paramount importance as there are no other means of getting information to the police - in the absence of a rural telephone system they cannot be rung up and information by letter except for very serious offences will not receive quick attention. If the police are to control crime in the absence of a national home communication net work they have to be physically present in detachments which these countries cannot afford and which does not have to be the case with European and North American police forces.

2. Ratio of police to people. While the ratio in Kenya and England in 1963 was 645 and 541 respectively, that of Uganda is very much lower at 1220 people per policeman. These ratios are even more extreme when they are considered on a district basis although some allowance must be made for local government police forces who may exercise further social control and whose cases may not be passed to the central government police force. There are some striking differences in district crime rates which may be attributable to cultural and social differences, such as cattle theft amongst the Karamajong who have a culture largely based on the cow, and property offences in Buganda

where the culture is increasingly based on western-type possessions. The presence of the police to whom a report can be made personally may be a more important factor in accounting for these differences. (Table 1) A visit to roundabouts in Nairobi on many week day rush-hours will show police waiting for certain types of offences e.g. going right from the left-hand lane, any traffic constable can fill up his summons book by standing there and his illness or transfer to another beat will mean a reduction in such offences. The limit to criminality in these circumstances is the ability of the courts to handle more than a fixed number of cases in a certain number of working days and how far the police can push this number up without incurring the latent hostility of the judiciary - a serious factor in the smooth hearing of more important cases in the courts. The cases filed in the Mombasa Resident Magistrate's court in 1964 (Table 5) suggested that November and December figures for traffic cases may have been a combination of these factors. November's figures are nearly three times those of the previous month so it would seem that some senior police officer has ordered a campaign for certain offences, and temporarily overloaded the court. Something similar may have occurred in April as prosecutions under the Municipal laws were over double those of the previous month.

The judiciary cannot stop the police bringing cases but they can suggest informally that some reduction in petty cases might be effected. Such a suggestion would result in the transfer of more cases into the jurisdiction of local courts or the informal settlement of cases in the police station without the details being recorded (Goldman 1963:101).

Unless the expansion of the police forces keeps pace with population growth, the ratio of police to people is going to get less and less favourable for the maintenance of law and order.

The results of such a situation are

- (a) a decline in reported crime as in Buganda (Tanner 1965)

where the freezing of police expansion and a population growth of 3.2% per year was resulting in a decline in reported crime. From this the government may have been led to conclude that the police were becoming increasingly efficient in controlling and reducing crime, and therefore economies could be made in the police establishment without danger to peace and good order. In the crime projection for Buganda (Table 2) it was estimated according to the expected population increases that on the 10,800 per year average reported crimes for 1960-64, the police should be prepared to deal with 13,000 reported crimes in 1970 and as against 14,750 crimes if the true crimes figure for 1964 alone is taken. This estimate being made on the unlikely assumption that crime and criminal activity will not go above the existing level of efficiency and frequency.

(b) Another important consideration in examining the police to population ratio is the number of police available on any day for the prevention and detection of crime. If it can be accepted that the police are never likely to be ahead of crime every policeman used outside crime duties represents a reduction in this ratio. State visits, public celebrations, political meetings and presidential tours will all deplete the active police force for several days. The Buganda Emergency in May 1965 onwards necessitated the provision of police guards for ministers without any increase in police establishment.

(c) In another way the geographical distribution of police is very uneven even where the ratio is low as in Kampala. The low density residential areas containing senior civil servants, government ministers, ambassadors and ex-patriate managers and specialists is relatively well provided with police and telephones, while high density areas may be correspondingly understaffed.

(d) Another factor to be considered in the police to population ratio is the adequacy of training combined with experience. East African police forces in the period discussed have been undergoing considerable changes through the retirement of expatriate officials and the promotion of their subordinates.

Whilst in no way suggesting that these officers are not competent, a police force when not concerned with para-military work, is a technical organisation which requires overall competence and the rapid promotion of large numbers of officers may not insure this without a relatively lengthy period of adjustment. Thus the numbers of police available may be no indication of their ability to solve and prevent crimes and the result of any shortage of men and experience is likely to be the concentration of the better police in the capital cities and important commercial areas such as the Mwadui diamond mine.

3. Acceptability of the legal system. Citizens do not often report crimes in East Africa because of a western conception of duty to the state. Here the state is too new as a political entity or too old a traditionally alien body to supply the motivation for anything more than a minority of crimes reported. A crime such as murder may be reported to evade responsibility by a local authority or to enlist the police in the recovery of stolen property but perhaps not if the aggrieved persons want satisfaction against the criminal (Tanner 1965 b). The English judicial system is too long-drawn out to inspire the aggrieved citizen with any feeling that his wrongs are being set right. It has been remarked that in Pakistan and India the law of the police and courts is not the law of the people (Hoebel 1965:45 and Cohn 1965:104-108) and the situation is the same in East Africa. In fact in East Africa there is a judicial system on which nationalism and independence has made virtually no impression as regards court procedure and it is this rather than the nature of the law itself which partly alienates or discourages people from fully supporting the police; whatever the rights and wrongs of the matter to the average citizen criminal law is still largely carried on in a foreign language under rigidly codified laws according to an alien code of criminal procedure and resulting in punitive rather than compensatory sanctions.

They do not believe in the jural postulates of the central government courts that all are equal under the law, relations by contract rather than by status, the case to be settled by itself without regard to ancillary factors and the necessity of clear

cut decisions. As opposed to India and Pakistan, East Africans faced with European judges and magistrates and served largely by Asian lawyers, have not attempted to embrace the statutory law system. Law students in the University of East Africa tend to be openly contemptuous of customary law as a system having any usefulness for the modern African state, so that there appears to be a continuing gulf between the governing and legal elite and the people themselves.

Perhaps the average litigant would have gone along with the English based legal system if only compensatory rather than punitive sanctions had been allowed. The absence of compensation as the primary theme of criminal justice has alienated the majority of East Africans from considering the courts as a source of justice. A criminal remarks on capital punishment that "it seems that by killing a murderer, government is making the murderer suffer for the murder. But for me if my son has been murdered, there is nothing, neither government nor the murderer pays me anything".

This need for compensation rather than impersonal punishment exists from this level of the murder down to the smallest of Penal Code offences which results in the courts often being used when there is no chance of private settlement or in circumstances which permit the court case and its judgement to be used to harass an opponent towards an ultimate settlement outside the court.

This viewpoint is forced on the researcher because of the restricted nature of these crime statistics which represent only offences which are recorded by the police. Besides the police stations in every country there are large numbers of local court houses with lock-ups and administrative officers of all grades from the Assistant Divisional Executive Officer in Tanzania to the District Commissioner in Kenya who act roughly as police officers and have specific police powers. Also in all areas the local branch of the political party acts in effect as a branch of the police from time to time. So these agencies may pass on the news of offences and the offenders themselves to the police.

It is not only that procedure, evidence and punishment differ between customary and codified law. Primary and local court cases may not appear in crime statistics and even if they do there is still no clear division between customary and codified law, and between tribal and local authorities. Customary law is exercised by primary courts as well as by political officials and administrative officers particularly as regards to conciliation. A form of customary law is now codified in Tanzania which may or may not be followed by Primary Courts and District Magistrates. The point must remain that crime statistics are deficient because they remain very largely those cases reported to or discovered by the police force of the central government.

POLICE AND COURT STATISTICS

There is a tendency to seek statistics which are as accurate as possible and for this end court statistics tend to have greater validity since there are findings of guilty or not-guilty related to sections of law and its interpretations which tend to be as exact as trained lawyers can make them. This classification of greater validity may well exclude from the statistics crime in which police opinion is convinced that they know the criminal but cannot make the evidence stick. Each case coming to court has a clearly defined charge and decision but such cases only represent a minority of cases reported to the police (Table 6). The Uganda police in 1963 were able to prosecute in 33% of Penal Code cases reported to them and this includes cases in which the accused has been found not guilty and discharged. The same minority of judicially proved cases shows in the Mbale Police district of figures for 1964 (Table 3) in which 52% of the 178 cases heard by the central and 53% of the 149 cases heard by the local courts resulted in convictions.

A further difficulty is that the cases coming to court are a sample self-selected by the nature of the crime and the availability of the necessary evidence. The police in Uganda attribute much of the high rate of murder (Table 1) to drink and seek greater control over brewing and selling; to a certain

extent they are right as convictions show a very high proportion of homicides and attempts to be due to quarrels at beer parties or after drinking (Table 7) but cases involving drinks may well be the easiest to detect, arrest and gain a conviction.

Another difficulty to be expected is the problem of reconciling the statistics of different government departments and a case is recorded showing different figures in Kenya for persons condemned to death by the courts and received into prison (Read 1966).

An additional source of crime statistics are the central government courts monthly returns of all cases registered, pending and heard with the accused's name, age, alleged offence and the court's decision. From these details it is possible to find the proportions prosecuted on any type of charge and found guilty and the range of sentences related to the place and time of prosecution and to a particular magistrate. A study of traffic cases in Mombasa for 1960 and 1964 show that prosecutions of Asians have doubled whilst those of Africans have increased by one third and Europeans halved; during the same period motor vehicle registrations by Asians had not shown any substantial increase whilst African and European ownership was just about related to their proportional prosecutions. In 1960 Asians and Africans were fined a mean of 29 shillings and Europeans 23 shillings whilst in 1964 the mean for Asians had risen to 35 shillings, that for Europeans to 46 shillings whilst for Africans it had declined to 19 shillings; these conclusions would suggest that there are some long-standing biases in the administration of traffic justice which existed before independence and have continued afterwards.

The main difficulty in this type of analysis is that the existing laws are modified by amendments and the extent of legislation is constantly increasing so that more laws have been amended or passed in East Africa in the few years of independence than during the colonial period. Since this means that numbers of new offences have been created it increases the possibility of being prosecuted in general as well as making

selective prosecutions for political and other purposes more likely.

The language in which the crime statistics are compiled is also an important consideration. High Court statistics can be considered more reliable because the language of the court is English in which the Judges are competent even if it is not their mother tongue; the information before the courts is phrased in English although it is almost certain that it will have originated in another language. Its translation into the correct English is often questionable as court interpreters are poorly paid and have slender qualifications in relation to the responsibility of their roles.

It is also not simply a question of translation of evidence or documents into English from one clearly delineated national language. Possibly only in Tanzania can there be a single national language - kiswahili - which has been in use for half a century, but even there evidence may well have been collected in one language and translated through kiswahili into English by policemen who similarly have learnt English as the last of a series of languages taught to them as they moved from home and up through primary to secondary schooling. Kenya has kiswahili in only limited use in certain areas and its extension to other areas would be strenuously resisted. In Uganda the language position is even more politically complex and the police may be forced to use English at a much lower level in the force simply because it supplies the only partially acceptable language medium. So whilst High Court statistics may prove reliable within certain limitations, at lower levels of the judicial system and in the police forces generally there will be serious problems resulting from the use of English.

With the almost total Africanisation of the police forces no one at the case level is recording the evidence in his own tongue; this is mentioned not so much in criticism of the standard of English used but in surprise that so much is used correctly by persons who in other countries would not be accepted as competent to do police work in another language.

It is unlikely at present that the police officer concerned has reached more than Cambridge School Certificate English and may indeed not be so high. An example of a report received by the Uganda C.I.D. for a suspected murder case outlines some of the difficulties in such a system for which at the moment the police have no alternative. "At 8.p.m. the deceased fetched food and went to his hut to eat. In about 30 minutes Miryamu was heard by wife of Yowana saying that she was sorry to stay alone with a dead body in the house and went on, Kasonga is dead lying in his hut. Yowana's wife came out and saw Kasonga's hut on fire. Kasonga was burnt to death in the hut. Circumstances of his death suspicious".

It has already been noted (Beattie 1960:49) that the greater number of reporting agencies the greater the variations possible in interpretation of a crime and its allocation to a particular section of the law; the allocation of offences under the sections for grievous harm, common assault, aggravated assault and attempted murder is particularly difficult. There will thus be variations between provinces and between police stations and police officers within a particular province. The possibility of variations are large when the languages of those concerned may not be within the Bantu, Nilotic, or Nilo-Hamitic linguistic groups.

The Mbale police district returns for 1961 and 1964 show differences in totals which must be partially accounted for by inconsistencies in recording procedures. The total crimes against the person have doubled with common assault matching this increase whilst aggravated assaults have remained the same, attempted murder increased seven times, and grievous harm declined by a third. These Mbale district police returns (Table 3) were taken entirely at random and the differences between the years and their possible explanations were discussed at a seminar on police statistics held at the Uganda Police College. Apart from the problem of an inadequate knowledge of English, the reliability of reports must vary according to the ability of the writer and whether he went to the scene of the crime or is relaying a report. The pressure of work, experience of police

work and other factors must all contribute to such inconsistencies.

There are mistakes of fact, misconceptions of instructions and carelessness. Some examples of these can be found in the same Mbale police district returns. They show that no cases at all were awaiting trial at the end of 1961 other than 4 murder cases in the central government courts and none at all for lower courts at the end of 1964, a clearly impossible situation.

It has also been suggested that the value of crime statistics decreases as the distance from the crime itself in terms of procedure increases (Beattie 1955:178). With murder as an example, the event to conviction in time will often take six months involving police at station, district and headquarter levels, the law officers, lawyers, a preliminary hearing before a magistrate and the actual trial in the transformation of a social event to a legal fact; different localities, different languages and different people examining, questioning, expanding and reducing the details of the actual event.

Consistency is even more difficult to obtain because of police transfers even if it were possible to issue and obtain adherence to uniform instructions. It is doubtful whether in recent times any police station in East Africa has had the same reporting officer for serious crimes over a two year period. An example of such inconsistencies were shown in the same Mbale statistics when 1961 had 24 frivolous, vexations or false complaints with only two for 1964, both connected with murder cases.

This would suggest that frivolous cases in 1964 were settled informally and the parties sent away without record being made in the police station occurrence books. Similarly the drop in grievous harm and aggravated assaults in 1964 whilst there has been an enormous increase in common assaults from 270 to 680 suggests that the recording officers have taken the easier charge whenever possible. This course of action may have been necessitated by the absence of qualified doctors who would have been able to give the specialist evidence necessary for even

attempting a conviction. Similarly the increase in manslaughter and murder brought before the courts in 1964 in comparison to 1960 may have been due not to a simple increase in these offences but to the presence at Mbale of special police staff equipped for and required to investigate just these types of cases which were beyond the ability of the ordinary police force there to complete satisfactorily.

Another major difficulty facing the East African police is the absence of maps in some areas or the reluctance to use them when available for recording the location of crime. It is not disputed that the police concerned know where the crime was committed but the records must record this location not only in terms of political boundaries but where within any political area. The location of crime on political boundaries between chiefdoms, sub-chiefdoms and districts has already been noted (Tanner 1966). The importance of geography in crime can be shown in the reported murder rates for Buganda in 1964 (Table 4) which vary between 2.7 in Kyaddondo to 194.9 in Buruli counties. Since some of these rates appear to be low in comparison to Indian (Elwin 1943) and Ceylonese figures (Strauss 1953) and some high in comparison to figures for American Negroes (Wolfgang 1958) and most East African tribes (Bohannan 1960) this special and possibly tribal distribution of all serious crimes must be a necessary subject for concern and research.

PROBLEMS OF INTERPRETATION

It is important to realise that police statistics in East Africa are not produced for the scrutiny of an interested public and the analysis of specialist sociologists. Rather they are produced under some bureaucratic compulsion by overworked police officers who are both self-conscious of their inaccuracy and unaware of the real benefits which can accrue from a more complex, accurate and expensive system of statistics. It may also be that they are produced more in defence of their budget allocation than in explanation since comment on any police question is more likely to be criticism than congratulations. It is not surprising

therefore that published police reports are sociologically empty documents and that the police are defensive in relation to deeper enquiries.

It is therefore necessary to treat official statistics with extreme caution not so much to dispute their accuracy since few police officers would suggest that they are accurate, but to regard their manifest inaccuracy as indications of problems rather than statements of exact facts. To regard the wide variations in homicide rates (Table 1) as the beginning of an enquiry rather than its end, particularly as the case details show the total to be made up almost entirely of violent deaths with the almost complete absence of deaths by poisoning. From this it might be possible to conclude that poisoning does not occur but the infrequency of inquests, rapid burial in a hot climate and the lack of facilities for autopsies make it possible that only a minority of murders are investigated.

It is not possible to state whether the high number of reported arson and murder cases in Mbale district in 1963 was due to the presence of the police or to a social trend towards violence, just as the low number of murder cases in Kigezi district may not indicate the reverse. (Yeld 1967). Perhaps we should conclude that the murder rates quoted are very much the minimum probable figures. In terms of the unitary states which are being developed in East Africa it is perhaps a better sign to have high rates of reported crime than to imagine that the absence of reported crime is due to better behaviour of the people and the smooth functioning of the government's law and order policies.

Police statistics can at least be used as a basis for becoming aware of the realities of human behaviour in general and police behaviour in particular; the form in which such an organisation expresses itself relative to its own activities and certainly not as descriptions of the extent of criminally deviant behaviour in the population as a whole.

Crime is too often looked at as un-African, a result of colonialism and the injection of alien values. This is racist

nonsense that can only prevent a proper understanding of social reality - crime cannot be abolished and usually can only be partially controlled. It is a response to particular pressures and the availability of certain types of property which were not part of the simple tribal life of pre-colonial Africa or in Europe for that matter.

In a series of informal enquiries with Makerere university students, none denied that they had stolen and a majority admitted to marihuana smoking. There is no reason to suppose that unknown and unrecorded crime in East Africa is not extremely common and as common as in other studies (Wallerstein 1947:102). In the same area of stereotyped conceptions figures for sex offences - rape, indecent assault, buggery and bestiality may be explained by suggesting that these offences are contrary to African custom and therefore do not occur. If the details of known cases involving women are brought into the argument, there is often a reaction that the offences would not have occurred if the women concerned had conformed to custom and for example not gone alone to collect water or cultivate their fields; further the reaction even among university law students is that these cases should be subject to civil rather than criminal jurisdiction and the women entitled only to compensation for physical or property damage. However the majority of such offences as in the United States and Europe are not reported because of the modesty, fear or disgust of the potential complainant, the shame of both the families concerned and the inability of anyone to comprehend the value of the probable statutory penalties.

Crime statistics show quite clearly that sex offences do occur in African communities which are reported to the police and that their pattern may be comparable to rural communities in other parts of the world where the countryside provides better opportunities for finding victims (Walker 1965:26).

It is also difficult to analyse criminal behaviour or indeed criminal deviance when much of the recorded cases in certain fields may be police instigated. Western police forces do not

have to undertake so many activities in support of revenue collecting which are normally carried out by other agencies. In East Africa in disregard of any possible effects on their public relations, the police often carry out drives in pursuit of the minor petty criminals connected with licenses, tax, transport permits and immigration. Police forces in America and Europe would hesitate to antagonise the public to this extent except under the gravest circumstances related to murder or very serious theft. The campaigns against traffic offenders suggested by the Mombasa case returns for 1964 (Table 5) may be an unusual feature of these statistics.

Finally the primary purpose of crime statistics must be to explain the present in order to be able to assist in the prevention of future crime. To this end an understanding of motive is essential though it is not available in police details of cases and can only be found from reading court judgements. Even in these the details as to motive are likely to be absent in the majority of Penal Code cases and only to be found in murder and attempted murder where premeditation is an essential ingredient to the charge.

The motives attributed by the police (Table 7) for homicide and attempted homicide for 1961 to 1963 are essentially easy explanations of immediate causes - indeed no police force has the specialist staff or the need to attempt to find the real causes of such offences existing as they do in multiple roots of the personalities of all the persons involved. The quarrel at beer parties which claimed 158 deaths or near deaths in 1963 can hardly have been entirely fortuitous (Bohannan 1960:257) just as 147 cases of wife beating or domestic disputes give the circumstances of the offences not the motives.

CONCLUSION

East African crime statistics prepared by the police under difficult circumstances relating to a multiplicity of languages, a supra-tribal government and the expansion of the population

without any corresponding increase in their establishment, are liable to contain more inaccuracies than corresponding statistics in Europe and the United States. There are additional basic difficulties common to all the police forces because of a lack of comparability between offences and reporting agencies.

Table 1

Uganda police/population ratio and reported arson and murder cases

	Ratio/police population 1963	Arson 1963	Murder reported 1963	Murder rate 1963 (less pending false cases) per 100,000 pop.
Kampala	50	13	48	} 15.92
E. Mengo	3,258	} 50	} 280	
W. Mengo	2,637			
Mubende	1,129	115	32	24.11
Masaka	2,386	6	105	12.86
Busoga	1,598	56	112	8.8
Mbale	1,844	159	136	22.96
Tororo	4,353	73	20	1.12
Teso	4,163	162	107	17.85
Toro	2,795	304	52	5.96
Bunyoro	1,972	20	18	9.66
Ankole	5,839	44	40	2.89
Kigezi	7,726	27	31	1.87
Acholi	2,472	49	54	11.67
Lango	3,936	52	23	2.55
W. Nile	5,734	62	16	2.13
Karamoja	653	5	92	33.65
Total	1,220		1,166	10.87
England & Wales	541			
Greater London	454			
Kenya	645			

Crime projection for Buganda and Mubende
 (less greater Kampala), based on true crimes 1960-64.

Table 2

Crimes	Average crimes 1960-64	Estimated true crimes 1970	True crimes 1964	Estimated true crimes 1970
1. Against lawful authority Penal Code 42 to 111	437	524	431	517
2. Injurious to the public Penal Code 112 to 181	108	127	161	193
3. Against the person Penal Code 184 to 243	1,202	1,442	1,703	2,043
4. Against property Penal Code 252 to 321	4,376	5,251	4,462	5,354
5. Misc. Penal Code Crimes Penal Code 326 to 378	58	69	63	75
6. Other laws	4,622	5,546	5,489	6,586
7. Total	10,801	12,959	12,309	14,768

Estimated population 1964 = 2,194,000 x 1.2
 1970 = 2,643,000

Reported offences against person

Mbale Police District, Uganda, 1961 and 1964

	1	2	3	4	5	6	7	8	9
	Total Reported up to 31 Dec.	Pending	Referred to African Courts	Total	Complaint due to Mistake of Law or fact	Frivolous, Vexatious or false complaint	Closed Undetected	Accused dead or Insane	Total
<u>1961</u>									
16. <u>Murder</u>	57	9	-	20	2	-	17	1	28
17. <u>Manslaughter</u>	17	-	-	-	-	-	-	-	17
18. <u>Attempted Murder</u>	2	-	-	2	2	-	-	-	-
19. <u>Attempted Suicide</u>	14	-	-	3	-	1	2	-	11
20. <u>Grievous Harm</u>	51	2	13	5	-	-	5	-	31
21. <u>Common Assault</u>	179	8	140	52	11	15	26	-	79
22. <u>Aggravated Assaults</u>	54		19	13	4	1	8	-	22
23. <u>Other Offences</u>	89		35	28	4	7	16	1	26
Total	563	19	207	123	23	24	74	2	214
<u>1964</u>									
16. <u>Murder</u>	90	9	-	33	-	2	31	-	48
17. <u>Manslaughter</u>	52	-	-	-	-	-	-	-	52
18. <u>Attempted Murder</u>	14	-	-	11	-		11	-	3
19. <u>Attempted Suicide</u>	8	-	1	4	-	-	4	-	3
20. <u>Grievous Harm</u>	33	-	5	6	-	-	6	-	22
21. <u>Common Assault</u>	680	15	377	152	20	-	132	-	136
22. <u>Aggravated Assaults</u>	52	2	22	6	-	-	6	-	22
23. <u>Other Offences</u>	116	5	34	36	6	-	30	-	41
Total	1,045	33	439	248	26	2	220	-	327

Table 3

10	Brought Before Central Courts	28	-	17	-	6	1	-	-	4	-	-	-	-	-	-	-	-
11	Brought Before Lower Courts	17	-	16	-	1	-	-	-	-	-	-	-	-	-	-	-	-
12	Convicted	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
13	Order made Under Section 314(1)b or 318(1)a of the C.P.C.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
14	Acquitted	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
15	Dismissed	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
16	"Nolle Prosequi"	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
17	Awaiting Trial	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
18	Convicted	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
19	Acquitted	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
20	Dismissed	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
21	"Nolle Prosequi"	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
22	Awaiting Trial	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
102		112	80	-	11	7	-	-	4	4	5	-	-	-	103			
8		18	6	-	1	1	-	-	1	1	1	-	-	-	16			
8		14	7	-	1	-	-	-	-	-	1	-	-	-	13			
16		63	10	-	2	4	-	-	3	3	2	-	-	-	58			
15		16	15	-	-	-	-	-	-	-	1	-	-	-	15			
10		1	9	-	-	1	-	-	-	-	-	-	-	-	1			
17		-	-	-	1	-	-	-	-	-	-	-	-	-	-			
28		-	17	-	6	1	-	-	4	-	-	-	-	-	-			
48		-	1	1	7	3	2	34	-	-	-	-	-	-	-			
52		-	52	-	-	-	-	-	-	-	-	-	-	-	-			
3		-	-	3	-	-	-	-	-	-	-	-	-	-	-			
3		-	1	2	-	-	-	-	-	-	-	-	-	-	-			
16		6	13	1	1	-	-	1	1	1	2	3	-	-	-			
24		112	19	2	1	2	-	-	72	4	4	36	-	-	-			
10		12	6	1	-	1	-	2	5	4	4	3	-	-	-			
22		19	11	3	2	5	-	1	1	3	3	15	-	-	-			
178		149	103	13	11	11	2	38	79	13	57	-	-	-	-			

Table 4

Reported murders 1964 in Buganda

County	Estimated population	Reported murders	Rate per 100,000
Kyaddondo	238,651	9	2.7
Busiro	149,495	36	24.1
Singo	176,686	49	27.7
Mawokota	96,438	14	14.5
Butambala	47,139	4	8.48
Gomba	63,114	12	19.01
Busujju	33,650	17	50.5
Kyaggwe	321,679	87	27.04
Buvuma	2,812	0	0
Buruli	27,190	53	194.9
Bulemezi	255,604	56	21.9
Bugerere	102,544	35	34.1
Sese	6,171	0	0
Mawogola	39,093	7	17.9
Kabula	9,654	1	10.3
Koki	33,466	4	11.9
Buddu	426,624	75	17.5
Buwekula	42,077	6	14.2
Bugangazzi	25,821	5	19.3
Buyaga	48,010	8	16.6
Total	2,145,929	478	22.3

Table 5

Resident Magistrate's Criminal Court in Mombasa
No. of Cases filed during 1964

	Traffic	Tr.Tic.	MM Cases	Criminal	Total
Jan.	584	526	229	397	1,736
Feb.	403	317	230	387	1,337
Mar.	456	234	258	327	1,275
Apr.	606	295	597	547	2,045
May	582	415	479	351	1,827
June	539	254	404	406	1,603
July	485	282	494	437	1,698
Aug.	268	563	498	340	1,669
Sept.	663	337	503	325	1,828
Oct.	644	220	407	307	1,578
Nov.	1,732	360	371	296	2,859
Dec.	565	360	281	251	1,457
Total	7,527	4,263	4,752	4,371	20,912

Police District	Population (1959 Census)		Police Establishment			C.I.D. Establishment		
	Number	Density per Sq. Mile	1961	1962	1963	1961	1962	1963
Kampala	46,735		948	899	927	163	156	143
E. Mengo	612,640	120	179	173	188	-	-	49
W. Mengo	725,255	158	268	266	273	-	-	56
Total Mengo	1,337,895	140	467	439	463	-	-	105
Mengo	99,377	37	See W. Mengo		88	-	-	26
Masaka	443,877	117	191	185	186	36	33	40
Busoga	677,410	197	429	424	424	57	57	63
Mbale	366,580	225	188	195	199	36	36	44
Tororo	400,432	254	75	92	92	6	12	13
Teso	457,875	106	111	105	110	-	-	21
Toro	349,354	74	119	125	125	-	14	15
Bunyoro	128,198	27	65	65	65	-	-	-
Ankole	531,135	90	86	91	91	-	-	21
Kigezi	494,488	260	64	64	64	-	-	10
Acholi	206,846	27	113	116	116	-	14	15
Lango	354,311	79	90	90	90	-	-	-
W. Nile	435,756	73	76	76	76	-	-	-
Karamoja	172,397	16	268	268	264	-	-	-
Railway(3) Police	-	-	124	136	134	-	-	-
Total	6,536,531	86	(4) 5270	5247	5357	(5) 571	413	624
England & Wales	(7) 47,023,000	-	-	(8) 87,000	-	-	-	-
Greater London	(7) 8,172,000	11,323	-	(8) 18,000	-	-	-	-
Kenya	6,450,000	29	12,422	12,262	11,873			506

(1) - Bugisu	304,075	dacoity	329
Mbale	13,569	"	1508
Sebei	40,336	"	69
Total	357,980	"	225

(2) - Bukedi only. This district is covered by Mbale and Tororo thus the comparisons are not strictly correct.

(3) - The Railway Police have stations at Kampala, Jinja, Tororo and Gulu, and posts in these districts.

(4) - Totals include all police such as drivers, matrons, radio staff etc., not included in the District figures.

Table 6

Popula- tion per 1 Police- man	Final Code Cases								
	Total Reported			Cleared up by Arrest & Prosecuting			% of True Cases cleared up		
	1961	1962	1963	1961	1962	1963	1961	1962	1963
50	11,985	12,164	10,725	3,346	3,688	2,659	31	33	26
3,258	-	3,539	-	-	999	-	-	30	-
2,637	-	4,091	-	-	1,151	-	-	31	-
2,890	5,510	7,630	6,035	1,429	2,150	2,052	28	30	36
1,129	See W. Mengo		1,230	See W. Mengo		252	-	-	26
2,386	2,493	2,818	2,458	412	565	729	18	20	34
1,598	5,427	5,651	4,357	1,322	1,052	1,342	26	22	33
1,844									
2,637	2,975	3,158	3,771	713	595	962	25	27	26
4,353	1,691	1,645	1,435	393	407	416	26	29	30
4,163	1,844	2,208	2,601	549	769	1,406	33	42	58
2,795	1,856	2,333	3,551	676	595	1,348	40	28	40
1,972	752	1,075	1,051	202	364	285	30	40	28
5,839	1,217	1,478	1,555	426	543	684	38	41	53
7,726	878	978	1,069	292	424	442	37	48	43
2,472	1,537	2,128	2,099	626	1,036	966	43	51	50
3,936	1,331	1,484	1,480	337	553	773	35	39	55
5,734	1,098	1,186	950	456	389	433	46	27	46
653	988	843	1,073	255	243	276	28	30	29
-	522	596	557	140	161	109	30	26	20
(6) 1,220	42,104	47,375	48,007	11,574	15,544	15,134	30	31	33
541	(10) 896,020			(1) 212,539			24		
454	-			-			-		
645	43,570	46,499	45,790	(11) 18,762	(11) 21,557	(11) 20,123	(11) 43	(11) 47	(11) 44

- (5) - Totals include all staff such as HQ and Co personnel, not included in the district figures.
- (6) - Related to all police, including drivers, matrons, radio staff etc.
- (7) - 1963 census
- (8) - 1964 strength figures. Most forces in U.K., particularly the Metropolitan, are under establishment.
- (10) - Indictable offenses
- (11) - Cases resulting in conviction and % of true cases resulting in convictions.

Homicide and attempts: Motives

	Total Cases reported			In course of robbery			In course of cattle theft			Land, cattle or money dispute			Quarrel at beer party or after drinking			Dowry dispute			Tribal dispute or following law dispute			Following an argument - unspecified or feud		
	61	62	63	61	62	63	61	62	63	61	62	63	61	62	63	61	62	63	61	62	63	61	62	63
Kampala	48	41	56	2	-	2	-	-	-	2	-	2	1	4	7	-	-	-	-	-	-	1	1	1
Lugazi	-	-	-	-	-	-	-	-	-	-	1	3	-	9	6	-	-	-	-	-	-	-	1	3
Nagalama	-	-	-	-	-	-	-	-	-	-	4	1	-	5	2	-	-	-	-	-	-	-	1	2
Bombo	-	-	-	-	-	-	-	-	-	-	1	3	-	9	6	-	1	-	-	-	-	-	2	3
Total E. Mengo	-	145	-	6	15	41	-	-	-	-	6	7	-	23	14	-	1	-	-	-	-	-	4	8
Busunju	-	-	-	-	2	-	-	-	-	1	1	-	1	-	4	-	-	-	-	-	-	1	2	-
Mpigi	-	-	-	-	-	-	-	-	-	-	2	-	-	2	8	-	-	-	-	-	-	-	1	1
Mityana	-	-	-	-	-	-	-	-	-	-	3	2	-	4	4	-	1	-	-	1	-	-	3	2
Entebbe	-	-	-	-	-	-	-	-	-	1	-	-	1	-	1	-	-	-	-	-	-	-	-	-
Total W. Mengo	-	155	-	13	13	16	-	-	-	2	5	2	2	6	17	-	1	-	-	1	-	1	6	3
Total Mengo	224	300	352	19	28	57	-	-	-	2	11	9	2	29	31	-	2	-	-	1	-	1	10	11
Mubende			72	1	-	-	-	-	-	-	2	-	1	1	1	-	-	-	-	1	-	-	1	-
Masaka	74	81	120	12	8	18	-	-	-	1	2	2	6	10	10	-	-	-	1	-	1	2	2	2
Busoga	113	157	141	10	18	16	-	-	-	2	2	6	10	16	10	-	1	1	-	-	-	2	5	5
Mbale	76	130	153	8	5	8	8	8	1	4	3	2	9	21	13	4	1	-	2	1	2	1	8	3
Tororo	20	26	29	1	4	3	-	-	-	1	1	2	3	-	4	-	-	-	-	-	-	1	2	1
Teso	79	81	110	3	-	1	9	13	11	1	2	3	10	10	17	1	-	2	-	-	1	6	4	8
Toro	25	30	55	-	1	-	-	-	-	1	-	-	6	14	6	-	-	-	-	-	-	6	3	3
Bunyoro	15	16	18	-	1	-	-	-	-	1	-	-	6	2	3	1	-	-	2	1	-	-	2	2
Ankole	28	40	64	1	1	1	-	-	-	-	1	5	4	11	14	-	-	1	-	-	-	3	1	1
Kigezi	17	15	34	-	-	-	-	-	-	-	1	2	3	4	10	-	-	-	-	-	-	1	2	4
Acholi	30	55	58	1	1	-	-	-	-	1	1	2	5	13	15	1	1	-	1	-	-	6	10	10
Lango	32	34	34	1	-	-	1	1	-	1	3	-	1	6	5	-	-	-	-	-	-	3	2	1
West Nile	20	28	28	-	-	-	-	-	-	-	2	-	4	-	9	1	-	1	-	-	-	2	4	6
Karamoja	106	65	92	1	-	-	85	39	53	-	1	1	-	-	3	-	-	-	11	15	14	1	2	3
Uganda	907	1101	1398	60	67	104	105	68	65	17	32	37	71	141	158	8	5	5	17	20	18	38	59	61

Table 7

Wife beating, jealousy over domestic dispute	After rape	Thief- beating- after arrest, or pursuit by crowd	Thief- beating- by owner in defence or to regain property	Connected with witch- craft	Arising from adultery	Acc'd insane	Political (Lost Counties, Toro disturb.)	Gambling dispute
61 62 63	61 62 63	61 62 63	61 62 63	61 62 63	61 62 63	61 62 63	61 62 63	61 62 63
1 2 9	- 1 -	6 9 8	- - 1	- - -	- 1 -	- 1 1	- - -	- - -
- 8 8	- 1 -	1 3 4	2 - 1	- - -	- - 2	- - 1	- - -	- - -
1 7 2	- - -	3 3 7	- 1 2	- 1 -	- - 1	- - -	- - -	- - -
- 3 5	- - -	- 4 7	- 1 1	- - 2	- - 1	- - -	- - -	- - -
1 18 15	- 1 -	4 10 18	2 2 4	- 1 2	- - 4	- - 1	- - -	- - -
4 - 3	- - -	5 3 2	- 1 -	- - 1	- - -	- - -	- - -	- - -
- 4 4	- - -	- 2 4	- 1 -	- 4 -	- - -	- - -	- - -	- - -
- 2 3	- - 1	- 1 3	2 - 2	- 1 3	- - -	- 1 -	- - -	- - -
1 - -	- - -	- 2 -	- - -	- - -	- - -	- - -	- - -	- - -
5 10 10	- - 1	5 8 9	2 2 2	- 5 4	- - -	- 1 -	- - -	- - -
6 28 25	- 1 1	9 18 27	4 4 6	- 6 6	- - 4	- 1 1	- - -	- - -
- 3 1	- - -	- - -	1 - -	- - 2	- - -	- - -	- 2 57	- - -
11 8 8	- - -	2 3 8	3 1 3	1 - 2	- 1 -	3 1 1	- - -	- - -
22 14 17	1 1 1	2 9 27	3 14 10	1 - -	1 - -	1 1 -	- - -	- - -
9 17 18	- - -	3 14 15	9 17 23	- 2 3	2 - 4	- - -	- - -	1 - -
3 4 2	- - -	- 4 3	- - -	- - -	- - -	- - -	- - -	- - -
19 23 18	- - -	8 4 15	1 4 5	1 1 -	5 3 -	- 2 -	- - -	- 2 -
3 3 3	- - -	- - 3	- 1 1	- - -	- 1 -	- - -	- 3 21	- - -
2 1 1	- - -	- - 2	- - -	- - -	- 1 -	1 2 -	- - -	- - -
7 9 10	- - -	- 2 2	- 1 -	- - -	- 1 -	- 2 1	- - -	- - -
- 4 7	- - -	- - -	- - -	- 1 -	- - -	- - -	- - -	- - -
13 15 14	- 1 -	- - -	- - 1	- - -	- - -	- 2 2	- - -	- - -
6 11 10	- - -	- - -	- - 1	- - -	1 2 2	- - -	- - -	- - -
5 9 1	- - -	- - -	- - -	1 - 1	- - -	1 1 1	- - -	- - -
2 - 3	- - -	- 1 -	2 5 1	- - -	- 1 -	- - -	- - -	- - -
109 151 147	1 3 2	30 65 110	23 45 52	4 10 14	9 11 10	6 13 7	- 5 78	1 2 -

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THE SELECTIVE USE OF LEGAL SYSTEMS IN EAST AFRICA

Research into the legal systems of East Africa tends to assume that there is a relatively clear dichotomy between customary law on one side exemplified by the customary moots of a tribal system varied to include modern developments as might occur in a municipal housing estate, and the statutory law of the three East African states of Kenya, Tanzania and Uganda administered by the judiciary on the other. This assumption may have led observers to conclude that whether one system or another is utilised by the litigants is largely a function of the statutory law defining its own range and that there can be little opportunity for the participants to decide which system would be used.

It is suggested that this dichotomy is largely illusory and that both systems elide into each other and that there are wide variations within each system in which the litigant, suer, respondent, accuser or accused, whether they be private persons or government departments, as well as the hearing magistrates, have in practice considerable latitude in deciding which system and which type of court or moot within a system shall be used to hear the case.

In considering this matter, it is necessary to clearly distinguish what should happen according to the law; for example, that cattle theft is a serious crime which must be dealt with by the statutory courts as in Kenya where such an offence can receive up to 14 years imprisonment. Then what the persons concerned think happens, as when the police state that cattle offences are treated as serious crimes to be reported to headquarters, investigated and then taken to court and what actually happens

when the public reject this legal system and report perhaps ten per cent of all such offences to the police, probably those involving members of other communities, preferring to deal with most offences within their own communities.⁵

Whether an issue should be taken to one system or another depends upon the parties' assessment of a number of factors which include the publicity attached to the case, the chance of the case being successful, the magnitude of the grievance, degree of guilt known to exist, status of the persons involved and the relationship of the parties, the cost of the case and the effects of success.¹

Broadly speaking, there are three legal systems in operation in East Africa. The first, containing the courts of Resident Magistrates or their equivalent at the district or area level and above, up to and including the East African Court of Appeal, in which the presiding Magistrate or Judge has a specific legal training and deals with judicial matters solely in terms of statutory law and the written record; for convenience this may be referred to as the 'paper' system.

The second system involves courts instituted by government which are presided over by magistrates who have had some legal training in government or quasi-government institutions, but who cannot be classified as members of the legal profession. In the colonial period, this included administrative officers who held part-time magisterial posts and who were required to pass certain law examinations set by their government, as well as the local courts conducted by the chiefs and magistrates sitting with local elders on the bench to assist them. After independence, this system included in Tanzania the new grade of district magistrates of local training who have been instituted to replace the previous administrative class magistrate.

This system includes some statutory law as the Uganda law which codifies all customary criminal law, and a large amount of subsidiary legislation relating to taxation, licencing, agriculture, health as well as law and order. This system also deals with

customary law cases involving land, marriage, adultery, inheritance and debt in which the community creates and defines what they consider to be their law. As this type of law does not depend on written definitions or rulings, there are differences in decisions between similar cases within the jurisdiction of a single court. It can be appreciated that a court can operate in the first system for criminal law as in Uganda, and for customary law in the second so that the magistrate will change from a written record for a criminal case to a largely verbal trial and decision in a customary dispute.

These magistrates, operating in parts of two systems and because of a lack of sufficient English, pressure of work and the constant temptation to abbreviate rather than record evidence and reasoning in full, results in this category being referred to as the 'impressionistic' system.

Lastly, there is the system of law process which involves no formal structure and which expands and contracts its legal power within the community according to the importance of the matter in issue. This would include a wide variety of systems from the moot of the Turkana to the heads of families sitting in judgement. Also it would include the neighbourhood and parish elders in town and country, the tribal associations in the cities and the political committees of parties in each country who adjudicate and arbitrate on a wide variety of disputes and whose decisions may well be as binding on the participants as the judgements of statutory law under the 'paper' system. In this category, no records are kept and enforcement of judgement is by consensus and will be referred to as the 'verbal' system.

It is now proposed to examine these three categories for the circumstances in which parties prefer them to be used.

The public accept that the 'paper' system is imposed entirely by governments from ideas not present in their traditional life, and in this very isolation the 'paper' system gives every appearance of success because it deals with a very limited number of cases according to fixed rules of which itself is the

mentor.² Even if they accept that this system deals with "natural" crimes, such as certain types of murder and theft, they infer that the results of this justice do not conform to custom or contribute properly to the continuance of good order in the community. However in some crimes they prefer to use this system because there are no longer any customary methods of settlement acceptable to the public which can be carried out reasonably successfully without government taking action. Murder in itself is not a difficult problem to decide in terms of the evidence according to the 'paper' system, but in customary law, it involves blood responsibility - elders would have to make very serious decisions and live with the results - they are therefore often in a hurry to get the case dealt with by statutory law. Cases of bestiality tend also to be brought to court because any action against an offender taken by a local community would similarly involve them in living with the social consequences of their decisions.

In cases in which the community cannot take the law into its own hands because of the serious view taken of inter-tribal fighting and the long-term problems of revenge, police action is also preferred as a way of avoiding decisions which might well have serious after effects - typically cattle theft which is attributable to another community. In Musoma region of Tanzania in 1959, it was noticeable that cattle theft by the Masai was always reported to the police but that far more frequent and economically damaging thefts within the district and carried out by tribesmen living in that district were rarely reported.

Professional criminals are almost invariably in favour of having their trial before statutory law magistrates and research within the Kenya criminal community did not produce a single complaint against the judicial system. In extended interviews over two years with over a hundred men serving sentences in prison, not one complained that the judicial system was unfair to them. They did not look on the law as an abstract idea trying to provide justice, but as a system to deal with crime and criminals which necessitated that a high proportion must be found

guilty and punished. It was up to them to respond in the best way possible to the system by manipulating it to their own advantage. Even illiterate criminals have a shrewd knowledge of the statutory law and are emphatic that they would prefer to be tried by it, especially when the evidence against them is mainly verbal. More than any other law the Indian Evidence Act used there is seen as the criminals principal defender since in comparison to the range of evidence permitted in the 'impressionistic' courts, it narrowly restricts witnesses on what they can say which the criminals appreciate very much. They also state that the bias inherent in being tried by the 'impressionistic' system in the locality of the crime or where the criminal lives is ruled out. They admit that judges may remember them from previous cases, but that this will never be as bad for their interests as an 'impressionistic' hearing in which everyone present will have formed decided opinions on his guilt before the case has started to be heard.

In the circumstances outlined a criminal might admit to previous convictions so that the police would take a more serious view of his crime and not consider sending it for trial to an 'impressionistic' court. Many of the appeals presented by criminals are based on this assumption that the law itself will find a loophole in the evidence and not that the evidence will be presented in any new way. In a group discussing their own admitted guilt as a stage in their own possible rehabilitation, most had appealed because they appeared to see the 'paper' system as judicial ritual rather than an evaluation of judicial fact, in which chance was an important part since they did not expect to know all the factors involved in a decision. Even within the 'paper' system, the experienced criminal litigant has considerable room for manoeuvre as he is acutely aware of the differences in sentences given by magistrates serving the courts in a particular town. He can get out of a court presided over by a magistrate known to give heavy sentences by declaring that it is not fair that he should be tried there as he has been tried by that magistrate before; he would not have to prove this statement to get his case transferred to another court.

The 'paper' system is almost invariably used in cross-racial situations. Prosecutions against non-Africans for behaviour involving insults to African dignitaries, flags and citizens which elsewhere would be treated as minor misdemeanours, get sent to court for trial. This is not done only because the new nations are rightly sensitive to such behaviour and wish to show that they are masters in their own homes, but because the police are nervous of stating to the complainant that there is no case to answer according to the evidence presented to them. They would rather that the blame was attributed to the judiciary and their decisions publicized in the press, even if the judge makes remarks in court about the lack of evidence produced by the police which did not justify a prosecution. It is also used in the provinces of Uganda with traditional rulers for the cases classified as 'insults to rulers', which are used as a method of social control against other tribes, for example, the prosecutions in Bunyoro and Ankole of persons wearing Kabaka Yekka badges which showed their political allegiance to the Buganda rulers.

In general the police when faced with a case involving politics or important persons would take the case to court with inadequate evidence in the anticipation of a third party making the decision. It would be possible to conclude that the more important the case socially rather than criminally, the less likely the police would be to record on the file that there is no case to answer.

The 'paper' system is used by non-Africans, particularly Indians, when they are likely to obtain from it results that they cannot obtain in normal business relationships. In some cases they see the statutory law as something totally divorced from the political and social reality in which they live - as if it was an institution guaranteeing them police enforcement of legally correct judgements on poor social foundations. A typical example of this would be the estate employer who prosecutes employees for acts which are in fact criminal but which result from poor working conditions; they attempt to use the law to obliquely reinforce sanctions on their employees which have not been successful through industrial relations channels. It could be

concluded that nationals see the legal system in its social context, whereas non-nationals see it as an abstract system having an obligation to give them their legal rights without regard to the social context.

As in general lawyers only function in these courts, any case in which the use of a lawyer is assumed to be profitable would be stated in terms making it come within the compass of their statutory powers. Inflating the subject matter in a civil suit is the most typical example.

There is also a 'potlatch' element in Indian and Arab life in East Africa in which large sums are conspicuously consumed in litigation between members of the same family if not the same community. Mr. Nubar Gulbenkian's suit against his father costing many thousands of pounds in court and lawyer fees was initiated over a dispute concerning the cost of a chicken lunch eaten in the office and debited to expenses, might be considered a very comparable case. Possibly the result of the case was immaterial but the litigants received publicity from the cost and persistence of their litigation which was personally satisfying. By engaging in prolonged and obviously expensive litigation in public, such a person is establishing his social importance by a conspicuous display of wealth. Especially within a family, whether the case is won or lost, both sides are impoverished - they do not expect to win, but to impoverish their opponent. During a study of cousin marriage in Mombasa,³ several cases were found in which an in-bred family had been impoverished by litigation between siblings carried on in the statutory courts. An example of this from present day India stated, "A wealthy Thakur who went to court looked forward to not just one quick case, but to a series of cases, appeals, adjournments and counter appeals through which a poorer competitor could be ruined. Since British procedure and justice appeared capricious to the Indians, someone with a bad case was as prone to go to court as someone with a good case. The standard was not the justice of his case, but his ability to outlast his opponents. It became a mark of pride among the Thakurs to outwit an opponent through the use of the courts and

law, and the prestige of a family was tied to its success as a litigant and its ability to ruin its competitors in court".⁴

Perhaps this category might be extended to include the use of the statutory courts by provincial governments to enforce or decide matters which are essentially political. The Buganda government's suits against the Central government over the legality of referendums, boundaries and taxes, must come within a class of conspicuous expenditure which is largely wasted since the decisions must be political in the last instance and comes from a similar misunderstanding of the socio-political background to the use of a legal system. Their appeal was to an abstract ideal, while the manipulators of that same legal system saw it as a macro-political tool.

Another class of cases involves the use of the 'paper' system to draw attention to a particular matter such as the validity of an insurance claim which would be greatly enhanced by the details appearing in court records.

The category contains cases which are brought to court as a result of information received in which the evidence is circumstantial and is brought to court because of the ease with which a prosecution can be brought and a conviction obtained. Matters starting in private feuds involving the planting of a prohibited article in another's house and informing the police that there is a home-made gun in the grass roof, distilled spirit in the kitchen and marihuana under the bed. The 'impressionistic' courts would accept as evidence that the man was informed against and take into account circumstances which could not be proved or disproved in court, so that such cases would be dismissed.

The 'impressionistic' system is an attempt to have a working compromise between the demands of a developing state to have necessary statutory law and the requirements of most of their inhabitants to have a customary law known to them and within their powers of influence. While the 'paper' system can reach decisions without any reference to or cognisance of social

conditions outside the courtroom, in this system even though the magistrate may be a government appointment, he must take much more cognisance of the neighbourhood in which he is working. He is certainly socially isolated living in a strange locality and probably uncertain of his judicial role because of recent promotion, assisted on the bench by local elders and subject to considerable off-duty direct and indirect pressures short of bribery and although it may not be explicitly required, he may well feel the need to justify the decisions to those members of the community with whom he is in contact.

While he is subject to some extra-judicial pressures, he is divorced in the civil field from any responsibility for enforcing his decisions. While it is the intention of government to canalize as much judicial activity as possible into the courts subject to their control, it is very significant to note the very small proportion of civil cases in which the judgement is enforced by the court. It seems that the cases which come to court and this may well involve both civil and criminal cases, have been initiated outside the court and will ultimately be decided there. The litigants use the courts to obtain a judgement which can then be used as one of the factors legitimising a claim through the 'verbal' system to give it added weight.

Another class of cases are brought to this type of court because the 'verbal' law processes are unavailable or have failed to make a decision which is acceptable to the parties concerned. The figures for cases heard in 1960 in the Mombasa African Tribunal seem to suggest that in an urban setting some communities have a better system of settling their disputes than others. In criminal cases 147 Kamba were prosecuted by 71 persons, of whom 44 were Kamba, but in the case of the 90 Luhya prosecuted during the same period by 26 persons, only 4 were Luhya. In civil suits there were only 86 cases recorded for the year of which 33 were Kamba with 17 of them having Kamba respondents. If the Kamba community had evolved as efficient a system as the Luhya for the settling of their quarrels, these figures would have been different, but the relative distances from their homes may have been a contributory factor.

These courts are also used where the litigants are unrelated, such as the claim of a Kikuyu hairdresser in Kisumu against a Luo trader and where assumptions of political bias might be made by the alien party, or within a community in which they belong to different clans. In towns where there is no tribal association, which is usually used for the arbitration of civil and criminal disputes between the members, as in Mombasa in 1960, when there were only 25 suits involving bride-wealth heard in the local court of which 16 were between local Nyika. They would also be used in towns where there was no common customary law between the litigants. For example when one litigant is matrilineal and the other patrilineal or when there are tribal differences in inheritance rules which can only be resolved by an uncommitted person. These courts are also used where there are no appropriate relatives who can settle a dispute or a difficulty, as in the case of an abandoned woman who sees in the local tribunal her only hope of justice. It seems that along the coast in predominantly Moslem communities women use the 'impressionistic' system to get their Islamic rights through the courts which they would be unable to obtain through their families because of widespread endogamy discouraging 'verbal' litigation. It can also be used when one party to the case no longer accepts a customary law solution as the Kamba wife who refused to be inherited by her husband's brother and used the local court to assert her right to remarry whomsoever she pleased.

The location of the court has considerable influence on the cases which come before it. In many parts of East Africa, courts are few and far between and the litigant has to obtain lodgings near to the court if the case lasts more than a day which is almost inevitable. It can be assumed that the majority of non-urban cases come from within an approximate five mile radius of the court concerned. Also the nearer the litigants live to the court, the more influence can be brought to bear on the magistrate and court elders towards a solution acceptable to the community. Again the courts only sit between fixed hours; the usual office hours laid down by the government and industry so that the courts in the towns are used far more by the

unemployed, self-employed, under-employed and land-owning class than by the wage-earners, who cannot afford to lose wages and reliability status with their employers because of prolonged litigation. Also in these courts there are a limited and identifiable number of officials to be influenced in comparison with the 'paper' courts in which the power-administering officials are usually unapproachable. Similarly in the 'verbal' system it is often impossible to approach individuals privately, or where individuals have no power outside a consensus from a larger group which is more difficult to influence.

This is not a specific accusation that bribery can be used to influence a court decision in a positive way because this is an infrequent and dangerous procedure, but to exercise influence to delay a case so that it is never heard, withdrawn or an ex-parte judgement delivered. In both criminal and civil cases a series of adjournments will influence one of the parties so that if this tactic is prolonged with discretion, the other party will win by attrition and of course such adjournments are relatively easy to obtain. It can be seen from this that the landlord or shop-owner can, if he wishes and the local circumstances surrounding the case make it permissible, sue in court and obtain a high proportion of ex-parte judgements. Distance has the same utility in country courts where an ex-parte judgement can be obtained merely because the respondent lives at a great distance from the court and he balances his loss of time in attending against the possible loss of the case.

In cases where one party sees no possibility of getting a satisfactory solution through the 'verbal' system, he may bring the respondent to court to establish his claim should a more propitious opportunity appear later. Such occasion could be when the trader is about to go bankrupt and the civil servant with a debt about to go on transfer, or when the respondent sees himself in a difficult position in a 'verbal' tribunal and puts in a counter claim in order to strengthen his own case.

Both the police and the public are aware that the 'paper' courts require higher standards in the presentation of evidence, even

apart from their acceptance of the procedure and law involved as being a necessary evil. In Musoma in 1959,⁵ cattle theft cases were brought before the local courts without reporting them to the police because the community, through the members of the court, could exercise social control over a troublesome problem without the difficulties involved in presenting evidence according to statutory requirements. Cases of this nature were often brought to the 'impressionistic' courts when the losses involved made them serious crimes and therefore legally outside their jurisdiction. The defendants were able to appeal to a higher court where there was usually a virtual rehearing of the cases, but sufficient judgements were upheld to justify this local control which was both quick and convenient.

Similarly the police and indeed any prosecuting agency will put their case into the court system most likely to bring success as when a case of grievous bodily harm is brought and there are no expert medical witnesses available so that the charge is altered to 'harm' and the case transferred to an 'impressionistic' tribunal. The police would also tend to transfer to these 'impressionistic' courts cases in which the evidence is marginal, hoping to get a conviction which would not be obtainable in a 'paper' court, or generally for cases of less importance which would not under the day to day circumstances of their work justify the time and expense of producing the evidence in the necessary form.

The criminal himself is also aware of the maximum powers held by the magistrates in 'impressionistic' courts and the advantages which might come to him by pleading guilty there with the agreement of the police and obtaining their useful good will by appearing cooperative, rather than to risk a plea of not guilty in a 'paper' court. The criminal with a long record of previous convictions and aware that the case against him is based on exhibits rather than verbal evidence would try to be heard in these 'impressionistic' courts.

The 'verbal' law processes function almost independently of state authority in circumstances which are more comforting to

the litigants who rationalise that this is utilising their traditions where there in fact may only be an illusion of this.

This system is particularly used where community identity is so strong that the person attempting to go outside it for the settling of a dispute against a fellow-member of the same community would be heavily penalised. The Ismaili community carries within its membership so many social and economic benefits that almost all marriage and business disputes are settled through the local community heads, possibly even including some criminal matters. The case totals for the Mombasa African Tribunal for 1960 show that with only 86 debt cases heard in a year for a trading seaport town with a population of 111,847 Africans, there must have been considerable private settlement of disputes involving business and house occupancy.

Above all in a town keeping business hours and with a high proportion of the population in employment, the 'verbal' system takes on an added popularity, probably equal to its utility in more traditional areas. Disputes can be settled with the minimum of fuss at times convenient to workers - the evenings after work, Sundays and Public Holidays.

This system also has to be used where either party has broken the law or the dispute involves matters which involve connivance between the parties in defiance of the law or a previous agreement with a third party. It is often considered that the only advantage to be obtained from a licence to sell beer is the opportunity it confers to call the police if a fight breaks out, so that disputes and quarrels over unlicensed beer have to be settled informally. The person who hires an unlicensed taxi can only be sued informally if he does not pay. When there is a housing shortage there are often tenancy agreements which prohibit sub-tenants while charging high rents with the result that there are sub-sub-tenants renting pavement trading space from a sub-tenant of the ground-floor shop renting from the tenants of the house and these people can only settle their disputes informally because all their tenancy agreements are illegal. Similarly in some places the government gives housing

allowances but prohibits sub-tenants which are often considered necessary to off-set rises in the cost of living.

Neighbours in housing estates settle their disputes informally and there is considerable use of tribal associations, and local political party committees, probably more than before independence, as government officials tend to send disputes there because of their own overcrowded working hours and their expectation that these informal tribunals have stronger powers and more time to enforce settlements, as well as individuals involved in them who aspire to gain power through settling disputes,⁵ and whose favour these officials wish to curry.

In many places, the 'paper' and 'impressionistic' courts represent an establishment which is unacceptable to many individuals and communities. This may be particularly so when community or family shame is involved as in cases of incest and homosexuality, and all the parties involved negotiate private settlements.

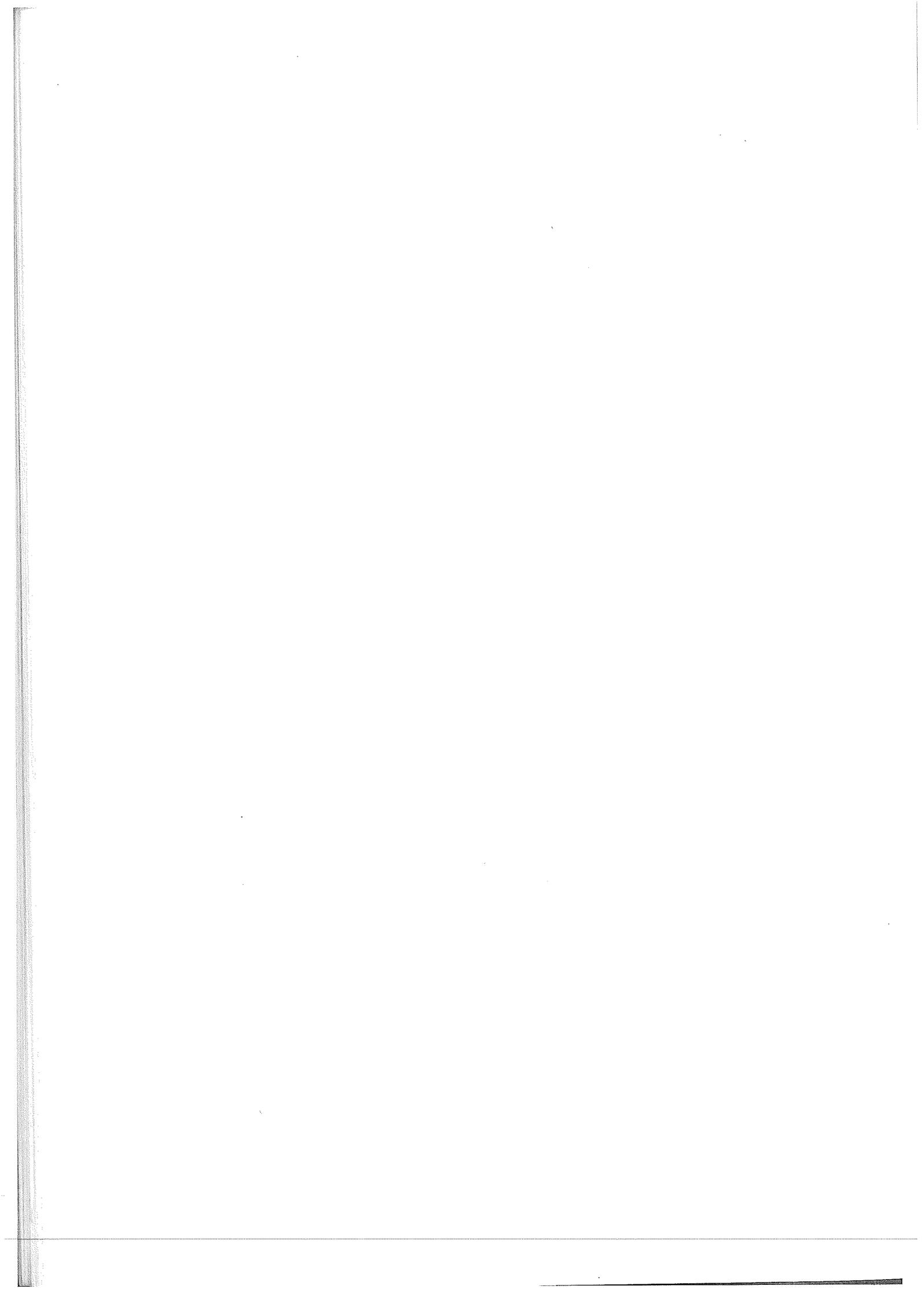
From these examples it can be seen that there is considerable latitude in the ability to use one system instead of another and from this a series of hypotheses can be formulated:

1. The institution or person initiating a case will take it to where it is considered to stand the best chance of success. This evaluation is made in terms of the importance of the case for prestige or property, the relationship and relative importance of the litigants, convenience and existing systems of social control.
2. The issues will be presented in the form most favourable to the initiator in terms of chances of success and convenience - a positive choice will be made.
3. Faced with one or more methods of settlement of equal or unknown utility, the initiator will take the case to the legal system nearest to his own social system - a negative choice will be made.

4. Faced with a series of legal systems, each of which is only part of the total dispute-settling system of the initiator's society, the decision given in any one system will be taken as only one stage in the total process of settlement.
5. The greater the seriousness of the dispute, the more likely it is to be sent for settlement where there is less inter-personal relationship.
6. Agencies accepting a dispute will process it in the form most likely to finish it quickly in terms of the time, work and prestige involved and may pass the matter to another part of the 'paper' or the 'impressionistic' systems, or down to a part of the 'verbal' system.

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RURAL CRIME IN UGANDA — SOME THEORETICAL ISSUES

The economic policies of the independent East African States of which the Republic of Uganda is one, are based on the development of their agricultural and pastoral potentials rather than on the development of industry in and around the principal towns. However, it is in these urban and peri-urban areas that the police are concentrated since it is there that the government is situated, as well as the offices and houses of the principal businesses and diplomatic staffs and the centres of political activity. The government for its own survival and good name has to concentrate on the adequate policing of the area which contain a small minority of the country's population, while tending to pay less attention to the rural areas because of the overall difficulties of paying for a sufficiently large police force rather than any conscious policy orientation.

This paper is a theoretical evaluation of rural crime in Uganda and its effect on agricultural and pastoral life. It is theoretical because there is a conspicuous lack of information on this topic for reasons which will be elaborated.

CAUSES AND CONSEQUENCES OF RURAL CRIME

In considering crime amongst rural agricultural communities a clear distinction must be made between 'natural' and 'induced' crime. In this context 'natural' crime is taken to be the amount of criminal behaviour that can be expected in any community and which will never be eradicated by changes in morality, improved police techniques or social services. These crimes are normally constant in number and have a strong dyadic element in crimes

between the sexes, beer shop quarrels and general community tensions in which such crimes will always occur under such existing conditions that their numbers are never likely to be reduced noticeably by social change or punitive actions. There will always be violent quarrels between men and women, fights after drinking and minorities which excite the hatred and fear of the majority. Society usually keeps such crimes under restraint and there are usually no outbreaks, although there may be peaks related either to temporary oversupply of wealth at harvesting time or to periods of severe deprivation in drought and famine which both raise tensions. Some areas and communities have a long established pattern of violence which may effect the agricultural output of those who choose to work there because these crime rates are more or less constant; for example Uganda police statistics suggest that Mengo has a consistently high rate of homicide and Bunyoro has only one tenth of the Mengo rate with the relationship tending to remain constant.

Induced crime is taken to be deviant behaviour occurring in an area because of some observable social, economic or political changes affecting the population and over which they have no immediate means of control. Crime tends to be assessed in terms of an individual's losses and such losses can be set against another's gain so that theft may involve an agricultural community in little net loss in the short run. Property is being transferred by illegal means; stolen property is sold and the money enters the economy or the stolen livestock can be eaten so that productivity has at least served one of its purposes. However, any community can withstand only a small amount of regular loss; a study of cattle theft in Musoma, Tanzania (Tanner, 1966) showed that an annual loss of 1% of all cattle owned did not cause serious social reactions but 3.1% brought about strong organised retaliation. If this percentage is approximately correct, should crime account for about 5% of existing production, future productivity may well be inhibited so that attractive stealable crops in terms of saleable value, ease of disposal and weight: value ratio will tend not to be produced. Pineapple cultivation has always been in this category since the entire crop is usually stolen as it becomes ripe, and on

the East African coast the deliberate production of coconut palm seedlings in certain areas has collapsed because of wholesale theft so that the extension or replacement of plantations is left to palm seedlings grown in the immediate vicinity of the owner's house.

1. Climate. An agricultural or pastoral community bases its social life on the assumption of reasonable rainfall but geared to surviving the worst years rather than to maximizing the lean ones. If there are floods or droughts the balance of their social life will be distorted and criminal activities may well result. Famine conditions make theft of grain and crops common offences. Some farmers take greater protective measures over their fields in much the same way as the landed gentry in England in the late 18th century may have protected their property after the enclosures, whilst pushing numbers of potential delinquents into the urban and industrialised areas where they cannot buy food even at high prices. The strain of a serious food shortage or famine is so serious that the social consequences will last much longer than the climatic ones and may well result in prolonged delinquency. Such conditions also consume capital which could have been used for agricultural production or for personal emergencies and give rise to social costs through causing the break-up of families and marriages, as the younger men and women leave for the towns abandoning the middle-aged and elderly to their fate. At the best a rural economic depression must result in a rise in social problems of which criminality must be the most likely to attract attention.

Too much rain may also cause crime by destroying standing and stored crops whilst at the same time preventing the sale of the available surplus because of disrupted communications. The 1963 Kenya floods broke both road and train routes to Mombasa leaving up-country producers with unmarketed surpluses of milk, vegetables and flowers whilst at Mombasa, itinerant sellers and distributors were cut off without warning from their only source of income. In the long run, an adverse environment such as that between the Tsavo National Park and the coastal belt of Kenya or Ugogo, Tanzania, where only one harvest in five is estimated

to be plentiful, inhibits effort. This results in an attempt to get a steadier income from cattle theft and poaching which further destabilises those who attempt to earn their living from agriculture.

Amongst pastoralists, a good year invites the envy of others who have not got much good grazing and water, and which often develops into cattle raids from neighbouring communities with whom there has been continuous tension historically. The pastoralist is constantly searching for better grazing and on his travels spots the unguarded or over-plentiful herds of his neighbours. Conversely a shortage of water and grass will result in the community looking on their neighbours as the only possible source for replenishing their stock totals.

It would perhaps be a mistake to think of shortages and delinquency only in terms of the physical needs for survival. Even the most isolated farming or pastoral group is more a social rather than a biological unit and it may be that it is social rather than biological shortages which cause trouble and lead to crime. Rice along the East African coast and cattle among the Masai, Samburu and Karamojong, are not strictly necessary for biological survival but they are certainly necessary for everything which makes life socially important and interesting - feasts, marriage and religious ceremonies. It is the absence of the ability to carry out these social activities which lead the coastal Swahili to theft and the pastoralist to the complicated organisation of a cattle raid. Such raids involve the spying out of the land, the collecting of the participants at a certain time and place so that they can be fed, briefed and the necessary religious preparations carried out, the raid itself and the get-away with a rearguard to keep pursuers back whilst the stolen cattle are sped away and distributed amongst the participants. Raids by hundred or more men are not uncommon and their (illiterate) leaders, have a considerable talent for such complicated work.

The patch-work distribution of wealth should also be remembered. Average rainfall figures from widely separated recording sta-

tions give an entirely unwarranted impression of climatic uniformity. Adjacent areas may have totally different harvests and such minor and isolated events may bring serious consequences. In Usukuma, Tanzania, one adjacent parish may have droughts at planting and sprouting time and the other a thunderstorm at harvesting; the growth of attention to cotton at the expense of food crops or their increasing preference for maize which is relatively drought-sensitive may result in a growth of crime, possibly induced by the 1967 crime wave in Mwanza coinciding with a very poor initial rainy season.

2. Overpopulation. The constant increase in East African population, especially in already crowded areas, will mean the gradual movement of agricultural people into less and less favourable environments. In some cases, a high level of population overflow can be absorbed for a time but it is inevitable that eventually people will have to move from these areas and that overpopulation will be a cause of serious delinquency.

In Ngara, Tanzania, the overflow moves from a hill top existence with two crops per annum and a high population density to the valleys, with a one crop, low density economy, where the cycle of isolation, poor crops, too much vermin, ill-health and famine leads to more movement, accusations of witchcraft and arson. Movement off Kilimanjaro has meant cultivating in lower altitude dry country with the regular possibility of drought and food shortages whilst the social ambitions of the cultivators are cast in terms of high standards of living based on cash incomes from coffee, bananas and vegetables. The movement off the north-western slopes of Meru has meant not only cultivating in a very dry area with highly friable soils but the occupation of land which up to this time has been a component of the local Masai grazing cycle; this has already given rise to continuous inter-tribal tension between the Masai and Meru and its resulting crime.

Before World War II, the population structure, whilst probably beginning to show some increase, was not abnormally distorted. Since that date the number of young people surviving to

adolescence has steadily increased without any equivalent rise in employment opportunities. The maximum number of criminals in Western Europe and North America when analysed by age has always been related to the period immediately after leaving school, around 15 to 17 years for boys. The fully adult criminal has always been a small minority.

In East Africa, the average ages of convicted criminals seems to be unrelated to any probable school leaving age at the moment, and is probably between 22 and 25 years. The numbers of known juvenile delinquents in court cases has been very low in Uganda and Tanzania, so low in fact that it cannot be considered a known problem at all. In Kenya the figures may well be higher when the preventative work of the Nairobi Starehe Boys Centre is considered but it still cannot be parallel to the enormous Western figures. This suspiciously low figure for juvenile delinquency may be accounted for by the low rates in the countryside for both reported and detected crime. Many young men have to wait for their father to die before they can get land for cultivation and even more need to earn money for bride-wealth if they are to marry. There is thus ample opportunity for crimes over money whilst under and unemployment provides the incentive.

The effect of the population bulge, with over half the population under 16 years, and the inability of the East African countries to fulfil the school leavers' expectations of paid employment must mean that many thousands of young people will be forced back involuntarily into an agricultural environment. The situation is more extreme with pastoralists where even the acceptance of primary education makes the child quite unsuited to returning to an essentially non-western pastoral existence. This situation must lead to substantial increases in crime, firstly of a petty nature involving minor thefts and peculations and then gradually increasing to professional criminality as the intelligent but unemployed youth begins to make use of his brains in response to his own and other economic needs. These crimes will involve theft of crops and money, house-breaking, border jumping for smuggling, forgery, drug peddling

and the marketing of stolen property. It may be possible for the older generation to retain a relatively strong grip on the younger generation for a time and restrain them, but the political leaders are not necessarily interested in preserving customs and controls which might lose them the younger generation's support. Tribalism has been attacked and with it some customary control lost but this is related to community elders of the old type. In Uganda the ruling party is not totally dominant and is too insecure to institute new systems of control. In Tanzania where the Tanganyika African National Union is the only political party, the Tanganyika Youth League is encouraged to aid reconciliation and to help the police, and party elders have superseded the old headsmen.

The next decade will see a substantial lowering of the average age of the criminals not only to correspond with the changing structure of the population itself but because with the absence of higher educational opportunities to which the educational and social system has directed the childrens' attentions, and the absence of job opportunities in sufficient numbers for those unable to get this higher education and who consider themselves unable to return to an agricultural life. There will be an equally substantial increase in the amount of crime both in value and occurrence, the increase being greater in the rural than urban areas related to the growth of the population and the probable failure of law and order forces to keep pace with this increase as well as the increasing demand for money and goods which will not be available legitimately in an economy not expanding as fast as the population in the pastoral and agricultural areas. Crime will be widespread also in rural areas if there is economic or political uncertainty and the consequences in these circumstances must be a reduction in agricultural production. The planting of long-term cash crops such as coffee will be halted; few would see any point in planting when years of growth can be slashed down by an enemy. Short-term cash crops will be reduced to the amounts that can be exchanged locally for wanted commodities such as food, salt and tobacco. Even though buying agents may appear at the markets, it might be unwise to draw attention to oneself as receiving

cash and similarly there might be very little in the shops to buy.

3. Political disturbance. Economists have tended to deal with this problem almost entirely in terms of its effect on the non-agricultural sector, especially the overseas investor or capital provider. The agricultural sector, the foundation of the economies of all the East African countries, is very sensitive to such troubles and slow to recover. The failure to obtain finance for a cement plant has long-term consequences but the failure to plant either food or cash crops, is an immediate as well as a long-term problem.

There are many areas in East Africa which have recently, in the post-independence period, suffered serious disturbances such as Toto, Buganda, Karamoja, Marsabit and the refugee reception areas of Ngara, Tanzania and Ankole, Uganda. Similarly there are potential tensions which may cause future trouble, such as the borders of Luo areas of Kenya and the inter-tribal boundaries around Mount Elgon in Uganda.

Under the worst possible conditions of political uncertainty resulting in widespread disorder bordering on civil war, there will be results which go beyond those already suggested for situations leading to widespread rural crime. There will be a movement away from roads which will be used by both the forces of order and disorder, so that these areas become neutralised strips - no one wants their crops to be taken without payment or for themselves to be called upon to work for nothing as porters or labourers clearing or building road-blocks and destroying bridges.

In such a situation migratory labour will not be available so that there might well be a labour surplus in one area and a serious shortage elsewhere with consequent effects on clearing harvesting and wooding; even when the labourers are available the farmer might well be reluctant to give them scarce food in payment or show that he keeps money in the house. The wider aspects of trade will also come to a complete standstill as

buyers refuse to move out into the country for markets and those already in outlying trading centres move into the greater security of the towns. A localised outbreak of violence has always meant an immediate evacuation of Arab and Indian traders and the closing of shops - robberies with violence in Tanzania at Musoma in 1959 and Ngara in 1965 have had this effect; as a result farmers had to travel long distances both for selling and buying. In general there will also be a marked reduction in food production to minimal needs as any production above this will make the cultivation liable to political or criminal impositions.

A noticeable feature of serious disturbances is looting. It is very doubtful whether this is a means of redistributing assets and it is certainly not as effective as theft. Firstly it is non-selective - that which is available is taken and not what the individual wants or thinks he can sell - and secondly it is highly destructive through burning and breaking - possibly the destruction to redistribution ratio is of the order of ten to one.

4. Changes in supply and demand. Economic changes, from whatever cause, are bound to cause fluctuation in criminal activity, which may, indeed respond far more quickly to such opportunities than normal economic responses. It is clear that the rate of theft is related to the quantity of goods available to be stolen; the often repeated statement that theft did not occur in the olden days may have been true because there was little to steal other than livestock rather than that East Africans in the recent historic past were more moral than they are at the present time.

Clearly, at the present time there is more to steal so that the numbers of bicycles available plus the unrequited need for bicycles amongst non-owners is in ratio to the number of thefts. The incentive to better agriculture is the accumulation of property so that more property is available for potential criminals to consider, whilst at the same time the inability of the economy to provide more than a small part of what the people want in property and money to meet their obligations for tax and

education means that more people are tempted to become criminals; this is shown particularly in the rising numbers of thefts by civil servants who have opportunities for corruption and have at the same time rising social obligations which is giving concern to the government. It is noticeable that in Buganda where private property and a monetary economy has very largely replaced traditional procedures there is the highest number of armed robberies reported to the police.

Theft itself is easy and almost any stolen property can be sold on the open market, provided that it is not too conspicuous, without having to resort to professional fences who are usually regarded elsewhere as necessary for thieves. Relatively commonplace property which would not be worth stealing in Europe or America because of the risk of detection and the difficulties of disposal, have a comparatively high value in Uganda. Cheap radios, gramophones, tires of Peugeot and Volkswagen saloon cars, bicycles, tinned foods and box cameras are easily sold.

Large-scale theft and the breaking of marketing laws may be caused by selling restrictions and price fluctuations between adjacent areas within the country or over international borders. Particularly in the latter case there will be no police enquiries so that stolen coffee, for example, will not even have to be re-bagged whilst the receiver's price will be correspondingly higher since he is in little danger.

5. Centralisation and bureaucracy. On various political and economic grounds, marketing has become increasingly centralised under marketing boards and co-operative societies. Whilst the economic grounds for these institutions may be sound, their staffing provides considerable problems as so far there is no parallel system of controlling office-bearers until it is too late. The amount of dishonesty in co-operative societies in Tanzania was one aspect of the movement which had to be investigated by a special Presidential Commission. Whilst it may have been politically necessary to remove Asians from crop marketing, the combination of monopoly buying with a widespread anticipation of corruption, embezzlement and theft in the buying agencies

largely staffed by elected officials, the drive for increased production has been depressed. This depressive influence on the farmer's efforts may also be increased by the general East African over-administration of economic activity. There are detailed rules about almost every economic activity covering brewing, maize, cattle, cotton and cattle marketing, transport and produce licensing. Apart from the possibilities of corruption, it must alienate people from respecting law and order when attempts are made to enforce these regulations. The regulations are so widespread that anyone can be caught on one pretext or another so that they may become the means of implementing personal quarrels or further enforced taxation on minorities. It is not surprising when they are often involved in so much purely nominal criminal activity, that the police cannot get much co-operation for detecting real crime.

ABSENCE OF CRIME STATISTICS

Any enquiry must be related to sociological reality and its theoretical consequences rather than to government statistics of crime and law cases, which cover only a proportion of statutory offences and even fewer numbers of cases involving the breaking of local norms.

If crime in this context can be defined as any act outside an urban or industrial area which is contrary to local norms of behaviour and which may affect rural agriculture, then the basis of this enquiry cannot be existing criminal law and police statistics of offences and offenders.

1. Reporting of crime - convenience of the public. Crime in the rural areas, much more than in the towns and industrial areas, will not be reported to the police unless it is convenient. There is a direct relationship in reporting crime between the distance to the Police Station and the cost of all the alleged crimes in terms of money or prestige. Available crime statistics largely represent offences in the vicinity of Police Stations and a Police Station built in a new area will mean an immediate

rise in reported crime. The low murder rate of 1.87 per 100,000 population in Kigezi in 1963 may well be related more to the absence of police, of whom there were only one per 7,726 people as against one per 645 people in Kenya, rather than to the theoretically peaceful nature of the Kiga people. In addition few persons will go to the police at night, whilst the police themselves may well be very reluctant to leave the Police Station at night after an emergency call. Nevertheless people want Police Stations because of the protection which they bring to the neighbourhood even if they still do not report crime.

2. Sympathetic and useful Police. Crime will also not be reported unless the police are sympathetic and useful. If the police are either more or less totally alienated from the people, as in Buganda as a result of the continuing May 1966 emergency, or in role conflict with the people because their attempts to be their protectors from crime conflict with their role of taking positive action against tax and licence defaulters, few cases will be reported to the police for action except by those whose political norms coincide with those of the central government. In this situation the police suffer from inevitable role conflict since their support of the central government means that they have to act in a politically punitive manner and are seen to be imposing this type of political overlordship and their training and role perception as the protectors of these same people. In many instances the police cannot be useful as their numbers only permit attention to a limited number of serious crimes in the context of firstly more individualised inter-tribal tensions which are made obvious by the police officer concerned being unable to speak the local dialect or speaking in a partially known lingua franca such as Kiswahili or in Luganda, an unpopular language in Uganda from its association with past Buganda supremacy; since the policy of the government is to have a unitary state with as little tribalism as possible, it is often the practice if not the policy to post policeman away from their own areas so that the police may represent not only an imposition but the imposition of policeman from what are considered to be inferior tribes or hereditary enemies: secondly the general difficulties of detection where finger prints cannot be obtained

from houses and household materials which are made of mud, wood, brick and grass and where the constable on the case often can do no more than ask who is suspected.

3. Legal system discourages reporting crime. Crime will also not be reported unless the legal system encourages the hope that malefactors will be punished by the courts. Criminals all over East Africa are usually devoted admirers of the English-based legal system which is currently used in the central government's courts because there are so many more opportunities for being found not-guilty than in the lower courts which carry out customary and statutory law under conditions of customary procedure. They say that in the absence of circumstantial evidence, they prefer the central government's courts as no references can be made to previous character or convictions, and verbal evidence is much easier to refute.

The general public believe that the criminal does get away with far too many offences through the niceties of court-room procedure, and also they find that the courts are not apparently sympathetic to their position as aggrieved citizens; there are difficulties over the giving of evidence when the court rules require non-Bantu customary procedure and the frequent use of an alien language in front of an alien magistrate. There are also high costs of attendance at court, when there may be prolonged delays before giving evidence, involving both loss of time which cannot be retrieved by an agriculturalist at planting or harvesting, and money because he may have to pay for accommodation as well as food during the hearing. The more serious the case, the more distant the court of hearing will be from the site of the crime; even though the Judges of the High Court tour to provincial centres where there are also Resident Magistrates with power to try most cases other than those involving capital punishment, the witness in any case of rural crime will have to sleep away from home which is a worrying experience for both farmers and cattlemen. There are also insuperable difficulties over sentences in court in which the compensatory provisions of a customary law sentence are often ignored. The victim often gets nothing out of the fine or imprisonment sentence and the

result of this dispersonalised revenge may well be a feeling of impotence easily transferred into outbursts of violence such as those responsible for some 325 homicides of suspected thieves in the rural areas of Uganda between 1961 and 1963 in which mobs have acted without any political motive even when the amount stolen has not been large; the police themselves in informal discussions attribute these mob lynchings to their failure to police adequately the rural areas. Many cases will be settled informally by local arbitration and will only be taken to the police where there are advantages to be gained by doing so - inconveniencing an offender or shaming him into leaving the neighbourhood; rape may be compounded locally because of the shame to the families involved. The Westernized punishments for crime such as imprisonment under reasonable conditions do not work very well because much of their force is based on the criminal feeling shame as a result of his family's and society's attitude towards his punishment rather than the crime. However this feeling of ignominy depends heavily on the urban and industrial structure of society for its effectiveness whilst in under-developed East Africa the extended family and its reluctance to reject a member still dominates social structure. Thus the public esteem and support of the criminal can be destroyed if he works away from home but not when a blood relationship exists, which means he can steal from home without much informal control over his activities.

4. Social pressures against reporting. Crime will not be reported unless it is politically convenient and safe to do so. In any area there is a dominant political and tribal flavour and to go against this would be to suffer serious social penalties without any reasonable hope of getting effective police support for the case. In general Ganda do not complain about Nyoro in Bunyoro and vice versa in Buganda as they would have been in those areas for social and economic purposes and quite prepared to accept the dominance of the local tribe; this would mean that they would use informal channels for complaining about crime or attach themselves to local figures who would be able to protect them from the cruder injustices of being an alien in another tribe's land. However as the overall pattern of dominance has

been altered both by the central government's refusal to perpetuate Ganda dominance and rejection of this dominance by non-Ganda tribes, the dominant tribe becomes reluctant to report whilst the alien uses the police to enforce his rights once they are not members of that dominant community; thus police records in Buganda show a significantly higher proportion of complaints by Nyaruanda and Rundi than their numbers would suggest. There are also patterns involving economic dominance which the underprivileged go against at their peril, such as the tenants of large landlords whose usual redress against crimes which they consider to have been done to them, is to move away without complaining.

There are also problems related to political dominance particularly in one party states such as Tanzania or in localities in Uganda which are effectively controlled by one party rather than another. Whilst announcing that corruption must be stamped out, even incipient action against party officials is treated on a higher emotional level as being attacks against essential unity to which the general public which is the party either reacts strongly or remains indifferent since they know that it would be dangerous for them socially and politically to support the charges even if they know them to be true.

DIFFICULTIES OF CRIME CONTROL

Whilst being virtually unnoticed by government agencies responsible for law and order, rural crime is likely to have serious effects on the economy, but it is not easy to see increased police action as an answer to the problem. Even if it were possible to increase police coverage in rural areas to ten times their present strength, it is unlikely that there would be much reduction in criminal activity because of police action.

1. Identification of stolen property. Unless thieves are caught in the act, stolen property is usually so common-place as to be unidentifiable. Just as a milk tin has no identifiable characteristics so agricultural produce cannot be identified except by

related circumstances. Even reasonably well-policed Kampala has an undetected rate of over 80% for housebreaking and burglary cases for this reason, and it appears to be the practice in cases where the stolen property is of little value and unidentifiable to close the case-files as undetected after 24 hours.

2. Exposed nature of the victim. Ugandans do not live in villages and their houses are widely dispersed. They are thus living in circumstances making attacks easy, particularly when the only available light is in the house and a visit outside for calls of nature makes the individual particularly vulnerable. Although neighbours might hear calls for help they would be unlikely to come outside until dawn unless the household contained several men feeling a personal obligation to help a relative rather than a neighbour. At community level there is little or no protection unless some vigilante organisation such as the local youth league has taken up such work in place of the declining power of traditional leaders.

3. Exposed nature of agricultural products. Even more than the house, the fields of grain or plantations of bananas and coffee are completely unprotected after sundown. In a few minutes several years' work can be destroyed by slashing. Unharvested crops or crops stacked for winnowing can easily be burnt. These can be classified as revenge crimes for real or imaginary offences which the owner has committed in the past, or crimes intended to enforce a particular political or tribal dominance. Crime for gain other than the stealing of household property may be centred on livestock, since the whole animal can be moved and it has, therefore, a high risk of theft. The consequences of this potential necessitates the universal kraaling of livestock at night which reduces the productivity of the animal so that instead of the optimum 18 hours grazing per day, it will get between 8 and 12 hours only as well as night and day guarding which puts an additional strain on the small social group, particularly when the prevailing norm of stealing livestock whenever possible is no longer linked to societies functionally constructed to resist and retaliate. This potential may turn

farmers to the advantages of coffee which is difficult to steal without transport and even more to tea which is almost impossible to steal since the leaves have to be picked selectively and processed within hours. This crime as a "developing to cash crop" factor may be only one final precipitating factor in the social, economic and legislative bias against the pastoralist.

4. Exposed nature of housing. The vast majority of houses are made of mud and wattle with flimsy doors; such a construction can never prevent a thief getting in and the isolation of the houses almost everywhere means that he can do so at leisure whenever the occupants are away. Property is stored in wooden or fragile tin boxes fastened with a simple padlock, whilst the burial of money under the bed may be no more secure from a determined and vicious thief who is prepared to torture the occupants for information.

CONCLUSION

The combined effects of weather, overpopulation, political disturbances, changes in supply and demand, and centralisation and bureaucracy taken together with rural isolation and the problem of policing suggests that the existing probable high level of rural crime will rise higher in the immediate future. Whilst this may affect agricultural production, particularly of cash crops and in isolated areas, it is anticipated that there will be no reduction in gross output, but rather that crime may contribute to a reduction in per capita productivity unless its increasing incidence causes communities to institute local protective measures. It is not considered likely that the central governments will be able to control this anticipated increase because of continuing political problems and their inability to finance the cost of a greatly increased police force.

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