TEXT NO. COL.2/09/KEN.6

SECOND WORLD BLACK AND AFRICAN FESTIVAL OF ARTS AND CULTURE

LAGOS, NIGERIA

15 JANUARY - 12 FEBRUARY, 1977

COLLOQUIUM

MAIN THEME: BLACK CIVILIZATION AND EDUCATION

SUB-THEME : BLACK CIVILIZATION AND PHILOSOPHY

PUNISHMENT AND TERRORISM IN AFRICA

by Dr. H. Odera Oruka
University of Nairobi, Kenya

English original

COPYRIGHT RESERVED: Not for publication without written permission from the author or through the International Secretariat.

PUNISHMENT AND TERRORISM IN AFRICA

by Dr. H. Odera Oruka
University of Nairobi
Kenya

INTRODUCTION:

Punishment and terrorism are not the same thing I intend to explain the meaning of each of the two terms and the difference between them. After this I will refer to certain theories, beliefs or practices concerning the nature of punishment in traditional and modern African societies. I will first discuss the practice of punishment as it is employed in the modern-day Africa. In the light of these discussions I believe it will be clear that the indiscriminating acceptance of traditional ways is as dangerous as the wholesale rejection of them: In embracing or rejecting traditions the criteria for doing so should not be based on the exaggerated praise of the traditions or on the blind acceptance of modernity. Rather, they should be based on a philosophy or an ethic (whether traditional, modern or neither) that stipulates and potrays what is genuinely good, dignifying and progressive to those concerned. Penal systems in the traditional and modern Africa contain practices which are dangerous to embrace simply because they are traditional or modern. There are certainly many useful and humane practices in the traditional penal systems in Africa; but their adoption in today's Africa should be

../2..

supported by an argument which is more than just the simple fact that they are "traditional". For if traditionality is to be a sufficient reason for embracing a practice then we must be committed to embrace even the obviously bad and stagnating traditional ways. This would be absurd.

In examining how punishment is employed in modern Africa, it is revealed that much of what is paraded as punishment is in fact not punishment but terrorism than punishment. At the end we propose suggestions for abolishing the conditions that make us terrorize or punish - this entails reducing or abolishing terrorism and punishment as cruel and useless social practices.

I do not overlook the arrogance and oversimplification involved in writing on a topic like "punishment in Africa". Africa is too large and diversified, geographically, socially and ethnically. It is obviously too much for one person to handle effectively a topic that deals with the whole of Africa. The assumption that it is easy for one scholar to handle a topic of this sort has been the pitfall of many scholars. Very often we have been faced with such topics as "African politics", "African law", "African Religions", "African philosophy", "African culture" etc. This love for the adjective African reflects an Africanist attitude that is quite understandable. The attitude is a reaction to the Western myth that Africa as "the dark continent" was devoid of any important elements of culture and civilization.

../3..

The Africanist attitude then is an attempt to confirm or deny this myth depending on the ideology of the scholar reacting. Understandable though this attitude may be, the question whether it does intellectual justice to its topics still remains.

My purpose in this study is not to react to the charge of "the dark continent". I do not intend to confirm or deny that there is such a thing as an "African view of Punishment." I do not doubt however that there is and there has been the practice of punishment in Africa. My purpose will be to discuss from the stand point of analytical and speculative moral philosophy, based on observable facts, the questions concerning the institution of punishment in the various parts of Africa. I will be discussing "punishment in Africa" rather than "African punishment" or "African Penology". But since there are various works dealing with the latter topics, I may have to discuss them so as to know how they affect and are affected by this work.

(i) Punishment and Terrorism Defined

Punishment is a practice that usually involves two parties. One of the parties is the punishing party, the other is the party receiving punishment. The former is usually an authority or supposed to be an authority over the latter. And the latter is usually an offender or believed to be an offender. In rough formulation we can state:

> One party punishes another means that the former inflicts suffering or loss on the latter on the ground that the latter is believed to have broken or allowed the breaking of a rule which it is the former's duty or right to protect.

It is not necessary here to explain in which manner the party receiving punishment did break or allow the breaking of the rule. The rule could have been broken intentionally, by negligence or through ignorance. What is important to note here is the idea that in the process of punishment, the punishing party is convinced, or is simply made (or forced) to believe or else pretends to believe, that the party receiving suffering or loss has broken or allowed the breaking of a rule; and that it is the duty of the punishing party to protect the rule.

However, the rule must be such that it is within a system or an aspect of a system which makes the punishing party an authority over the party receiving punishment. This system can be an established legal system of some state (as is usually the case) or it may be a body of moral rules and precepts that connects the two parties. It is precisely because of this latter sense that we may regard the caning of a child by a parent or a school master as punishment. If, however, it can be proved that there is no law or moral precept that makes one party an authority over the other then, there can be no question of one of them punishing the other.

Whatever form of suffering or loss that one may inflict on the other cannot, rightly, be regarded as punishment. It must be something else e.g. torture, maltreatment but not punishment.

In the use of the term "authority" in this context we allow the possibility that an authority may authorize some other party to act on its behalf. It is by this possibility that the policeman, the judge or the hangman may be recognized as an authority in the process of punishing. The policeman or the hangman derives his authority from the government or court which employs him.

It is the system of law that makes one party an authority over the other that at the same time makes the first party have the legitimacy (right or duty) to protect certain rules and to punish whoever disobeys such rules. A party can be an authority over another with or without the latter's whole consent. Certain people find themselves under governments or laws that they do not approve of. But this does not in itself invalidate the idea that such governments are authorities over such people. Nevertheless, from an ethical point of view, there must always be a minimum moral or ethical consent or attitude which one party should have toward another party in order that the second party can regard the infliction of suffering or loss upon itself by the first party as punishment. This minimum ethical attitude or consent is necessary so that even any reasonable spectator may regard one party's treatment of another as punishment.

Without this minimum ethical consent a party loses its legitimacy and hence its authority to punish the other. This consent is essential for the solidarity and order in every nation or state. It is embodied in the maxim that given an offence there is a certain degree or type of suffering that an authority worth its name would not for instance cut off a man's ear because the man failed to pay his income tax. Such a treatment would not be regarded by the tax defaulter or any reasonable spectator as punishment, but as terrorism or state thuggery. The minimum ethical consent for one party to regard the other as its legitimate authority is itself the instinctive, informal and necessary minimum consent that gives one the conscience to allow certain types of treatments of oneself by another as punishment otherwise they are kinds of torture and a barbaric mishandling of oneself by another.

The meaning of punsihment which we have just explained is one which does not take into account the notions of free will and responsibility. Although it is not the case that every instance of punishment requires the culprit to have been responsible for his offence, the requirement that for one to be punishable one must be proved responsible for an offence is today a necessity in many criminal offences. A person cannot be responsible, it is stipulated, unless the person acts on his free will. We should therefore include the idea of free will in the definition of punishment. Besides, we also need to include in this definiton, the conception that

punishment is expected to act as a deterrent, since it can easily be shown that all the supposed functions of punsihment entail the function of deterrent.

The meaning of punishment that we shall assume throughout the rest of the essay will, therefore, be as follows:

> Punishment means the intentional infliction of suffering or loss on a person by an authority on the ground that the person is believed to have broken or allowed the breaking of a rule that it is the authority's duty to protect and usually, though not always, on the assumption that the person had the freedom to refrain from breaking of the rule; and the infliction is done with the hope that it will serve as a deterrent to a future attempt to break the rule.

This meaning of punishment is different from the retributivist view in three significant respects: It does not pretend that punishment must be for an offence that actually took place. One can be punished for something that is not really an offence. Secondly, unlike retribution, it explicitly speaks of deterrent. And thirdly, it is a meaning of punishment that, unlike the retributivist meaning, can honestly claim to be justified by what usually takes place in the game of punishment - it does not sacrifice reality for the sake of logical soundness.

It also differs from the meaning of punishment that many professional lawyers tend to uphold namely that whatever an authority, or what appears to be an authority, stipulates as "punishment" is punishment regardless of the moral questions involved.. Our stipulation is that an authority has no legitimacy to regard its infliction of suffering or loss on a person as punishment unless the person posses the minimum ethical consent to recognize as an authority. No reasonable person will for example posses the minimum ethical consent to recognize as an authority with the legitimacy to order or decide punishment, one which orders a firing squad to execute a person suspected of stealing a wrist watch.

Terrorism:

The use of term "terrorism" is very common in Africa today. But it is interesting to note that the use of this term is usually the monopoly of the members and friends of the minority white regimes that still exist in the continent. By the term "terrorists" these regimes mean the rebels or the members of th guerrilla movements trying to liberate their people from the white minority rule. However, the regimes themselves would not like the use of such terms as "liberate". From their point of view the terrorists are lawless gangs using threat and violence to force the governments in S.Africa, "Rhodesia", and the "Portuguese African territories" into complete submission and surrender.

In this sense the use of the term "terrorists" is meant to be derogatory. Morally it entails the conception that a terrorist is immoral, inhuman or ruthlessly wicked. This is well understood by the members of the liberation forces themselves and they prefer to regard themselves not as terrorists but as "guerrillas" or "liberation forces."

It is of course true that a terrorist uses threat or violence to force another into complete submission or to annihilate another. But it is very important to conceive that a terrorist need not be lawless. A terrorist can, and many of them do, use law to coerce others to submission or to annihilate others. Adolf Hitler used law to terrorize people; and the minority white regimes in Africa use law to coerce submission on the majority of the people they are ruling. It is important to add that such a law is of course full of threat and violence to those who are to be coerced. When it is made clear that a terrorist can have a law, it becomes sensible that the members of the African liberation forces in Southern Africa should also refer to the supporters of the white minority regimes as terrorists."

The notion of minimum ethical consent can be well illustrated here. The reason why the white minority regimes refer to the liberation forces as terrorists is because they do not at all consider that the liberation forces have any authority or legitimacy to inflict any punishment on the members of the regimes.

And even if the forces had, or claim to have the minimum ethical consent to recognize such an authority or legitimacy. Hence, whatever suffering or loss the forces inflict cannot be punishment but terror.

The argument can and should be reversed: The reason why liberation forces must refer to the supporters of the minority regimes as "terrorists" is because they do not at all consider that the minority regimes have any legitimacy to be authorities that do decide and execute punishment upon them - i.e. the regimes have no legitimacy to rule in Africa and the members of the liberation forces have lost the minimum ethical consent to recognize such regimes as the authorities over them. Hence, whatever suffering or loss the regimes inflict on the members and supporters of the forces must be looked upon not as punishment, but as terror or terrorism.

We are being driven to the position that given the infliction of suffering or loss by one party on another party, terrorism starts where punishment has no legitimacy to be recognized or tolerated as punishment has been stressed or executed beyond a reasonable maximum.

We shall therefore assume the following as our working definition of terrorism:

> Terrorism is the intentional infliction of suffering or loss on one party by another party which has no authority or legitimacy to do so, or which appears to have an authority or legitimacy but has in

fact made the sufferer lose the minimum ethical consent necessary to recognize such an authority or legitimacy.

In other words:

Terrorism is illegitimate infliction of suffering or loss on another or else, it is punishment beyond a reasonable maximum.

(ii) PUNISHMENT IN TRADITIONAL AFRICA:
(Compensation and Retribution)

There are a number of studies which conclude that in traditional African societies the objective in settling offences was compensation or restitution. By this they mean that once an offence had been committed the reaction was not to inflict suffering on the offender but simply to restore aminity or redress the loss. The aim was to compensate the person wronged. And much of the compensation was done without inflicting suffering or loss on the offender himself.

Compensation could take the form of one family or clan of the offender giving some material goods to the wronged or relatives of the wronged. Even serious offences such as murder were solved mostly by compensation and death penalty was inflicted only on the incorrigible and frequent murderers and witches. The argument for this was that such murderers and witches were a danger to the whole community and it was to the interest and safety of the whole community to dispense with them.

Several authorities on penal systems in Africa make a distinction between punishment and compensation and regard the latter as something which in traditional Africa does not involve penal sanctions.[1] This is of course possible; compensation need not involve punishment. However, certain scholars in th West, cherishing retribution, view punishment of the offender as a negation of, and hence a compensation for, the offence done.[2] This idea of compensation differs from the one in traditional Africa. The former is oriented towards redressing the situation by means which must involve punishing the offender, while the latter is oriented towards restituting the loss by means which need not involve punishing the offender. In the West it is mysteriously believed that once the offender has been punished usually by fines (which only go to pay the salaries of the judges and prison warders) or imprisonment, then the balance is restored - compensation is made. The wronged or the offended person usually gets very little or nothing out of the fines. But he is expected to go home satisfied that justice has been done.

In traditional Africa, it is confirmed by several studies, there were no prisons or fines. Prisons and fines are elements that have been introduced into Africa by the colonial penal systems and are therfore foreign imports.[3] Some scholars therefore suggest and recommend that such punitive foreign imports ought to be reduced to a minimum and that their places be occupied by ...

compensation which was the traditonal way of settling offences, and is still the method of settling offences in much of rural Africa.[4)]

It is true that the wholesale introduction of the Western types of the penal systems with their emphasis on such things as fines and imprisonment has done a serious damage to the traditional African form of compensation as a method of settling offences. This damage is further strengthened by distinction the colonial penal system made between criminal and civil offences. The stipulation is that the former are usually against the state while the latter are offences against person(s). The majority of the offences are usually the criminal type. Since the majority of the offences are considered offences against the state one easily understands why most of the fines are often paid to the state and not to the persons wronged. A person who attacks and injures another is considered to have committed a crime against both the state and the injured party. If he is fined say, £100, more than three quarters of this amount usually goes to the state. The injured party receives only a token sum to reward him for the blood spilt.

Not all those who have dealt with the subject of penology in Africa think that compensation, in the sense I have explained above, was the objective of settling offences in traditional Africa. Some are of the opinion that traditional Africa was full of severe retribution and all forms of barbaric and inhuman punishment.

It is sometimes alleged that one reason why the colonial regimes legislated away the traditional African penal methods was because they saw these methods as barbaric, or uncivilized.[5] There are also scholars including fellow Africans who subscribe to the belief that the traditional African methods of treating offenders were barbaric and retributive. One of such scholars, the philosopher W. Abrraham of Ghana, attempts to give a metaphysical, moral and rational reason for this barbarity:

> "Since metaphysics spewed out morality, politics, medicine, theory of social organisation, etcetera, the consequences of an error in metaphysics could well be grave. And this is possibly that which explains that severity of punishment among the Akans which has appeared as barbaric"[6]

An "error in metaphysics"! Why not an error in science? Because, Abraham contends, the Akans have a metaphysical not a scientific view of the world. This philosophical rationalization or justification of things which are not, even if they are peculiar to Africa, worth such justifucation is typical of th trend of thought which Abraham displays in The Mind of Africa (1962). This trend is oriented towards philosophication i.e. giving philosophical authenticity to views or practices which we have no evidence to regard as philosophical.[7]

../15..

With what philosophical evidence or sincerity should such things as being buried alive be rationalized by the idea that they are "consequences of an error in metaphysics"?

In 1972 Leo Bokassa, then President of the Central African Republic, led a group of his soldiers to a prison and ordered the soldiers to beat the convicted thieves to death. Three of the thieves were beaten to death and had their bodies displayed in public to scare the potential thieves and robbers. Peter Enahoro writing in the AFRICA magazine remarked:

> "Traditional African punishment for theft is harsh and violent which explains why there has been no general outcry against the medieval sentences in the rest of Africa ... indeed, in the backwoods of Africa it was common practice to put thieves to torture without even giving them up to the colonial authorities for legal justice."[8)]

In Sudan things like adultery or loss of virginity are still regarded with such great shame that in the villages it is possible for a woman to be put to death if she is found to be guilty of such acts.[9)] The attitude in Sudan is that whenver a woman and a man meet the devil is the third. And hence the girl who loses her virginity has allowed the devil to enter her. She may not find any one to marry.

../16..

But if she happens to find a husband and later the husband discovers the presence of the devil (lack of virginity) divorce is allowed to take place.

From what we have discussed in the previous paragraphs, it is clear that although traditional Africa had compensation as a means of settling offences, it also had barbaric and severe retributive forms of punishment. Severe retribution however is not something that can be regarded as unique to Africa. The rest of the world has had andstill a great deal of the world has penal systems based on the notion of retribution. And it seems that retribution is even today the underlying premise in much of the penal philosophy in Britain.[10] However, this cannot excuse Africa for engaging or having engaged in the practice of retributive punishment.

What we come to from this discussion is that in traditional Africa both restitution (compensation) and retribution were used for settling offences, and it is my conviction that those who have dealt with the subject of penology in Africa, whether they advocate the theory of compensation or retribution, would not be fair to the subject if they refuse to recognize these two ways of settling offences in the traditional Africa.[11]

It is easy to show that one reason why some people emphasize severe penalty and retribution is because some people are forward-looking while others are backward-looking.

The forward-looking people regard severe and retributive penalties and the deterrent forms of punishment such as fines and imprisonment as things that are undesirable and have, in fact, failed to achieve any useful results whenever they have been practised, and hence Africa would be better off if it dispensed with them. And these people emphasize the theory of compensation in traditional Africa in order to have a cultural and traditional justification for their argument. If certain punitive acts are not traditionally African then, it is expected, Africa has a justification to reject or minimize their use. Clinard and Abbot suggest after their case study of crimes in Uganda that,

> "Restitution to the victim or compensation to the victim has particular merit as a substitute for both fine and imprisonment in less developed countries. This was the traditional method of settling offences in most countries, and it still remains so in rural areas, particularly in African societies."[12]

Dr. H. P. Junod, who had done intensive study of the Bantu societies, recommends compensation as a must for all mankind if crimes are to be reduced:

../18..

> "Police work in arresting criminals, preventing detention, detention itself, diversification of institutions, psychopathic prisons, all forms of dealing with juveniles: all this has not stopped crime, and we still go on building prisons and institutions of educators and of the Bantu people that "restitution is the redemption of the criminal." (my italics)[13]

The forward-looking people need not all of them think that the penalties in traditional Africa were humane and mostly restitutive. Some think that penalties in traditional Africa were cruel but that they ought not to be condoned in "... in modern Africa ...". They fail to understand how modern Africa can afford to keep such a great silence over such state thuggeries as the ones which were symbolized by the excesses of Leo Bokasa and the general disa[illegible] and terrorization of people in Uganda in the early years of the 1970s. Like Peter Enahoro they look for explanation for such terrors and the resulting silence from the severe and barbaric penalties of the traditional Africa.[14)]

The backward-looking group wish to agree with Leo Bokasa that such forward looking ideas like compensation and rehabilitation cannot be of any use and that the solution to the crime is the policeman's or the

soldier's club, the gallows andthe bullets of the firing squad.

The question of restitution or severe retribution as the traditional African objective in settling offences suggests how traditions can be useful and how they can also be dangerous. No reasonable moral philosopher can object to the idea that restit ution or compensation, in the traditional African states sense, is a desirable objective for a penal system and that a tradition that upholds this objective is worth preserving. However, the difficulty comes in when the same tradition that upholds compensation also cherishes severe and barbaric penalties. With this difficulty the reasoning must move to the level that tradition alone should not be the standard for what is to be preserved i.e. it will not, all things considered, be a worth-while principle to preserve and enhance practices simply because they are traditional.

I agree with the forward-looking people that Africa ought to employ compensation rather than severe penalties of retributive nature. But I agree not simply because this would be in comformity with the tradition; (for this would commit me to acce-pting barbaric and severe penalties as well) but because compensation would under the present cir-cumstances be reasonable and positive to Africa. A tradition can be reasonable or unreasonable, dignifying or degrading and forward or backward looking;

in short, it can be constructive or destructive. And it is clear that in rejuvenating traditions people ought to be selective.

What is important is the idea that experience in the old and present Africa should teach the African man that Africa ought to accept anddevelop theories and practices not so much because they are traditional to her but because they are reasonable, positive and dignifying to her present and future needs. When something is positive or reasonable to Africa it shall have an added advantage if we find that it is also traditional. But when something traditional is negative and stagnating to Africa, it cannot be reasonable for Africa to adopt it simply because it happens to be traditional. Traditions cannot be above the fundamental moral dignity of man. When we recommend compesantion or restitution, we should do so because it is in accordance with the voice of reason and human dignity. We should do so because, "restitution", says H.P. Junod, "is based on the fundamental nature of man even if this has disappeared in the hardened criminal or the gangster of "Murder Inc.". "(15

(iii) PUNISHMENT IN AFRICA TODAY

Law corrects or perpetuates injustice depending on the authority that uses it and the sense of justice that such an authority has.

../21...

Where th authority is unjust or biased law will be seen to perpetuate and even promote injustices. Where the authority is just or unbiased law may be seen to correct and reduce injustices. But in both cases law exists only because of injustices - because it is to correct or perpetuate injustices.

Punishment is one of the most important instruments that the law uses in correcting or perpetuating injustices. And in any given society the degree of punishment that is practised reflects the degree of injustices that prevails in that society. The more the punishment the more the injustice that has been done, either by those who inflict the punishment or by those who receive it. All depends on which of the two parties is. By injustice in this context we mean the practice of using the law to terrorize others or to punish them beyond a reasonable maximum for their offence as well as the practice of defying and acting against a just law.

We have argued that in traditional Africa both compensation and elements of extreme retribution dominated the penal systems. The next interesting thing to discuss is the type of penal systems that we have in Africa today. In almost the whole of Africa the penal systems are dominated by foreign imports - by the methods or means of settling offences that have been imported by the colonial regimes. It was expected that independent Africa would quickly change the colonial

legal patterns and introduce her own. But this has not happened. What however has happened is that various African countries since independence have more and more employed harsh rules and punishments based on legal patterns that were colonially designed. And the Continent is everyday fuming with the wailings of the victims of harsh punishment and terrorism. This must of course suggest that Africa is full of injustices; and that these injustices are perpetrated either by the punishers or by those punished, or by both of the parties. All over Africa there are harsh rules and punsihments that are meant for political offenders, thieves, robbers, smuglers, abortionists, the un-employed and the intellectual dissenters etc. But, as we mentioned, these rules and punishments are not based on any new philosophy of a penal system which independent Africa so badly needs, but on the colonially given legal patterns. Even such a radical man like Nkrumah did not manage to revolutionize the legal system in Ghana. It is observed that by the time he was deposed the legal system was still overwhelmingly that of the British.(16

Of course he made various reforms in the system. But the changes he made were only of the kind William T. McClain is talking about in his Recent Changes in African Local Courts Law (1964).(17 These changes consist of the attempts by the African States to reorganize their judicial institutions by removing the barrier which during the colonial days

used to cater for two separate jusicial systems in one African territory. In an English colony these were customary courts (based on non "repugnant" customary law) and the superior courts (based on the English common law). There was, therefore, according to McClain, a dual or parallel system of courts and that the new African States by breaking this duality and intergrating the two s ystems into one have made great significant changes in their legal patterns. After 1960 the Nkrumah regime, for example, did much to upgrade and intensify the role of customary law in Ghana and to integrate it fully in the judicial institutions of the country.

However, such changes are not changes in the legal philosophy but simply reforms of the rules and institutions based on the previously given legal philosophy. As Nkrumah himself would confirm in his Consciencism; a change in an ethical rule does not in itself entail a change in the cardinal (or fundamental) ethical principle or philosophy. Perhaps it is not all necessary that African States should revolutionize the legal pattern they inherited from the colonial regimes. After all they have not even revolutionized their political and economic connections with the former colonial masters. Nevertheless, it is amazing to note that punishment as it is being employed in Africa today is not rationalized or justified by any legal philosophy other than that introduced by the colonial powers.

../24..

1. POLITICAL OFFENDERS

It is well known that Africa is full of people regarded as "polictical offenders." Who are the political offenders, or in other terms, what constitute a political offence? Clinard and Abbot give a definition of the political offence as follows:

> "A crime is political whenever the state uses laws or political power to punish or detain persons who are assumed to be a threat to the government and those in control of it."(18

Many people however would not regard cases in which the state uses a political power to punish or detain persons assumed to be a threat to the government as instances of the political offence or crime. [illegible] A very interesting fact is that most of the political offenders in Africa never regard themselves as criminals or offenders. It is common, among those with political power, to regard the suffering of political offenders not as "punishment" but as "detention". The understanding here is that punishment is reserved for an offence that has been proved beyond doubt and by an appointed magistrate or a judge. And detention is viewed to be simply a procedure of keeping a person away from the areas in which he could do harm to the state, and that such keeping are not punitive. According to the meaning of punishment which we assume in this essay, there is no justification to

regard detention as non-punitive. To detain is the same thing as to punish, although there are other forms of punishment which are not detentions.

In Africa there are various instances when a government detains (punishes) or terrorizes certain persons because such people are believed to have attacked the opinions of those in control of the government. Our definition of punishment requires that the punishing party must have the authority or duty to protect certain rules and that the offence that justifies the infliction of punishment must be a violation of one or more of those rules. Now, when a government punishes a person for attacking the opinions of those in control of the government, this would not correctly be regarded as punishment unless it is a rule that no one is to attack the opinions of those in control of the government the citizens should be dumb. It is of course a duty of the state to protect its government, but this does not imply protecting the opinions of those in government from attack by those others who wish to do so, and who are in or under the same government. Freedom of opinion entails, since we are not in matters of knowledge perfect, that we be free to express our opinions of others; but of course that they too are free to do the same.

We come to the idea that when an authority appears to detain or punish a person for holding or expressing an opinion that is contrary to those of others (whether these others are in government or not) then this would qualify as punishment (in the legitimate sense) only if two conditions are recognized:

(i) that 'no one should attack or contravene the opinions of others' must be a rule which the government has the duty to protect and

(ii) whatever suffering that the government may inflict on the person who has contravened such a rule must not be beyond a reasonable maximum.

If these conditions are not recognized a detention or punishment of political offenders easily becomes terrorism.

Many politicians in Africa have been detained for expressing opinions that are not in line with the policies of their governments or for attempting to form a political party that opposes the one in power. But it is one thing to express an opinion, and another to put one's opinions in practice when it is against the law to do so. It is for example one thing to express contrary opinions, and it is another thing to attempt to form a political party based on such opinions. To detain one for the former is not punishment but terrorism, unless it is a rule that no one should express a contrary opinion and it is the government's duty to protect such a rule. However, to detain one for forming a political party would be punishment if the formation of such a party is illegal and if the punishment for this offence remains within a reasonable maximum.

It is definitely beyond a reasonable maximum if one is detained for, say, ten years for attempting to form a political party, as the British did to Jomo Kenyatta. He was detained for about ten years for holding and expressing opinions that were contrary to the policies of the government and for being the leader of a political party that was not in line with the policies of that government. These were not offences that would warrant detention for ten years and it is understandable why the colonial govermment fabricated another charge to justify the ten-year sentence: Jome Kenyatta, they alleged, was the master mind behin Mau Mau and Mau Mau, according to the government, was a gang of terrorists.

The terrorization of Jomo Kenyatta was done by the colonial (invading) power. To this extent one may understand it as a typical action which most colonial powers use to survive and to silence the criticism of the colonized. What is difficult to understnd is the use of such actions by many of the African governments on their own nationals.

In June 1965 President Benbella of Algeria was deposed from power. The reason for thisaction was said to be " economic mis-management ", The person who deposed him, Col. H. Boumedienne, was his Vice Premier, Minister of Defence and the Army Chief. If Benbella had co mmitted a political crime in the form of economic mis-management, then obviously his Vice

Premier who had such a chain of top posts in the government must have been a party to such a crime. Yet Benbella was deposed by his deputy, put in detention and up to the time of writing the world has hardly heard about him. Mr. Benbella was a great Pan-Africanist who stood on the same level with Kwame Nkrumah and Gabel Nasser. He has now suffered for about a decade. Again, what was his offence? Given the offence, has his suffering been punishment or terrorism? His offence was "economic mismanagement." Whith leader in the world has never mismanaged economy? Benbella's detention, whether the man is still alive or dead, was terrorism not punishment. And this must surely be an irony on the man who in 1965, the same year he was toppled, expressed an open mercy by a decree closing fifty eight prisons in Algeria, a fact that resulted in the unconditional release of over twenty percent of the criminals from the country's jails. To detain a person for over a decade because he mis-managed economy must by all reasonable standards be beyond the reasonable maximum punishment for the offence. And the person so punished must have lost the minimum ethical consent to regard the authority that inflicts the suffering as the one that has the legitimacy to do so.

There is the infamous Sept/Oct 1972 Burundi state thuggery. It resulted into the massacre of several hundreds of those who were alleged to be anti-government. The massacres were carried out by official youth movements of the government.

First, the state terrorists (as we must call such movements) cleared out (murdered) most of the educated class of the dissident group, later they turned to the common people and killed them in large numbers. Observers testify that at that time there was no civil war or rebellion in Burundi.(19) If there were a civil war or rebellion such massacres could be excused on the ground that they are necessary consequences of the war or rebellion. The truth behind the matter is however simple: The government was in the hand of the minority tribe, the Tutsis. And the majority tribe, the Hutus, had opinions contrary to the opinions of those in government mostly because of the previous tribal hatred and clashes between the two groups. This time (in Sept/Oct 1973) there were no tribal clashes-no civil war-but those in authority felt it was their duty to stamp out the opinions of the dissidents. Those in the government it appears belied they were doing nothing wrong; they were only punishing the notorious and traditional political offenders. I do not know any reasonable ethics which would consider such state thuggeries as punishments. The Burundi massacres were terrorisms carried by the state against its citizens.

From the Republic of Lesotho, we have Chief Leabua Jonathan's drama of January 1970. It has made a "great" contribution to the 20th Century history of punitive acts in Africa.

../30..

In January 1970 Chief Jonathan(the first prime Minister of the Country) made a move which is rare in Africa. It was a good move; The country was to hold a general election and his own party (then in power) was contesting on the same conditions as the opposition party led by Ntsu Mokhehle. Mokhehle was then a well known nationalist with inclinations to socialism. An Election was held. When from the sixty percent of the votes counted, it became clear that the opposition would form the next government, Chief Jonathan ordered the countings to stop. He then declared a state of emergency and suspended the Constitution. He arrested all the leaders of the opposition plus the King of Lesotho. The opposition leaders were detained. Mokhehle even though he had won the election was only to be the "premier in chains" (20) and he was not out of chains until more than two years later, when he came out as a former political offender released by the order and "mercy" of Chief Jonathan. In August 1973 Wemb Mwambo wrote in the magazine AFRICA No.24:

> "Ever since Chief Leabua Jonathan secured election results in his favour in January 1970, he has ruled by decree and suspended the Constitution, and parliament is but an assembly of robots".

The arrest and detention of the opposition leaders in Lesotho could not be regarded as "punishment" given

../31...

the meaning of punishment which we have assumed in this essay:

First, Chief Jonathan because he had lost the election could not be acknowledged as the party that had the authority, right or duty to inflict punishment on anybody in Lesotho unless in spite of the election results he had been delegated the authority by some higher authority in the country, There was no Constitution and the King too was in chains. The detention of the opposition leaders was therefore an instance of the infliction of suffering or loss on some party by another party that had no authority or legitimacy to do so. This conclusion can be objected to by the suggestion that an authority (or power) can be usurped or trenched upon. Given this it seems proper to regard Chief Jonathan as a usurper and to see his acts on Mr. Mokhehle and his colleagues as punitive; and that all we should do is to qualify that they were punitive acts which we do not like or approve of.

This relativity in the ethics of punishment will not do here. Chief Jonathan's acts could not at all be punitive because Mr. Mokhehle and his colleagues must have lost the minimum ethical consent to regard Chief Jonathan as the authority that had the good will or legitimacy to protect their interests and to decide punishment for them. And besides, it does not seem that the Prime Minister of Lesotho had the duty to protect the rule namely 'that no person or party is allowed

to defeat the ruling party in an election.'

Let us assume that some government could enact a law that makes it a political crime (or offence) to defeat in an election the party which is already in power, and that Lesotho had such a law. Would it therefore not be correct to regard the Chief's acts on the opposition leaders as punishments? It would be correct to do so provided that the acts were not beyond the reasonable maximum punishments for the offence. But it seems obvious that several years in jail for proving that one is more popular than those in power, or that those in power have lost their popularity, is by any reasonable scale beyond the reasonable punishment. I see no way in which Chief Jonathan's acts could be regarded as punitive according to our sense of punishment. They were terrorisms and maltreatments and tortures.

We said before that for a person to be punished for expressing an opinion contrary to the ones held by those in government, it ought to be made a rule that the government has the duty to punish whoever expresses such an opinion. Most African governments have never had the courage to articulate such a rule although in practice they terrorize or "punish" those who dare to express such opinions. However, Ethiopia is an example of the few countries that did make an attempt to have a rule or law of this sort. In 1961 there was an attempt to have a Coup d'etat in Ethiopia. It failed. Following this a decree was passed that recommend[illegible] up to 30 lashes - on those who indulge in the offences

which relate to "the disturbance of public opinion."(21 The phrase "the disturbance of public opinion" is a clever camouflage for the phrase "expressing opinions contrary to the ones held by the government." This decree would make the flogging of a person accused of "the disturbance of public opinion," provided that such a flogging is not beyond a reasonble maximum suffering for the offence and given that the person who made the decree, Emperor H. Selassie, had in the eyes of the Ethiopians the legitimacy to do so.

Some of the most appalling "punitive" acts have been witnessed in the Portuguese colonized Africa, Zimbabwe and South Africa. A good example of these is the Wiriyamu massacre (22 or genocide. Sometimes in 1973 Portuguese troops massacred about 400 unarmed African villagers in Mozambique. The reason behind the massacre was very simple: The villagers were alleged to be sympathetic to Frelimo - the Front for the Liberation of Mozambique. And the massacre was meant to be punishment for the sympathizers among whom were men, women and children. It is clear that such actions like the Wiriyamu and Sharpeville massacres could not be punishment by any sincere meaning of the term. They are terrors in the form of genocides. In Zimbabwe and South Africa many so called political offenders are in jails. Men like Nkomo and Sithole have languished in jails for a period now running to be two decades.

They will probably die there unless, as in the case of Jomo Kenyatta a strong popular pressure on the Colonial regime or success in gaining power by the majority berings about their release. Yet the situation in Zimbabwe is now much more difficult than the Kenyan one. It seems the ultimate solution must rest with the guerrillas and the liberation movements. But this solution when it comes will find the ma jority of the political prisoners already dead. Perhaps their death in jails may not matter as long as their countries are liberated. However a negotiated political settlement in Zimbabwe cannot be rulled out altogether since the economic and military pillars of the minority regime are everyday in the decrease.

The punitive acts and terrorisms in Southern Africa are those carried out by the invaders who by coloni$_z$ation have tried to legitimize their rule and subdue the local peoples. Subh invaders only manage to keep going by maintaining the rule of terror and extreme punitive acts. Terrorism in Southern Africa is understandable given that those carrying them out are invaders. But terrorism in the rest of Africa is difficult to understand or justify, since here there is no question of invaders but simply of the elected leaders or leaders who surp (take) power on behalf of the indigenous people. Many of the leaders who led Africa to independence had been victims of the punitive acts and terrorisms of the colonial regimes. They were detained as political offenders on the basis of the colonial legal patterns. They became prisoners and detainees in Africa, a land which traditionally had no prisons or detention camps.

It is therefore absurd that when these leaders assumed power they, in dealing with their political offenders, indulged in using the same methods which were used on them by the colonial regimes.

The future generations may come to regard 20th century as Africa's "dark ages " (may we wish not). And it seems they will blame not those who are today carrying out the various acts of extreme punishment and terrorism. They may after all come to blame the majority of the 20th Century African generations themselves. The majority of these generations in-so-far as it has allowed or tolerated such acts of terrorism within its ranks may be looked upon by the future generations as having been composed of fools and idiots. "Fools and idiots" because they kept disuniting and betraying one another. Those who rortured and terrorized them would even be given a word of praise; for they were not themselves idiots; they were only unjust and wicked.

2. NON-POLITICAL OFFENDERS

(a) Victims of the Death Penalty

The real and serious offences are usually of the non-political nature like rape, murder, homicide, theft and robbery. It is these types of offences that we shall refer to as the "non-political offences". But this does not rule out that such offences can and sometimes may have political motives.

Despite the agreement among many scholars that traditional Africa settled its crimes or offences mostly by compensation and that it had no prison the present-day Africa shows a very different picture; capital punishment, imprisonment and fines are the usual means of settling offences. These are means that have been imported mostly from Europe and America. But it is interesting to note that while Europe and America are busy moving away from the use of capital punishment, Africa is strenghening and expanding its use. Nearly all the African states have the death penalty for murder and of late it has been extended to cover even robbers and thieves. At the time I am writing, Kenya, Ghana, Nigeria, Uganda and Siera-Leone and Zambia have death penalty for "robbery with violence". The phrase "robbery with violence" is however quite confusing since no one robs without the use of violence. In Nigeria, Uganda and Siera-Leone the penalty has to be inflicted in public, and by a firing squad. The purpose, it is said, is to scare the potential criminals.

In 1973 Siera-Leone parliament passed a Bill extending the death penalty to robbery with violence. During the debate the Attorney General, Mr. L. Brewah supporting the Bill, remarked that he "felt the firing squad more humane than hanging and was even a better way of showing the "illiterates" that the sentence is carried out. The illiterates, according to the Attorney General, did not believe that when a prisoner went to the Pademba Road Prison he was hanged at all (23

../37..

Many members during the debate expressed the opinion that public execution would deter potenti.l criminals. And they felt that by recommending death by firing squad instead of hanging Siera-Leone was in this way desisting from some practices of the British Law.

The Siera-Leone debate reflects a view common to the majority of the current African governments: This view is that crimes and other offences could be reduced by severe punitive methods, and that the more severe and public a penalty is the greater will be its deterrrent effect. In Ethiopia as one example, a Penal Code provides that capital punishment "shall be executed by hanging and may be carried out in public to set an example to others."(24 However, in several places the belief in deterrence is coupled with that of extreme retribution. Leo Bokasa's tragic drama of the 1972 public mutilation of thieves is an application of a strong belief in the theory of deterrence and extreme retribution. To beat thieves to death and parade their bodies in public cannot be justified only by a belief in deterrence. The attitude which encourages such harsh and shameful treatment of the criminals must be a belief in extreme and utra vires retribution. Retribution in punishment is not just an expression of "tit for tat" i.e. the practice of reacting to an offence by inflicting on the offender the suffering or loss that he deserves and no more. It is also the tendency or practice to treat the offender with great harshness and wickedness than those which were involved in the offence.

../38..

It is such a tendency which, for instance, encourages some authorities to answer say, rape with murder. No where is this practice better shown than in South Africa. There, the punishment for a blackman who rapes a white woman is hanging.

(b) Punishment for Development

The idea that deterrence is the main objective of punishment, we are told, is being applied to promote development in some French speaking African countries. There criminal law is said to be used to enforce and encourage development by the systematic punishment of the anti-economic actions. The aim is to use punishment to deter people from continuing with actions, customs and habits which are known to be economically stagnating. In the article Penal Policy and Under development in French Africa[25] Jacqueline Costa gives an interesting exposition of the idea that necessitates this practice He writes:

> "In Africa, criminal law is not the codified expression of the values of an established social order. It is a tool to be used in the very creation of such an order .... The systematic penalizing of anti-economic actions in the recent codes and other legislation offers a striking example of a policy attempting to promote development by encouraging changes in individual motivations."[26]

The "anti-economic" actions or crimes are reported to be things like stock theft which in Malagasy and Niger are liable to be punished by death penalty or life imprisonment. Bride wealth is considered another an anti-economic crime and in Gabon and Ivory Coast anybody guilty of giving or receiving is liable to be imprisoned for up to one year or more with a fine twice the value of the bride-price given. Idleness is another and vagabondage, begging and unemployment are regarded as its various forms. In Malagasy, Gabon and Central African Republic it is a crime to be an adult, a non-student, physically fit and to be unemployed or without work. Such a person is liable to be imprisoned for up to one year. Costa remarks:

> "This rediscovery of the primordial function of the criminal law is perhaps the most important aspect of the modern development in African law. In an era when penal sanctions are frequently becoming less rigorous and more re-educative the severity of some of the recent African codes is perhaps a reminder to all that the criminal law is essentially based on coercion and that the threat of penal action is one of the best deterrents and preventives yet devised"[27] (my italics)

../40.

It is clear that the author entertains and tries to justify severity of punishment which is already so rampant in modern Africa. His positions would have some sympathy if the threat of punishment can successfully be used to reduce such things and theft, unemployment and unprogressive customs. I believe the threat of punishment cannot achieve such goals for reasons which I have explained before and which I will explain again in the next sections.

It seems as if Jacqualine Costa is suggesting that in the codes he refers to there is a new view or philosophy here. The so called 'economic-promoting punitive acts' are drawn from the French labour legislation. What appears as a new philosophy is only due to the fact that in Africa (or "French Africa") the acts are made harsher than their French counterparts.

(c) The Remand and the Non-Criminal Prisoners:

A contrast to the idea of inflicting punishment on those who are idle or unemployed is the infliction of punishment on those who try to fight idleness and employ themselves. In Kenya for example, there is a liquor known as changaa (or Waragi). It is brewed secretly and in large quantities by the local people. The brewing and selling of chagaa was forbidden by the colonial regime and up to the time I am writing it is still illegal to brew, sell or drink chagaa in Kenya. The majority of chagaa brewers and sellers are unemployed people who indulge in this activity as a means of earning a living.

../41..

But when they are arrested they face the sentence of six or twelve months imprisonment or a minimum fine of 500 - 600 shillings (about 80 - 90 dollars). It is interesting to note that the "Changa offenders" never regard themselves as criminals or offenders. A detailed study of one of the prisons in East Africa by R.S. Tanner reveals that even those imprisoned for stock theft, hemp smoking, immigration and tax offences "do not see themselves as criminals."(28

This recalcitrant attitude not to admit even when in jail that one is a criminal implies that the prisoner has lost the minimum ethical consent to regard his imprisonment as punishment that is justifiable. It may also imply that the prisoner regards his suffering as punishment that is beyond the reasonable maximum for the crime. All this is so because to admit while in prison that one is a criminal has an air of suggesting that one regards the penalty as some-what justified or that it is a deserved and a sufficient negative reaction to one's crime. And the way to protest against a penalty or to indicate that it is unjustified, that it is for no crime or that it is too much for the crime, is to reject the idea that one is a criminal. This rejection can at times be too severe: In 1972 a man from Mathare Valley in Kenya stripped himself naked in front of Policeman and everybody around as a protest against his arrest for brewing Changaa. The man argued that his survival depends on brewing Changaa, it was his employment, and hence, his arrest and harassment were wrong and unjustified.

But when they are arrested they face the sentence of six or twelve months imprisonment or a minimum fine of 500 - 600 shillings (about 80 - 90 dollars). It is interesting to note that the "Changa offenders" never regard themselves as criminals or offenders. A detailed study of one of the prisons in East Africa by R.S. Tanner reveals that even those imprisoned for stock theft, hemp smoking, immigration and tax offences "do not see themselves as criminals."{28

This recalcitrant attitude not to admit even when in jail that one is a criminal implies that the prisoner has lost the minimum ethical consent to regard his imprisonment as punishment that is justifiable. It may also imply that the prisoner regards his suffering as punishment that is beyond the reasonable maximum for the crime. All this is so because to admit while in prison that one is a criminal has an air of suggesting that one regards the penalty as some-what justified or that it is a deserved and a sufficient negative reaction to one's crime. And the way to protest against a penalty or to indicate that it is unjustified, that it is for no crime or that it is too much for the crime, is to reject the idea that one is a criminal. This rejection can at times be too severe: In 1972 a man from Mathare Valley in Kenya stripped himself naked in front of Policeman and everybody around as a protest against his arrest for brewing Chaga. The man argued that his survival depends on brewing Changaa, it was his employment, and hence, his arrest and harassment were wrong and unjustified.

But the police did not excuse him. He was naked and remanded.

Typical victims of Chagaa arrest are those represented by Mrs. Odipo Oriambo:

> In October 1973 a group of policemen intruded into her home some where in Western Kenya and found her brewing. She together with her one year old daughter were arrested. She was tried and fined 600 shillings or six months jail in default. Neither herself nor the husband could afford to raise the fine. So she and the child had to stay six months in jail.

How should we regard the stay of this one year child in jail? Is it punishment or terrorism? Without doubt it is terrorism precisely because the child did not do or was not believed to have done any offence. And there can be no punishment if the victim has not committed, or is not believed to have committed, ar offence. The detention or imprisonment (of that) of Mrs. Odipo Orimabo herself and the Mathare Valley stripper should be regarded as "punishment" against an attempt to employ oneself in the only way that is practically available or possible for one. However in the case of the stripper the punishment ceases to be punishment since by his display of nakedness it must be obvious that he had lost the minimum ethical consent to regard his arrestors and as the authorities that had, or should have [illegible]

the legitimacy to arrest or punish him. His was, therefore, terrorism not punishment.

Besides those who stay in jails but do not admit that their crimes are crimes, there are those who stay in remands or prisons but having committed no offence. These are usually the victims of mistake, miscalculation, inefficiency and the rashness of the law enforcing authorities. J. Read, who is a great scholar in the legal system in East Africa, reports that of the 97,927 persons received into Kenya prisons in 1961 "no less than 52,312 were committed on remand with 1,136 remaining on remand at the end of the previous year, this gave total of 53, 448 remand prisoners in the year. Of these only 7,925 were subsequently convicted and sentenced to imprisonment."(29 And in 1964 the number was 71,916 prisoners; 40,696 were on remand but later over 24,000 of them were discharged as innocent.

From Liberia Gerald Zarr reports:

> "Of the forty-five prisoners incarcerated in Monrovia Central Prison in May 1965 on charges of murder, nearly half had been in detention for periods of two to six years and I encounted three individuals who had each been incarcerated for more than ten years."(30

../44..

There are those who may not regard being put in remand or incarceration as punishment. Nevertheless, the meaning of punishment which we assume in this essay regards remand, incarceration or detention as punishment provided the victim is thought to have committed some offence and as long as the suffering or loss the victim incurs is within the limit or the reasonable maximum for the offence. Being kept in a remand for ten years because one is suspected of theft is, for instance, beyond a reasonable maximum punishment for the offence and should be regarded as terrorism or something else but not punishment .

Because being in remand or incarceration is sometimes never regarded as punishment, the judges usually impose sentences on thosewho have been in remand even for several years without taking into account that such people have already been undergoing punishment. A person may be in remand for say, five years for being suspected of stealing a cow. He may after this be tried and found guilty and then be jailed for two years. His punishment will then actually be a jail of seven not two years; and this in itself must be beyond a reasonable maximum for the offence.

Those who would not like to regard being placed in remand (which usually is just a branch of a prison) as punishment support their stand by the argument until one has been found guilty and sentenced by a recognized court of law.

This is a view which consoles those who have been in remand and later discharged as innocent. It is a way to make them not look upon their incarceration with shame since they were never being punished. They were, it is believed, only in remand and remand, unlike imprisonment, is not supposed to carry a social stigma. However, this view deceives the remand prisoners and makes those of them who later prove themselves innocent unconscious that they ought to sue the state for having punished or terrorized them for no offence and for damaging their names by keeping them for so long in remand.

CONCLUSION

I wish to conclude this essay by emphasizing that although the main objective, as we read, of the punitive acts and penal systems in the present-day Africa is deterrent, there is no likelihood, whatsoever, that punishments bring about a deterrent. Indeed, most observations and studies of crimes in Africa show that crimes are rapidly on the increase, and that at any given period in this increase great percentage of the offenders or criminals are recidivists or repeaters. The punitive acts and the penal systems in Africa today do not and will not achieve their aims for various obvious reasons:

1. Because no punishment is ever a deterrent to a crime.

../46..

2. "Punishment" that appears to deter is never punishment but terrorism with its extreme forms of torture, mutilation and massacre.
3. But terrorism appears to deter only as long as it is applied continously.
4. Terrorism cannot be applied continously for a considerable period without a rebutal.
5. Terrorism is, hence, too dangerous and costly for any government or state that is worth its name to engage in.
6. Neither punishment nor terrorism can ever eradicate factors that breed crimes and criminal behaviours - criminal factors.
7. Punishment loses even the few benefits which it may have when it is applied with fear, hate and ignorance.
8. Punishment and terrorism in much of Africa today are inflicted with fear, hate and ignorance, and in complete disregard or perversion of reason and truth.
9. The only education or learning which punishment or terrorism imparts on its recipient are fear, hate and the dread of humanity.

FOOT NOTES

1) In African Penal Systems - Ed. Alan Milner, Routledge and Kegan Paul (1969) - several contributors to the book confirm this: see for example J. S. Read on Kenya, Tanzania and Uganda; W. Clifford on Zambia and R. Seidman on Ghana Prison System

2) Hegel in his lecture on the Philosophy of right and law regards wrong or an offence as a negation of contract and punishment as the cancellation of a crime or an offence - the negation of negation. Hegel, being a retributivist, would not accept that the cancellation is done if a court would, as in tra ditional Africa, allow the offender to go unpunished and the court itself compensates from its own resources the damage done to the wronged party. This western sense of compensation is offenders, rather than offence, oriented. In traditional Africa the reverse is the case.

3) Bee W. Abraham: The Mind of Africa (1962) - Chicago Press, p. 80 and Alan Milner op.cit. p.103, 242 and 463.

4) Such are the suggestions of Chps XIV and XV of Ideas and Procedures in African Customary Law, OUP (1969) - Edited by M. Gluckman; Peter Rigby in Punishment: An African View (paper No 82, Social Science Conference - Makerere, December 1971) and M. B. Clinard and D. J. Abbot in Crime in Developing Countries, 1973) John Wiley and Sons.

5) Allan Milner in Sentencing Patterns in Nigeria writes:

> "At various times in the history of customary laws hanging, beheading, stoning, drowning, burying alive and killing by the idential means used by the murderer had been allowed" (African Penal Systems, p.264)

The Colonial Powers, Milner explains, reacted by making such penalties subject to the requirement that they should not be "repugnant" to natural justice and humanity and as a consequence most of them were legislated away.

For a more discussion on the notion of repugnancy test, one may see among others, Judicial and Legal Systems in Africa (1962), Editor, A. N. Allot, The Bushe Commission (A report of the commission of inquiry into the administration of justice in Kenya, Uganda and Tangayika Territory in criminal matters, 1933) and Law Reform in East Africa by Okoth Ogendo, E. A. Journal Vol. 7 Dec. 1970.

6) W. Abraham op.cit.p.47

7) I discuss this more fully in The Ground Work to African Philosophy (forthcoming)

8) AFRICA (An International Business, Economic and Political Monthly) No. 13, September 1972

9) See T. Nordenstan: Sudanese Ethics (Uppsala 1968) p.96, 113, 147, 150 and 206.

10) In The Concept of Punishment (1969) Ingemar Hedenius remarks that most of the present day philosophers who have contributed to the revival of retribution in punishment are British.

See also The Philosophy of Punishment (1969) Editied by H. Action - Macmillan, St. Mary's Press.

11) Jan Vansina has observed these two ways of settling offences in his study of The Traditional Legal System of the Kuba, see AFRICAN LAW (Ed.H. and L.Kuper) University Calif. Press (1965)

12) Clinard and Abbot, op.cit. p.269.

13) H.P. Junod: Reform of Penal Systems in Africa, East African Law Journal, vol.2 No.1, March 1966, p.31.

14) Apart from the magazine AFRICA and several harmless comments by some newspapers in Africa, there were no organized protest in Africa against these terrorisms. Thanks to G. Amin! Several times he himself warned against the mysterious disappeearance in Uganda. Seeing that the General was the ultimate authority in Uganda were such warnings only double morals or honest remarks against terror? I do not pass judgement. Let history judge.

15) H.P. Junod: art cit. p.32

16) African Penal Systems p.82 - 83

17) Howard Law Journal Vol.10, No.2 Fall 1964 pp. 165 - 186

18) Clinard and Abbot, op.cit., p.49

19) See Burundi: Crisis Summit in AFRICA, No. 25 Sept. 1973

20) See Lesotho 1970 (An African Coup under the Microscope) by B.M.Khaketla, C.Hurst & Co., London, where Mokhehle is baptised as the "premier in chains."

21) Steven Lowenstein on Ethiopia in Alan Milner, op.cit., p.41

22) For details of the Wiriyamu massacre see Massacre in Mozambique by Fr. Adrian Hastings - Trans Africa Publishers (1974) and Warfare or Genocide in AFRICA No. 24 August 1973, The Significance of Wiriyamu in AFRICA No.25 and The Times of London 10th July 1973.

23) See Siera-Leone: Death Penalty in AFRICA No. 28 p.74-75

24) Alan Milner, op.cit., p.41. However this was Ethiopia of Emperor Haile Selassie. As I write Ethiopia is under-going a revolution and we should expect that the revolution will radically change the existing penal system of the country.

25) Ibid p.365-393

26) Ibid p.367-8

27) Ibid p. 391

28) Ibid p. 315: Tanner writes:

> "The numbers in prison in proportion to population is much higher than in Britain, while those imprisoned for "real" crimes form only a small proportion of the convicts present".

29) Alan Milner, op. cit. p.141-2

30) Ibid p.203