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Guilty Secrets: Deceit, Denial, and the Discovery of Kenya's 'Migrated Archive'

by *David M. Anderson*

Oxford reeks of the empire, and among the elderly residents of its elegant Boars Hill suburb it is the pungency of camphor that keeps the mothballed memories alive. Gathered there at a summer garden party to celebrate the royal wedding of 2011 are a collection of the empire's children: a few former colonial officials, several businessmen who plied their trade in the Commonwealth, and some ex-settlers from Britain's African and south-east Asian territories. Among them are Mr and Mrs Pettigrew-Squires – at least that is what we shall call them for now. He is angry that recent revelations in a High Court case about British torture of African 'suspects' have ruined the 'reputations' of his former colleagues in Kenya's colonial service. She is embarrassed at her husband's bluster, and splutters on about the marvels of life in late colonial 'Keenya' (always the elongated vowels of English 'received pronunciation'): the parties, the spacious colonial homes, the bougainvillea, the sunshine. She then tells a story, disarmingly frank in her innocent portrayal of something that she seems not to be aware is sinister. She tells of spending her last weeks in employment during 1963 as a clerk at Nairobi's Government House, taking bundles of documents onto the governor's lawn and stuffing them into a burning brazier. The fires never ended, she exclaims with a laugh – as the British busily destroyed the archive of their colonial misadventure in Kenya.

The bonfire on the governor's lawn signifies an effort to edit, to sanitize and to censor history. Like Mr Pettigrew-Squires, the British late-colonial state was deeply concerned with reputations. And in Kenya British colonial officials had good reasons to fear that their reputation might be sullied. A violent insurrection, the Mau Mau rebellion, had been put down during the 1950s by an oppressive and heavy-handed counter-insurgency. Britain's colonial administration in central Kenya had been militarized in this conflict, imprisoning more than 80,000 people without trial, hanging over 1,000 convicted 'terrorists', and subjecting the local people to surveillance and interrogation on a massive scale in the manner of a police state. It was a 'dirty war' with many excesses on both sides, in which Britain had been widely accused of breaking the rule of law in its treatment of the rebels.¹

The burning of documents was an act of intentional destruction designed to prevent the records of the counter-insurgency falling into the hands of the

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nationalist government, who would come to power in Kenya in December 1963. But destruction was not the only method adopted to edit, sanitize and censor the archival record. There was also a process through which selected documents were retained in British possession and returned, secretly, to the United Kingdom. This covert act effectively denied Kenyans access to critical materials relating to their own history, ensuring that the post-colonial state would not be able to assemble a full record of the actions of its predecessor, and that the British would guiltily guard their own secrets of this past.

None of this was known to the British public until the spring of 2011, when a High Court case, brought by veterans of the Mau Mau rebellion seeking compensation from the British government for their injuries, made the headlines.² As part of the prosecution's investigation, the documents secretly 'retained' by the British were located and scrutinized for the first time since 1963, their contents revealing and proving beyond doubt British practices of abuse and torture.³ These were the revelations that so inflamed Mr Pettigrew-Squires, bringing disrepute to the memory of his halcyon days on Kenya's empire field. Worse still, the realization also emerged that Britain had 'retained' archives from all over its colonial empire, and not just from Kenya.⁴ This sparked a wider debate that placed the empire itself on trial: had the British sought to manipulate history on their own behalf by censoring the archive not only in Kenya but in all their former colonial territories? What else might they have to hide?⁵

This article explains how Kenya's 'secret archive' came to be 'revealed' through the events leading up to the High Court case, and examines the wider implications of this discovery for our understanding of the place of archival sources in reconstructing the deeply contested history of Britain's empire. The principal themes of this archival story are secrecy and destruction.

The article is organized in three substantive parts. In the first part, we recount how this 'secret archive' was created, before moving in the second to explain how knowledge of its existence seeped out despite efforts to maintain official silence. The third part then examines how the deceit of concealment was identified, revealed, and finally acknowledged in the post-colonial years by a range of interested actors. This considers how the archive came to have meaning not just for historians – the archive junkies of our story – but also for war veterans and torture victims, human rights activists, and legal advocates. The conclusion then briefly discusses the wider impact of these archival revelations, and the question of ownership.

HIDDEN IN PLAIN SIGHT

In November 1963, just weeks before Kenya gained its independence under the incoming nationalist administration of Jomo Kenyatta, a flight from Nairobi arrived at a foggy Gatwick airport carrying four crates of documents. The heavy wooden crates contained over 1,500 files, selected from

colonial government departments in the colony of Kenya, and brought to London 'for safe keeping'. These were files that the British did not want to pass on to the incoming Kenyan government – material that they wished to keep to themselves. The movement of these records was accomplished covertly, under conditions of secrecy, with care being taken in Nairobi to ensure that no Kenyans were aware of the consignment or its contents.

The flight was met at Gatwick by a member of staff from the Colonial Office, who supervised the loading of the crates into a van that transported the documents to the department's storage facility in the London suburb of Hayes.⁶ This 'migrated archive' from Kenya would remain at Hayes until 1994, when it was moved to a new Foreign and Commonwealth Office (FCO) storage facility, shared with the intelligence agencies MI5 and MI6, at Hanslope Park, in rural Buckinghamshire.⁷ Only between 2012 and 2014, following the revelations of the Mau Mau court case, were these files reviewed, catalogued, and released into the public domain at the National Archives (TNA), in a series designated 'Migrated Archives' and given the number FCO 141.⁸

What was the documentary material flown into Gatwick in November 1963? How had it been selected? And why was it being returned to Britain? To answer these questions we have to take a wider look at how the British managed their domestic and colonial archives at the point of decolonization. In his exemplary essay on the fate of colonial records at the end of empire, historian and former TNA archivist Edward Hampshire reminds us that processes for the selection, destruction and retention of records have been in place under the British system of government since the nineteenth century.⁹ At present, only around five percent of all British government records are selected for permanent retention, to be deposited in TNA. Thus, ninety-five percent are destroyed or are never made accessible. Procedures in the British colonies varied from this norm and were often *ad hoc* in character, although it is sobering to realize that so little of the total of government records is expected by archivists to be 'normally' kept and made accessible to the public. Destruction had always taken place in the colonies, just as it did in Britain. Archives are not in any sense primarily about transparency and openness: they are, and have always been, the product of negotiation, selectivity, and censorship. Destruction is thus necessarily constitutive to the archival process.

Colonial archives held special dangers. From 1950, as the Cold War set in and fears of communism mounted, specific controls were applied in British colonies for the handling of any papers designated as 'top secret'. All colonies were required to assemble a register of such documents, and if any 'top secret' document was destroyed a 'certificate of destruction' was issued for transmission back to London. This, argues Hampshire, marked the beginnings of a more regulated and systematic approach to archives within the British colonial sphere,¹⁰ but not one that put colonial archives on a par with those in Britain: colonial archives were treated as separate from but

connected to Britain, not governed by British law but mediated by British officials nonetheless. This liminal character of the colonial archive determined how the British treated the records of their empire at the point of decolonization.¹¹

By the time of Kenya's decolonization, in 1963, several other British territories had already experienced a transfer of power and arrangements had been developed for the handling of 'sensitive' documents. The British were quite prepared to hand over most of the administrative papers of government to the incoming regime, but they also identified other specific categories of document, for destruction and for 'retention'. Those to be destroyed were sometimes listed (and sometimes not), and then burned or sunk in the ocean. Those to be 'retained' were listed, packed up, and shipped or flown back to London. It is likely that the first such case for this procedure was India, where, as independence celebrations got underway, the British were still busy burning files. 'The pall of smoke which hung over Delhi during the destruction of documents in 1947', commented one British official, was the subject of much press commentary at the time.¹²

The first colonial possession to achieve independence – its transfer being handled by the Colonial Office – was Ceylon, in 1948, and here the process appears to have relied upon local officers to implement their own decisions on what documents would be destroyed and what would be brought back. By the time the Gold Coast made the transition to independence, as Ghana, in 1956, the Colonial Office had established some firmer ground rules.¹³ Here, while much of the most sensitive material was destroyed (but listed first), a cache of other documents was removed and deposited in the new offices of the British High Commissioner to Accra. When it came to the turn of Malaya, in 1957, the passion for destruction seems to have been overwhelming, perhaps intensified by the contested character of decolonization here and the influence of Cold War factors. There was also concern about protecting British allies and supporting them in the political process: the British were accordingly keen not to leave any 'hostages to fortune' in the archive papers. To this end, a month prior to independence Malaya's incoming Prime Minister, Tunku Abdul Rahman, a British ally, was told about the massive destruction of documents and was informed that some papers had been 'retained'. The letter explained the rationale of British actions with a somewhat disingenuous reference to procedures in the United Kingdom:

The removal of these documents is in accord with the usual policy by which the secret records of one government are not left for the use of its successors. I think you are aware that this is the practice with Cabinet papers in the United Kingdom and I assume the same practice will be followed in this country with Cabinet papers whenever there is a change of government.¹⁴

The parallel was misleading: in Britain documents were removed from the incoming government, but not destroyed. The destruction of documents in Malaya was in fact an immense exercise, with many collections of papers being incinerated at the British naval base in Singapore. A similarly extensive weeding out took place in Nigeria before independence in 1960, by which time this was the established practice in all British decolonizations.¹⁵

Though in Kenya they had to deal with the added complexities resulting from the Mau Mau Emergency, the officers who implemented the destruction process from 1961 at first broadly followed the procedures that had been worked out in neighbouring Uganda – in what local officials in Kampala named ‘Operation Legacy’.¹⁶ But it soon became clear that the conditions of the Emergency in Kenya had created a political climate in which the Colonial Office feared retribution and legal challenge from the incoming African government. The perceived difficulties of the Kenya process are evident in the fact that there are no fewer than nine administrative files within the FCO 141 series devoted solely to discussion of the selection of Kenyan documents for destruction and retention.¹⁷

Whereas in earlier decolonizations local officials were left to take their own decisions, in 1961 the Colonial Office issued formal instructions on the destruction and retention of records in East Africa. The Kenya administration took this framework and added further conditions and controls. Nowhere else would British behaviour be as cautious and guarded as it was in Kenya. Here, colonial officials resorted to extreme secrecy, excluding African staff from offices where the categorization of documents was taking place, creating a racially-determined ‘watch system’ in which documents were labelled to be seen by British (white) staff only, and deliberately changing the file system so as to disguise the removal of documents. While this process was going on, a full security review of all British documents was undertaken in the central administrative offices in Nairobi in 1962.¹⁸ British officials in Nairobi at this time were sternly warned not to reveal anything about the retention of documents to African staff, and to ensure that nothing of a classified nature was seen by African eyes:¹⁹ only authorized personnel were permitted to participate in the process of selection and destruction. To be ‘authorized’ was both a matter of race, being defined as ‘a civil service officer who is a British subject of European descent’,²⁰ but also of rank – only officers with the appropriate security clearance were permitted sight of any document identified as ‘sensitive’.

As files were scrutinized in Nairobi, those to be withdrawn for either destruction or retention were first given ‘watch’ status and marked with a ‘W’ on the front cover.²¹ These papers were then removed to the Governor’s Office, where a second sifting took place, this time to decide what would be destroyed and what would be retained. It was at this stage that Mrs Pettigrew-Squires had been so diligently employed at the garden brazier. In a further sophistication apparently unique to Kenya, concerning active files that remained in the working offices but were classified as ‘secret’ or

'confidential', another level of racial censorship was applied: some of these files were additionally labelled with the word 'Personal', this denoting that they should only be seen by European civil servants and not by the African elected ministers who were then coming into the interim government.

A Colonial Office guidance telegram sent to Kenya on 3 May 1961, cited by Anthony Badger, gave detailed instructions on how files scheduled for destruction were to be identified.²² Documents to be destroyed included all of those relating to the Joint Intelligence Committee, along with all grades of political intelligence material and all other files graded as 'Top Secret'. Such papers were to be destroyed by fire, or 'packed in weighted crates and dumped in very deep and current free water at maximum practicable distance from the coast'. The instructions then laid down four main criteria for the selection of documents to be retained. The documents that were to be 'migrated' would be those that:

- (a) might embarrass HMG or the Government;
- (b) might embarrass members of the police, military forces, public servants or others, e.g. police informers;
- (c) might compromise sources of intelligence information;
- or (d) might be used unethically by ministers in a successive Government.²³

These broad and generalized categories still gave local officials considerable latitude in making their selections. The numbers of files returned to the United Kingdom from Kenya was considerably greater than for any other colony – three times more Kenyan files found their way to London. This indicates the many political and legal difficulties that had arisen in the counter-insurgency against Mau Mau rebels. Decisions made in Kenya had often been hotly debated amongst British officers, and it is apparent that at least some of the files retained were selected primarily because they reflected the intensity of those disputes. It is difficult to avoid the conclusion that some officers used the 'retention' system not only to remove things from Nairobi, but to preserve them for later scrutiny – should any challenge arise. Interests were being protected. Mid-ranking civil servants, in particular, were determined that the responsibility of senior officers for orders issued regarding controversial counter-insurgency measures, including abuses of African prisoners, should be recognized. The decision made by Kenya's Governor Baring and Attorney-General Griffiths-Jones, and endorsed by Colonial Secretary Alan Lennox Boyd in June 1957, to impose a regime of torture in the prison camps holding the most recalcitrant of the Mau Mau detainees was the most prominent of these concerns.²⁴ This explains why much of the material brought back from Kenya to London proved to be so controversial. In Kenya's case, this would indeed prove to be a hostage to fortune.

We do not know what was finally destroyed in Kenya. No lists of destroyed documents appear to have survived. The many gaps in the archival listings now held in both Nairobi and London give clues, however, as to

what is missing. Always aware that destruction had taken place, Kenya's historians have long speculated on this.²⁵ Even as the selection and destruction of documents was taking place, British officials in Nairobi themselves mused on the likely implications of their actions: 'No sensible person would expect the transition to independence to be unaccompanied by the destruction or removal of some papers', wrote one official in 1962.²⁶ But would a 'sensible person' have thought that 1,500 of Kenya's 'Top Secret', 'Secret' and 'Confidential' files would be brought back to London?

DISCOVERY AND DENIAL

Despite the requirement of secrecy imposed on this process by the British, it did not take the government of Kenya very long after December 1963 to realize that key documents had been removed from the Secretariat at the time of the British departure. Such gaps as were evident in the filing cabinets might of course have been accounted for by destruction, but the Kenyans also found notes and memos that indicated the process by which materials had been selected for 'retention' and shipment to the UK. These traces of the 'retention' process, carelessly left behind in the paperwork, confirmed the rumours that there had been an airlift of documents.²⁷ That the Kenyans did not immediately respond to this revelation reflected the character and political colour of the first Kenyatta government. This was, in essence, a 'loyalist' administration, comprising those who had fought with the British against the rebels of Mau Mau. Former freedom fighters, on the other hand, even after their release from detention camps and prisons, found themselves largely excluded from political life at local and national levels after 1963. Kenyatta managed the dangerous and potentially toxic memories of intra-Kikuyu violence during the rebellion by suppressing public discussion of Mau Mau.²⁸ It was not, therefore, until the autumn of 1967, by which time the initially good relations with the British had begun to cool, that the Kenya government finally grasped the nettle, writing to the Foreign and Commonwealth Office in London to ask that a full inventory of the 'stolen papers' be provided and requesting that everything be returned to Nairobi.

We know of Kenya's 1967 request because the file of correspondence relating to the enquiry from Kenya is amongst documents that were released into the public domain at the Public Record Office (PRO, now the National Archive), Kew, in 1999, in compliance with the normal workings of the '30-year-rule'.²⁹ What was a 'secret' in 1963 had been forgotten, it seems, by 1999. The documents released in 1999 show us that the British response to Kenya's request in 1967 was blatantly dishonest. A minute on the file, dated August 1967, candidly admits that a huge collection of documents, comprising more than 1,500 files and covering over 100 linear feet of storage, had indeed been taken from Nairobi and brought to London in 1963. These files are described as 'sensitive documents', which 'might embarrass Her Majesty's Government, embarrass members of the police or army, or

compromise intelligence sources'. Further comments on the 1967 file describe the process by which these papers were selected for return to London as 'routine', being part of a wider exercise carried out in a 'meticulous fashion'. All of this was admitted internally, but the Kenyans received a quite different official response: they were simply told that no such collection of Kenyan documents existed, and that the British had removed nothing that they were not entitled to take with them in December 1963.³⁰

International interest in the identification and recovery of lost archives, was increasing, however. UNESCO included archives within its definition of cultural property in 1970 when establishing a 'convention on the means of prohibiting and preventing the illicit import, export, and transfer of ownership of cultural property'.³¹ Over the 1970s, the International Council on Archives (ICA), created in 1948, campaigned to identify 'migrated archives' and petitioned for their return. Prompted by these initiatives, the Kenyans managed to get a British MP to ask a parliamentary question on their behalf about the 'missing documents' in 1971, and they again made a request to London about the return of documents in 1974, but failed to make any progress. Political interest in the missing documents waned in Kenya during the 1970s, but the matter was taken up and professionalized by Kenya's Chief Archivist, Maina Kagombe, who was an enthusiastic supporter of the various UNESCO directives. Following the 1974 request, Kagombe sent a delegation to London to search for what he now termed their 'migrated archives'.³² Led by senior archivists from the Kenya National Archive in Nairobi, this delegation met with staff of the Foreign and Commonwealth Office (FCO) in 1981, and visited the Public Record Office (PRO) – now the National Archive (TNA). As a recent official enquiry into the Kenya 'migrated archives' has acknowledged, this Kenyan delegation was systematically and deliberately misled in its meetings with British diplomats and archivists.³³

By the 1980s, then, the issue of 'migrated archives' had achieved a higher international profile and UNESCO and the ICA were highlighting the special case that archives of decolonized countries presented. As Banton makes clear, British response to these initiatives, led by the head archivist at the PRO and backed by the legal advice given to the government of the day, was once again to dissemble and deflect.³⁴ It proved a successful strategy, as the international conventions proposed on migrated archives were never ratified at the UN.

Back in Nairobi, other visible traces of Britain's 'secret archive' had surfaced. Situated at one of the main junctions of what was once Government Road, now known as Moi Avenue, the Kenya National Archives is housed in one of central Nairobi's most imposing buildings. This was once the Bank of India, and with its pillared frontage and high-vaulted two-storeyed entrance, it still conveys a sense of wealth and power. The occupants, however, are now distinctly less grand than they once were. In place of inscrutable bankers and excitable investors, the humble archive

staff busy themselves serving the requests of diligent historians, students, and researchers, who come to delve into documents on Kenya's past, or just read the books that can be ordered from the old government library collection also housed here.³⁵ Despite the bustle of traffic outside, and the vehicle exhaust fumes that billow in through the windows of the reading room, this is a site of quiet scholarship.

Kenyans are unsure what to make of this place. Popular opinion in Nairobi is familiar with the stories of Britain's flight from this former colony. Veterans of those years recall that there was massive destruction of documents before the British left – not just on the governor's lawn, but at other colonial offices, in the rural districts far beyond Nairobi, and even at the sites of the detention camps where rebel suspects had been held and interrogated by their colonial masters. Some tell of crates of papers flown over the Indian Ocean to be dumped in the deepest sea.³⁶ Historians, too, have lamented this loss of documents, describing the destruction and arguing for the need to create new, alternative archives of indigenous papers and of recorded oral testimonies, to replace the tainted colonial record.³⁷ These tales of destruction lead many Kenyans to wonder what could possibly be left that is worth reading in the National Archives? Brave journalists and other casual researchers who drop into the National Archives in hopes of finding a gem or two of historical evidence are discouraged by the difficulty of the task, their failure adding to the public sense that there is nothing of any value to be found here. The British, it is said, have stolen Kenya's history.

But although destruction and theft are undeniable, Kenya's National Archives remains a vast, valuable, and uniquely detailed historical trove. Searching for documents here, either on the clunky and near-obsolete computerized retrieval system, or among the dusty handlists that pile up against the back wall of the Reading Room, is a laborious, tedious and frustrating business, but there is historical treasure to be found here. This remains one of Africa's most substantial archives, holding a very full record of papers for the colonial period up to 1952, when the Mau Mau rebellion began. For the history of the rebellion itself, and the rise of nationalism in Kenya, the archive is not as full as it should be, but nonetheless contains a copious quantity of useful documentation – as is evident in the major published work of the many historians who have drawn on this indispensable archival collection to write the history of this troubled period in Kenya's past.³⁸

As historians worked through the documents in Nairobi's archives and explored the papers dealing with the Mau Mau rebellion, they found references to many 'missing' files, they spotted huge 'gaps' in the catalogues, and became aware of patterns in these omissions. They even encountered stray papers that referred directly to the transportation of files back to the United Kingdom. From at least the late 1990s, then, all Kenya's historians who wrote about Mau Mau were therefore aware both of document destruction

and its extent, but also of the likelihood that Britain had 'retained' some of the most important documents.

Histories have to be written, despite the impact of destruction and 'retention'. The truth is that historians always, everywhere, have to deal with destruction and retention. Archives never have space for everything. All governments select, filter, and winnow the papers that move between their departments of state and the national archive. And they all have secrets: they all know that archives can be dangerous places – perhaps especially colonial archives.³⁹ Governments guard themselves against such risk by seeking to control the archive – dictating what can be read, by whom, and when. The British policy of destruction and retention of colonial documents is just another example of a familiar process; one that government officials would never have expected could be exposed to full public scrutiny. But, in April 2011, that was precisely what happened.

ARCHIVE JUNKIES, ACTIVISTS AND ADVOCATES

The revelation of the 'migrated archives' taken from Britain's former colonies finally came on the evening of 5 April 2011, just one day before the first hearing in London's High Court was to commence in the case of Mau Mau veterans seeking compensation from the British for alleged tortures and abuses committed against them in the 1950s. The admission, made in a statement in the House of Lords by junior Africa minister, Lord Howell of Guildford, acknowledged that the FCO 'irregularly held' historical archives relating to thirty-seven former British colonies, then estimated to amount to some 8,800 files in all.⁴⁰ Lord Guildford warned that it might take 'many years' to review this material in order to decide whether it could be put in the public domain, but within a week Foreign Secretary William Hague, embarrassed by the revelations and under pressure to clarify the circumstances of the archive, told *The Times* newspaper that the government would in fact process the files and make them all available to the public as speedily as possible.⁴¹ This commitment was honoured, and by November 2013 the 'Migrated Archives' had been reviewed, redacted, catalogued and placed in the FCO collection at the National Archive.⁴²

The events leading up to this announcement drew together several sets of actors with shared interest in the recovery of the long-lost archive from Kenya – though none of them had any idea of the empire-wide archives that would also emerge from this process. They included the victims of British abuse in Kenya, seeking compensation for their injuries and losses; the activists of Kenyan human-rights organizations, who campaigned for recognition of the abuses committed during the colonial period; the historians whose pursuit of evidence in the archives allowed the explosive story of concealment to be pieced together; and the rank and file enablers of the legal profession, who assembled the evidence and brought the case against the British government to court. Let us consider the role of each of these agents in bringing about the revelation of the lost archive.

The Kenya government might have pushed harder for the restoration of the 'migrated archives' had the memory of Mau Mau not been such a national trauma. Until 2002, any organization associated with the Mau Mau movement was still banned under Kenyan law. As historians B. A. Ogot and Atieno Odhiambo have observed, Kenyans themselves remained deeply ambivalent about the place of this insurrection in their own history, some preferring not to give prominence to a cause that had advocated violence and divided communities.⁴³ Those who fought in the Mau Mau armies, and their staunch supporters, took a different view, however, and despite the ban on the movement by the 1990s there were already more than twenty-three different veterans' associations all working actively for the welfare of their members.⁴⁴

In 2001, when doing research on the history of the rebellion at the Kenya National Archive in Nairobi, I was approached by representatives of these Mau Mau associations. They were aware that the National Archive might contain documents that could be relevant to their claims of mistreatment, but had then neither the resources nor knowledge to search the records for themselves. One group, from the town of Nyeri, were especially keen to 'make peace' with the British Army, and presented me (in 2001) with letters and messages of comradeship that they wanted to be conveyed to military commanders in London. This, they reasoned, might be a first step toward acknowledgement of their suffering.⁴⁵ Another group was eager to pursue legal action through the courts. They had first been alerted to this possibility by the campaign in the rural villages of Murang'a and Nyeri of a self-styled 'lawyer', who was collecting testimony from survivors of the British detention camps. In return for a 'registration fee' this man was promising to win a large compensation package. The fraud was later exposed and prevented, but it had galvanized the veterans' associations into looking for other kinds of evidence that might support their claims, and in this effort the archive loomed large.⁴⁶

Despite all they knew of their own suffering, and the authority that might be conveyed by their oral testimony,⁴⁷ for Mau Mau veterans the archive nonetheless possessed a different kind of power – that of the written word. Aware that their own government was not committed to supporting them, they understood the great importance of 'independent' evidence, the kind that might be found in sources that other Kenyans were unable to manipulate or censor. For the veterans, the archive represented more reliable evidence than did other sources. They even wondered whether local rumours that the archive contained nothing of value were merely a government ploy, designed to put them off the scent.⁴⁸

My own research was by this time having an impact on Kenya's discourse on Mau Mau, as a result of public talks given in Nairobi and London and the press coverage that ensued. As the elections of 2002 approached, after which the Mau Mau associations would be legalized for the first time, a local Kenya researcher published an article in which he declared that 'The groups

pursuing compensation have pegged their hopes on statements by David Anderson, a British historian whose research findings on an examination of capital cases during the Emergency showed gross violations of human rights'.⁴⁹ The confirmation of these findings would not be published for another three years,⁵⁰ but already in 2002 the victims of British counter-insurgency violence had come to appreciate the potential significance of the archive.

After 2002, the Mau Mau veterans' associations were able to operate openly, and this made it possible for the Kenyan Human Rights Commission to take up the case. Set up in the 1990s, as part of the global turn toward human-rights activism, the Commission now helped to co-ordinate the work of several of the associations and moved them toward a common methodology in gathering evidence for a legal claim. At this point, the focus began to sharpen around seeking documentary evidence that would corroborate the testimony of victims. The publication, in 2005, of two historical studies of the Mau Mau rebellion provided a wealth of archival references that might serve this purpose. Caroline Elkins's study of the detention camps drew heavily on the oral testimonies of survivors, and also included many valuable references to archival sources from both London and Nairobi.⁵¹ My own study, *Histories of the Hanged*, used legal sources from the archive to examine the cases of rebels whom the British had prosecuted on capital charges. The legal papers used in this book, all of them from the Kenya National Archive in Nairobi, provided copious evidence of British abuse and the mistreatment of prisoners.⁵² Both studies gave a spur to the campaign then being run by the Kenya Human Rights Commission.

At around the same time, in the spring of 2005, another historical book was published in London that unwittingly provided an important additional piece of evidence by proving the existence and the whereabouts of Britain's secret colonial archive. This was a study of the history of Lesotho's medicine murders, authored by historian Colin Murray and former colonial official Pete Sanders. Meticulously piecing together the story of the leopard murders from fragmented archival sources in Roma (Lesotho), Pretoria and London, Sanders eventually discovered that 'many sensitive files' about the investigation of the killings he was studying 'had been removed from Basutoland by the Government Secretary in 1965, shortly before internal self-government, in order to protect them from scrutiny by the incoming government of Lesotho'.⁵³ Through his contacts with retired diplomats and others formerly in colonial service, Sanders tracked the documents down 'to a repository of the Foreign and Commonwealth Office (FCO) at Hanslope Park', in Milton Keynes, Buckinghamshire.⁵⁴ There, in the early months of 2003, Murray and Sanders were able to examine the documents, noting in the process that the vast Hanslope Park depository contained many other colonial archives besides those relating to Lesotho.⁵⁵ In May 2003, Colin Murray had written to me telling me what he had seen at Hanslope Park.⁵⁶

By early 2005 we therefore knew the broad details of document removal to London, and Murray's intervention gave a strong clue that those papers were still preserved and indeed suggested where they might be held. But the critical element in moving this into the public domain was to be the advance of the legal claim for compensation by the Mau Mau veterans. The London law firm of Leigh Day first discussed the Mau Mau case with the representatives of the Kenya Human Rights Commission in 2003, but it took some time for the legal approach to take shape. Leigh Day first worked with the Kenya Human Rights Commission toward a systematic collection of oral evidence from victims, and initiated a process for the review and assessment of this material. From an initial survey of some 15,000 statements, this eventually led to the identification of a small number of claimants, five in all, whose cases would be taken forward. The justification for their selection was that there seemed to be a reasonable chance in each case that archival documents might be located to corroborate the stories they told – this assumption being based on what was then already known about the archival holdings in Nairobi and London from the published work of historians.⁵⁷

Leigh Day made their first request for what turned out to be the Kenyan 'migrated archives' on 11 October 2006 – although at that time the lawyers were only dimly aware of what it was they had asked to see. Informed by historians, including myself, and by members of the Kenyan government that it seemed likely there were indeed other 'secret' documents somewhere in Whitehall, Leigh Day went on what might be best thought of as a 'fishing trip' – asking in general terms about 'a tranche of documents relating to the suppression of the Mau Mau rebellion'. This request received the reply from the Treasury Solicitors that 'all information held by the FCO relating to the Emergency period [in Kenya] has been transferred to TNA and is in the public domain' – a statement that proved to be far from the truth.⁵⁸ Over the next five years a variety of requests were made about Kenyan documents, some by Leigh Day following up their initial enquiry, and others by historians seeking to use the British Freedom of Information legislation to find out what other papers the government might still hold.⁵⁹ In response to all these requests, the government claimed that searches had taken place and that no additional documents existed.

The crucial breakthrough came in December 2010. By then, Leigh Day had filed to have the Mau Mau case heard in the British courts and a preliminary hearing, to decide upon legal jurisdiction, had been fixed for April 2011. Having followed the case closely over several years but until then not directly involved in the prosecution, I agreed in the autumn of 2010 to serve as an Expert Witness on behalf of the Leigh Day action. I now composed a first witness statement, in which I directly addressed the questions of the destruction of colonial records in Kenya and the removal of records to London. My witness statement of 23 December 2010 quoted from archive documents I had seen in Nairobi and London which referred directly to the 'retention' of Kenya archives in 1963 and their removal to London.⁶⁰

The presiding judge, Justice McCombe, accepted the veracity of the essential facts set out about the removal of documents to London and instructed the FCO to release the documents or to explain why, how and where they had been destroyed. Days later, in early January 2011, the records management team at Hanslope Park revealed that the materials they held did indeed include the 1,500 files described in my witness statement.⁶¹ The admission of the existence of the Kenyan files led directly to the acknowledgement of the wider 'migrated archives' collection at Hanslope Park, and hence to the statement made in the House of Lords on the eve of the first Mau Mau legal hearing at the High Court,⁶² and then to Hague's decision, on 8 April 2011, to release all of this archive to TNA.

CONCLUSION: WHOSE ARCHIVE?

The Public Records Act (1958) established the terms under which government archives were created and maintained in the United Kingdom. This Act allowed for the preservation of the records of government in the national archive, setting down strict legal rules determining what might be destroyed and on what terms this could happen. With the exception of very specific categories of security records, nothing can be legally destroyed under the Public Records Act (1958) without listing and registration.⁶³ No such constraints applied in Britain's colonies – processes of secret destruction and the 'retention' of files from Kenya and elsewhere were designed and carried through by the Colonial Office without any reference to British legislation. The whole 'migrated archives' collection at Hanslope Park had no legal status in the United Kingdom: in a very important sense, it simply did not officially exist. In his 2011 report on government handling of the requests for access to the 'migrated archives' in connection with the Kenyan legal case, Anthony Cary admits that FCO records management staff at Hanslope Park 'were conscious of the files as a kind of guilty secret, of uncertain status, and in the "too difficult" tray'. As one official explained to Cary: 'People tried to ignore the fact that we had them. We weren't really supposed to have them, so it was thought best to ignore them for the purposes of [Freedom of Information] requests'.⁶⁴

Secrets signify power. The theft of colonial archives might be defended as the righteous act of an out-going administration, but it was also an act that denied Kenyans (and other colonial peoples) their history. Theft and destruction have eroded and undermined the confidence that the people of Kenya have in the capacity of their own institutions to preserve that history. In its efforts in the 1970s to have migrated archives restored to their rightful nations UNESCO was explicit about the colonial aspect: 'Military and colonial occupation', according to UNESCO's 1976 report, 'should grant no particular right to retain records acquired by virtue of such occupation'.⁶⁵

Destruction of archives is a still more pernicious act. The 'normal' character of document destruction does not make it right, or even necessary. In the Kenyan case, we cannot know the precise criteria used by local officials

for what to stuff into the burning braziers, but it is clear that their main aim was to maintain the good 'reputation' of Britain. Anything that reflected badly on the United Kingdom and its administration of the colony was supposed to be destroyed. This was an explicit aim, knowingly acted on and then wantonly denied. The destruction in Kenya was severe though incomplete. It could have been worse. In the British colony of Aden, where departure came precipitously in 1967, amid an insurrection that did not allow civil servants the time to sift and sort their papers, every document in the Governor's Office was heaved onto a huge bonfire that was still smouldering as the Governor and his staff escaped to their waiting aeroplane. The conflagration was filmed for posterity by a home-movie buff among the staff, and later appeared on the website of the British Empire Museum at Bristol, where, before 2010, it caught the attention of many historians of empire.⁶⁶

We are fortunate that more of Kenya's documents did not meet the same fate, and it is perhaps surprising that so much Kenyan material should have found its way back to London at all. It may be even more surprising that the 'migrated archives' of Hanslope Park survived long enough to be now preserved in the National Archive. Kenya's case was in one sense typical – files were destroyed and some retained in all British colonies. But the violence and excess of Kenya's war of decolonization set it apart as a distinctive case, giving its documents a particular potency. The materiality of the Kenyan archive that was retained and returned to London, its sheer scale and expanse, and the range of those with interest in its contents, all marked the troubling and enduring presence of the colonial past in both Britain and Kenya. Destruction and retention combined in Kenya, as elsewhere, to provide Britain's ordering regime with the power to contain and shape knowledge about the past, yet the survival and re-emergence of the records now revealed from Hanslope Park has defied the intentions of those who would censor and edit this history.

Kenya's 'migrated archive' contains copious evidence of British abuse and torture, of the breaking of the rule of law, of executive interference with judicial process, and of numerous efforts made to conceal misdeeds and infringements.⁶⁷ Why was this damning record allowed to survive at all? Why was it not all consigned to the brazier in the Governor's garden, or to the depths of the ocean in weighted, sealed crates? The answer to this question lies in the contested character of Kenya's counter-insurgency. Some within the colonial establishment were deeply uncomfortable with the wholesale destruction, concealment and removal of these archives, while others were equally determined to ensure that records should not be revealed to the public that would damage reputations. The arguments about actions, and their implications, are fully rehearsed in the Hanslope files. All the evidence required to show who took the crucial decisions, and how they were implemented, is to be found in these retained files – and it is difficult to escape the conclusion that it was the intention of those in charge of the retention process that such matters

should be fully covered: the subalterns of the British colonial administration thus ensured their masters would be called to account. This is more likely to have reflected the machinations of internal bureaucratic politics than worries about subsequent prosecutions, although the possibility of future legal actions is mentioned at several points in the correspondence these files contain. Not everyone, therefore, wanted to destroy the evidence of colonial action: for some, it was critical that a record should survive – if only to protect mid-ranking officers from accusations that they had acted without the instruction and direction of their superiors.⁶⁸

A final question relates to the future status of the Hanslope Park files: whose archives are these, and should they be preserved in Britain at all? Who actually owns the 'migrated archives'? As Anthony Cary's report concedes, this question was debated over many years between the FCO and TNA without any clear consensus being reached, and with many contradictory decisions being determined by both parties. In essence, TNA was reluctant to accept the 'migrated archives' as British records because they did not fall under the description provided in the Public Records Act (1958). On the other hand, the FCO did not want to return the records to the former colonies as this would involve the reputational damage of having to explain how they came to be at Hanslope Park in the first place. Both parties at various times argued for the destruction of the entire 'migrated archive' collection. That this did not happen was down to a fortuitous combination of bureaucratic inertia, lack of resources, and unease on the part of some more junior officers that these papers might actually be important.⁶⁹

What should happen now? All the 'migrated archives' from Hanslope Park, more than 21,000 files at the latest count, are available to the public at TNA. The records sit at Kew in the British government archive, yet they belong to the countries from which they came. Several governments are currently investigating the papers to discover whether an effort should be made to have them 'repatriated', and the Kenyan government seems very likely to be among those that will make such a request in the near future. UNESCO addressed this question back in 1976:

Archives are an essential part of the heritage of any national community. They not only document the historical, cultural and economic development of a country and provide a basis for a national identity they are also a basic source of evidence needed to assert the rights of individual citizens.⁷⁰

In the case of Kenya, those rights were recognized in the 2013 settlement made by the British government to more than 5,000 Kenyan citizens who claimed to have been tortured and abused in the 1950s – a decision that was reached at least in part because of the documents found in the migrated archive.⁷¹ The Kenyan migrated archives, along with the documents relating to all the other thirty-six former colonies, should now be returned to their

countries of origin. This will not make up for the destruction wrought by Mrs Pettigrew-Squires and her brazier, but it might go some way to restoring the reputations that Mr Pettigrew-Squires holds so dear.

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13 These details are to be found in TNA FCO 141/4989.

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29 The '30-year-rule' is now being replaced by a '20-year-rule'.

30 TNA FCO 31/211/11, Scott to Arthur, 7 Nov. 1967. See also, TNA FCO 31/211/9, Reid to Scott, 2 Nov. 1967, and various minutes in FCO 31/211/4 describing the migrated documents.

31 Quoted in Banton, 'Destroy? Migrate? Conceal?', p. 330.

32 Cary, 'The Migrated Archives', p. 2.

33 Cary, 'The Migrated Archives', p. 2.

34 Banton, 'Destroy? Migrate? Conceal?', pp. 329–31.

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- 56 Personal correspondence with Colin Murray, May 2003.
- 57 This paragraph draws on my notes of discussions with Daniel Leader, of Leigh Day, over several months from mid 2009 into 2010.
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