

'PROFILE OF CRIMINAL HOMICIDE'

BY

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A dissertation submitted in fulfilment of the requirement for the award of the degree of DOCTOR OF PHILOSOPHY in Sociology, Faculty of Social Science, Makerere University, Kampala.

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STATEMENT OF ORIGINALITY

I, ~~TIBAMANYA RUTH MERWABINYANTIS MUBIGYERE~~ ^{Solomon} mwene MUSHANGA, hereby declare that this dissertation is my original work and, that it has never been, nor will it ever be, submitted for any degree in any University, publication as a whole or in part without the express permission of Makerere University.

RUTH MERWABINYANTIS MUBIGYERE

Signed:

TIBAMANYA mwene MUSHANGA

May 30, 1974
University of Nairobi

ACKNOWLEDGEMENT

Many people helped me in carrying out this study and I thank them all. A few, among them, deserve special mention here.

I wish to thank Prof. David Bronkesha of the University of California at Santa Barbara and Prof. Edward Steinhart of the University of Texas at Austin for having been kind and willing to dispatch to me books, papers, journals, often at great costs to them whenever I wanted such literature. Dr. Gidion K. Sherurah and Mr. Okot p'Bitek of the University of Nairobi for discussing several points with me and for useful suggestions. Omwami Katungwensi Rubimbwa of the Department of Sociology, Makerere University deserves special thanks for all his kindness, friendship and assistance in many ways not only to me alone but to all members of my family. I want to express my sincere gratitude to Prof. Marshall B. Clinard, my teacher and friend, and his wife Ruth, for the interest, guidance and supervision of this study without which it would not have been possible to complete.

I am also grateful to the Rockefeller Foundation of New York for the financial grant that enabled me to attend a seminar in Criminology at the University of

Wisconsin at Madison in preparation for this study. In connection with this I wish to thank Drs. James S. Coleman, Ralph Davidson, and David Court for their keen interest in this programme. I am grateful too to the Kenya Government for permission to carry out research at Kamiti Prison.

Finally, I am grateful to my wife Muko and my daughters and sons, whom I miss so much, especially the small one, Rugogamu who arrived in the world at such a time! for enduring all the hardships.

TIBAMANYA mwene MUSHANGA

June 5, 1974
University of Nairobi

SUMMARY

The main objective of the study was to find out whether the people in Kenya kill under similar conditions and for similar reasons as people in Uganda or elsewhere where research has been carried out. The major questions raised under this general objective cover a wide range of variables which include the age of offender, and other personal and social variables that are of sociological significance in explaining criminal violent homicides among human beings.

The study used the direct interviews of the prisoners. These were all men serving long prison sentences at the Maximum security Prison at Kamiti situated just outside the Metropolitan city of Nairobi, in Kenya. In all, there were 108 respondents. Some had committed manslaughter and the rest had committed murder and had either been sentenced to death but had been reprieved by the President and the death sentences had been commuted to life imprisonment or had committed murder while suffering from mental aberrations and were serving what is known as President's Pleasure, which means an indefinite prison sentence, and usually such inmates first undergo psychiatric treatment before being allowed to mix with other criminals within the prison community.

In addition to the use of data obtained from the prison, use was made of previous studies especially in Africa for comparative purposes. The purpose of this was to help

establish certain general variables that can be stated with any degree of certainty in relation to criminal homicide situation and in respect of offenders. This helped in the construction of a profile of criminal homicide.

This profile is viewed as very important if something has to be done or if effort is to be expended in preventing the loss of life through control programmes. If general variables that characterise offenders and victims of violent criminal homicide, are known, then it can become possible for social Defence Planners to see in which areas their plans are most likely to succeed, or to be totally inapplicable.

The study tested three main hypotheses, which were divided into (in all) twelve subhypotheses.

One: The first general hypothesis was that the prisoners at Kamiti represented the general criminal homicide offender population in that they have personal or individual characteristics that have been found to be predominant among offenders in other societies. These individual characteristics related to (a) age, (b) rural background, (c) little or no education, and unemployed or self-employed, (d) no previous court or prison record.

Two: The second general hypothesis stated that the majority of criminal homicide cases were committed under the same social conditions in Kenya as have been found elsewhere. The subhypotheses were (a) alcohol, (b) weapons, (c) offender-victim relationship, (d) that homicide for gain is not common.

Three: Motives for homicides. The subhypotheses are (a) drunkenness, (b) simple disputes, (c) sexual jealousy, (d) cattle raids.

FINDINGS

In order to test whether there was any association between these variables, and since it was impossible to replicate these interviews, the nonparametric or the distribution - free test which relies on ranks was used, and association of the major hypotheses was established, that:

1. Criminal homicide is predominantly committed by males, and in the majority of cases, against fellow males, then females in the second instance.
2. Male offenders are relatively young, the majority being aged between 18 and 30 years; and the victims tend to be about 6-10 years older than the offenders. This finding shows clearly that males below the age of 18, and those above the age of 45 are rarely involved as offenders, but that they frequently become victims.

*Those also
dominate
in proportion*

3. The study has shown and confirmed that criminal homicide is predominantly a behavioural interaction commonest among the unemployed, or the self-employed, and those who occupy the bottom position of the society. In other words, it can be asserted that the higher the individual in social standing, the less likely he is to engage in criminal

homicide as an offender, and very unfrequently such individuals appear as victims, mostly in cases involving robbery with aggravation.

4. Criminal homicide in the majority of cases, is committed by individuals who are under the influence of alcohol. Usually either the offender, or the victim, or both have alcohol in their circulation systems; and in most cases the death occurred when they were drinking together.

5. Unlike other crimes, offenders of homicide, on the whole have no police, court, or prison records; and are therefore first offenders.

6. The Kamiti sample shows that the majority of Criminal homicide offenders were of rural backgrounding, this, more than anything else reflects the background of the larger part of the African population.

7. In most cases, the offender and the victim not only knew each other but were also related, as family members, spouses, friends, lovers, workmates etc.

8. Criminal homicide cases tend to occur at night and in 8 p.m - 2 AM or near the house of either the victim or the offender. In some cases, the quarrel starts inside the house, then a fight, and one of them gets out and the other one follows him and kills him at once.

9. Criminal homicide, as shown by the present study is an intra ethnic, as it has been shown from American studies to be an intra racial phenomenon.

In this study, Kikuyu killed Kikuyus, Abaluyia killed Abaluyia and Africans killed fellow Africans only three Indians got killed as victims of robberies.

10. Motives in most of these violent encounters are trivial and not clear. In some cases, there is a long-standing grudge which is normally suppressed but which breaks into violence with the ingestion of alcohol.

In the majority of cases, violence comes during the heat of passion, and therefore no mens rea, or malice aforethought. Few cases of criminal homicides are premeditated. The study has shown that no single theory is possible in explaining criminal homicide. Veli Verkko attributed high rates of criminal homicide in Finland to the National Character which was characterised by drunkenness, in U.S.A. Negro high rates are attributed (nowadays) to impoverishment of the Black people there relative to the dominant white population.

But it seems truer to say, whether impoverishment and subjugation or not, whether a particular group of people drinks excessively or not, that criminal homicide is a cultural behavioural phenomenon, just like divorce, suicide, industriousness, homosexuality, high rates of brideprice, and other social attributes. This conclusively shows that criminal homicides cannot be explained in terms of biology

and Lombrosian body-type, but in terms of Sutherland's theory of Differential Association which stresses the role of social contact and socialisation. It is to the socialisation of new members of society that attention must be directed in the attempt to control the rates of criminal violent homicides.

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CHAPTER ONE

INTRODUCTION

OBJECTIVE

Criminologists who have carried out empirical research have repeatedly stressed the importance of research on all aspects of crime. They note that research is necessary to discover patterns, similarities, repetitions and circumstances surrounding particular criminal behaviours. Such findings are important because they can be of tremendous use for planners, teachers and those who are involved in the whole field of social defence. It is now becoming more and more recognised that programmes that are formulated without reference to and due consideration of prevailing social, economic, political and even cultural factors hardly ever succeed. This is more so in the field of crime control and prevention. There is a lot that is going on on the East African Scene in the field of crime control and prevention. These range from increase in the police force, the establishment of para-military units, the enlargement of, and the unification of the courts, the expansion of the prisons and recruitment of more guards, and the expansion of probation services. But all these programmes and establishments will continue to be under the shadow of doubt as long as they are not based on empirioally verified facts that require such expansion.

The main objective of this study was not so much as to provide information on which control and prevention programmes in the field of social defence could be based, but rather, in Bohannan's

words¹ to find out whether people in Kenya kill under similar conditions and for similar reasons as people in Uganda or elsewhere where research has been carried out. The questions raised under this general objective of the study are: at what age is an average man likely to be a criminal homicide offender; he is likely to be married? literate? employed?, of urban or rural background? What role does alcohol play in the genesis of violence? Is the offender likely to be related to his victim or not? What are the motives? In the end, the study aims at constructing a profile of criminal homicide based on the findings of the study and in comparison with others that have been carried out in other countries.

Criminal homicide in East Africa, is, year after year, said to be increasing, and for this, not only the governments but also the average resident has reason to be uneasy because of the likelihood that one may sometime be a victim. Many people, of course, never imagine that they are as likely to be offenders as they are likely to be victims. Crime is the concern of us all; crime knows no social distinctions; although the rural, unemployed, the uneducated, and the illiterate is most likely to be killed and to kill, this does not imply the safety of the mighty and the powerful; the rich and the educated. Last year, a business director was stabbed to death in his own office by one of his employees whom he had discharged for inefficiency. Not so many years ago, a very high ranking cabinet minister was shot and killed in the streets of Nairobi in broad day light. Recently, a very senior government official, a provincial supervisor of criminal investigation was thoroughly beaten up in the town of Nyeri and he narrowly escaped death. Violence can be administered by anybody to anybody

although some groups prefer to use violence more than others, but the fact remains that all people are as much potential victims as they are potential offenders.

Another objective of this study was to find out to what extent are criminal homicide offenders likely to give information relative to the crimes they committed once they have been sentenced and are serving their prison sentences. The objective was, in fact, to give the murderer, the manslaughterer a chance to state his position and give his views freely without fear of further self-incrimination: but due to the short time the researcher was allowed to interview men serving life and time sentences, it was not possible to get detailed account of each of the criminals now serving life and time sentences at Kamiti Government of Kenya Prison.

The objective that has been realised is the collection of data relating to the men who killed others: the circumstances under which violent associations erupted and the reasons or motives which the perpetrators give for the slaying of their fellow human beings. The study of crime in Africa, especially East Africa, is still in its primitive stages: and the study of violent deaths has not been done at all, especially in Kenya; apart from Wilson's of the Joluo, Paul Bohannan's study in North Kavirondo, both reported in Bohannan's study of African Homicide and Suicide,² the subject has not been looked at at all; and it is the objective of the present study to stimulate research into this field so that light can be thrown on the numerous issues that are involved in the crime of homicide. If there is anything in which the British have achieved a high

rate of misleading the lawyers and prison guards, is the idea that research is useless. That researchers only want to go to prison and instigate trouble and to make stupid criticisms of the system; but it is my sincere belief that unless research into these institutions is allowed, and even encouraged, we will never know where and when there is need for change, alteration or abolition of a particular programme.

Thus the study aimed at highlighting major issues in the field of criminology and at making a start in the endless struggle of study of criminal behaviours especially the violent ones.

METHODOLOGY

Data were collected at the Government of Kenya Prison at Kamiti with the permission of the office of the President ref. no. ADM 13/001/C1580/5 of 31st January 1974 and with the approval of the Commissioner of Prison ref. no. 36/1/43 of 27th February 1974. Kamiti is a maximum security prison, where very serious felons are admitted when sentenced to more than four years imprisonment. Permission was not granted to interview inmates at other prisons; this made it impossible to have a larger sample.

The data were collected on 109 male offenders serving life and time sentences. One case was dropped as the offence of criminal homicide involved the use of a motor vehicle, and for our purposes, this case did not fit into the type of the

cases we were looking for; that is cases in which one human being knowingly or not takes up a weapon such as a knife, panga, or spear and inflicts a deadly blow to another person. Thus finally, we have data on only 108 offenders. There were about five more offenders who were not interviewed because of expiration of the time allowed. There were also, at the time of the interviews, 21 condemned felons, five of whom were hanged just before I started the interviews, and 16 were not interviewed because these are considered to constitute a "special" type of felons for whom permission was not granted.

Different researchers have preferred different sources for their data; for various and stated reasons. Professor Marvin E. Wolfgang in his study of criminal homicide in Philadelphia, used Police files³; Calvin F. Schmid, in a study of homicides in the city of Seattle, Washington state in King County used death records at the Coroner's office.⁴ Howard Harlan too used the Coroner's records of Jefferson County in Alabama.⁵ Three of the most recent studies of criminal homicide, Mushan_ga in Western Uganda, Leigh Bienen in Western Nigeria, and Carolyn Flueh-Lobban in the Sudan used court files and Police records; published judgements in homicide cases in Western Nigeria and cases from the Sudan Law Project files at the University of Khartoum; respectively.⁶ Tanner, ten years ago, made a survey of criminal homicide for the whole of Uganda by using Police files.⁷ Bohannan and his colleagues in the study already mentioned mainly used information already recorded either by the courts or Police.⁸

There are obviously advantages and disadvantages for preferring one source of data to another one. Police records show, in general, that every person who is charged with criminal homicide offence, the offence is usually entered as murder; and in some cases murder is listed together with attempted murder. According to this method, the Kenya Police in 1970, recorded 503 murders (including attempted murder) and only 8 cases of manslaughter.⁹ Police records too generally do not show some of the important issues that may be considered in an analysis of criminal homicide. They may or may not show the age of the offender; very often they simply entered "a male adult" and this is not very useful, for we would like to relate the crime the individual committed to his age, for in this way we may discover very useful patterns and relationships. Police records too in East Africa hardly ever record whether the suspect is literate, what education he has had, whether he is married or not, what religion he practices, whether he drinks alcohol or not, whether he has children to take care of or not and most important, it is the police in most cases, who determine the motive behind the homicide. The police records are useful in giving background information as to time and date of the homicide. But in Uganda the police are in the habit of recording the date in such away that it becomes impossible to list. They write that the crime occurred on or about 31st of March and very often the entry shows two dates on or about 30/31st March. The age of the offender, is again, determined by the police as most of the suspects do not know their ages d

even if they were literate.

The use of court record would appear to be a much more rewarding method if only many cases did not end before they reached the courts. Sociologically, the police information is more useful in that it gives an account of the deceased person; this is important whether the person who killed the deceased is known or not, the fact is that he is dead; but legally, the problem arises for there are cases that turn out to be that actually the deceased precipitated his own death, or that the accused killed in self-defence and therefore has no charge to answer, or that the killing was justified because the deceased was in the course or in the process of committing a felony.

The present study attempted to use the offenders themselves as a source of information and without further reference to police or court files since permission was not granted to have access to these files. It must be noted, especially in relation to the motive in criminal homicide, that it is only the perpetrator who has the details but not the police or the courts. In cases where the perpetrator jumps and an innocent person is arrested and charged and sentenced, all the details relating to his person and the victim remain incorrect because the real actor was not arrested. The present study shows three groups of responses, the bulk of the criminals accepted the fact that they are the ones who killed; another group gives a very vague explanation of what actually happened on the eventful night, while another group flatly deny having had anything to do with death of the

person. It would appear that the account freely given by a murderer or a manslaughterer without fear of the death penalty or life imprisonment would yield more information in relation to the violent encounter prior to the demise of the deceased. And such information can be given by persons who have already gone through the system and either awaiting the fateful day or are serving their respective sentences in prison.

It was not possible to visit other maximum prisons for the purpose of interviewing men and women serving life or time sentences in prison because, the prison administrations, not just here in Kenya or East Africa, but in most countries, impose severe restrictions on contact with those who are deemed to have wronged society, and especially those who have committed the most abominable of all crimes of criminal homicide. It was the wish of the researcher to analyse the individual accounts of the crime by the convicts, and to compare their social, economic and other variables with other offenders such as robbers so as to see in what respects the two or more "types" of criminals differ.

The data collected from the offenders were by direct interview with the offender. The medium of interview was Kiswahili which all of the men interviewed spoke and understood fairly well: Kiswahili being a popularly spoken language in urban and rural Kenya. With the help of one student, who also acted as research assistant, it was possible to communicate with the inmates. The student also being a Kenyan of the Kamba tribe, could speak to the inmates in their mother languages

such as Kikamba and Kikuyu, two of the three leading tribes from which offenders came from.

The Bromquist Double Median Test which relies on ranks is used to test the validity of the responses. The distribution - free statistical test is considered to be more appropriate in view of the small size of the sample; it is also a useful test because it allows the researcher to test the responses of individual offenders as randomly drawn from the larger population of criminal homicide offenders. The interview schedule is attached at the end of the dissertation.

HYPOTHESES

Three main hypotheses were formulated for this study; and each in one way or another relate to one another.

HYPOTHESIS ONE: That men who are serving life or time sentences at Kamiti Maximum prison have the same personal or individual characteristics that have been found to be predominant among offenders in other societies.

SUB-HYPOTHESES:

(a) That the average male offender is a relatively young person, aged between 18-30; that is the period of 12 years between 18 and thirty will, more than any other period of life, have more offenders.

(b) That the majority of these offenders are young men with rural background, if not by residence, then by birth and

upbringing.

(c) That the majority of these offenders have little education, if any, and as such are either self-employed or not employed in the sense of being wage-earners.

(d) That individual offenders, will be young men who have no previous court or prison records; sons of men and women who have had no such record either.

HYPOTHESIS TWO: It was hypothesised that crimes of violent deaths committed by the majority of those offenders were committed under the same social conditions in Kenya as have been found elsewhere.

SUB-HYPOTHESIS:

(a) That alcohol will be mentioned by the offender as having been present in the offender, the victim, or in both, or in the homicide situation, in the majority of cases.

(b) That the commonly seen and touched tool of the cultural group which is known for its defensive or offensive value will be found to be the weapon commonly used in committing murders and manslaughters.

(c) That criminal homicide being a crime or an interactional process which ends in the death of one or more persons so involved; is commonly committed by a person against a member of his family, clan, friend, workmate or acquaintance, and only rarely will strangers be victimised unless the motive is purely for gain.

(d) That criminal homicide for gain is a relatively infrequent crime, in which either the victim, or the offender or another person gets killed.

HYPOTHESIS THREE: It was hypothesised that when offenders are questioned about the motives for their violent criminal behaviour, the majority will be found to have no clear perception of what led to the bloody encounters with their victims.

The majority of the inmates will give the following as motives for killing: -

- (a) Drunkenness, when the drunk is temporarily insane.
- (b) Disputes over simple matters such as are common between friends.
- (c) Jealousy and related matters.
- (d) Subcultural values such as cattle raids and counter raids among the cattle tribal groups of the Kalenjin group.

In addition to the above major hypotheses and their subhypotheses, a number of other factors were considered and these will be discussed together with the hypotheses. For example, the study sought to find out about the marital status of the men who commit these murders. Are they likely to be married, with children under their care or not. The implication here is that the married man with children is likely to be more responsible in his relation with his friends and therefore less likely to engage in violent encounters with drunks. No hypothesis was advanced in relation to the religious beliefs of the inmate, but religion was included under the list of

individual characteristics. The inmates were also asked whether they were regular drinkers of alcoholic drinks even if they had taken no alcohol at the time of the incident. It would have been more profitable to find out whether, criminal homicide offenders are more likely to be users of alcohol than another group of criminals such as robbers, embezzlers or those on corruption charges.

The scene of the crime was also listed, as one researcher has pointed out its value,¹⁰ but this was confined to the actual place of the murder whether it was inside or outside the house. The scene of the crime in terms of geographical location would have made very little sense in view of the small size of the sample; and it was for this reason that tribe was not considered except in relation to who killed who. In relation to the question of the scene of the crime, attempts were made to find out where exactly the killing took place; whether at the home or near the home of the offender, of the deceased or elsewhere.

Although no hypotheses were advanced in relation to temporal patterns of these offenders, effort was made to discover if there were any temporal patterns relating to time of day or night, day of the week, date, and month of the year. There was no point in trying to list the year of the crime since the inmates were serving different periods and had been convicted at different intervals. Because a good number of these inmates are illiterate, or were illiterate prior to their incarceration, and because they have been in prison for

a very long time, some as long as 13 or 14 years, it was almost impossible for the majority to remember the date of the month.

Effort was made to get information about the victims from the offenders; and in this respect, inmates were asked about the tribe, age, sex, occupation, marital status of the deceased, the number of children deceased left and whether the offender and the deceased were drinking together prior to the eruption of violence. Due to lack of time, a lot of information that would have been collected was not, and the present study will analyse such information that I was able to obtain in the time I was given.

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5. Howard Harlan, Five Hundred Homicides, Journal of Criminal Law and Criminology, (1950), 40:736-752.

6. Tibamanya M. Mushanga, Criminal Homicide in Western Uganda, East African Literature Bureau, 1974. By using court and Police records, it was found that many more cases of violent deaths get recorded in the Police but only a part of these get to the courts. Of those which Cross the Preliminary Inquiry Stage, only very few reach the high court. See also T.M. Mushanga, Violent Deaths in Western Uganda. East African Law Journal, Vol. VIII Nos. 3 & 4, 1972. Leigh Bienen, Criminal Homicide in Western Nigeria. 1966-1972. Journal of African Law, Spring 1974, and Carolyn Fluehr-Lobban, An Analysis of Homicide in the Afro-Arab Sudan, in Sudan Notes and Records.
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9. Crime Patterns in Kenya during 1970. An Analysis of Arrested and Convicted Persons by Crime, Sex, Ethnic and Racial Groups and by Area. A paper circulated in the Department of Sociology, University of Nairobi, March, 1974.
10. Calvin F. Schmid, op.cit. One of the most astonishing findings of Schmid's study of homicide in Seattle is that almost 25 per cent of all the crimes were concentrated in a very small area, about four blocks wide and ten blocks long.

CHAPTER TWO

A. THE NATURE OF VIOLENCE

In this section, a review of the major theories of violence is attempted. Violence is one of the most persistent and universal traits of human societies. There is no society known that does not use violence either on individual or person to person level or on group or national level. Some, individuals, and some groups as well as some national groups are more prone to resort to the use of violence than others.

Several disciplines have contributed to the accumulation of knowledge about human violence; and what can be presented here is a quick survey of the most well-developed theories:

(a) The Psychological, Psychoanalytical and Psychiatric explanation.

The psychological, psychoanalytical and psychiatric studies of violence and aggressive behaviour are known to be interrelated, and for this reason, they are discussed together.

One school of thought has suggested that violent and aggressive behaviour is a quite normal development among human beings.¹ That violence derives from aggressive and sexual needs and drives which are biologically determined. This school of thought points to such recurrent behaviours among children and babies as head knocking, biting, scratching and hairpulling. That these behaviours suggest the presence in the infant of a destructive behaviour which is manifest from the day the baby is born. That:=-

"A defect in the emotional development of the child provides such an absence of fusion (that aggression is not fused with libidinal urges). The child whose parents are absent (such as working mothers) who does not experience emotional responsiveness from adults, and who is punished by adults to the exclusion of love, will be unable to give and receive love. Experiences such as these encourage the infant and the child in the free expression of destructive behaviour. Destructive urges never become, or are insufficiently fused with, loving urges. The infant is given no reason to modulate or modify his behaviour; behaviour which expresses love or restraint over aggression and destruction remains unrewarded, and therefore, excluded from his choice of responses.

And that:-

If the child is punished for his behaviour, he learns to associate the infliction and perception of pain in others with the experience of pain in himself (resulting from his punishment). In effect, the child is being taught the principles of retaliation, and he acquires more than fear from his punishment. He observes and will imitate whoever punishes him. Stated differently, the child will learn that the infliction of pain is the response he is to give whether this be physical or psychological, his most probable response is the one repeatedly demonstrated to him, and that is expression of destructive behaviour."²

Other psychologists such as Elton B. McNeil have noted that while violence is a relatively common trait among children, the need to use violence and the way to use it at any particular point in time is not equal. That it depends upon differential kinds of life experiences in early childhood. In an article some eight years ago, McNeil gave an outline of the steps parents take to "fashion a special Frankenstein". His outline goes like this; that there are three steps: -

Step 1: Have no love for the child:

McNeil states that love is a mercurial element that can vitiate the best of malicious intentions; that it topples what hate constructs and undermines rejection, softens the sting of anger, and dulls the edge of rage. That love fashions a protective cocoon that shelters the individual from the full force of the blows of fate. That it is insidious, and its workings are invisible to the eye and yet when it is absent, the child becomes an object like any other object to be used or misused as the needs of the parents dictate.

Step 2: Shape the child's view of the world and people:

That the child's world view is moulded by its parents through the process of reward and punishment. That if a particular mode of behaviour is selectively rewarded or punished, the process ends in producing a particular personality type; and that this is especially true if selective reward and punishment are begun early enough in life and continues for a sufficient length of time and reinforced with parental example. In other words, children learn from their parents through

identification and the process of reward and punishment.

Step 3: Reinforce preferred behaviour while rationalising it.

In order for a child to develop violent and aggressive behaviours, he must be completely convinced that his reactions to people and the way he treats them are natural, reasonable, correct and in no way disapproved. He must also learn that "in the jungle only savages survive". Antisocial behaviour is reinforced by rewards and when punishment is given, it must be interpreted to be quite stupid, unfair and unintended.³

According to the above views by Elton McNeil, violence is acquired and internalised through the long process of socialisation; and nowhere does the author suggest inheritance as an explanation of violent behaviour. Although the infant may have the innate tendencies towards violent behaviour, it is through socialisation that those violent (or non-violent) behaviour patterns become incorporated in the personality structure of individual persons. From the above, we can conclude that violent behaviours, will develop in those children who are, from an early age and continuously, exposed to brutality, and generalised lack of reverence of human life. Therefore children who are exposed to witnessing mob lynching, riots, public executions, flogging, fights, assaults, murders and so on, are most likely to develop violent behaviours in their adult social life; for they not only internalise violence as a way of life, but get hardened and develop no reverence for human life.⁴

Following in the footsteps of their intellectual father, Sigmund Freud, the psychoanalysts have constructed a theory of violence as a result of mental aberration. According to Sigmund Freud, the psyche is conceptualised as being divided into three major parts: The Id, as that part of the psyche that contains the desires, drives, wishes and fantasies which provide the individual with impetus, for human action. The Id demands immediate gratification almost without hesitation; and is ruled by the pleasure-pain principle and is completely illogical; and operates at the unconscious level. The Ego, is the conscious part of the psyche and for Freud, the Ego is an organisation established through learning to govern the relations between internal organic processes and the environment. The third part of the psyche is the Superego; which develops as a result of learning or the internalisation of social values, which makes it unconscious in its nature.⁵

In the sick person, the theory goes, one of the two things happens: The Id may overflow with violent drives, wishes and desires; thus the sick person hates too much, enjoys pain (either of self or of others) too much, or wishes to destroy himself. Sometimes the Id is just too much for the Ego to control and the individual breaks out into violent behaviour which may lead to ca-tharsis or the reduction in tension. Alternatively, the Superego makes no allowance for the expression of hate and dislike (due to overformation) so as to bring about what is called catharsis, or the relation or reduction of tensions, the individual may overcome this

difficulty by building up or accumulating more and more tensions due to lack of catharsis. This may go on till he cannot control himself any longer, and just like a weak dam, violence erupts with no prior warning. But when the Superego is too weak due to underformation, the individual sees nothing wrong in the use of violence.

In a detailed outline of violence, the members of the American National Commission on the causes and prevention of violence stated that:

"Drives are indispensable to the dynamics of human mental activity. Drives, together with the psychic energy which is assumed to be part of them, provide the motive force capable of setting our mental or psychic apparatus into action. The two basic drives are sex and aggression. 'Man is not distinguished, however, by the nature of his drives alone, but by how he deals with them. Crucial here are the ego functions of delay, modification, and renunciation of the drives' demands.

'While sexual impulses or drives have a wide variety of aims, and can be constructive, aggressive drives are more rigid and less diversified. The aims of aggression are to totally destroy objects, to fight with or to dominate objects, or to cause their disappearance. Aggression may be modified by displacement, by restricting the aims of aggressive impulses, by sublimating aggressive energy, or by fusing aggressive drives with libido.

In normal development, the motive for redirection of

hostile impulse is love. It is because the loved person is valued (cathexis) above all other things that the child gradually modifies his aggressive impulses and finds alternative modes of expressing them.

Individuals who do not or cannot develop meaningful attachments to other humans, feel little pain, joy, grief, guilt or remorse and have no clearly formed conscience. Because of their emotional poverty, an appetite for powerful sensations is created with demands for equally powerful psychological sensations. Hence, they resort to drugs or brutal activity, experienced in dehumanised dimensions.

Periods of greatest vulnerability is during the first 2 years of life. The love bond forms during human infancy and the regulation of the aggressive drives is dependent on the quality of the bonds.

The absence or rupture of human bonds has a permanent effect on the capacity to regulate aggressive behaviour. This implies that the eradication of the source of later destructive behaviour could be made possible by providing stable human relationships for each child in his development.

The absence of social adaptation or the appearance of dissocial or delinquent behaviour should not be viewed as the result of specific causes such as mental deficiency, moral insanity, broken homes or parental neglect.

Instead, much behaviour should be recognised as stemming from unsuccessful transformations of the self-indulgent

and asocial trends and attitudes which are apart of the child's original nature.

The pleasure principle has to be balanced or the child develops by the reality principle, which serves to restrict, modify, and postpone gratification.

The child must become libidinally (with positive sexual feelings) tied to his environment through imitation, identification, and introjection. In adequate development, the parents' social ideals are carried into the internal world of the child where they take root as a child's ideal-self and become a forerunner of the superego.

Introjection of parental authority is added during the Oedipal period to become an effective internal legislator, the superego, which then regulates drive control. It does this by rewarding a compliant ego with feelings of well-being and self-esteem and by punishing a rebellious one with pangs of conscience and guilt.

Adequate socialisation into the norms of acceptable behaviour demands from the child a certain amount of alienation from and turning against what he feels legitimately to be his inner most-self. The largest obstacle in the path of successful socialisation is the difficulty of combining the aim of full individual freedom (free drive activity) with compliance with norms (drive restraint).

Among the most important factors impeding adequate socialisation into the norms are failure in ego development, the

incorporation of parental dissocial values by normal identification, and disruption of identification through separation, rejection, or other interferences with normal ties.

Early childhood aggression is not adverse to adequate socialisation. Such aggressive strivings, if fused in the normal way with libidinal ones, are socialising influences that provide initial strength and tenacity with which the infant reaches out for the objective world. Aggressive strivings are also necessary for adequate identification with parents and for achieving independence; they also lend moral strength and severity to the superego in its dealings with the ego when the aggressive strivings are deflected from objects and places at the superego's disposal.

When aggressive drives are not tied to libidinal processes, the child may become destructive and quarrelsome, and show a preference for hostile rather than friendly relations with fellow beings. This will occur when there are sufficient rejections or loss of love. Aggression in this defused form is not controllable, either externally by parents or internally by ego and superego. If fusion does not occur through strengthening of libidinal ties and new object relations, the destructiveness expresses itself as delinquency criminality and violence.....The criminal perpetuates the attitude of the child who ignores, belittles, or disregards parental authority and acts in defiance of it."⁶

Violence is widely used in different social situations especially in traditional communities in different situations by different people; both in criminal and in non-criminal behaviours. In non-criminal social relationships, violence is very often used as a means of obtaining conformity within the social unit, as when parents beat their children for misbehaviours or as when a man brutally attacks and beats his wife for minor infraction of marital or sexual obligation. Such violent behaviours remain outside the realm of the criminal law, but only if violence is used with moderation.

(b) The Subculture of Violence:

A subculture of violence is presumed to exist if a group which forms part of a larger group such as a nation, a tribe or a community, shares similar violent behaviour patterns. A sub group is called a subculture of violence because of its members outward behaviour which is expressed in violence in situations in which other subcultural groups react to conflict situations differently. It is now established that members of some groups are known to be more irritable, more quarrelsome and more belligerent than others.⁷ The concept of the 'Subculture' as advanced and popularised by Wolfgang and Ferracuti,⁸ is extremely important in the understanding and in explaining violence and criminal behaviour in general especially when dealing with several social groups or subcultures. Wolfgang and Ferracuti have stated that:

1. No culture can be totally different from or totally in

conflict with the society of which it is a part. This implies that the subculture which is more characterised by violence than other subcultures still has non-violent behaviour patterns which it shares with the rest of the group.

2. That to establish the existence of a subculture of violence does not require that the actors sharing in these basic value elements should express violence in all situations.

3. That the potential resort or willingness to resort to violence in a variety of situations emphasises the penetrating and diffusive character of this culture theme.

4. That the subcultural ethos of violence may be shared by all ages in a subsociety, but that this ethos is most prominent in a limited age group, ranging from late adolescence to middle age.

5. That the counter-norm is non-violence. This means that the individual will be ostracised from the group if he did not act in a violent manner in a situation when violence was the expected response.

6. That the development of favourable attitudes toward, and the use of violence in a subculture usually involve learned behaviour and a process of differential learning, association or identification.

7. And finally, that the use of violence, in a subculture is not necessarily viewed as illicit conduct and the users therefore do not have to deal with feelings of guilt about

their aggression.

According to this theory, violence is viewed as a learned response to social situations and as such, it is not an innate attribute of certain individuals or groups. Just like the Psychological and the psychoanalytical explanation, the theory of the subculture of violence has its foundation in the structure and function, or the social process of the subculture that exhibits such behaviours.

(c) Sellin's Culture Conflict Theory

This theory is more related to criminality in general rather than to violence alone. The theory was formulated by Thorsten Sellin in the late 1930s.⁹ Sellin's theory of culture conflict is based on the contradictions or conflict of conduct norms confronting individuals in certain situations. Where cultural norms conflict with each other because of cultural contacts, some of the behaviour patterns may be antisocial and in some cases, criminal. Sellin noted that a conflict of norms exists when more or less divergent rules of conduct govern the specific-life situations. Individuals are identified with a number of social groups each of which has its own conduct norms. A person is a member of a family which is responsible for his socialisation and internalisation of social norms; he is also a member of the play group, political party, religious denomination, clan, school, work-group and many others. As a member of these groups, some of which have got their own and particular conduct norms, he

inevitably acquires norms which may sustain, weaken, reinforce or even contradict the norms he had earlier internalised in his personality structure. If he lives in a mixed society, his chances of his value norms running counter to other norms become greater. Culture conflict also may come about as a result of abrupt social-change accompanied by urbanisation, and industrialisation. New values get imposed on old values thereby creating situations in which human behaviours can be variously defined. Colonialism, imperialism, conquest and facilitated communication lead to cultural contacts with inherent mix up of values and definitions of social situations.

Conflict itself appears to be inherent in all human social relationships and refers to a struggle in which two or more individuals take part aiming at outdoing the opponent or opponents. A conflict is said to exist when two persons compete for the same valued object. The object could be a person (fighting for a ^{M/W}~~woman~~), a political position, a house, money, a position in a church organisation, the army, the prison, the police or any other social organisation. Conflict, according to Georg Simmel, is one of the central forms of social interactions, for it strives to dissolve ambiguity and divergent dualism; it is in this way that conflict may be a method of achieving some kind of unity; and for this, it frequently figures in nearly all crimes of violence such as assault, rape and murder.

Robert M. MacIver has made a distinction between direct

and indirect conflict.¹⁰ Direct conflict being characterised by overt effort of one group to impede, restrain or even destroy the other group; while indirect conflict refers to situations in which individuals or groups do not actually impede the efforts of the other but nevertheless seek to attain their ends in ways which obstruct the attainment of the same end by the others.

Sociologically speaking, all conflict is not socially harmful. Conflict is recognised as a useful element in society for it creates initiative and generates competition especially in the business world. Conflict differs from competition in that it seeks elimination, while the latter is usually directed towards excellence. It will be seen from this study that the majority of the criminal homicide offenders, killed while engaged in conflict situations.

K (d) Differential Opportunity:

Just over twelve years ago, two criminologists, Richard A. Cloward and Llyd E. Ohlin attempted to explain crime in terms of differential opportunity structure. Cloward and Ohlin's theory is very closely related to Robert K. Merton's theory of anomie which states that individuals may turn to criminal behaviour patterns as an alternative when access to legitimate means to success are blocked.¹¹

Anomie as used by Robert Merton differs in meaning as used by Emile Durkheim. { Merton states that most modern societies put a very high premium on material success, the

form of wealth by which education opens the door to these success and status symbols; but at the same time the same societies fail to make adequate institutional means for the average person, especially the poor and the slum dweller to achieve these goals.¹² Their anomie lies in their inability to acquire what they want; and in being powerless and resigned from all forms of attempts to improve their social conditions especially those who live in slums of despair. Writing about anomie

Clinard and Abbott have recently stated that:-

"The model of anomie has been vigorously criticised as an explanation of deviant behaviour in modern societies. Consequently the tendency to drop or to modify the theory on the basis that 'anomie was perhaps never there' is increasing. It is possible, however, that anomie is more applicable as a partial explanation for some of the social forces leading to increased crime in countries undergoing rapid development; for example; in developing societies goods in considerable amounts and varieties are suddenly made available only to foreigners and a small group of local persons. Despite independence and development, the low living standards still give these material possessions, as well as a higher standard of living, a high status value in urban context. Access to higher status by education is often unattainable, and when it is possible the economy is often insufficiently developed to make use of those persons who do manage to obtain it."¹³

Walter B. Miller suggested that lower class culture was at the base of the street corner delinquents' behaviour.¹⁴ Miller's explanation of criminality does not markedly differ from that of the subculture of violence as put forward by Wolfgang and Ferracuti; although Miller himself appears to have thought that the two are quite distinct; he wrote:-

"In the case of 'gang' delinquency, the cultural system which exerts the most direct influence on behaviour is that of the lower class community itself - along established, distinctively patterned tradition with an integrity of its own - rather than a so-called 'delinquent subculture' which has arisen through conflict with middle class culture and is oriented to the deliberate violation of middle class norms."¹⁵

Miller's lower class culture is characterised by trouble, that members of this culture are prone to violation of the law. The lower class also put high value on toughness and physical prowess, skill and masculinity. The guy must be tough, fearless, brave and daring. This is in relation to the concept of 'Machismo', manhood is stressed. But at the same time timidity, cowardice, and gaining money by hard-work are perceived as alternatives. The lower class are also characterised by smartness, shrewdness, ability to outsmart others, to be witty all mixed with slowness, dull-wittedness and gullibility. Excitement is common, fate

and general belief in luck, chance and mischance and relative freedom from external (and internal of course) constraints, recognising no superior but at the same time being, in some cases, dependent.

(e) Genetic Theory of Crime:

The genetic theory of crime is the prevalent sociological explanation of crime as first outlined by Edwin H. Sutherland.¹⁶ This is one of the most carefully stated theories relating criminal behaviour to the nature and effect of environmental group influence on the individual. The theory is stated in such a way as to show how an otherwise mentally 'normal' person through stages of successive events begins to engage in deviant and delinquent behaviour. The theory shows that crime is a normal learned behaviour without so much of biological or psychological defects. The theory is generally known as Differential Association. The theory states that a person becomes delinquent because of an excess of definitions favourable to violation of law over definitions unfavourable to violation of law. Differential association with criminogenic elements in the creation of a criminal operates successfully through frequency, duration, priority and intensity - all in relation to the criminogenic element.

In addition to the above major theories of criminality, there are others of less importance. One important point to be singled out from nearly all the theories which we have reviewed in the preceding paragraphs is that criminality is

not a result of heredity, or of congenital factors. The Psychological, psychoanalytical, psychiatric, and the sociological explanations, in one way or another show that criminality is learned. Violence and aggression characterise individual persons or groups just because of differential socialisation in the expression of anger and aggression.

The President's Commission on Law Enforcement and the Administration of Justice Surveyed the numerous studies conducted in United States of America over a period of years, and found that violent crime, its offenders and its victims are found often in urban areas characterised by:-

Low income

Physical deterioration

Dependency

Racial and ethnic concentrations

Broken homes

Working mothers

Low levels of education and vocational skills

High unemployment

Overcrowded and substandard housing

High rates of tuberculosis and infant mortality

Low rates of home ownership or single-family dwellings

Mixed land use

High population density.¹⁷

In addition to the above, the Uniform Crime Report (of United States of America) has listed a number of factors

that must be considered when one is interpreting crime rates and their changes and the type of crime committed from time to time; the following factors are listed:=-

Density and size of the community population and the metropolitan area of which it is a part.

Composition of the population with reference particularly to age, sex, and race.

Economic status and the mores of the population.

Relative stability of population including commuters, seasonal and other transient types.

Climate, including weather conditions.

Educational, recreational, and religious characteristics.

Effective strength of the Police Force.

Policies of the prosecuting officials and the courts.

Attitude of the public toward law enforcement problems.

The Administrative and investigative efficiency of the local law enforcement agency.¹⁸

The quest for the "causes" of crime, especially violent crimes such as assault, rape and homicide is an endless one; it will continue as long as there is no preventive "vaccine". Crimes of passion are especially difficult to explain. The President's Commission on Law Enforcement and Administration of Justice has noted that:

"To seek the 'Causes' of crime in human motivations alone is to risk losing one's way in the impenetrable thickets of the human psyche. Compulsive gambling was the cause of an embezzlement, one may say, or drug addiction the cause of a burglary or madness the cause of homicide; but what caused the compulsion, the addiction, the madness? Why did they manifest themselves in those ways at those times.?"

There are some crimes so irrational so unpredictable, so explosive, so resistant to analysis or explanation that they can no more be prevented or guarded against than earthquakes or tidal waves."¹⁹

The report goes on to indicate that on the other end of the spectrum there are crimes which are simple to explain, such as an organised robbery, theft or murder of an informer; but the same vicious questions can be asked; why does one man turn into a professional and not the other, why does one resort to the use of violence in a situation another man would not even think of it? This is where the two theories, namely, the subculture of violence, and the theory of Differential Association with its central focus on learning and socialisation, are extremely important in the explanation of violence and aggression.

B. LAW OF HOMICIDE AND PROCEDURE IN KENYA

Murder, according to the Penal Code of Kenya is committed when any person who of malice aforethought causes the death

of another person by an unlawful act or omission, and death penalty is mandatory for any person convicted of murder.

Section 203 of the Kenya Penal Code states:

"Any person who of malice aforethought causes the death of another by an unlawful act or omission is guilty of murder."

Section 204 spells out the punishment for murder:

"Any person convicted of murder shall be sentenced to death."²⁰

Murder in Kenya, like in most of former British African territories, is not legally defined in degrees as in other countries where it can be in the first or second degree. Manslaughter is defined as an unlawful act or omission which causes the death of another person.

Section 202 of the Kenya Penal Code states:

"Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed 'manslaughter'."

Section 205 given the punishment for the felony of manslaughter

"Any person who commits the felony of manslaughter is liable to imprisonment for life."²¹

In murder, malice aforethought is deemed to be established by evidence proving any one or more of the following circumstances:-

- (a) an intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;
- (b) knowledge that the act or omission causing death will

probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish to it may not be caused;

(c) an intention to commit a felony;

(d) an intention by the act or omission to facilitate the flight or escape from custody of any person who has committed or attempted to commit a felony.²²

* The Kenya law of homicide defines what is unlawful omission, as to mean an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.²³

Provocation is an extenuating defence, as is intoxication under certain circumstances. Provocation includes any wrongful act or insult of such a nature as to be likely, when done to an ordinary person or in the presence of an ordinary person to another person with whom he is socially related to deprive him of self-control and induce him to use violence. In this regard wrongful acts or insults offered in the presence of one's wife, child, servant, master, brother, sister and in some cases friends are recognised as provocations.

Infanticide is a felony which is treated as manslaughter,

unless the defence can satisfy the court that at the time the woman committed the crime of infanticide, she was disturbed by reason of her not having fully recovered from the effects of giving birth to the child or by the effects of lactation. The Kenya law of homicide provides that when a woman is convicted of an offence which is punishable with the death penalty; and she is found to be pregnant, the death penalty is not to be passed, but that instead she receives life imprisonment. The question and the determination of pregnancy is, however, left to be decided by the trial judge.

In a case where two people agree to kill each other, the so-called suicide pacts, if any one of them should survive, the offence is manslaughter but not murder. It is a felony to procure another to kill him or to counsel him or to aid him to kill himself. Sentence is life imprisonment. Attempted suicide, however, is a misdemeanour; as is the concealing of birth of child. But the killing of the unborn child is a felony which is punishable with imprisonment for life.

Attempted murder is a felony and is punished with life imprisonment; but attempted murder by any person who is serving a prison sentence for three or more years is punished with imprisonment for life with or without corporal punishment.

Being an accessory after the fact to murder and written threats to murder are felonies punishable with seven years;

but conspiracy to murder is deemed to be a graver felony and is punished with 14 years imprisonment.

The whole of the homicide law is about the same for the whole of East Africa. The Criminal Procedure too has not changed much since it was first introduced here almost eighty years ago. The structure of the court room, with high desks behind which sit the judges, the robes, the wigs, the addressing of the judge as "My Lord," the frequent references to attorneys as "the learned" defence or prosecution counsel; the use of English even when the lawyers, the accused and the judge may be able to communicate in a local language; the repeated reference to British texts and legal precedents; the cross-examination process act;²⁴ show very little change from what they were when the British ruled East Africa.

The criminal procedure is set in motion with the commission of a homicide. Immediately after the crime is committed, the village chief is informed, although he has no judicial function whatsoever, under the British system here, he could be charged with negligence of duty if he failed to get to the scene of murder; usually to keep watch over the deceased till the arrival of the police. When the chief is informed, he at once informs the Senior chief and sends message to the police. He may proceed to arrest the suspect and detain him till the arrival of the police. The police are responsible for the removal of the deceased to the nearest hospital where a post mortem examination is carried out before the body is returned to the village for burial. No

person suspected of having died at the hands of another may be buried before the examination is done. The aim of the post mortem examination is to determine the cause of death and to confirm the method and weapon used in the killing.

At the same time, the accused is supposed to be medically examined, and under ideal conditions this should be soon after the arrest is effected. But in practice, it may be days or even a week or more before the accused is examined by a doctor. Very few cases get referred to the specialist psychiatrist for expert examination.²⁵

The accused is or should be brought before a magistrate for formal charging with the crime. He is then remanded into custody while the inquiries go on to collect information in regard to the crime committed. The collection of information is done by detectives; these are police men in civilian clothes. When the investigations are finalised, a report is sent to the office of the director of public prosecution. In the meantime, another file is opened on the same case at the police headquarters. The office of the Director of Public Prosecution has the final say whether prosecution should continue or the case withdrawn. When it is decided that there is a prima facie case for the prosecution preliminary inquiry is held by the local magistrate. Trial follows a couple of months after and is presided over by a judge of the High Court. At the preliminary inquiry, the state is represented by a police prosecutor while the accused appears for himself; but at the trial, the state

or prosecution is represented by a state attorney and the state appoints another attorney to defend the accused.

The high court judge sits with two or more assessors who are expected to advise the court on some of the cultural matters of the community in which the crime was committed. It must be pointed out, however, that the court is not bound to accept the advice given by the assessors. The high court judge after hearing the prosecution and the defence, and after calling in witnesses and expert opinion determines the verdict; (a) the accused may be convicted of the crime for which death penalty is mandatory; (b) the charge may be reduced from murder to manslaughter and the accused convicted accordingly; for which he may receive the maximum sentence of life imprisonment; or the judge may give him a time sentence, which may be two, four, ten years depending on a number of circumstances and mitigating factors; (c) the accused may be found guilty of the crime for which he is accused but insane whereupon he is sent to a mental hospital from where he goes to prison on President's Pleasure; (d) the court may find the accused not guilty and discharge or acquit him at once. There is no provision for payment of a fine or compensation in criminal homicide cases. In every case where the accused is found to be guilty of murder, the appeal to the East African Court of Appeal is automatic. The East African Court of Appeal may or may not uphold the judgement as determined by the High Court.

In cases where the High Court judgement is upheld, the death penalty is inevitable unless the accused is reprieved by

the President of the Republic; and usually when this happens, the offender receives life sentence; and these were the majority of cases in the present study. In some cases, the East African Court of Appeal may order a re-trial either by the same judge or by a different judge. The same court also may find the accused not guilty and discharge him, or may reduce his death penalty to life or time prison sentence. The execution of the condemned convicts is carried out at Kamiti, the only prison with such facilities in the whole country. Execution is by hanging; and is not to be done in public or to be announced. For those who receive life sentence for this crime, the normal time served is about 15-17 years or even less. The man with the longest stay at the time of the interview was 14 years, and he was hoping to go back to his village. There are several other maximum prisons where convicts may serve their sentences - not by choice - such as Naivasha and Mombasa.

On the whole, the criminal procedure and process is much quicker than that reported by Leigh Bienen in Western Nigeria where the case may take as long as two years on remand, and from two to three years before all the appealing process is completed and the case finally settled.²⁶ In fact most of the men who gave more than 12 months as time they spent on remand turned out to be those who had to go to mental hospitals for psychiatric observation and determination of their mental conditions. Otherwise the average time spent on remand was about seven months. Mostly four months was the

commonest length of time the accused had to spend on remand awaiting their trial.

CONCLUSIONS:

When all theories that attempt to explain violence are considered, one major observation can be made; that violence, in general, is culturally determined whether these theories be Psychological, Sociological or Economic because, as we have tried to show, the definition of situation as requiring the use of violence to resolve a conflict situation is a matter of cultural configuration. We also noted that violence is common to all or most of human societies, the differences as shown by different national rates are indications of cultural differences between human societies. This observation is important if preventive measures are to be taken to deal with violence, for the roots of violence are to be found in the processes of socialisation of the young children.

The law of homicide in Kenya bears little that could be said to relate to prevention. It is largely punitive, and makes no provision for the compensation of the victims of homicide whom the state bears responsibility of protection. Very little within the law can be seen if any, that relates to prevention of criminal homicide and violence in general.

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22. All subsections of Section 206, of Kenya's Penal Code.
23. See also Uganda Penal Code, Section 182 (2); Tanzania Penal Code Section 195.
24. Leigh Bienen found the situation to be the same. An effort to replicate the British Criminal and Legal procedure is viewed by many in East Africa as unnecessary, leading to delays and very often to miscarriage of justice, especially through incompetent court interpreters.

25. This was found to be the case by Tolani Asuni in his study of Homicide in Western Nigeria. Asuni reported that in some cases, the accused was brought before the psychiatrist months after the crime, and in some cases as long as a year may elapse before the suspected person is examined. See T. Asuni, Homicide in Western Nigeria, British Journal of Psychiatry, (1969), 115, 1105-1113.
26. Leigh Bienen, op.cit. Bienen also reported that at the time of her study, the Chief Justice announced that all criminal Cases not brought to trial in 2 months could be dismissed; but a decree had not been enacted to enforce such a decision.

CHAPTER THREEPREVIOUS STUDIES OF HOMICIDE IN AFRICA

The study of crime, in Africa, is not a very regular pursuit; and the study of violent murders is scanty in most countries, and as far as I am aware, no study of criminal homicide has been done in the Republic of Kenya. This can be explained by the fact that there is no institution of Crime research in the whole of Eastern Africa, and the researches that have been carried on have lacked adequate and enthusiastic support from the research bureaux or the Universities.

1. PAUL BOHANNAN: AFRICAN HOMICIDE AND SUICIDE.

The most widely known study of violence is the work edited by Paul Bohannan which was published 14 years ago. Bohannan and his associates, most of whom if not all of them were social anthropologists included such famous men in the field of social anthropology as John Beattie of the University of Oxford who provided the section on the Banyoro of Western Uganda, and Aidan Southall, now at the University of Wisconsin at Madison who wrote on the Alur of North-western Uganda. The study edited by Bohannan represents seven cultural groups: the Tiv of Central Nigeria, the Basoga, Gisu, Banyoro and ... of Uganda; the Luhya of North Kavirondo and the Joluo all ... Western Kenya. The main stated objective of this work was ... answer the question Paul Bohannan posed: "do Africans kill

themselves and one another for the same reasons and in the situations as Europeans and Americans? If not, how and why do the conditions differ?"¹ Bohannan and his colleagues studied not only homicide, but also suicide ^{suicide is homicide!} ^{also might be homicide!} in the societies where the studies were carried out. Nearly all of the contributors to this volume used court files and coroners reports on cases that were determined to have been due to self-destruction. Bohannan noted, then, as is now, that literature on suicide is several times as extensive as that on homicide.

The study on homicide dealt with a number of factors and situations that are common with most homicides. These included the weapons used, the temporal patterns, sex of victims and offenders, the relationship between the individuals involved in the homicide drama; motive of killers, dispositions of homicide cases, and the study contains very excellent case studies of particular cases of homicide and suicide.

All cases of homicide that were studied and are discussed in the text were classified into three main categories: One - that in most of the seven communities studied homicide occurs in dangerous but not illegal situations or institutions in which people participate at their own risk. In such situations, homicide occurs more or less regularly in the course of action associated with the dangerous institution and members of the society are fully aware of the risks involved in the institution, and when the homicide occurs, the members of the

group consider it non-culpable.

The Second category is also of non-culpable homicides. While under the first category homicide occurs regularly as when a homicide occurs while people are ~~working~~, the second one is institutionalised. Bohannan gives two instances of institutionalised homicide; one is legal as when a convicted and condemned person is hanged, and the second is ritual murder. Ritual murder is non-culpable among the people who practice it, but quite culpable under the given British Law. Bohannan does not clearly show his third category but one which is obvious is what he has called "self-help justice," manifested in thief-killing; which is reported among the Tiv, Alur, Gisu, and Luhya. The killing of witches also is or was considered non-culpable by people who practiced it; and for some groups of people, such as the Alur the killing of a non-Alur is not considered as serious as killing a fellow Alur. According to Bohannan, homicide must be studied, interpreted and understood in its cultural and social context, (because it is a result of a definition of a sociocultural situation). This can be proved by the fact that homicide rates, like suicide rates, are not uniform within national subgroups or universally. The fact that England and Wales, Holland, and Spain have very low rates of criminal homicide as compared to Finland, West Germany and America leads us to seek the differences in either the social structure and function of these different

societies or in the sociocultural value systems of the groups. Like divorce, drunkenness, cattle-raids, homosexuality, exhibitionism and the recently popular practice of streaking all have to be explained in the same way, by the sociocultural value-elements and reactions and the expected response in a given situation.

Two of the seven tribes studied concern us more than others in this study, these are the Abaluyia studied by Bohannan himself and the Joluo studied by Wilson. The study of the Abaluyia used 114 records in the North Nyanza area from the year 1949 to 1954. Of the 114 cases, 20 had been disposed of by the magistrate's court at preliminary inquiry as nolle prosequi, or charge was withdrawn on the advice of public prosecutor, or by the police when no evidence was available. 14 were disposed of by the high court in the following manner, one was released on legal technicality, one was found guilty of attempted murder, and 12 were acquitted. Of the 80 cases that are discussed in the text. 12 were hanged, one was found to be insane, one case was not recorded, 65 were guilty of manslaughter.² Bohannan noted a very significant observation. He noted that the homicide rate rises as one goes eastward, from Bantu to Nilo-Hamitic culture. This hypothesis would require the study of two or more adjacent Bantu and non-Bantu tribes. One of the factors that may be related to higher homicide rates found among the non-Bantu groups, especially the Nilo-Hamitic groups, is the traditional habit of cattle raids - an institutionalised, but very dangerous institution in which either the cattle-raider or

the owner or some other person gets killed. Cattle raids, as we shall see later, have deep cultural roots in ancient beliefs and values of such people as the Karamojong, the Masai, the Samburu and the Turkana groups of people. All these groups differentiate cattle raids from cattle theft.

Bohannan found that, contrary to the views held by the Europeans that the Abaluyia kill each other when drunk; and by the Abaluyia themselves that most killings involve land dispute, neither alcohol nor land dispute could explain the majority of these cases but only a fraction of the sample. Of 80 cases he analysed, only 27 had alcohol in them, and only one out of 13 murders had alcohol in it.

Wilson discusses the Joluo homicide in relation to their historical sociocultural values. For them, like for most other Africans death which results from violence is ritually dangerous and has to be cleansed, in order to avoid the supernatural consequences (chira) which may afflict the clan.³ Deaths which result from immediate and unpremeditated encounters are regarded less seriously (in being ritually dangerous) than pre-meditated murders. Premeditated murders bring very bad chira, or ritual danger to the group and therefore must be punished when they occur.

Wilson does not discuss other issues that are commonly discussed in such studies such as weapons, sex of victim and offender, disposition and motive.

2. TANNER: CRIME IN EAST AFRICA: HOMICIDE IN UGANDA 1964

Tanner carried out a survey of homicide cases that were reported to the police during the year 1964. During that year, the Criminal Investigation Department of the Police had files on 1267 alleged murders and manslaughter cases for a population of about 7,068,515⁵. That total was reduced by investigation and redefinition as suicide, natural death and deaths resulting from civil disorder and he was left with 711 alleged murders to analyse. A very interesting finding is that of the 1267 originally recorded murders, and of the determined cases of alleged murders, only 137 resulted in court convictions.

Tanner's study showed that there was a steady increase in criminal homicide in Uganda between 1960-1963 and a very slight decline in 1964; he does not, however, give an explanation for the increase over the three years or for the decrease in 1964. Tanner deals very briefly with variations of homicides within Uganda but hardly gives the sociological explanation for these differences. On temporal patterns he found that a majority of the alleged murders were committed during the afternoon and before midnight. There were more alleged murders committed at night than during the day. The alleged murders that were committed during the day were 329 and those committed at night were 681, about twice as many; which indicates that violent criminal homicides is a nocturnal activity. Tanner also discusses the monthly distribution, day of the week, the rainfall, weapons, sex

of victim and the weapon used, weapons by administrative districts and motives. Motives that were given by the police included:

Motive not known	405
Quarrel, nature not specified	75
Robbery of house effects	72
Quarrel over drink	56
Victim caught stealing	49
Quarrel between husband and wife	47
Connected with revolt in Ruwenzoris	32
Inter-tribal disputes, not Buganda	26
Victim suspected of robbery	24
Sexual jealousy	21
Accusation of witchcraft	19
Victim in possession of stolen goods	19
Robbery of bicycles	18
No motive, offender insane	18
Dispute over property other than land	19
Theft of livestock	18
Victim attempted to rob offender	15
Self-defence in cases other than robbery	16
Quarrel over money	12
Found to be an accident	12
Quarrel over land	11
Robbery of cash over 200 shillings	10
Offender drunk, no known motive	8
Other motives	263
Total	1267

Tanner notes the role of alcohol in the homicide cases. He reports that traditional alcoholic drinks are drunk in a traditional setting which controls their use and sets norms of conduct to which the community adheres. But that the new forms of alcoholic drinks do not have these controls which have been built into the communities' social structure. These alcoholic drinks include Nubian gin, Waragi or Moshi, which are brewed illegally. These alcoholics are bought and consumed in a more personal individual manner than the traditional beer.⁷ Tanner reports that the type of materials with which most houses are built contribute to a high homicide rate. That mud and wattle and grass roofs are very easy to burn at night and before the occupants wake up, the house is already well covered with fire. Unfortunately the case Tanner cited to illustrate this point is completely irrelevant,⁸ and of all the methods of inflicting death burning was recorded in 17 cases out of the 1262, and I do not consider this to be a "A factor of which the type of material used in building may contribute to a high homicide rate...."⁹

3. ADEOYE LAMBO: MALIGNANT ANXIETY

Malignant anxiety was identified as a syndrom which is very much associated with Criminal Conduct in Africans. Dr. Lambo closely studied 29 patients who were suffering from this condition.¹⁰ The same condition had been identified

earlier in Kenya and Eastern Nigeria and also in the Congo. This psychiatric condition was associated with Frenzied Anxiety. According to Dr. Lambo Frenzied Anxiety must be differentiated from Malignant Anxiety. Frenzied anxiety is commonly found in patient with histories of schizophrenia, hysteria, epilepsy and other maniac depressive disorders. The frenzied anxiety attacks are usually very brief in their course. Malignant anxiety, Lambo explains is a syndrome, a protracted mental reaction to situational factors which has its origin in social influences. The anxiety is therefore a permanent state of mind unassociated with any psychosis latent or manifest. The condition is reported to be a progressive and crippling disorder especially in the interpersonal sphere, but which does not lead to the disintegration of the personality.

Dr. Lambo's study revealed a lack of any psychotic manifestation, but that it constitutes "a very real type of insanity." Lambo noted that malignant anxiety is infrequently associated with "acting out" of homicidal impulses in men and self-destructive tendencies in women.

Malignant anxiety was identified to be closely associated with cultural factors. The fear of bewitchment (actual or potential) is prevalent among the destribalised, semi-educated Africans who make up the larger percentages of African Urban Communities. Malignant anxiety in some violent acts may

resemble ritual murder. Dr. Lambo reported that:

"In a cursory assessment of the relative frequency of this condition, it is now known that this mental maladjustment is more frequently seen in 'marginal' Africans who are in the process of renouncing (or have unsuccessfully renounced) their age-old culture but have failed to assimilate the new."¹²

This study is important because it confirms studies conducted elsewhere which show that the marginal men, the alienated, the socially maladjusted are more likely to engage in homicide episodes either as victims if not as offenders.

4. TOLANI ASUNI, HOMICIDE IN WESTERN NIGERIA.

Professor Asuni, now medical superintendent and specialist psychiatrist at Aro hospital for Nervous Diseases, Abeokuta Nigeria, studied a group of 53 criminal homicide offenders.¹³ The group also included the condemned prisoners who were awaiting execution. In agreement with Bienen, Asuni noted the low rate of criminal homicide in the region. Asuni's findings are interesting; most of the convicts were married, 42 out of 53 - only eight were single, and one, a woman was divorced. Thirty two of the 53 - had children, only 15 had no children. On occupation, Asuni found that the majority of the criminal homicide offenders were engaged in what he called the 'traditional' as opposed to 18 who were engaged in

non-traditional jobs. The traditional included farmers, small holders, fishermen, labourers, petty traders, and traditional healers. The non-traditional included motor drivers, sawyers, corn-mill operators, bricklayers and domestic servants. Illiteracy was very high, only 3 out of 53 or just about 5 per cent were literate. Asuni noted that "the sociological observation that the well-to-do and higher status members of the community do not turn this aggression outwards in homicidal acts, while the lower social classes do, is supported by the findings here."¹⁴ Asuni questioned the subjects on religion, domicile, victim, their attitude towards their offences etc. Of special significance is the finding that offenders, (some of them) when questioned what they would do if they found themselves in the same situation answered that they would do it again.¹⁵ Again that more of these offenders killed during the night than during the day; more outdoors than indoors; swords, knives and machets were used; and 57 per cent of these offenders were diagnosed as mentally abnormal. Professor Asuni shows how inadequate the psychiatric services are in that part of Africa; which is the situation everywhere on the continent of Black people. Asuni also reveals the unfortunate state of affairs of referring patient of accused of criminal homicide to non-specialist doctors for psychiatric examination. In one case the accused was found guilty and hanged although Dr. Asuni considered him a psychiatric patient. The full account goes

like this:

"I.A. Killed a woman, his previous lover, another person's wife, because she caused him to be impotent. According to his statement in court." "I had sexual intercourse with her and after that I started to feel uneasy with my penis, and not long after I started to excete my semen. I told the deceased the nature of my ailment after I had had sexual intercourse with her. After that I became impotent and I could not have sexual intercourse with any female again."

He had accused his ex-business partner of threatening him with some everlasting scourge some time prior to this and he believed that this impotence was the threatened scourge. He had also threatened this ex-partner with some physical violence (death) and the latter had reported this to the police; who advised him to go and settle their problem in their village. Two conciliatory meetings were held in the village.

The accused went from his village to report the murder himself. Besides several matchetwounds, he completely decapitated the victim. He expressed the wish to kill his ex-partner and had planned to commit suicide by drinking some insectioide.

In this case no medical or psychiatric evidence was called. The defence counsel appointed by the court did not even address the court, leaving the court to

sort out the facts. The accused was condemned and hanged. When interviewed in the condemned cell, he was withdrawn and negativistic. He refused to give any information. All he said was that he had accepted the court's verdict. Psychiatric impression of this case is that the accused suffered from anxiety state consequent on his illicit sexual intercourse with a married woman. This anxiety state resulted in his impotence. His statement that he excreted his semen could mean that he contacted some venereal disease which might have increased his anxiety. He then projected his problems on his ex-business partner who might have threatened him with some misfortune, or not. In this culture, projection leading to paranoid ideas is a very common occurrence.

What also aggravated the accused's condition was that the last of his three children, by his wife who left him because of his impotence about a year before the murder, died. Another noteworthy observation is that the police to whom the partner reported the homicidal threat of the murderer were not aware of the seriousness of the situation. It has been known for a paranoid schizophrenic to report his case to the police and on getting no satisfactory solution, not even the suggestion of psychiatric treatment, to take the law into his own

hands and murder his imagined assailant or antagonist. It is also worthy of note that impotence, a significant psychiatric symptom, is not regarded as such by most people in this community including members of the judiciary and bar, and this symptom has been the immediate cause of homicide and suicide (Asuni, 1962) in a number of cases."¹⁶

5. MUSHANGA'S CRIMINAL HOMICIDE IN WESTERN UGANDA.

This was a study of violent deaths in the three districts of western Uganda, of Ankole, Kigezi and Toro, with a population of over two million people. The study used court records which were kept at Mbarara, Kabale and Kabalore, for Ankole, Kigezi and Toro districts respectively. The study included 569 offenders, of whom 88.9 per cent were male, and 501 victims. The study analysed data on sex of both offender and victims in both general criminal homicide and in murder cases. Weapons were analysed, where spears, sticks, panga (matchet) and knife were found to be the most commonly used weapons to inflict death with. Guns were used in four cases out of 501. Relations of the individuals involved in a homicide episode were also analysed, as were motives, the role of alcohol, temporal patterns and the disposition of offenders. In addition, the study attempted an examination of Rwenzururu movement and its violence. The main findings were:

That criminal homicide is a crime which is predominantly

committed by young males, especially those between the ages of 18 and 30. That men prefer to kill fellow men, that when a woman kills, the victim is likely to be a male relative especially the husband or lover. That women, in general do not kill fellow women. Veli Verkko's static and dynamic laws were examined and found to bear some truth in relation to low homicide rate for the Abakiga and high homicide rate for the Abatoro.¹⁷ Homicide is an interpersonal affair where, in most cases, the motive is not clearly perceived. Alcohol plays a role in these slaying, either the offender, the victim, or both are, in most cases found to have been drinking prior to the crime, and usually, the two have been drinking together. Dispute over land that was projected to be a major factor did not appear to be again this suggests that most homicides result from trivial rather than from major interpersonal disputes; it appears these get settled somehow while the minor ones, which are never clear in the mind of the offender, are more problematic than is generally realised. Witchcraft does not appear to be a major issue in these cases; disputes over brideprice are common among the Abanyankore and Abakiga people.

The differences in annual rates of homicide reported to the police which show that Toro, which, by population is a third of Ankole and Kigezi has a rate twice as high as that of Ankole and Kigezi put together; can only be explained

in sociocultural values of the subcultures involved. While in Toro a man may quarrel with another over a beer party and leave and go to way-lay the other and stab him to death, in Kigezi and Ankole, the quarrel and dispute must be settled there and then and if need be, by fighting; but no way-laying as this is considered extreme cowardice.

6. CALOLYN FLUEH - LOBBAN: AN ANALYSIS OF HOMICIDE
IN THE AFRO-ARAB SUDAN

This study was conducted in 1970-1972. The aim is stated to have been to look into the social contexts within which homicide occurs in the ethnically diverse Sudan.¹⁸ The author used case files from the Sudan Law Project at the University of Khartoum. Dr., Lobban's sample was made up of 356 cases of which 293 were males and 63 females as offenders. In Lobban's study, the age of offenders is similar for males and for females; 18-30 accounted for 58 per cent of male offenders and 57 per cent of female offenders, thereafter the percent drops considerably as the persons grow older. Persons who were below the age of 18 and those who were above the age of 50 accounted for 5-6 per cent of all offenders.¹⁹

Lobban found homicide to be more frequent in the densely populated Blue Nile Province and Khartoum Province and also in large cities. She attributes the higher urban rates to both the problems which come with urban life and the increased

efficiency of the legal machinery in the cities. The majority of the victims and of the offenders were peasants or cultivators. Town labourers too stand out with a high percentage of offenders. Most homicides are intra-ethnic rather than inter ethnic. This is explained in terms of social interaction; that whereas the members of an ethnic group have a lot of contact, there is no inter ethnic contacts apart from those found in urban areas.

Knives are reported to be the most commonly used weapons. Women rarely kill each other; 70 per cent of homicides in this study occurred either in the environs of the home or at the place of work. Most of the offenders and victims are related as husband and wife, brother or brother-in-law, and the like. The social dyad in which violent homicides occur are those involving husband and wife, of the known relations, husband and wife scored 57 of the 150, the next one was the sister or brother relationship with 21. In the non-relational category, the largest group was of village neighbours, 72, followed by sexual competitors who came up with 42. Lobban reports that "In the south problems of the levirate and 'ghost' marriages are contributing factors to marital discord."²⁰ One of the most strange confrontation is that which is known as shakla. These are violent episodes that break up from time to time and which have their genesis in traditional enmity. Two individuals get involved in a homicide drama; then members of their respective groups join

and a large affair starts, in which several persons from each side get killed; and often government intervention is required to stop the situation.

Dr. Lobban identified three major categories in which violence is expressed: 1) insults, 2) sex-related cases, 3) cases that are related to poverty. Insults provoke anger when they are related to religion or to a man's sexual behaviour. Insults seem to be strongly resented among the Sudanese people. In one case, one woman killed another woman in a courtroom because she said publicly, "Don't come and prostitute in Hamid Effendi's house again because I am living there now."²¹ In another case a woman insulted her daughter by saying in public "Don't forget to let me know the next time you brew beer." The daughter killed her mother because she publicly made it known that her daughter brewed illicit beer and also that she is disrespectful as not to inform her mother.

Other common motives for homicide in this Sudanese study include the defence of honor, dignity and decency. Sexual jealousy, sexual competition and adultery.

Lobban reported that in the Muslim Sudan, approximately one out of every three marriages contracted ends in divorce.²² There also cases that Lobban considered to be related to poverty, such as those arising out of disputes over the payment of brideprice, land, water and animal rights. Perhaps these cases are to be explained in terms of culture rather

than poverty per se, although poverty may be part of the culture.

7. LEIGH BIENEN: CRIMINAL HOMICIDE IN WESTERN NIGERIA
1966-1972

The study covers the period between 1966-1972. Out of a total of 698 criminal cases from eight judicial divisions were examined and only 114 homicide cases in which 205 people were accused, and 130 killed were selected for this study.²³ Bienen's study is the most recent analysis of criminal homicide in Africa. Bienen considered a number of variables in this analysis. Only 4 per cent of the accused had been drinking before the crime, most of the victims, were killed by their relatives for personal, domestic or sexual motives. The homicides were intra-ethnic. 21 per cent of the offenders were found to be psychiatric cases. 51 per cent were acquitted. On the average the accused spent about 2 years on remand awaiting trial, and the whole process from the time of crime commission to the end of appeal, takes between 4-5 years. Bienen found that most homicides did not markedly differ from patterns of homicide from other cultures. One thing appears to be more frequent in Western Nigerian homicide, and that is group murders. Of the 205 accused, 89 that is about 43 per cent killed in groups of from two to nine, and one case is on record in which 18 people were accused of killing one person. Bienen is silent about the motive of this particular case, but usually

when one person is attacked and killed by at least more than two or three persons, it is either because he was a thief, a witch, or was attacked by a gang of thieves.

Another finding which is a bit unexpected is that the age group of slayers in Western Nigeria is that of 30-40 first, followed by 20-30, although victims were a decade older than their slayers. The occupations of the offenders are the usual ones, of the lower socio-economic status people, small farmers, self-employed, farm labourers, and drivers. No single accused belonged to the higher status occupation. In her conclusion, Bienen suggests that there is need for increasing legal aid particularly in the two year pre-trial period. She also noted the prejudicial and discriminatory nature of expert testimony in cases involving psychiatric cases.²⁴

CONCLUSIONS

The study of crime in Africa is still in its embryonic stage. Much has to be done to identify patterns, relationships and conditions that favour or contribute to the commission of violent crimes. Combined effort by sociologists, lawyers, psychiatrists and other social and biological scientists is recommended as more likely to yield more information than studies that focus on one aspect of life or by a specialist of any one of the above disciplines. Criminological studies are made impossible by not only lack of funds, but also by lack of

cooperation between various departments of government and universities. More needs to be done in the way of fostering cooperation and development of team work, not only among the scholars, but also among the practitioners and all persons that are engaged in the field of criminology, criminal law and social development.

References to chapter three

1. Paul Bohannan (edited) African Homicide and Suicide, Princeton University Press, Princeton, New Jersey, 1969, p. 3.
2. Ibid. see table 30. Disposition of homicide cases, p. 157.
3. G.M. Wilson, Homicide and Suicide among the Joluo of Kenya, in Bohannan op.cit. pp. 179-213.
4. R.E.S. Tanner, Crime in East Africa: Homicide in Uganda 1964. The Scandinavian Institute of African Studies, Uppsala 1970.
5. Ibid., see table 1 on page 85, which gives the details of the districts, estimated population and number of murders each year and rate per 100,000 from 1960 to 1964 inclusive. The rate in 1964 was 10.05 per 100,000.

6. Ibid. page 93 table 12. The typology of these alleged motives shows many inconsistencies such as separation of robbery of household effects, victim suspected of robbery, victim in possession of stolen goods, and robbery of bicycles.
7. Ibid., p. 25-26.
8. See note 15, p. 122, victim had petrol poured on him whilst sleeping. When he went to the door, a match was struck and he received burns from which he died soon after. The house was completely burned and one of his wives and two children were treated in hospital for burns. No known motive, case closed unsolved. C.I.D. (Uganda) case file 2.3/64. The house would have been destroyed if petrol was used, at least the wooden structure of the building could get burnt, and the occupants receiving burns.
9. Ibid. p. 26.
10. T. Adeoye Lambo, Malignant Anxiety; A Syndrome Associated with Criminal Conduct in Africans; Journal of Mental Science. (1962), 108. pp. 256-264.
11. Ibid., p. 257.
12. Ibid., p. 258.
13. Tolani Asuni, Homicide in Western Nigeria, British Journal of Psychiatry. (1969), 115, pp. 1105-13.
14. Ibid., p. 1106.

15. See Tibamanya M. Mushanga (Then Musa T. Mushanga), *Punishment and Deterrence*, Mawazo, Vol. 3, no. 3 June 1972 p. 40.
16. Asuni, op.cit. pp. 1108-1109. See also Tibamanya M. Mushanga, Criminal Homicide in Western Uganda; the case of man who walked a distance of about 30 miles and came to inform the district administrator that he did not like Italian catholic fathers because they were liars. The D.C. sent him to the Police, he repeated the story, the Police told him to go away. He went to the market and bought a machet and walked to the catholic mission and beheaded one of the white fathers and was bringing the head to the Police when he was arrested. This was at Kabalore Toro, Uganda, 1970.
17. M.T. Mushanga, *Violent Deaths in Western Uganda*, East African Law Journal, September, December 1972 Volume VIII Nos. 3 and 4 pp. 186-187.
18. Carolyn Fluehr-Loban, *An Analysis of Homicide in the Afro-Arab Sudan*, Sudan notes and Records (no year.).
19. Ibid. p. 6.
20. Ibid., p. 9.
21. Ibid., p. 13. It is of particular interest to note that listed among 'places of Crime of homicide'; is in the court-room where 8 persons are recorded to have been killed; variable 8, on page 30.

22. The Sudan must have one of the highest rate of divorce on the African continent. In a preliminary study of marriage in one of districts of Uganda, the author found divorce to be very infrequent. See M.T. Mushanga, Polygyny in Kigezi, The Uganda Journal Volume 34 part 2, 1970, pp. 201-209.
23. Leigh Bienen, Criminal Homicide in Western Nigeria, 1966-1972, Journal of African Law, Spring 1974, pp. 15-16.
24. Ibid., p. 27.

CHAPTER FOURVALIDATION OF HYPOTHESES: GENERAL CHARACTERISTICS
OF OFFENDERS.

The data that are analysed in the following pages were collected from 108 Criminal homicide offenders that were serving life, time or President's pleasure sentences at Kamiti Government of Kenya Maximum Security Prison, early 1974. There are six such maximum prisons (known as Principal Prisons) in the country but Kamiti is the only one with facilities for judicial execution of condemned offenders. Offenders who are admitted to Kamiti are those serving long term sentences, ranging from four year to life imprisonment. Offenders in Criminal homicide cases who receive less than four years prison sentences are short-term prisoners; some are at Kamiti prison but in a different prison; for there are three prisons at Kamiti, one is the male maximum prison, the second one is medium and has sections for male and female offenders, and the third is a general prison mostly for young first offenders where the maximum stay is not more than four months.

There are, in all, 77 penal institutions in the Republic of Kenya which handle about 49,000 convicts each year, with a daily population of about 20,000 and a staff of about 5670.¹ Prisons are national institutions and as such a prisoner from any part of the republic may be admitted in any prison or may

be transferred from one prison to another depending on circumstances warranting such a transfer. Offenders convicted of very serious felonies and those who are already hardened through repeated convictions and imprisonment and those who are sentenced to long-term sentences are held in one of these six principal prisons.

Since Prisons are national institutions to which any convicted person may be admitted, the prison population at Kamiti, about 1,400 in all, is a representative of the nation in its identity; with all linguistic, ethnic, racial and religious groups being represented. The population at Kamiti Maximum Prison differed from Kenya general population in two major respects, there are no women and no children. Of the 108 male offenders that were interviewed, the Kikuyu, Luo, Kamba, Kisii, and Luhya appeared to have more offenders. The following is a break-down of tribal groups:

1. Kikuyu	18	10. Turkana	2
2. Luo	18	11. Marakwet	2
3. Kamba	17	12. Samburu	2
4. Kisii	14	13. Gisu	2
5. Luhya	12	14. Tharaka	1
6. Nandi	6	15. Kuria	1
7. Meru	5	16. Somali	1
8. Giriama	2	17. Pokoth	1
9. Masai	2	18. Nyangori	1
		19. Kipsigis	1
		TOTAL	108

The first five tribes, Kikuyu, Luo, Luhya, Kamba and Kisii are also the first five major tribes in the country.

The Kikuyu, who form the largest tribe, in the country live in the central province where this prison is situated just about 16 miles north of Nairobi. The Luo, the Luyia and Kisii (Gusii) live in the Western Province of Kenya and the Kamba from Ukambani live in the Eastern Province with their headquarters at Machakos, about 35 miles east of Nairobi.

Nearly all the prisoners who belong to these (and other tribes not listed, for there are over 70 tribes in Kenya) ethnic groups listed above committed (or were alleged to have committed) the homicides in their respective areas, and were therefore, transferred from their home towns to this prison. Some of the homicide offenders had been transferred to this prison to be executed, but had their death sentences stayed by the President of the Republic; and were serving life sentences.

Many well-informed people the researcher spoke to about this crime of homicide and violence in general, such as University lecturers and students, prison and police officers and others, gave it as a generally held view that (a) the Gusii (Kisii) are an extremely violent people, among whom violence and murders are common and in most cases start from very trivial disputes; (b) that the Kikuyu do not kill unless it is for money (mbesha),

(c) that the Meru (not to be confused with the Meru of Tanzania with whom the Meru of Kenya have no relationship) are drunkards and therefore kill when they are under the influence of alcohol, (d) that the Luos are proud and will fight and kill if insulted or even slighted; and (e) that most of the people who kill, do so because either they are under the influence of alcohol, or because of women, land, money and hatred (which is not specified).

Among the tribes that are listed, there is only one outside tribe (outside of Kenya), the Gisu, who come from Eastern Uganda where they are known for their violence and high homicide rates in that country.² In a recent press warning, the District Commissioner for Uasin Gishu district said that:

"The rate of crime in Eldoret town and Uasin-Gishu district in general has increased recently..."

The newspaper went on to state that the D.C.

"...attributed this to the increase in immigrants, particularly members of the Bagishu tribe from neighbouring Uganda."³

To check this crime, the D.C. asked all Bagishu immigrants to register at his office, and warned that those who do not register and later found loitering in the town or elsewhere in the district would be dealt with according to the law.

Most of the homicides were intra ethnic and only very

few were inter ethnic, and when those occurred, they involved in disputes over money, as well as cattle raids and counter raids and open robbery with menace as in one case in which five Kikuyus invaded an Indian's shop in Nakuru for robbery and ended up by killing the Indian owner of the shop. Two of the five were hanged, one received a life sentence (one who was interviewed and gave the details of the robbery), one was given four years imprisonment and the fifth was found not guilty and acquitted at the trial. From this study of 108 offenders, it is clear that in a society which is not highly urbanised and industrialised, homicide and violence tend to be confined to members of the same ethnicity and only rarely will members of other ethnicity get involved either as offenders or as victims. Wolfgang found that Negroes in Philadelphia killed fellow Negroes, and whites too killed fellow whites.⁵ In a similar study in Chicago, Voss and Hepburn found that "Only 6.6% of the Criminal homicide in Chicago in 1965 were inter-racial; and of these 80 per cent involved the killing of whites by nonwhites."⁶ Explanation for this general characteristic of violent homicides - that they are intra racial, or intra ethnic - is to be found in the general explanation of homicide in general. It cannot be by free determination or by the free exercise of one's free will, but the general conditions and situations in which the individual agent of aggression and violence is a participant. The decision to use violence and physical force to settle a

conflict situation is largely a cultural phenomenon.

Southall has pointed out how the Alur of Northern Uganda view intra ethnic homicides more seriously than inter ethnic ones. Professor Southall wrote:

"Reaction to homicide occurring between local groups, instead of within them, depended on the degree of their relationship, that is from the recognition of remote common clanship, to that of only common tribal membership or allegiance to the same chief, to the lack of any recognised common bonds between members of different neighbouring tribes having no common political allegiance. In the latter case, the usual reaction was feuding and revenge with little chance for the payment of compensation in lieu. Homicide in these latter circumstances was therefore a very different offence from homicide occurring either within the same local kin group or even the same political jurisdiction. Contemporary Alur behaviour suggests that this distinction persists, and that they have different moral feelings about violence committed on and among strangers, when they are away from home from those they have about violence among their own kin or fellowtribesmen.⁷

Inter-tribal homicides are either committed in traditional cattle raids and counter raids as those that are common among the Suk, Karamajong, Turkana, Samburu, Pokoth and other nomadic people found in north-east Uganda, and north west

Kenya; or in overt robbery cases; or in urban areas where ethnic groups mix up and after a time new relationships develop that may be conducive to the use of violence in interpersonal conflict situations.

FIRST HYPOTHESIS

The first general hypothesis states that individuals who committed criminal homicides in Kenya show similar characteristics that have been found to be common with criminal homicide offenders in other societies. Four subhypotheses have been advanced and one of these subhypotheses is that offenders are mostly young males, between the ages of 18 and 30 years.

SUBHYPOTHESIS 1: AGE

It is now generally accepted that the very young and the very old do not usually take part in criminal homicide as offenders, although they are usually victims of violent attacks. Violent deaths are, in general, committed by people who are young. Wolfgang has written that "In general, those who kill are younger than those who are killed."⁸ In his study of Philadelphia, Wolfgang found that offenders had their highest rate between ages 20 and 24, and their second highest rate between 25 and 29 years.⁹ In a study of criminal homicide in Western Uganda, it was found that offenders had their highest rate between the ages of 25

and 29, and the second highest rate between the ages of 20 and 24, and their third highest rate between the ages of 30 and 34 years.¹⁰ Voss and Hepburn in their study in Chicago found that 19.5% of the offenders were between 20 and 24, and 14% were between the ages of 25 and 29 years. The two authors noted that:

"The youthfulness of the offenders is indicated by the fact that 52.3 per cent of the white and 44.5 per cent of the non white offenders were between 15 and 29 years of age."¹¹

Professors Clinard and Abbott in a recent study of crime in developing societies have stated that:

"Young males commit most of the crimes throughout the world, and the population of less developed countries consists primarily of the young."¹²

Clinard and Abbott go on to mention that in some countries in Africa south of the Sahara 40% of the population are under 15 years of age and more than 60% are under 21; in Zaire 60% of the population are under 25, and that between one-third and one-half of the urban population (in Zaire) are under 15 years of age.¹³ From Clinard and Abbott's observation, it could be concluded that the youths have higher crime rates because their proportion in total population is higher; but this may not be the case, for even in societies where they are not over represented

in total population, their crime rates are still higher. Sutherland and Cressey have reported that:

"Persons under the age of 25 constituted 35 per cent of all homicide arrests, 68 per cent of the arrests for robbery, 77 per cent of the arrests for burglary, 72 per cent of the arrests for larceny, 88 per cent of the arrests for motor vehicle thefts."¹⁴

Tanner in a survey of homicide in Uganda found that 21-30 was the age group with the highest number of criminal homicide offenders,¹⁵ but Hermann Mannheim found that ages 13-15 had the highest rate per 100,000 of indictable offences for males while females had their highest rates between the ages of 17 and 19 years.¹⁶

To establish the age of the inmates is a real problem. Most offenders come from rural Kenya, in homes where illiteracy is high; but even with those who are literate the problem remains, for they are sons of men and women who are or were illiterate and who could not have recorded the dates of the birth of their children. La Fontaine has written that "Determining age among Africans, particularly those who are today over 30 or so, is notoriously difficult..."¹⁷ The age of these offenders is no less correct than if it were taken from Police or court records. The age was given by prisoner, by asking him how old he thought he was, then he was asked how old he was at the time he committed or is

alleged to have committed the crime. After this he was asked how long he had been in prison. As an example if a prisoner gave his age as 30, he was asked how old he was when he was arrested or at the time of the crime, and if he said he was 15, he was asked how long he had been in prison, and if he said he had been in prison for 10 years, he was told the error in his statements and he was asked to correct it; and the final version was recorded against him. But since we know that people below 18 would not be sentenced to life imprisonment or to a principal prison, 18 was used as the base plus the time he has been in prison which was easy to determine since every prison had it on his shirt marked as 1151/62. It is not certain that the police employ a more accurate method in determining the age of an offender; the usual practice is to ask him for his age and enter on the form whatever age the accused gives; it is only in cases where the accused gives the age that would afford him the defence of criminal irresponsibility that the police or the courts begin to be more cautious about age. In some cases, Medical officers are called to make the determination of age.

The present study shows that 71 out of 108 interviewed criminal homicide offenders were aged between 18 and 30 years. What was considered important was the upper limit. Since no offender would be sent to this prison who was not above the age of 18.

To test the null hypothesis which states that criminal homicide offenders are relatively young men aged between 18 and 30 years, the sign test on the distribution of this sampled population is used. For the distribution to be symmetric vis-a-vis the median of the sample, at least 43 must answer that they were above the age of 30 or must answer 'no' to a question, "Are you below 30 years of age?", and 'yes' for those who are 18 and above but below 30. In this case the results are:

"Yes"	-	71
"No"	-	37
		<hr/>
Total interviewees		108

The figure of 43 is obtained from critical tables of the sign test at a 5% level of significance.¹⁸ Since 71 is greater than the given figure of 43, and since 37 is less than the same figure, the null hypothesis is accepted. Criminal homicide offenders in Kenya, as seen from the sample of 108 offenders, are, as has been found in studies elsewhere, males aged between 18 and 30 years; but to put it more correctly, those who commit criminal homicide and who are in the category of criminal responsibility are aged between 18 and 30 years.

SUBHYPOTHESIS 2:RURAL BACKGROUND OF OFFENDERS.

Clinard and Abbott have stated that "Delinquency and crime rates are always lower in rural than in urban areas in developed countries and a similar situation exists in the developing."¹⁹ That delinquency and crime are not only unduly concentrated in the urban areas of any country but mainly in the largest of those cities. Johnson states that "It is generally agreed that crime rates are higher in cities than in rural areas."²⁰ The author continues to note that the difference in rates is greater for property crimes than for crimes against persons. That robbery, automobile theft and larceny have the highest ratios; but that criminal homicide and aggravated assault rates are higher in urban areas but that the difference is not as marked as for crimes against property.²¹ Many scholars have carried out researches on urbanism and crime rates, but very few have done so much detailed work on the rural crime especially violence. Voss and Hepburn studied criminal homicide in the city of Chicago; Calvin F. Schmid studied homicide in Seattle, Wolfgang studied the same phenomenon in the city of Philadelphia, Bensing and Schroeder studied homicide in the urban area of Greater Cleveland, Cuyahoga County, Ohio and many others, but very little is on rural violence. Some sociologists have

seen higher rates of crimes in urban areas in terms of police activity; that since the law enforcement and other government agents are more active in the urban areas, this contributes to higher rates for these areas; in other words, that rural and urban crime rates are the same, but because of differential activity, the rates differ.

On this question of rural-urban criminality, Frank Hartung states that "that existence of a criminal and delinquent culture and social organisation in urban areas seems to have been established." He goes to say that "the crucial question is whether there is a rural criminal tradition."²² Later on, Hartung writes that:

"Rural and urban delinquency are, then, alike with respect to differential law enforcement informal or unofficial decisions by Police and others prior to decisions at the juvenile - court intake desk, the over-looking of actions that are probably delinquent, and the giving of a "second chance" (or more), all resulting in the official rates being less than those the demonstrable incidence of known delinquency would probably give."²³

While these observations by Hartung may be true and quite characteristic of rural processes of dealing with delinquents and criminals, they cannot be equally applicable in criminal homicide cases as they are likely to be in cases such as simple assault, larceny or other kinds of crimes against property.

This is because criminal homicide is one of the crimes, if not the only one, with the highest rate of visibility; for while a policeman, chief or citizen may overlook a simple larceny or burglary, none is likely to overlook a criminal homicide; and therefore differential law enforcement in rural and urban situations should not affect rural-urban criminal homicide rates.

With the exception of certain kinds of murders, those committed with mens rea, in which elaborate planning is involved, such as poisoning, most of other violent deaths are relatively more difficult to conceal especially when perpetrated by one individual.

In studies carried out in America, it has been found that homicide rates and rape rates increase with the size of the population of the city, that in fact murder (criminal homicide) and forcible rape rates are about five times in cities of 250,000 as high as the rates in cities of 10,000.²⁴ And that in certain respects, the number of crimes decreases as the distance from the city increases. Stuart Lottier in a study of crime in the city of Detroit found that murders, assaults, rapes and robberies known to the police decreased consistently in the commutation area of the city to a distance of about twenty miles.²⁵ He also found that crimes against the person such as criminal homicide, assault, forcible rape and so on, decreased in the entire metropolitan area of Detroit within a radius of two hundred miles.

As noted earlier on, criminal homicide is mainly, an act

that results from a dyadic interactional process; and only in rare cases does it result from robbery and other gain-intended ventures.

In the present sample very few cases of criminal homicide were perpetrated within cities and towns; and most of these were cases in which either the victim or the offender were engaged in robbery situations or in which a dispute arose out of debts or wages.

The most probable explanation for criminal homicides in rural areas may be that it is because the greater percentage of murders arise out of interpersonal conflict relationships, and that crime is human behaviour and homicide as such is subject to cultural definitions, restrictions, and expectations in the use of violence.

It must also be remembered that the overwhelming majority of the population in East Africa is rural, and Kenya is no exception with just about five per cent of its population living in urban areas.²⁶ This factor is important in indicating why the majority of the criminal homicide offenders that were serving sentence at this prison were from rural areas. It could also be said that nearly all of the African people in East Africa whether they now live and work in urban areas, have a rural background. For nearly all African people in cities in East Africa have two homes, one in the city for work, and another one the proper home - in the rural areas, mashambani.

SUBHYPOTHESIS 3:EDUCATION AND EMPLOYMENT.

The third sub-hypothesis under the general personal characteristics of criminal homicide offenders was "That the majority of these offenders will be found to have had little or no education and as such are either unemployed or self employed."

Education and employment are considered together because of their interrelatedness. In East Africa, education is seen, valued and pursued not for its own sake but because it is the means to obtain an employment.²⁷ Good education means a good job; this has been the situation until very recently when the situation has all of a sudden changed so that there are now thousands of young men and women living in urban areas in search of employment. But formerly literacy and the ability to add and subtract figures were criteria needed for some of the jobs such as clerks, police, watchman, store-keeper, headman and so on; and because parents wanted their sons and daughters to get jobs, they sent their children to school with a result that in those communities where employment was not viewed as a direct consequence of education, parents were reluctant to send their children to school. Or to put it in another way, in communities where the need for employment of the youths was not great, such as among the Masai, the Bahima, Turkana, and other cattle people, there was little effort, and in some cases no effort was made, to educate the youths;

therefore education here is perceived in terms of job opportunities, and it is for this reason that education without a job or an employment is regarded as no education at all and results in the frustration of the person himself.

Of the 108 interviewees, 59 said they were literate, i.e. they were able to write and read their respective native languages. Most of these literate men had had some years of primary education and only three had had up to post primary education; one was a former primary teacher who had two years of teacher training, another one was a soldier and the third who had four years of post-primary education was a medical assistant. The problem here is whether to accept that a rural man who had only two or three years of primary education is both literate and educated. Both education and literacy are very relative concepts in that there are people who are more educated and therefore more literate than others. But the fact that the so-called literate turned out to outnumber the completely illiterate all from a country where the rate of illiteracy is very high is difficult to substantiate. But by using the sign test, the null hypothesis that the majority of the criminal homicide offenders are illiterate is not accepted but nor is it rejected outright, since those who said that they were literate and those who said that they were not are about equally represented in the sample.

The higher rate of unemployment among the offenders indicates that those who said that they were literate, were

actually not functionally literate, and therefore the majority of them were no better and no worse than those who said that they were totally illiterate.

One other difficulty is about employment. In East Africa, a person is said to be employed if he is working for someone else, or for the church, or for the Government or for a private company in whatever capacity. A Government officer is employed so is his clerk, office-messenger, cleaner, a porter or labourer and driver. The alternative is to be unemployed, that is not to be on the payroll of someone else. In this case, a man who lives on his land where he grows food some of which he eats with members of his family and some of which he sells in the local market, is said to be unemployed. The other man who may have five acres of tea or coffee where he and members of his family obtain money for meeting most of their needs, is equally said not to be employed even if he earns more money from his crop each year than a government clerk or a hospital sweeper. Employment again, for some people of this description, could be a seasonal part-time job. A man may go to the town to seek an employment for two to four months and when the rains come, he goes home to plant and saw his gardens; he may then come and take up another part-time job and return home at the time of harvest. In this case, it may seem wiser to regard such part-time employees as not employed at all.

But since it is possible and particularly so in these

rural cases, that the self-employed may be earning more income than the labourer or government official, it was thought more proper to use Asuni's dichotomy of traditional and non-traditional occupations.²⁸ According to this dichotomy traditional occupations include cultivation, farming, herding cattle, and the like; while non-traditional occupations include drivers, teachers, waiter, policemen, cooks, medical assistant, shop assistant and the like. The following is the list of the break down of occupations as given by the interviewees:

<u>Occupation</u>	<u>Number</u>	<u>Occupation</u>	<u>Number</u>
1. Cultivators	32	14. Office messenger	1
2. Porters (labourers)	11	15. Student	1
3. Traders	5	16. Salesman	1
4. Mechanics (Makanika)	5	17. Medical Assistant	1
5. Drivers	4	18. Cook	1
6. Tailors	4	19. Shoemaker	1
7. Clerks	3	20. Houseboy	1
8. Herdsmen	3	21. Soldier	1
9. Policemen	3	22. Fisherman	1
10. Teachers	2	23. Watchman	1
11. Masons	2	24. Carpenter	1
12. Cattle traders	2	25. Waiter	1
13. Shop assistant	1	Unknown	19
		25 occupations	108

The only criterion on which traditional is non-traditional employment is used is wage - earning; otherwise it would be difficult if not impossible to make a distinction between a tea grower and a coffee grower both of whom are engaged in a non-traditional kind of activity; and a carpenter and tailor both of whom are engaged in non-traditional occupations but may be self-employed. Thus all the interviewees who were non-wage earners are listed as unemployed while those who were engaged in such humble occupations as watchman and waiter are listed as employed because they were earning wages monthly.

In a study of homicide in Uganda in 1964, Tanner found that the majority of the offenders and of the victims were, according to Tolani Asuni's division of traditional and non-traditional occupations, engaged in traditional occupations as cultivators, housewives, herdsmen, village headmen, fishermen and others.²⁹ In a study of homicide in Seattle between 1914 and 1924, Schmid found most of the victims to have been housewives, labourers, students, policemen, cannery workers, chauffeurs, clerks, watchmen, domestics, hotel keepers, saw-mill operatives, shipyard workers, truck-drivers, bartenders, delivery boys, fishermen, sign painters, telephone operators and the like.³⁰ Wolfgang in his study of criminal homicide in Philadelphia was unable to make a detailed account of occupations of offenders and victims because these were, in most cases, not entered on the Police form. But he noted that "For some victims and

offenders the category, "labourer," was frequently listed by the police although the designation of "semiskilled" or "skilled" worker appeared to be more warranted."³¹ In conclusion, Wolfgang stated that "It is, however, safe to assert on the basis of a crude approximation of occupation that 90 to 95 per cent of the offenders of either race were in the lower end of the occupational scale, or from the category of skilled workers down through the unemployed."³² Wolfgang went on to note that "Victims probably cover a wider occupational range than offenders, and have a slightly higher proportion in the upper half of the occupational scale."³³ Clinard and Quinney have written that "crimes of violence are found almost entirely in the lower class."³⁴

McClintock in a study of violence in London found that the majority of the offenders were unskilled or were causally employed, and Mario Simondi, in a study of homicide in Florence Italy, found that approximately 90 per cent of his sample were from the lower class.³⁵

It was originally hypothesized that most criminal homicide offenders are likely to come from low social status occupations. The study shows that nearly all the interviewed offenders belonged to this low status group of occupation. Even the primary teachers and the Medical Assistant: cannot be said to be above the low social status occupations.

Violence has been shown to be a crime of people with low social-economic status with little or no education. The low

social status people resort to violence in a number of situations. Primarily because they lack a stake in society; they have no honour to be proud of and therefore to try and protect their positions; and partly because of the sub-cultures of delinquency, crime and violence that are more widespread among those groups than among others. The low social status men are too eager to protect their manhood, or Machismo (in Runyankore, obushaija, no Swahili equivalent), because this is the most outstanding identity they have and share with those in higher social positions. "We are all men, what do you have that I do not have?" The desire to defend one's manhood is greater among the low social status group males because it is the greatest possession or attribute that puts them on equal footing with others.

High social-economic status per se is no insurance against the overt use of violence; for it has been observed that high economic status without adequate and sound education does not necessarily reduce the emotional urge to express violence; that in fact a man in such a position (of which he may consciously or unconsciously know that he does not deserve) is more assertive and demanding of respect than his low social and economic status counterpart. For such a person is more concerned about recognition, approval, praise and respect.³⁷ Education helps a person to develop his dependence and use of his rationality rather than spontaneous response to emotional Id drive. Education develops, strengthens and reinforces

the functional use of the superego and helps to control outbursts of aggression and violence. The rise to economic and political power without corresponding educational attainment leads to dissonance, anomie and extremism; and in some cases violence. The low social status or low socioeconomic groups also commit criminal homicides in which the motive is gain. Robbery with violence, generally known as Kondo in Uganda, is predominantly a crime of the low socio-economic groups. Nearly all cases of murder in which either the victim or the offender was attempting a robbery are those of people in the low economic and social positions. The unemployed, or the self-employed or part-time employed, the ill-educated, unskilled or semi-skilled especially those with an urban slum experience, are more likely to engage in property crimes sometimes which involve the use of violence and very often in deaths of a violent nature. A study of crime in the city of Milwaukee showed that the slums, or the inner core area of the city, which had 13.7 per cent of the population in 1957, had 38 per cent of the arrests for burglary, 69 per cent of the aggravated assaults and 47 per cent of other assaults, 60 per cent of the murders, 72 per cent of the arrests for commercial vice, 22 per cent of the drunkenness, and 67 per cent of the narcotics.³⁸

The low socioeconomic groups have no alternative to the use of violence to obtain what the white-collar officials obtain with the minimum of effort. A recent case in Nairobi

in which Shimechero, a senior civil servant was convicted and sentenced to five years for corruptly receiving £7,162 is a case in point. While Shimechero and others like him can receive huge sums of money through corrupt practices, the unemployed have no such access to channels of corruption, and therefore have no alternative but to resort to the use of overt violence to get money. The Spirow Agnew, the Shimechero, and others can live very comfortably on their corrupt practices, (and only a few are caught) but those who have no such positions use guns, pangas and rocks to get quick money. In this way, the low socioeconomic people are found to be involved in criminal homicide cases as offenders and also as victims. It can, therefore, be asserted once more, that criminal homicide is predominantly committed by what may be called the "Lumpen proletariats" against persons of the same station in life; and only in very few cases will those in upper socioeconomic and educational strata commit such crimes, though they be victims in cases involving robbery with aggravation or Kondo.

It was, again, suggested that having a wife and children is a stake great enough to restrain men from the use of violence; and accordingly inmates were asked to state whether they were married or not at the time the offence occurred, and also to state how many children they had prior to their arrest. Of the 108 offenders that were interviewed, 47 were unmarried as against 61. Marriage and having children is assumed to be a great stake for most people to consider in their day to day social interaction. Two major reasons appear to explain this

high rate of married man in the sampled offenders. One is that early marriage is a quite common thing among peasants in most African societies so that men get married long before they cross the danger-age zone of 30 years. In some societies marriages are contracted as early as 14 to 16 as is the case among the Bakonzo of Rwenzori mountain in Uganda. Early marriage is characteristic of rural, traditional peasants as late marriage is common among the herdsmen; and since all of our interviewees were above 18, it is in fact surprising that the number of the unmarried is that high; This high rate of married men in the sampled population of criminal homicide offenders is no negation of the concept of stake, it is because men get married when they are still within the danger-age period. The second important explanation is that most of these homicides, like criminal homicides elsewhere, are committed in the heat of passion; and therefore, either the offenders or the victims do not relate their intended actions at stake. This is an extremely difficult area to research into for there appears to be no way of determining the would-be offenders but who do not commit the homicide because of considering either the consequences of their actions or their families. The findings in this study do not support the contention that married men are less likely to be involved in criminal homicide as offenders, but nor can we say that they are more likely to be offenders because of the reasons given above.

SUBHYPOTHESIS 4:PREVIOUS COURT OR PRISON RECORD.

A hypothesis was put forward, that unlike other criminals those who commit homicides are most unlikely to have previous troubles with the law as robbers, and property offenders in general.

In a study of criminal homicide in Uganda showed that the majority of the offenders had had no previous court or prison records, that most of them were first offenders.⁴⁰ But Wolfgang found that criminal homicide offenders were unlikely to be first offenders. He noted that:

"Contrary to many past impressions, an analysis of offenders in criminal homicide reveals a relatively high proportion who have previous police or arrest record. Of total offenders, nearly two-thirds have a previous arrest record, and of total victims almost half have such a record."⁴¹

Wolfgang, in his earlier work on homicide, makes a very clear distinction that should be made. He noted that many criminologists do not make a distinction between (1) an arrest, or police record; (2) a conviction, or court record; (3) a commitment, or prison record.⁴² Daniel Moynihan has reported that "By far the greatest proportion of all serious violence is committed by repeaters." He goes on to say that

"offenders arrested for major criminal violence generally have long criminal histories, but these careers are mainly filled with offenses other than the final acts." But that, "Generally, though there are many exceptions, the more serious the crime committed, the less chance it will be repeated."⁴³ Clinard had indicated that violent offenders, on a continuum appear on one end while at the other end are organised and professional offenders and public-order offenders, political criminals, habitual petty criminals, occupational criminals, and conventional criminal careers occupy the middle position on the continuum. Clinard reported that:

"Offenders who commit criminal homicide, assaulters, and forcible rapists do not have criminal careers in such offenses. In fact, most murderers and assaulters do not conceive of themselves as being "criminals," for there is seldom identification with crime, and criminal behaviour as such is not a meaningful part of their lives. Forcible rapists, on the other hand, are likely to have a record of other offences, particularly property crimes."⁴⁴

In a St. Louis study Pittman and Handy found that only a small number of victims had previous arrests for Index crimes; but that most offenders had previous criminal records, with the prior arrest most frequently being for peace disturbance. The two authors noted that "The record, however, does not indicate whether this prior act was a slight scuffle or

affray or a reduced charge from a more serious offences. At least 37 (of 241) of the offenders had at least one previous arrest on assault charge."⁴⁵

The problem that has to be dealt with is "what constitutes a previous record?" Wolfgang, as noted above, makes a distinction between police, court, and prison records. But even these may not be directly relevant to violence. A person who is arrested, convicted and committed to prison sentence for being in possession of illicit gin is a criminal by definition, so is one found guilty of homosexuality. If the same men are accused of criminal homicide several years later, they will be said to have criminal records, but their previous criminal activities may or may not be related to their subsequent violent behaviour.

The present study shows that only seven out of 108 offenders had had previous contact with the law. Since the record was made on the report of the prisoner, these findings may not be all that reliable in that it was not possible to check records against prisoners' answers. Two had court record only and the other five had also been convicted and sentenced. Of the two court record cases, one was for adultery, the interviewee did not go to prison because adultery is not a criminal offence in Kenya; the second appeared in court for fighting. The other five who had sentences were: one who served three years in a reform school for theft, he also served another prison term for assault; one served four months for failing to pay his taxes; one served two prison

sentences for cattle raids and one man served one year for Mau Mau activities. It must be mentioned here that having no previous court or prison record is no indication that the offender had not broken the law prior to his subsequent conviction; since there are many more crimes committed than those that are known to the police, some of these offenders might have committed crimes that were never reported. But from what we have, it would appear that criminal homicide offenders are more likely to be first offenders.

CONCLUSIONS

Crime, not just criminal homicide, is, generally speaking, a near monopoly of males; the exception being infanticide and abortion; the two offences which are a monopoly of the females. This does not mean that females do not engage in criminal homicide; they do engage in this kind of crime but are more victimised than being offenders. Although this study did not test this fact, but it is a generally known fact that men predominate in crime commission especially in homicide, robbery and other related offences such as rape, kidnapping and aggravated assault. Age is now a recognised factor in crime especially violent crime. The very young and the very old are, as a rule, infrequently involved in criminal homicide, either as victims or as offenders. The most critical age group being between 18 and 30 years; the victims tending to be at least 5

to 10 years older than their slayers.

The background of the persons involved in criminal homicide in East Africa is not well established. Although nearly all the offenders in this study were of rural background, this simply shows where the majority of the people live, because over 95 per cent of the people in East Africa live in rural villages. But studies in other urbanised communities have shown that crimes of violence do not increase with the size of the city as do crimes against property.

Education and Unemployment relate to criminal homicide offenders and victims as much as they relate to the bulk of the members of society. Literacy is low, employment in skilled or professional jobs also is low; but other studies have shown that low socio-economic-educational status is significantly related to crimes of violence. Finally, the study shows that criminal homicide offenders, are not likely to have previous court or prison record; ~~they are generally first offenders.~~

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CHAPTER FIVEVALIDATION OF HYPOTHESES CONTINUED

The second main hypothesis states that "crimes of violent deaths committed by the majority of these offenders were committed under the same social conditions in Kenya as have been found elsewhere." The main objective of this hypothesis was to show that criminal homicide, in spite of cultural, regional and national variations, is common to all human beings, and as such will be committed in similar social-cultural contexts. Accordingly, three sub-hypotheses were advanced, and will be discussed below.

SUB-HYPOTHESIS 5:ALCOHOL AND CRIMINAL HOMICIDE.

It was hypothesized that alcohol will be mentioned by the offenders as having been present in the offender, or in the victim or in the homicide situation, by the majority of offenders. The problem was the determination of the presence of alcohol in the victim and even the offender. It was assumed that criminal homicide offenders who were already convicted and serving life or prison sentences would be a bit free to say whether they had drunk alcohol or not. While we cannot be wholly sure that all

those who reported to have been drunk were actually drunk, we have little ground on which to stand in order to doubt their statements. We know that the majority of violent murderers like to advance intoxication as a defence, but we also have ample evidence to show that in some communities, a great deal of criminal homicides are perpetrated by or against persons who are under the influence of alcohol.¹

In a study of homicide in Greater Cleveland, Cuyahoga County Ohio, Bensing and Schroeder found that thirty-six per cent of the felonious homicide victims were under the influence of alcohol at the time they were assaulted; and it was estimated that at least the same percentage of persons accused of committing felonious homicides were under the influence of alcohol; and that forty per cent of those who were justifiably slain were under the influence of alcohol.²

In the Philadelphia study of homicide, Professor Wolfgang found that alcohol was present in both the victim and offender in 43.5 per cent; alcohol was present in the victim only in 9.2 per cent; alcohol was present in the offender 10.9 per cent and that in 63.6 per cent, alcohol was present in the homicide situation—that is either in the offender, or the victim, or in both the victim and offender, or in the situation.³ In a study of homicide and suicide in Bugisu, La Fontaine was informed by the Police and Administration that drunkenness was at the root of most crimes

of violence.⁴ John Mushikori in a study of the same problem in Bugisu, twelve years after La Fontaine found alcohol to be a major contributing factor in homicides in Bugisu.⁵ In a study already mentioned several times of homicide in Western Uganda, alcohol was found to be present in nearly 37 per cent in a sample of 484 cases, with its highest rate in Toro where it was present in 59 per cent of the cases.⁶

Bohannan while studying homicide and suicide among the Abaluyia of North Kavirondo was told that their violent murders result from drunkenness.⁷ Voss and Hepburn found alcohol to be present in 53.5 per cent in the homicide scenes, but alcohol was present in 58.2 per cent of female victims as against 51.8 per cent in male victims.⁸

But there are some studies which have reported extremely low rates of the presence of alcohol in offenders, victims or in the homicide situation. For instance, Leigh Bienen in a study of criminal homicide in Western Nigeria found that alcohol was present in no more than four per cent;⁹ although the use of illegally distilled liquor in Nigeria such as Timashenko, Ogogoro or what young Nigerians call "Push-me-and-I-Push-You" is very common in such cities as Ibadan, the largest city in the Western State where Bienen carried out her research. Tanner found alcohol to be present in both victim and offender when victim was

male in 25 per cent and 19 per cent in female victims.¹⁰

The major problem, as noted earlier, is the determination of alcohol and especially the degree of alcohol in circulation at the time of the commission of the crime. Under ideal conditions, offenders (and victims) should be examined within 24 hours of the crime, but even then, the effects of alcohol would not be the same even if the alcoholic blood content would not have changed much. A man who is drunk and shouting, and quarrelsome at 9 p.m. will be found to be perfectly normal by 9 a.m. for every hour that passes, the recovery process progresses.

In most of East Africa, with the scarcity of qualified medical personnel and with problems of communication, an accused person may not be able to appear for medical examination for several days after the act. The police are not trained to take blood samples for serological tests; and even if they were, in some cases, the police do not get to the scene of crime for some days. The police charge sheet too does not include an entry for drunkenness. The only way alcohol may appear in a homicide case is either from the accused when he may give his statement and mention that he was drunk or was coming from a beer party, or by the witnesses. The only place known to the author where breathalyzer tests are done on suspected drunkards is at Kilembe Mines in Uganda, where these are deemed necessary to stop drunkards from going underground to avoid

industrial accidents.

The low rates of the presence of alcohol therefore, in East African homicide studies, is more reflective of lack or inadequacy of laboratory facilities rather than real absence of alcoholic consumption prior to the eruption of violence. It is suggested, as Lloyd M. Shupe has indicated,¹¹ that the analysis of the blood and urine of the offenders immediately after the crime is committed would reveal higher percentages than relying on verbal reports by offenders and eye-witnesses.

The present sample of offenders shows that of the 108 prisoners, 79 said that they drunk alcohol - that they used to drink alcohol prior to coming to serve prison sentences; and only 29 said that they never drunk alcohol. Of the 108 offenders, and of 79 users of alcohol, 52 or just about one half of the whole sample reported to have been drinking at the time or prior to the time the homicide was committed. The offenders were also asked whether, if they had drunk alcohol prior to the homicide, had been drinking with or in a group in which the victim was a participant. They were also asked whether, in their own opinion, they thought that the victim was drunk at the time he or she was slain.

According to the interviewees 56 of the victims were drunk and in 44 cases, the victim and the offender had been drinking in the same group prior to the eruption of conflict and eventual death of the victim. As noted earlier, the

reports given by offenders regarding victims cannot be relied upon as some might have been trying to shift the blame from themselves to the victims. But as is common in all human groups, there were men who were prepared to give unbiased detailed account of what happened without projecting the blame to the silent victim.

It is surprising that the use of alcohol is not as high as one would have expected to figure in criminal homicide cases. It would appear that a higher rate of the presence of alcohol would be expected if police records are used instead of inmate population. For more than 50 per cent of all reported homicides do not end up in convictions; and it would appear that most of these cases which are disposed of in ways other than convictions, especially convictions with long prison sentences, involve intimate intercourse and drinking in rural and semi-urban trading centres.

SUB-HYPOTHESIS 6:

WEAPONS.

The hypothesis (sub-hypothesis in this case) states that "The commonly seen and touched tool of the cultural group which is known for its defensive or offensive function will be found to be the weapon commonly used in committing murders and manslaughters."

Studies carried out in other societies where weapons used in homicides have been analysed reveal very fascinating

cultural patterns, especially when whole cultures or sub-cultures are compared. Weapons used to destroy human life are those that form the artifact of the given culture. In 1970, the Federal Bureau of Investigation (the famous F.B.I.) reported, through its annual Uniform Crime Reports, that guns (all types) were responsible for 66.2 per cent of all criminal homicide cases.¹² Mr. Ransey Clark, former Attorney General of the United States has written that:

"Since 1900 guns have killed over 800,000 persons in America. More than 20,000 people are shot to death and upwards of 200,000 are injured or maimed by firearms each year... Estimates of the number of firearms in private ownership range from 50 million to 200 million... Surveys indicate more than 40 million people own guns."¹³

The Report of the President's (of U.S.A.) Commission on Law Enforcement and Administration of Justice reported that:

"During 1963, 4,760 persons were murdered by firearms. During 1965, 5,600 murders, 34,700 aggravated assaults and a vast majority of the 68,400 armed robberies were committed by means of firearms."¹⁴

In the study by Bensing and Schroeder, firearms were responsible for 55.2 per cent of the cases.¹⁵ The Times in December 1973 reported that there were 125 murders in Detroit in 1963, the number had gone up to 693 in 1973, and

that 65 per cent of all these murders had been committed with guns; and that in a city of one and half million ($1\frac{1}{2}$) people, there were about 500,000 guns¹⁶ - that is, one gun to every three persons. Howard Harlan in a study of five hundred criminal homicides found that firearms prove to be the most popular weapon with the 492 agents, 49.2 per cent of them employing this type of weapon;..."¹⁷ Emil Frankel in a study of one thousand murderers stated that homicide by firearms is one of the alarming phenomena in present day social life in America. The use of firearms in committing homicide was in 51.9 per cent of all 1816 homicide cases.¹⁸

In Africa, the situation is different. Tanner in his Ugandan Survey of homicide for the year 1964, found that firearms (including muzzle-loading ones) accounted for about 1.7 per cent;¹⁹ of the 501 victims in a Ugandan study, only four victims died of gunshot. In the Sudanese study Fluehr-Lobban found that only six cases resulted from the use of gun-rifles.²⁰ Bienen's Nigerian study shows a much higher use of firearms in that society than it is in Uganda or the Sudan. Of the 205 cases guns were used in 38 cases or in 19 per cent.²¹ Bohannan in a study of the Abaluyia of North Kavirondo for the years 1949 and 1954 does not mention firearms at all. In that study sticks, knives and spears were the main weapons of killings. Wilson too in a study of homicide among the Joluo makes no mention of guns. For one hundred homicide in Busoga, the Fallers found not a single case in which a firearm was

used; and La Fontaine in her Bugisu study does not mention guns as having been used in homicides in that society.²²

In England and Wales, Gibson and Klein reported that shooting ranged from the low rate of 2.1 per cent in 1958 to a high rate of 13.0 per cent in 1965, but as in all American studies mentioned above, no panga or spear are mentioned as weapons of murdering people.²³ African studies on homicide show some similarity in the use of weapons by offenders. Spears, pangas, knives, sticks, axes, hoes, are commonly listed as weapons used; but very few rifles, shotguns, and pistols. Some weapons or artifacts are more common in some cultures than others and therefore appear more frequently as weapons used in criminal homicide. In the Western Uganda study, spears, sticks, pangas, knives and hoes led the list of over thirty weapons and methods of killing.²⁴ Bohannan's list of weapons was led by sticks, knives, pangas and spears, in that order.²⁵

The Kamiti sample shows that knives, sticks, and pangas are the most used weapons. The following is a list of weapons:

Weapons used in the Kamiti Sample

<u>Weapon</u>	<u>No. of Cases</u>	<u>Per cent</u>
Knives	33	30.6
Sticks	12	11.1
Pangas	11	10.1
Beating	9	8.3
Spears	6	5.5
Arrow	6	5.5
Piece of Wood	4	3.7
Miscellaneous	18	25.2
	<hr/>	<hr/>
TOTAL	108	100.0

Because the Kamiti sample was not homogenous in cultural matters, it is not possible to give an explanation of some of these weapons. But one thing does seem to appear that the carrying of knives by men seems to be frequent.

In one case, the prisoner stated:

We were several people drinking native beer. We were also playing. Then there was a dispute over a woman, three men started beating me, I saw blood coming, then I got my pocket knife and stabbed one of them and killed him. (Deceased and offender Kisii).

In another case, the prisoner said:

I had just come from work with a woman friend of

mine. I found deceased in my house and we disagreed about the woman. The deceased bet me, then I stabbed him with my pocket knife. (Deceased Kikuyu, Offender Kisii).

In another case the prisoner said:

We were walking back home drunk, I was with my friends when we met the deceased. He asked us where we were coming from; we asked him if it was his occupation to ask people that. He beat me very hard with a stick. Then my friends tried to part us. The deceased beat me once again, then I removed a knife and stabbed him. (Both were Luo).

From these reports and many others in this study, it becomes clear that carrying of folding knives is generally practiced, at least by the men in low socio-economic class in this country. Several people (not prisoners) have confirmed me that the carrying of these knives is very common, but only among the working class people. On the other hand, the upper class people, carry handguns, and swords in their cars; primarily for defence in case of an attack. I have been informed that even schoolboys carry small folding knives, and recently a schoolboy was fined for stabbing a fellow schoolboy. This custom appears to have its origin in the cultural contagion between Arabs and Somalis on the one hand, and the Africans on the other. Fluehr-Lobban reports that knives are the most

commonly used weapon and are a part of nearly every man's personal attire in the north.

One Somali inmate explained this to me; that all (or nearly all) Somali men, like Arabs, carry knives with them all the time. The carrying of the knife, which is known as Tori in Somali language is a sign of manhood just as the possession of a spear by the Abanyankore and Abakiga is regarded as a sign of maturity. Spears and sticks are traditionally carried by nearly all males of the Kalenjin and Masaai group. The carrying of spears and sticks is a common trait among cattle people in Eastern Africa. We find the custom common among the Karamojongs, the Turkana, the Bahima of Western Uganda, and other herdsmen. Because they have to be out in the wilderness, in most cases in territories where lions and leopards are common, and, as in the case of the Northern Frontier Districts of Kenya, where cattled - raids are frequent, herdsmen have to be armed all the time. On the other hand, cultivators are more and more using the panga, because, it is a garden tool for clearing bush, and it is especially common among the banana farmers such as the Baganda, the Basoga, and the Gusii of Western Kenya.

In this sample one person was killed by gunshot. The offender was a police sergent who was leading a small group of police men and villagers who were following the trails of the cattle-raiders. When the group eventually

caught up with the raiding group, the sergeant fired and killed one man, while the rest fled with the cattle. One person was killed when the accused was throwing (he alleged) out bricks from inside the house and did not know that small children were playing in the yard, the child of his neighbour was hit by a brick and died instantly. One case was that of a Medical Assistant who gave an overdose of medicine to a woman who died later. One case was of a Luo man who woke up at night and set his house on fire in which his small baby-son was burnt to death. He complained of mental illness and was at Mathare Mental hospital in Nairobi for a long time before he was found guilty but insane and imprisoned at the President's Pleasure. One other case was of a small child who was hit by a falling bicycle of her father. The man had had a quarrel with his wife regarding the paternity of the baby. She was only nine days old. One other person was hit with a bottle, another with a bicycle chain, another with an iron bar and another one was throttled with a rope.

With the exception of the very few cases just mentioned above, the majority of the offenders used the daily seen, touched, and used objects in slaying their victims. Different cultures contain different artifacts; thus American homicide studies show the overwhelming use of firearms, and African criminal homicide studies show overwhelming use of spears, arrows, pangas, and other garden tools. There is no way now an

American or British would-be homicide offender use a spear because it is not readily available in those societies. Wolfgang has argued that the slayer will use another weapon when another weapon is not available;²⁶ but also, it is possible that a would-be homicide case may be an assault one if a less lethal weapon is used instead. A woman who seizes a gun is likely to kill her husband than another one who sets on the same adventure with mere fists.

Beating of victims to death is not a common method of killing; and when it occurs either the victim or the offender (or offenders) was attempting a robbery or was suspected of having robbed. But one observation made on Kenyan robbery patterns is that the robbers appear to be extremely reluctant to use violence and take life. The following is a glaring example:

"Armed robbers struck again in Nairobi yesterday when they managed to snatch 45,000/- from a photographic shop - and then drive off through busy traffic morning. The robbers, one armed with a small machine-gun, grabbed the money from Sapra studio... As they made their get away they kept passersby at bay by threatening them with their guns... As the gangsters went down the steps from the office, employees followed them, but a shot was fired towards them and they cleared away."²⁷

In another robbery case,

A tug-of-war over a paper bag containing £4,533, ended abruptly when the bag split - scattering money all over the pavement in Nairobi yesterday. Two panga-wielding robbers scrambled to pick up the money and then disappeared in the milling crowds of shoppers.²⁸

In many press reports of robbery, robbers have been reported to be well-armed, in some cases they fire in the air; in some cases they hit their victims with the flat part of the panga, and no slashing as is the case in Kampala. This may suggest that the robbers are well organised and are in a league with some members of staff of the firms or banks that are raided. And since murder carries a death penalty, and robbery with menace does not, robbers are all out to avoid the taking of life lest they get caught and get hanged. If this were the case, the robbers would use violence to kill if a law to hang robbers with menace existed. But robbers who attack private homes or farms do not appear to show the same amount of restraint in using violence on their victims. In a recent case, a gang of robbers armed with a pistol raided a firm on Riara Ridge in Kiambu district, they killed the firm owner and made off with about £50 in cash and jewellery of unknown value.²⁹

The use of deadly weapons is related to the situation in which violence is deemed as the only way out. Violent homicides may be an end to a long-standing conflict, or may be a result of sudden outbursts of anger; and in both situations the most handy weapon will be chosen; while in planned or premeditated murders such as those in which poison is used, the type of weapon or method is predetermined for its efficacy and due regard is given to the possibility of concealing the weapon.

SUB-HYPOTHESIS 7:

OFFENDER - VICTIM RELATIONSHIP:

The hypothesis here is that criminal homicide being a crime which results from an interactional process which ends in the death of one or more persons so involved, is commonly committed by persons against members of their families, domestic groups, friends, workmates and acquaintances. Alternatively, this means that criminal homicide for gain is a relatively infrequent crime, more characteristic of urbanised communities, in which the victim, or the offender or another person gets killed.

Previous studies have shown that homicide is primarily a social interaction which involves people who are related or otherwise known to each other. Wolfgang in the Philadelphia study found that categories which involved primary contacts (close friends, family member, paramour and

homosexual partner) when combined constituted 65 per cent of all victim - offender relationships.³⁰ Wolfgang also found that categories which involved non-primary contacts, such as acquaintance, stranger, sex rival, enemy, felony or police officer, innocent bystander, when combined, comprised the remaining 35 per cent.³⁰ The Philadelphia study showed that close friend (28 per cent) and family associations and relatives (25 per cent) were the two main categories which accounted for more than 50 per cent of the cases. In a German study of the relationships between victims and their slayers, Hans von Hentig found that about one-third of all homicide victims are members of the offender's family.³¹ In the Western Uganda study, 32 per cent of the victims were members of the slayers family. This percentage did not include all the vis-a-vis relationships; it only referred to consanguinous relationship or affinity within the family of procreation or orientation. In the recent study of violence in the Sudan, Fluehr-Lobban stated that a high proportion of killers and victims are kinsmen (in 150 of 351 cases where the relationship is known). Fluehr-Lobban noted that in nearly every instance of homicide the relationship between killer and victim was clearly defined. They were husband and wife, brothers or brothers-in-law, they were jealous husband and wife's lover, or fellow villagers who had become involved in a dispute serious enough to provoke homicide. But Fluehr-Lobban contradicts herself when she says

that "Most individuals involved in the killer - victim dyad are not kinsmen related through blood or marriage, but are associated with each other on other bases such as friendship, common occupation or some competitive relationship." But that, "However, a high proportion of killers and victims are kinsmen (150 of 351 cases in which the relationship is known)"³² Bienen in the Nigerian study found that 37 out of 114 victims, or 32 per cent were related by kinship and marriage; four were lovers, 31 or 27 per cent of victims were known to their slayers, 13 or 11 per cent were in business or economic relationship, and only 26 or 23 per cent were strangers to their killers.³³ Voss and Hepburn in their study of homicide in Chicago found that a large proportion of the victims were slain by a member of the family or a close friend; that victims who were slain in such relationships accounted for 47.4 per cent of all victims for whom data were available. They found that this was particularly true of females; for 68.7 and 78.9 per cent of nonwhite and white female victims were slain by a member of the family or a friend; and that when taken together, all categories, member of the family, or close friend and casual acquaintance made up 96.1 per cent of the female victims.³⁴ According to Voss and Hepburn, very few females were killed by strangers.

The Kamiti sample that we are examining, confirms the hypothesis that criminal homicide is primarily a violent interaction between people who are related and that

only in rare cases in which gain is the motive as in robbery or cattle raids will people who are not known to one another be involved as offenders and as victims. The following is a breakdown of the victims relationship to their slayers:

Relations in Homicide - Kamiti Sample

<u>Victim</u>	<u>Number</u>
Wife	7
Father	5
Brother	5
Uncle	5
Cousin	5
Neighbour	5
Workmate	5
Friend	4
Clanmate	3
Son	3
Sister-in-law	3
Brother-in-law	2
Girl friend	2
Employer	2
Related by marriage	2
Father-in-law	1
Mother-in-law	1
Step-mother	1

<u>Victim</u>	<u>Number</u>
Step-brother	1
Grandmother	1
Daughter	1
Grandfather	1
Victim stranger	<u>43</u>
TOTAL	108

That is, in 65 or 60 per cent of cases, the offender knew the victim, and only in 43 or 40 per cent did the offender deny that he knew the deceased prior to the killing. There was no way of checking on the information given by inmates, but it would not be surprising if it were found the rates to be higher; for it can be asserted that in general people do not engage in conflict, violence and fatal combat with those they do not know unless the motive is robbery, to destroy information and cattle-raids. In a very remarkable statement an accused man at Mbarara, Ankole pleaded in very few words:

I did not intend to kill him;
 he was not a man of our area,
 I did not know him.³⁵

According to Clinard, homicides can be categorised into three major types; into those murders which are results of long periods of hostility, those which result in sudden

anger, and those in which subcultural factors play important roles.³⁶ In all these three major categories, conflict may result from the frequency of contact, duration of such contact and intensity of anger in such relationships.

One case from the Kamiti sample shows how long-standing (but latent) ill-feelings can find expression in violence. In this case, the offender was under constant belief that the deceased was bewitching his family, his statement runs like this:

The deceased was a witch. He was bewitching me, my children and my mother. We were drinking, but I was always aware that he was bewitching my family. We quarrelled about it when I asked him to tell me why he was bewitching my family. Then we started fighting, and I got my pocket knife and cut his neck and he died at once.

The deceased in this case was a cousin of the offender. Bewitchment always is practiced against people who are quite known to each other and in most cases, among those who are related.

Of particular interest is the husband-wife criminal homicide frequency. In Fluehr-Lobban's study in the Sudan, the husband-wife category had the highest rate of those who were related by affinity and by blood. In the Western Uganda study, the wife category was on top of the

victims in Toro and Ankole, in Kigezi the wife was killed in the third place after son, and father.

In England, Morris and Blom-Cooper have reported that:

"In this country murder is overwhelmingly a domestic crime in which men kill their wives, mistresses and children, and women kill their children. Of the murder victims over the age of 16, 70 per cent are female, and of those females nearly half are killed by their legal husbands and a quarter by their relatives or lovers. When considering victims under 16, again, about three quarters are killed by their parents or other relatives. Our own analysis, as does the analysis made by the Gowers Commission, confirms that the commonest murder is that of a wife by her husband, a child by one of its parents or a woman by her lover."³⁷

The following table shows the frequency of victims from the first to the fifth most killed relative within the primary or vis-a-vis social group; of the wife, father, brother, son and husband, the most frequently victimised relational categories in criminal homicide studies in Africa.³⁸

<u>Ethnic group</u>	<u>Wife</u>	<u>Brother</u>	<u>Father</u>	<u>Son</u>	<u>Husband</u>
Gisu	7	5	7	0	4
Tiv	8	7	0	0	1
Luo	6	1	0	0	0
Luhya	5	4	3	1	0
Nyoro	8	1	1	0	0
Soga	39	1	1	0	0
Alur	2	2	1	0	0
Nkore	10	10	4	6	5
Kiga	6	1	7	9	4
Toro	13	9	1	1	2
Kamiti Sample	7	5	5	3	0

There are two ethnic groups in Bohannan's table that kill the Father's brother more frequently than they kill the father. These are the Luo and the Luhya of Western Kenya. In the above table, it is clear that wives are the most victimised group in criminal homicide, followed by brothers, the fathers, and sons and husband in some of the Western Uganda tribes. Sexual jealousies, marital conflicts, and domestic arguments, disputes and altercations may be responsible for the high wife-victim rates in most of these societies. Since divorce, in some of the societies such as Kigezi and Ankole is not approved, unhappy couples try to live together till such time that violence breaks out usually while one of the participants is under the influence of alcohol. It

14 / 1979
1+4+1+5+7+9
31 3+1=4

would appear that if the woman's liberation agitation is started and involves the wives of the working class men, the rate of wife-victim would go up. The brothers kill each other because of conflict resulting from competition or from inheritance of property rights of their father's property and estates.

The Abanyankore and Abakiga of Western Uganda recongise the potential conflict that underlies the brother-brother relationship. They say that Abaishemwe bakundana baaba batungire meaning that brothers love one another when they are both or all rich. But the Abaganda have almost the opposition conception of brothers and brotherhood; they say that Aboluganda bitta bikonagana NAYE SIBYATIKA - that brothers are just like calabashes, they may hit each other but will not break. Brothers in most societies have, as noted above, a lot to conflict about, land disputes, cattle water wells, goats, and goats destryong the crops of another and so on. Brothers are likely to hate one another (now) when one of them receives education because of this he appears to be the successor to their father and to inherit the land, cattle and other things. In some cases a brother will hate another simply because the other one has children and one has not; or the other brother's children are doing well at school and the other one's are not; or because one has a job or a better job and the other one has not. In some cases, brothers will engage in terrible conflict when one loses a child and suspects the evil practices,

magico or witchcraft of the other. In the Kamiti sample an Elgeyo Marakwet man killed his elder brother because "he was a witch," The offender said that the deceased had bewitched his son; and because of this, there was hatred between the two, till one day when they quarrelled about it; and then fought and the elder brother was slain.

Brother-brother conflicts get reinforced by the attitude of their parents; if a parent is known to favour one son as compared to another, then bitterness between the two will get worse. It is even in such situations that parents get killed by their sons. A man will kill his father if the latter, knowing that his two sons are not on good terms, openly supports or sides with one son. In Ankole and Kigezi, some men migrate to distant places to avoid the conflict.

Parricide is commonest in those societies where the sons depend on the provision by the father for land and marriage payments. In one case in Kigezi a man killed his father because he was refusing to give him property with which to get a wife. Sometimes the dispute is about money. In the present study one Luo man aged 23 had this to say:

I was farming cotton. I took my cotton yield to sell; then I got money. My father (the deceased) took me to the chief saying that I had stolen his money. The chief asked me and

I told him that the money was mine which I got from my cotton. I however gave my father some of the money and we went home.

At home my father demanded the rest of the money. He began beating me and I got my knife to scare him but unfortunately I cut him on the stomach... and he died.

In another case, a Nandi aged 19 years killed his father because the deceased had repeatedly denied the paternity, and because of this he sold "my mother's land". In another case a Kikuyu man aged 37 killed his father because the latter refused to give him food. He said:

"We were drunk when we reached home. I used to eat in my father's house because I did not have a house. My father began quarrelling with me when I asked for food from him.

This is how the fight started when he beat me.

I stabbed him with a panga."

In one other case, a Kisii aged 26 killed his father because he had refused to come and care for the offender's mother when she was sick.

My father had married another woman. He had left our home and had settled some 70 miles away. After sometime, my mother fell ill, I wrote to my father to come and see her and take her to hospital but he did not come. After several months I wrote him

another letter and he never bothered to come. When my mother was very ill and about to die, my relatives collected money and sent two men to go and inform my father about the condition of my mother. They returned in the evening with my father. That night, we were sitting watching as my mother was dying, we were holding her, and suddenly I saw my father leave the house, I followed him to ask where he was going and why he had left us with a dying person; I do not know what happened to me, I got a panga and killed him and at that time my mother also died. But I had heard that there had been a dispute between my mother and my step-mother.

In the non-related category of victims were those who were killed in a course of robbery. In one case an Indian Woman was killed at Eldoret in 1962 by her shop-assistant who had returned at night with a group of robbers to rob the shop in which he was employed. In another case, the second inter-racial case in this study, an Indian man was killed at Nakuru when he was resisting the robbery of his shop. Two of his murderers were hanged, and the interviewee is serving a life sentence. Other non-relational cases involve cattle-raids among the cattle people such as the Masaai, the Nandi and other Kalenjin group of people.

This study, therefore, overwhelmingly confirms the

hypothesis that criminal homicide is commonly committed against a member of the family, a friend, workmate or an acquaintance; and that it is in infrequent cases that criminal homicide is committed against a stranger, and that when this happens, either the victim, or the offender or another person may be involved in a robbery of some kind. First it was shown that criminal homicide is an intra-ethnic offense, and here again, it becomes inter-ethnic when the gain motive is apparent.

In the next chapter we will try to show how all these variables are related to one another in the general genesis and explanation of criminal homicide.

CONCLUSIONS.

Alcoholic intoxication cannot be a motive for a homicide, but it does contribute to the perpetration of the crime. Lack of adequate facilities to test the urine and the blood of the victim and of the offender makes it difficult to determine how much alcohol contributes to criminal homicide. Drunkenness can only be the only explanation in a criminal homicide only when it can be proved that the offender was temporarily insane as a result of intoxication.

The study shows that instruments that are commonly found around homes such as spears, pangas, knives, hoes, sticks are the more likely to be used in committing violent homicides.

The less commonly seen or used weapons such as handguns and rifles are less likely to be used to commit homicide. The study shows that in most cases the victim and the offender are likely to be related as friends, wife and husband and only when the homicide accompanies another crime such as a robbery will the persons involved be unrelated or unknown to each other. Criminal homicide is an intra racial, which rarely involves total strangers.

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CHAPTER SIXVALIDATION OF HYPOTHESIS: MOTIVES

The third and last general hypothesis is this.

That criminal homicide is, in general, a crime of passion and as such many prisoners will be found to have no clear perception of what led to the eruption of violence. The hypothesis goes on to state that the majority of the inmates will mention drunkenness, disputes over simple matters such as are common between friends and relatives, jealousies and subcultural norms such as cattle raids; but differently, the hypothesis states that few prisoners will be found to be in position to state exactly what happened.

The question of 'motive' is irrelevant in criminal cases in most countries. Section 9 of Kenya Penal Code, in part, reads:

"Unless otherwise expressly declared, the motive by which a person is induced to do or omit to do an act, or to form an intention, is immaterial so far as regards criminal responsibility."

A motive must be differentiated from an intention. Thus, Macharia's motive for killing Kamau may be financial gain, and Matovu's motive for stealing may be his desire to feed

his starving children. A person's motive for doing what he does, is what induces him to do what he does. In the case of one person killing another, the act of killing is criminal even when the motive is good, because it is proscribed by the law, and this is the same as in the case of stealing, and in law this is termed actus reus, which means that the act (omission or other even) mentioned in the definition of the crime charged is proscribed by the criminal law.¹

Actus Reus thus refers merely to the perpetration of proscribed deed, such as killing, rape, arson, robbery etc. But such act, omission or any other event that is prohibited by the law may be occasioned inadvertently, for instance in most of fatal road accidents, or in a case where a person kills another when the former throws a spear to kill an animal while hunting, and in so doing, he spears his friend to death. In such a case, the homicide cannot be a murder, that is the killer cannot be found guilty of murder unless the prosecution can establish that the slayer had an evil intention of killing the deceased,, or what in law is referred to as mens rea- an intent or knowledge of the wrongfulness of conduct. But 'motive' and intention are not the same and one thing. For instance, Abdul may suspect that Mohammed is seducing his wife, acting on this belief, he may go and waylay Mohammed on his way home from a beer party; and spear him to death. In this case the killing is intended, that is mens Rea is present, but

the motive is the 'Why did Abdul kill Mohammed?' And the reason 'why' he killed him is because Mohammed was seducing his wife. Motive therefore is impulse to act in a specific way. A motive is goal-oriented in that there is always a specific objective to be realised.²

Since motive is not expressive to criminal responsibility, its determination from courts and police records is as imprecise as that stated by the inmate himself. At the time a criminal homicide offender is charged, the police make the first attempt to determine the motive, but in most cases, this is not done, and of course, it is not necessary. When the accused is indicted, and at the Preliminary Inquiry and finally at the trial, the question of motive is never raised. The police are very anxious to produce and charge someone with the offence, that is, they make effort to clear the case. The courts are more concerned with who did it and if he did commit the crime - Actus Reus - did he have the malice aforethought, or mens Rea which establishes the criminal responsibility of the accused; and once this requirement is established beyond reasonable doubt, the case is determined and judgement is given.

We noted that criminal homicide is a crime that involves relatives, friends, affines, workmates and people who are acquainted to one another. This means that interpersonal relationships and interaction of a face-to-face type are crucial in explaining the motives

behind criminal homicide. It is for this reason that many people believe that there cannot be motiveless criminal homicides, that for every homicide of a violent nature, there must be a motivating force. For this reason the law of homicide as applied in East Africa makes very little sense in the eyes of the majority of the African people for whom nothing happens without a cause, an explanation or else the occurrence is attributed to the supernatural powers, to fate and destiny. People interact in very many ways, situations, places and for all sorts of reasons. In so doing, disputes, disagreements, suspicions, hatred, jealousies, and conflict in general develop; but fortunately not all conflict situations are resolved with violence resulting in the death of one of the disputants. Conflict, as was shown by Georg Simmel, has its social function.³ Conflict is likely to erupt from all social interactions such as love, selling and buying, hunting, drinking, in work situations, in all bureaucratically structured organisations and is most constant in the family and domestic structures and their processes.

According to Karl Marx, conflict in human society is rooted in Class Struggle created by the ownership of the means of production and the resultant economic domination of the masses or the proletariats by the bourgeoisie. Unity or social harmony and conflict are constantly balancing each

other in nearly all social interactional processes; and in this respect it is a normal social interactional relationship. It functions in a sort of a dialectical process, with harmony as a thesis, disharmony or conflict as an antithesis and harmony again as synthesis. Violence erupts when the synthesis is either delayed, or its completion is prolonged or when there is complete failure to reach it. Most families (and most parts of the world) have their ups and downs. There is love and then quarrelling, then love. In some cases, there is quarrelling between a man and his wife or between friends, but this is only for a short time, there may even be fighting, but there is restoration to the normal or harmonious life. It is when conflict is abruptly intensified, or due to repetition, is allowed to accumulate without adequate venue for its expression that violence erupts and ends in the death of one of the conflicting parties. But as will be shown later, violence resulting in death comes as a great shock to both the victim and the offender when it is not preceded by verbal altercation. This happens when conflict relationships have not been established. In situations where conflict is already established, homicide may be viewed by one of the conflicting parties as a means through which a goal can be achieved. The goal may be anything from monetary gain to a woman or to a political position and so forth.

Here now we see that there are purposeful and aimless homicides. In the first type of homicide, we find nearly

all the murders, excusable and justifiable homicides. These are homicides (for our purpose we are interested in criminal ones) which have a motive behind. One case from Bunyoro illustrates this point, as others we will see later: A woman killed her co-wife because,

"When I first married into that house," she said, "Samali spoiled my skin. Then she caused me to become sick in my private parts. When I bore a child and he was five years old she caused him to die because I was having male children and she was jealous. Then after I had male twins she went and got medicine and put it in my food and so caused a stoppage in my vaginal passage...Even now I am not all right in going to the latrine; sometimes I spend two days without passing water. I told her that it would be better if she would kill me outright, rather than treat me in so cruel a manner. I am still young, having borne children only twice, and now I cant have sexual intercourse with any man at all..."⁴

In this case, the offender had a clear perception of what was happening to her and Why what was hapepening was happening; as a result of cultural definition of social phenomenon; for everything has a cause, and this cause can be removed if it is known; and accordingly, she took

steps to remove the cause of her misfortunes. There is no way, we as sociologists, can argue about her conception of her misfortunes. Others may say that there was no evidence that the deceased was causing all what was happening, but according to the understanding and the interpretation of the social and natural phenomena, (in this case the death of her son, the growth in her vaginal passage, the spoiling of her skin), of the offender these were real and were explainable in terms of her co-wife's craft.

The second category of homicide is what we may be inclined to designate motiveless or purposeless homicides; and there are two kinds of these aimless homicides; one; those homicides that are committed by persons with diminished responsibility and those who are confirmed schizophrenics, and the second is that which may result from an unintended act as for instances when a man throws his friend on the ground in playful manner, and the other one dies of ruptured spleen as a result of the fall to the ground. This is criminal homicide, although it may not be a murder, but it is certainly a manslaughter even when the accused is imprisoned "till the rise of the court."

Within the broad category of non-aimless homicides there are types that can be recognised. In fact all of the six types F. Tennyson Jesse listed of (1) Murder for gain, (2) Murder from revenge, (3) Murder for elimination, (4) Murder from jealousy, (5) Murder from lust of killing,

and (6) Murder from conviction⁵ may be grouped as murders which are purposeful. Both purposeful and aimless or motiveless homicides involve some kind of interpersonal relationship; in some cases the interpersonal relationship is of long duration, in some other cases the relationship may be very brief⁶ - sometimes lasting only a few minutes or seconds as in robbery - homicide cases.

In the Western Uganda study, 66 per cent of the victims were slain in what here is referred to as interpersonal relationships⁷, these include such relationships as beer parties, domestic interactions, marital and sexual relationships where altercations, disputes, conflicts, angers, and fights are frequent especially among low social-economic status groups; and more so in societies where there exists the subculture of violence. The Western Uganda study showed that beer party brawls, domestic altercations, provocation and theft were the most common motives and social contexts in which criminal homicide occurred. These were followed by mental disorders, sexual jealousies, infanticide and dispute over some kind of payment. The payment of brideprice or of loaned money were the focus of the dispute which resulted in the death of one of the persons so engaged. Dispute over land was not as high as was at first expected, and this was the case with witchcraft and sorcery. Tanner's study showed that unspecified quarrels, robbery of household effects, quarrel over drink, stealing and quarrels between husbands and wives

were the most frequent motives of criminal homicides in Uganda in 1964.⁸ Tanner states that to list drunken quarrel of unknown origin explains nothing,⁹ and I think this is quite true, for drunken brawls are the most difficult to explain sociologically. Some offenders (and even victims) use the cover of drunkenness to attack their enemies or persons against whom they have held a long-standing grudge or sexual rivalry; but this does not mean that there are no genuine cases of criminal homicide which come as a result of prolonged consumption of alcohol. Perhaps it is for this reason that Fluehr-Lobban avoided the use of the concept of motive and instead used the concept of "social context within which the homicide....occurred".¹⁰ She listed these 'social contexts' as including insults, insults and drinking, sexual jealousy, proven adultery. Fluehr-Lobban's listing suffers from the same problem of separating the would-be - similar motives, just like Tanner did. For instance, Insult and Insult and drinking are listed separately as is sexual jealousy, proven adultery, and sexual assaults. In this Sudanese study, theft was listed 14th of the 15 motives; but 'disobedience of wife' was ranked high as a social context in which criminal homicides took place.

Bienen, in the recent Western Nigerian study,¹¹ found that criminal homicides associated with civil disorder and politics accounted for 33 per cent of 205 cases. This is understandable in view of the recent civil war of Nigeria in

which Biafrans attempted to establish a state of their own. Dispute over land or property accounted for 19 per cent, quarrels over personal, domestic or sexual relations contributed 12 per cent, robbery 8 per cent and allegations of witchcraft 5 per cent.

The following table lists the motives and social contexts in which killing took place and the number of victims from the Kamiti Sample.

List of motives and social contexts in which killing took place as stated by prisoners at Kamiti Prison

1.	Robbery, and theft in general	14
2.	Social contexts in which alcohol was present	14
3.	Dispute over a woman	8
4.	Dispute over money	7
5.	Deceased suspected witch	5
6.	Dispute of a domestic nature	5
7.	Dispute over brideprice	3
8.	Insanity	3
9.	Dispute over land	2
10.	Cattle raids	2
11.	Deceased was a bystander	2
12.	Dispute over KANU* and KADU*	1
13.	Dispute over a cow	1
14.	Unspecified altercation	20
15.	Motive not given	21
	Total number of prisoners	<hr/> 108

* KANU - KENYA AFRICAN NATIONAL UNION (RULING PARTY)
* KADU - KENYA AFRICAN DEMOCRATIC UNION (BANNED)

1. Robbery and theft in general

In regard to robbery with aggravation, Clinard and Abbott have noted that as a country develops, there is an increase in robbery with violence, or the threat of violence, to secure money or material objects. The two scholars explain that:

"The basic reason for the increase in armed robbery lie well within the development process. The spread and growth of industrial and business enterprise require the transportation of large payrolls and other funds to local corporations whose security may be limited to a meagre force of unarmed private guards. The reward more than compensates the muted risk of capture and imprisonment."¹³

Robbery, in Eastern Africa, especially in the cities of Nairobi, Lusaka, Dar es Salaam and Kampala, if not checked in time, will constitute a social problem. Clinard and Abbott in a preliminary report in 1971 on property crime in Kampala stated that crime against property was increasing rapidly. Reported crime in that country had more than tripled in the twenty-year period from 1948 to 1968; and crimes of violence were experiencing the most rapid rates of increase in the whole country in the form of armed robbery.¹⁴ Robbery with violence,

kondo, accounted for 49 of the 501 victims or about nine per cent in the Ugandan study.¹⁵ Kondo in Uganda has been the experience of many people especially those living in the metropolitan city of Kampala. For this reason, the civilian government in 1968 passed a bill which made armed robbery a capital felony to be punished by capital punishment. The military government which came into force in 1971 in January, quickly indicated its wish to "eradicate" armed robbery in Uganda, and for this reason the Military government instituted public execution for armed robbery even when no person was injured in the robbery; and in February of 1973, the first public executions were carried out.

"Traffic came to a standstill in Kampala as motorists rushed to see Badru Semakula tied to a tree to face a 12-man firing squad before an estimated 30,000 crowd. A military spokesman later disclosed that Semakula was in fact shot for robbing."¹⁶

The Ugandan spectacle followed similar ones in Nigeria. In Central African Republic, the President ordered that thieves must have their hands cut off; in Tunisia, two men were sentenced by a Koranic Court to have their right hands cut off for theft.¹⁷ Zambia has enacted a similar law in an attempt to curb robbery with violence. Kenya parliament debated the matter and passed it but the law has not yet been applied. Thief-beating or mob justice

is a very common occurrence in East Africa especially in Buganda and areas of Eastern Uganda. As soon as a thief - let alone an armed robber - is sighted, alarm is raised and if arrested, he is beaten to death.

Armed robbery is a very common crime in the city of Nairobi; there are on the average, two major robberies in the city in a week in Nairobi. Nairobi, with a population of about 500,000 is a place for all people. The jobless, the job-seeker, the school-leavers and many other people. There are therefore several thousands of people who come to city to seek employment, some are lucky and get job, but most are not, they go back to their villages, but with urban deviant values. There is widespread discontent and frustration among the less educated and the unskilled.¹⁸

Aspiration and expectation for the realisation of socially valued goals (and goods) have become limitless in East Africa. Kenya being the richest of the three states that make up the East African Community is faced with a real problem resulting from the disparity in the distribution of the national income; where the minority is in control of the larger share of the national income. In such a situation, some of the people who are dissatisfied with their economic positions, or those who want to boost their regular and legitimate income, have decided to digress and engage in corruption, bribery, illicit distillery of chang'aa (Nubian gin), and some, who have no better alternatives are engaged in car thefts,

holdups and other forms of robbery with menace.

In Nairobi, there are indications of a growing criminal organisation which is specialising in holding up bank-bound businessmen and women, in most cases, the sums involved are really large.

It would appear that shop assistants, bank clerks and securicor guards are in a league in which the robbers are informed in advance and given details of the path to be followed, and the details of the person who would be carrying money. This robbery with aggravation differs from organised crime, of the Mafia type in that there appears to be no leadership. It is not organised in the sense of not having a bureaucratic operative structure, but it is organised in the sense that it is not at all haphazard; robbers do not go on holding up people at random, they are systematic and in most cases appear to get away with their loot.

In the Kamiti study, of the 14 cases in which the motive was stated to have been either face-to-face robbery, or theft in general, two of the victims were Indians and these were killed when they were attacked by groups of robbers.

In one case the prisoner stated in the following words:

I met the deceased when I was on my way to the market to sell my goat. Later he found me again at

the market and saw me selling the goat. When I was on my way back, I met him with seven other people waiting for me on the way. They got hold of me, I begun struggling and making alarm. I at once got my knife and stabbed the deceased killing him there. I was sentenced to five years.

The following case is typical of thief-beating which has become a very popular pass-time.

The prisoner stated that:

I did not kill him, he was killed by many other people. He was a thief. He stole my belongings and I went to report to the sub-chief, I was taking him to the sub-chief when many people gathered and started to beat him. I tried to prevent them from beating him hard but they could not stop. He died later. Then I was arrested together with other people, including my two sons, and my brother and his two sons; my other sons, the third was sent to an approved school. We are all six here from one family - we have been in prison for four years, we were given seven years each. The deceased was my step-brother.

2. Social Contexts in which alcohol played a role

Mention has already been made of the role alcohol

plays in the genesis of violence. It was also pointed out earlier that intoxication can be (and is usually) used as a cover to cover up intended actions; but cases in which intoxication is the only apparent motive are not uncommon. Social contexts in which alcoholic intoxication may appear to play a role in criminal homicide include:

1. Cases in which a person drinks so as to gather courage so as to carry out his intention.
2. Cases in which a person drinks so much that he is unable to form an intention to kill.
3. In other cases, a person may drink to such an extent as to be unable to control himself where if sober he would have resisted violent and homicidal tendencies.
4. In other cases, the person may be so drunk as to be legally classified as insane.
5. In some cases, a person becomes quarrelsome and violent even when he is not very drunk.

In the present study, 14 persons attributed their crimes to the influence of alcohol.

Reasons why alcohol does not appear to play a very significant role in homicides have already been discussed. Although the laws state that for intoxication to be accepted as a defence, the defence must show that the accused was induced to get drunk against his will; and

that the state of his mind was such, at the time of the commission of the crime, that he did not know right from wrong. But in most cases, drunken brawls, which involved friends, relatives and acquaintances, start from some other issue, an argument, an insult, a refusal to obey an order given by a drunkard, and so on.

Very often, chronic alcoholics get themselves in criminogenic situations; since quarrelling, disputes and fights are more frequent in drinking situations, the person who is frequently in such situations is more exposed to violence than the infrequent visitor to such places.

Cavan has noted that crimes committed by drunkards are more likely to be of the unplanned type or of a petty nature.¹⁹ This is so because of the effects of alcohol on the brain. Wolfgang and Ferracutti have pointed out that alcohol functions by releasing emotions and by lowering cortical control over the manifestations of anger.²⁰ Alcohol functions by arresting the functions of the superego leaving the ego to respond to emotional states and drives without further reference to socially approved norms of behaviour. In one case from the Western Uganda study, a woman under the influence of drink complained to her husband that he was not as competent as another man, and while so complaining, she got hold of his testicles and squeezed them. The man got furious, he got hold of her and strangled her to death in bed.²¹ It is in such cases that

the determination of motive becomes very difficult. In the above case, provocation, and infidelity as well as intoxication are possible motives. In the present study, one case is of such a nature. Two young Masai cattle-traders had sold a cow to another Masai. Two weeks later, as the two traders were drinking in a group, the buyer appeared. He stated that he had bought the cow from the two men at 200/-, and that when he sold it, he did not only fail to make a profit but also did not even recover his 200/- which he had paid. He then proceeded to demand some money from the two traders so that he could get all his 200/- back even if he did not make a profit. A fight started, and ended in the death of the cattle-buyer. The cattle-sellers were given life imprisonment. It would appear that subcultural norms of the Masai in relation to cattle and their sell; were involved as was alcohol as a contributing factor in this case. The lifers thought that the deceased provoked them but also thought that if they had not been drunk, the fight would not have ended in the death of the deceased.

In one case, a Kikuyu lorry driver returned late at night thoroughly drunk. He stated that he does not remember how he got back to his house nor does he remember what happened when he got home. But the next day he found that his wife, a mother of ten children, was dead. She had been killed in the night. He was arrested, charged and sentenced to life imprisonment. It is possible that he killed

her when he was temporarily insane due to intoxication.

It would appear that the use of police, and court records in addition to direct statements from offenders would be fruitful in yielding more information leading and showing the role of alcohol in homicide.

3. Dispute over a woman.

Of all situations, relationships, and interactional processes in which conflict, frequently breaks up, sexual jealousy appears to be a major factor, although most of the African peoples, unlike other non-Africans, lives do not appear to be dominated by sexual consideration, and jealousy. This can be illustrated by the fact that in some African societies, traditionally, polygyny was permitted, and in some societies, brothers, friends and other clan or age-group members had some kind of right to cohabit with the wife of one of them. This did not mean that the house-wife was a sexual partner to all her husband's brothers or age-mates. The opposite of this view is strict monogamy as practiced in European and Asian societies. This too does not mean that Africans are more liberal or less strict about their women. Tanner has noted the absence of cases of homicide involving the defence of a woman's honour but he again contradicts himself by listing sexual jealousy under motives; it would appear that the difference between sexual jealousy and killing in the defence of a woman's

honour is not clearly delimited. Under the heading of 'dispute over a woman', a lot of submotives can be listed.

Disputes over women were less frequent in traditional society because of the traditional social structure. A man lived among his blood relatives, friends and fellow clansmen, clan solidarity was more binding than it is now. In cases where relatives and affines were not so numerous as to afford a strong defence in case of aggression or an attack from a feuding clan, clan members were encouraged, (in some communities) to establish blood-brotherhood, which in most cases was more binding than blood relationship. In such a society, movements were not only limited but also watched and known. A man who frequented his brother's home when the latter was known to be away was reprimanded by the elders because his movements were likely to "spoil" the marriage of his brother. A woman's movements were more restricted. She only visited her family of orientation, and a few friends who were all known to her husband and in most cases lived a short distance away and when she moved there her movement would be noted by many people on the village. As noted earlier, sexuality does not play the prominent role in the lives of the African people. The meaning of life and its essence was demonstrated in terms of group affiliation and solidarity, the opposite of which is egoistic hedonism, selfishness, and sexual possessiveness.²² Modern life not only facilitates sexual promiscuity but also

provides facilities and situations in which violence can easily erupt in relation to women and sex. The heterogenous nature of urban and peri-urban communities, the working situations in which women work with men and through contact develop sexual attractions for one another, the communication systems made simpler by mail and telephone, and quick transport all contribute to more sexual contacts in present-day society than was the case in traditional society of yesterday. As an example, a very prominent and leading personality in Kenya politics was recently thoroughly beaten up in Westlands area near Nairobi for seducing the wife of another man. This man was in the habit of frequenting Westlands where he came and parked his car and went to his friends house. The wife of the other senior official came a few minutes later and parked her smaller car in a different parking place and joined her friend in his friends house where the two drunk and had sex (it was alleged) and when it was about time the offices closed, the woman would drive to school to collect her children and would find her husband arriving for lunch. This went on for sometime. One day the taxi-drivers, the shoeshinners, the newspaper boys decided to end this programme. They waited till the man came and parked his car and went to his friend's house to wait for his mistress, when she arrived, the rough boys pulled her and beat her up and followed the man and beat him up. The man was for some weeks in hospital. The sexual programme was disrupted. The point is that such arrangement would not have been possible in

traditional society and even in the present day Nairobi had the man and the woman not been of well known social positions, no one would have taken notice of it.

Drinking places, especially in areas of the city and suburban where most of the working class live, also make it possible for men to engage in conflict over women, since women can now sit and drink with men, and when the drinking is prolonged, and men and women begin to be intoxicated, then disputes easily start in relation to the women. In one case, a young man and his girl friend went to a bar to drink, and after a short while two soldiers entered the bar and ordered their own drinks. One of the soldiers poured a glass of beer and gave it to the girl whom they did not know. The girl and her boy friend were not happy about this, the girl refused the glass of beer, and the soldier begun shouting at her and insulting the boy. The boy and his girl friend decided to leave the bar, on getting out of the bar, the soldiers followed them and forcibly carried away the girl leaving the boy alone.

In another case, there was a big dance for a very important state personality in one of the East African countries. Many people had come to this dance. As the dance continued, one man and his girl friend (could have been a wife) were on the floor dancing to their hearts contentment when all of a sudden the man was pulled out and put in a government landrover and taken to the police where he spent

a night as the girl friend spent the night with an unexpected bedmate. The two cases just cited involved government officials who use their positions to get whatever they want because they have power. That is the nature of things in a society where civil rights are unknown, and where government officials can do whatever they like with the life and property of the individual; where life is worse than that in a state of nature described by Hobbes. But what we are concerned with here are conflict between individuals in relation to women in general, not cases that reflect a break down in civil order.

Sexual jealousy is not restricted to man alone, he shares the traits with nearly all other members of his species. Sexual jealousies are not restricted to married men and women only. Very often a married man get involved with unmarried girls or women, and vice versa. Unmarried men may also conflict over married women; and in the University of Nairobi here, it is rumoured that there are girls who are specialising in making friendship with married men. In general, unmarried women are commonly the source of conflict, fights, and murders. In some cases, the women themselves precipitate favourable conditions in which criminal homicide can easily be perpetrated, as the following case indicates:

Deceased was a girl friend of the accused. The accused having been drinking went to the deceased's

house. He found the deceased and another boy friend and all three drank again. Deceased told the accused to leave as she no longer wanted him. An argument broke out. The deceased got a panga and threatened the accused. The accused then seized the panga and struck deceased several times killing the deceased."²³

Cases of this nature are extremely difficult to determine the motive, perhaps the proper designation should be "multimotive" for such cases. The violence could have developed because of sexual jealousy^①, drunkenness^②, or because of the role played by the deceased herself^③. In many cases of criminal homicide, victims have been known to be, in some cases, more responsible, equally responsible or less responsible for the homicide. Wolfgang has shown that victims can precipitate their own victimisation. That

"The role of the victim is characterised by his having been the first in the homicide drama to use physical force directed against his subsequent slayer. The victim-precipitated cases are those in which the victim was the first to show and use a deadly weapon, to strike a blow in an altercation - in short, the first to commence the interplay or resort to physical violence."²⁴

While on this topic of victim-precipitated homicides, Wolfgang has shown that it has not been always possible to determine, from cases recorded in police files, whether

the homicides strictly paralled legal interpretation; that in fact, some of the motives given in these police cases do not legally serve to mitigate the offender's criminal responsibility. These cases include the victim being threatened by the offender in a robbery, in which case the victim either attempted to prevent the robbery, failed to take the robber seriously, or the victim irritated, frightened or alarmed the felony attacking him first with physical force so that the robber, either by accident or compulsion, kills the victim.²⁵ The victim may also contribute to his death in a number of ways; such as insults, infidelity, disobedience, failure to repay a loan and in some cases the victim may invite the deceased to kill him, as when a man or woman shouts at another in an altercation. "Who are you? You are nothing, kill me if you are a man."

Sex as a motive in criminal homicide covers a very large area of human behaviours. It can be a mere suspicion, to overt sexual intercourse, or anything in between. The following is a case of suspicion for sexual indifelity reported by Fluehr-Lobban from the Sudanese study:

In Khartoum South, Beshir and his wife were happily married for some 20 years and she bore him 3 children. Four months before the events Beshir suspected his wife of having illicit relations with one of the neighbours. She denied this and they begun to quarrel whereupon she moved to her brother's house which

adjoins their own and there she stayed for 4 months. A few days prior to the incident, Beshire came with three witnesses to the brother's house and announced publicly, "talag talag" (I divorce you three times), thus formally divorcing her complaining of her infidelity (which was never proven). Some days later Beshir saw his ex-wife buying milk from the local seller at the door of her brother's house and came upon her with an iron bar and struck her and killed her.

The offender was sentenced to death. In his appeal against the sentence he stated:

"I killed my wife whose dishonesty in marriage was known to me and I warned her and her friend to cut such relations. In fact I could not help my feelings and I did not intend to kill her."²⁶

The finding of a wife or lover in flagrante delict is yet another motive for homicide. Suspicion of sexual infidelity appears to be common to most marriages. Those in higher social status positions have a more or less tolerant view towards sexual infidelity but not so with those in low social economic positions. One case is on verbal record of a very prominent man who found his wife in flagrante delicto on his return to his house at an unexpected hour. Finding his wife so engaged, the husband closed the door and sat and started playing the piano. The

wife and her boyfriend ended abruptly and the boyfriend existed through the backdoor, the wife came into the living room and the husband asked for a cup of tea. The story was released by the woman when she briefly became a member of the Abalokole group, (a revival religious movement in Uganda). This is an exception to the expected behaviour in such cases. The following shows the reaction to the witnessing of infidelity.

The deceased, wife of accused had this to say just before she died:

"I was coming from drinking at Rwagara's home, it was about 1.00 p.m. I came together with Banjikira, Kuribuza, and Mugara, when we reached Kikunyu tree I told Banjikira that I was going to Sentabire's with Mugara. Then Mugara asked me to have sexual intercourse with him, I allowed him, we went into the bush and had sexual intercourse. He had sexual intercause with me for one round, then my husband came and found us standing, he walked for a short time 3 paces, he then came back and stabbed with a spear in my ribs and pulled it out and when he came back he found me lying down, he touched me to see if I had died; a man called Katondwe then came. That is my statement."

Sexual relationship among human beings is one of the most interesting interpersonal relationships. It is a very

highly complex interactional process which is characterised by love, care and psychological attachment in which the opposites, such as of hatred, neglect and conflict are not uncommon. From this observation, that wives constitute a victim category in criminal homicide, we can make a general statement that rates of criminal homicide are highest in the most close, intimate person to person relationships; therefore, the interpersonal relationships that are highly charged with emotional attachment, those that are characterised by love and intimacy, are the ones in which criminal homicides are most likely to erupt to the surprise of the spectators. Alternatively, it can be stated that the interpersonal relationships that are not characterised by high emotional attachment, love and concern are the least to engender violence ending in criminal homicide, with the exception of robbery with aggravation.

As Clinard has shown, that some of the criminal homicide cases are a result of long standing conflict, it would then appear that marriages that are rigid, that is those in which divorced, separation, remarriage or polygyny are restricted, not socially approved or completely prohibited, would tend to show higher criminal homicide rates than in those societies in which divorce is easy, remarriage is not disapproved and polygamy not prohibited.

In the second place, wives or lovers get killed by their male partners when there is brief conflict leading

to the raising of anger even when there is no long-studying conflict between the offender and the victim. This is especially so in cases in which offenders act while in the heat of passion; or while under the influence of alcohol. Women, in some African cultures, are regarded as weak and unable to stage a fight in case of an overt attack by a male let alone a husband or lover, and this cultural definition of the women's role undoubtedly encourages men, consciously or unconsciously to vent their anger on women with violence hence the higher rates of women or females in general as victims rather than offenders.

4. Dispute over payment: Disputes in General.

In a very terrible criminal case in Toro in 1971, a man was fatally stabbed to death at Mpanga Market because of demanding back his fifty cents. Criminal homicides resulting from failure to pay back or demanding payment present a very interesting category. Payment need not involve money; it could be a goat, a chicken, a few shillings or cents, food, drink and so on.²⁷ When the payment from which a dispute starts involves large sums of money, the debtor is most likely to go to court of law to have the matter settled. It is also when the sum is substantial that the borrower is most unlikely to deny having received or knowledge of the money, because then it is assumed the owner would resort to violence, sorcery or witchcraft. But when the sum involved is little, one of the disputants may

wrongly interpret the intentions of the other and through verbal exchange of words, even exchange of fists, passion is aroused and anger discharged in the most unexpected manner, leaving the offender and the onlookers in utter bewilderment.

In the present study, violent deaths resulting from disputes over payment of money were seven. These are not listed together with robberies, even though robbery itself may involve some kind of dispute in which the owner tries to retain his ownership and the robber to acquire the ownership by force. Some of the cases listed under dispute over money could have been listed under drunken brawls, and it appears that in some criminal homicide cases arising out of dispute over money, alcohol, as we saw earlier on, plays a significant role. The following is such a case:

We were drinking, we were about four persons. We had been drinking for a long time. The deceased shared a room with me, we lived in a camp. He was a porter and I was a lorry driver. There was no trouble. When we returned back to our room, I asked the deceased to give me back my money. It was forty shillings, he refused. He had borrowed the money from me to pay for the drinks. When he refused, we started to quarrel, then we fought, we were drunk, I then hit him on the head with a piece of wood, and he died. I am serving seven years.

In another case, the deceased was a sister-in-law of the accused, they had been drinking, then the deceased asked the prisoner to pay her back her money. The sum involved in this case was one shilling and fifty cents. In another case, the dispute started from failure to return change over payment for a drink. The prisoner stated that:

We were drinking, we were about four people. It was at night, and we were drinking chang'aa (illicit gin). The woman who was selling chang'aa refused to give me my change. And I wanted to go home. The deceased and his friends begun quarrelling with me and a fight started. We fought, my friend got a knife and wanted to stab me, we struggled till we fell on the ground, then we stood, then we fell and I got hold of the knife and stabbed him on the chest. He died at once.

In other cases, failure to pay wages to workers led to the murders. In one case, an Abaluyia man of about twenty-four years, a shoemaker by trade, sold gold to an Indian, the father of the deceased. When the Indian gold-buyer refused to pay for the gold he had bought from the shoemaker, the latter started a quarrel which resulted in a fight between the Indian and the Abaluyia man. The son of the Indian came to assist his father, and was slain in the combat.

Failure to pay is more likely to lead to violence if the person demanding payment thinks that the other one is

just refusing to pay him especially if such a person is viewed as wealthy and rich. In the following case, a Nandi business woman was killed by her Nandi porter; the latter now serving a life sentence had this to say:

The deceased was my employer. I used to dig her gardens, to graze her cattle, she was a Nandi, she was very rich. When the month ended, she did not pay me, I worked for another month, we were then drunk, and I asked her for my wages. She then started driving me out of her house, I told her that I couldn't go without being paid, she got hold of a panga and wanted to cut me, I got hold of the panga and cut her on the head twice and she died.

Workers seem to be very impatient when there is a delay in payment of their wages. The delay is easily interpreted as malicious and intentional when the employer fails to give a satisfactory explanation of why payment cannot be effected on the last day of the month. This may be understandable when one looks at their meagre wages; by the middle of the month these workers are completely without money, and for the rest of the month, they look very eagerly to the day of the end of the month when they can pay their debts, and buy themselves a drink; so non-payment makes them very unhappy and puts them in very hard situations for then they cannot pay and buy. Most of the working class people depend largely on borrowing, lending

and taking loans and by promising to pay back at the end of the month - when workers get paid.

In this study, there are a few more cases in which the motive is listed as a dispute in relation to non-payment of some kind. In one case, a Meru man killed three children of one man because their father had refused to pay back the dowry he had paid to the father of the deceased. In his own words, the prisoner who is serving a life prison sentence stated:

I had paid dowry for a girl, then when I wanted to take her and she had agreed, her father who is also the father of the three deceased children, wanted to sell her to someone else. One day I drunk, I was prepared to go to report this matter to the police. But due to drink I went to this man's place and finding him out, I killed three of his children, two boys aged 10 and 8, and a small girl of three years.

The story as given by the prisoner tells us almost nothing of what might have been the real motive; or if we accept that the motive was the refusal of the father of the deceased children to let the offender marry the girl for whom dowry had been paid; we must also note that this man might have deliberately gotten himself drunk before he proceeded to the home of the father of the deceased children. It would have been of great interest to find out why he was not hanged. But the fact that he was serving life sentences,

it is most likely he had been sentenced to death and had been reprimanded by the President to life imprisonment. This man too was one of the few prisoners who were closely related to other criminals. At the time of the interview, he reported that his own brother was in this very prison serving a seven-year term for robbery with menace; and his own father had been to prison for tax-defaulting. When this man was asked to give five major reasons of why people kill others, he said that people kill others because of drunkenness and nothing more. Apparently, for him a person can only kill if he is drunk, and I suspect that he used drunkenness to cover his terrible intentions.

In another case of dispute arising out of failure to pay brideprice, or what in Kenya is called dowry, is one in which a Mkamba man killed his brother-in-law. The prisoner said:

We were drinking muratina (a local alcoholic beverage) together. There were many other people, we had started in the morning and by about 4 p.m. we began quarrelling. Then we left and were both alone on the way home; he began demanding money because I had not finished payments for dowry; we quarrelled, and then fought, I beat him with a piece of wood and he fell and I ran to my house, I was arrested later when he was found dead.

In another case already mentioned above two Masai men killed another one when he demanded payment of money, or a refund of some money to make good his loss. The deceased had bought a cow from the two offenders a week or so at 200/-, he later sold it at a loss. Whereupon he decided to look for the two men who had sold him the cow,. He found them and informed them how he had sold the cow but did not get his two hundred shillings back; and therefore he wanted them to pay him the difference. They refused, a quarrel started, then a fight, and finally, the victim was fatally speared by one of the traders. The two murderers received life sentences.

Most of these cases illustrate the trivial nature of the kinds of things from which altercations start and end in homicide.

Fluehr-Lobban has noted that although disputes related to money are relatively rare, the few cases that existed in the realm of money disputes revolved around the importance of brideprice and payments. The following case is taken from the Sudanese study:

"Mohammed and his wife are both quite elderly. Their daughter was married some years ago. On the day of the incident the two were quarrelling, the wife saying that Mohammed had received bridewealth money but did not share it with her. The quarrel became violent. With Mohammed hitting the wife with a stick while

she threw dust in his face and attacked him. He pushed her and she fell against a stone which caused her death. He was found guilty of 'intent to cause grievous hurt' and was sentenced to 3 years imprisonment."²⁸

To illustrate further that most homicides start from very trivial altercations, conflicts and misunderstanding, we take one case reported by Bensing and Schroeder in their study of homicide in an urban community:

"D was sitting on the bed in his room. V, D's friend of many years, entered the room and headed for the refrigerator. D said: 'Where are you going?' V replied: 'I'm going to get me a beer out of your refrigerator.' D retorted: 'Nobody gets no beer out of my ice box unless I tell him to', whereupon V whirled, pulled out a knife, and said: 'The hell with you and your ice box, too!' D reached under the mattress, pulled out a pistol, and shot V three times, killing him instantly.

D admitted having had "a couple of beers". Test of V's blood revealed he had been drinking, but was not intoxicated."²⁹

Disputes over sexual matters, conflict over money, brideprice or debts all tend to indicate that the source of dispute is usually very minor.

In the present study, disputes that may be considered real are those which involved land, and these were only two. The disputes that are listed as of a domestic nature are those in which sex, money, or payment or land or any other property is mentioned.

Disputes are day-to-day experience of almost most people. Disputes can be centered on almost any social fact or institution. In one case in this study, a man killed another one because of dispute over the issue of KANU (Kenya African National Union) and KADU (Kenya African Democratic Union) political parties. Thus disputes can arise out of arguments about politics, economics, and religion. Disputes may also lead to insults which in turn lead to violence and deaths. We have, therefore, a whole spectrum of variables that are related in one way or another; but all having one common element, and that is, that they generate hostility and arouse tempers in human beings. Fluehr-Lobban reports one case of insult from the Sudan in which the deceased, on the first occasion met the offender and called out to him, "How are you, you old buggerer?" This incident was forgotten for sometime until again when the two met once more for the last time. The deceased again called out to the offender in a very insulting language, "Where are you going you old sodomist, you old pregnant one?" Immediately, the insulted man responded with insult, "You slave, be a man", he then drew his knife and stabbed

the deceased killing him at once. In another case, one woman killed another woman in a court-room because the deceased had insulted her publicly by saying, "Don't come and prostitute in Hamid Effendi's house again because I am living there now."³⁰

It must be noted that different social groups or cultures have different ways or expected norms of behaviour in cases of insults. In Uganda, the Abakiga, who have, over the last decade or so, the lowest criminal homicide rates, are feared because of their hot-temperedness especially when they are engaged in disputes, insults and altercation with members of other ethnic groups. The point is not that the Abakiga are a violent people, but that their vocabulary is full of insults, curses, and abuses, which, to them mean no insult at all, but when the same insults are used to members of other ethnic groups, the insulted person becomes annoyed and threatens, and while the Mukiga did not mean anything serious, he finds himself threatened and in self-defence, uses maximum force and kills. Hence the Abakiga and to a lesser degree the Abanyankore have lower rates of criminal homicide and aggravated assault at home, but have slightly higher rates of violence when they are away from their home areas.³¹

5. Insanity

Insanity, as a legal concept, covers a wide range of behaviour that are defined as abnormal in different societies. Those behavioural patterns range from feeblemindedness³² in which crimes of violence, such as criminal homicide may occur unintentionally, to processes of senile decay, epilepsy, maniac and hypomaniac psychoses, depressive psychoses, schizophrenia, dementia and many other kinds of mental aberrations. Different cultures define various kinds of behaviour in different ways, some as antisocial in one culture while the same behaviours are regarded as 'normal' in another culture. This, even in law, is quite evident. Different doctors give different diagnoses of mental conditions depending not only on their own internalised value systems but also on legal consequences of their diagnostic determination. The individual doctors or judges attitude towards the law, the state, the offender and the penal sanctions all play major roles in determining the mental condition of individual offenders. Wolfgang, in his Philadelphia study which we have cited on numerous occasions, concluded that "...the deduction can be made that white individuals who commit homicides are far more likely to be psychotic than their Negro counterparts."³³ In this study three men were in prison for having committed murders while under mental stress. They had been found guilty of murder but insane, and were sentenced to imprisonment on President's

Pleasure, an indefinite prison sentence from which the prison can be released when the authorities are certified that the offender is no longer a danger to society.

In one case the prisoner stated:

I was very confused, my mind was bad, one night I woke up and started burning my books, beddings, and other things. Then my wife left the house and went to call other people and left the baby in bed. The baby was seven months old and was burnt in the bed while he was asleep.

At the time of the interview, this man had been to Mathare mental Hospital for two years. He appeared to be fully aware of what happened and made no attempt to cover up his crime. But in another case, the offender appeared to be confused, and effort was made to get a clear statement from him but this is what he said:

We went to drink. I was so drunk that I slept, and when I woke up I found that I was tied. Then my brother came to inquire, he was beaten, the people who had tied me carried me to some distance and gave me a letter. They told me that Muruara (the deceased) had ordered them to tie me for a reason they did not know. They told me to tell him (deceased) that they would come on Wednesday to know why. They however ran after me, together with the man who had instructed

them to tie me; when they had untied me, they chased me to my house. When I got to my house I got a bow and arrows and shot them and killed the man who had told them to tie me. I only wanted to scare them, but I killed him.

This prisoner had been in prison for 12 years, and being a mentally ill person, he did not clearly know what happened. He had also been admitted and treated at Mathare Mental Hospital.

In the study of criminal homicide in Western Uganda, of the 501 offenders, 43 were categorised as mentally ill. These ranged from certified schizophrenics to those with diminished responsibility.⁴³

The Kenyan law of homicide and crime in general in relation to insanity states that:

"A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission; but a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to

that act or omission."³⁵

This law of insanity in homicide cases was formulated in England in 1843 and is known as the "M'Naghten Rules;"³⁶ for all intents and purposes, the rules are applied in a rigid manner as they are applied in England.

The greatest problem presented by insanity in the administration of justice in most of Africa is lack of or total absence of trained and qualified psychiatrists. In nearly all cases in which insanity is advanced as a defence, the courts have always relied on the determination and evidence of medical officers who in all cases, are not psychiatrists, and as Asuni has noted, this has led to condemning mentally ill persons to death. Professor Asuni has noted that:

"There is a strong indication that many of those condemned and executed committed the offence when their mental state was disturbed; this means that the machinery for distinguishing the category of the sane and the mentally ill in relation to homicide is very faulty."³⁷

It is interesting to note that a definite kind of mental aberration has been noted among Africans. This condition, known as Malignant anxiety, is characterised by a progressive and crippling disorder in the interpersonal sphere without demonstrable deterioration or disintegration of the personality, but often marked by emotional instability and abnormal

impulses.³⁸ Before Lambo explained the prevalence of malignant anxiety among Africans, Carothers in 1948 had observed a condition known as Frenzied Anxiety in Kenya; and the same condition was observed by Aubin in Senegal.

Professor Lambo states that Malignant anxiety is a condition which is unassociated with psychosis or mental defect, which is most commonly found in detribalised people exposed to special stresses. The author goes on to say that the condition seems to be the commonest source of capital crime in Africa.³⁹

Mental illness in criminal homicide needs very careful study. As noted above, many mental patients are sentenced to death because of lack of specialists diagnosis. To most people, and judges included, a person is deemed insane if he shows some outward signs of mental illness such as shouting, running, throwing stones and attacking people. The less visible signs and symptoms are completely ignored.

Of the 1267 homicides analysed by Tanner in Uganda in 1964, no mention of insanity is made. This indicates the seriousness of the matter of lack of qualified and trained psychiatrists in a society; and in a study of murder in England and Wales 1957 to 1968, Gibson and Klein found that 53.2 per cent of all homicides committed in 1968 were described as 'abnormal' because they were committed by persons in an abnormal mental or emotional state, many of whom committed suicide.⁴⁰ From the American

and British criminal homicide studies, it appears that the lower the annual criminal homicide rate per 100,000 of population, the higher the rate of mentally ill in the offender group and vice versa. To put it in another way, it appears that in a society where homicides are rare, those who commit such offences are (the majority) either mentally abnormal or said to be mentally ill. These rates may also be affected by the presence or absence of trained psychiatrists practicing in a given society. Asuni and Lambo, both of whom are medical specialist psychiatrists suggest that lack of specialised examination and determination of diagnosis of mental state of criminal homicide offenders leads to condemning offenders who commit their crimes while under mental stress.

6. Witchcraft

Although the belief in witchcraft, sorcery and magic is widespread in East Africa, it is not clearly reflected in homicide by high rates of murders resulting from such beliefs and practices. From the general attitude of some of the African people, fear of bewitchment is quite prevalent; and to practice witchcraft or to threaten a person with death through witchcraft is a felony punishable by life imprisonment. The law in East Africa recognises the existence and efficacy of witchcraft as shown by the severe sentences stipulated even for imputation of witchcraft. The

law states that:

- (1) "Any person who directly or indirectly threatens another with death by witchcraft or by any other supernatural means shall be guilty of an offence and on conviction shall be liable to imprisonment for life.
- (2) Any person who directly or indirectly threatens to cause disease or any physical harm to another, or to cause disease or harm to any livestock or harm to any property of whatever sort of another by witchcraft or by any other supernatural means shall be guilty of an offence and on conviction shall be liable to imprisonment for a period not exceeding ten years.
- (3) Any person who practices witchcraft or who holds himself out as a witch, whether on one or more occasions, shall be guilty of an offence and on conviction shall be liable to imprisonment for a a period not exceeding five years.
- (4) Any person who hires or procures another person to practice witchcraft or who for evil purpose consults or consorts with another who practices witchcraft shall be guilty of an offence and on conviction shall be liable to imprisonment for a period not exceeding five years."⁴¹

From the above legal provision, it is clear that the fear of bewitchment, and the actual effects of witchcraft are legally recognised and through such severe penal sanctions, the government hopes to protect it's citizens. Sociologically speaking, it serves no purpose to begin to look into the question of whether witchcraft does actually exist; what we know is that whether it exists or not as a natural, social or metaphysical phenomenon, it affects the relations among human beings, and as such, it deserves attention just like any other phenomenon, real or imagined. Witchcraft is, in laws of East Africa, not clearly defined. The Uganda witchcraft Act reads:

"For the purpose of this Act, Witchcraft does not include bona fide spirit worship or the bona fide manufacture, supply or sale of native medicines."⁴²

This really does not tell us what actually witchcraft is. Section (3), as noted above, implies that witchcraft is the same thing, or has a lot to do with supernatural power; and even then, supernatural power is not defined precisely.

In Kenya the witchcraft Act is confusing. The Act seems to deny the existance of witchcraft whilt at the same time recognising that witchcraft can kill. Section 3 reads: "Any person professing a knowledge of so-called witchcraft shall be guilty of an offence;" Section 11 states that: "Nothing in this act shall affect the liability to the

death penalty of any person who by use of witchcraft commits wilful murder."⁴³ The Tanganyika statute on the same topic states that:

"Witchcraft includes sorcery, enchantment, bewitchment, the use of instruments of witchcraft, the purported exercise of any occult power and the purported possession of any occult knowledge."⁴⁴

The effects of witchcraft are like the social effects of religion, but only in reverse. The belief in witchcraft and in religion is not and cannot be based on verifiable truths of the existence of the powers that are involved. Witchcraft can be used only for evil purposes. It can be lightening to kill livestock, to strike gardens or to burn a house. Witchcraft can be used to cause sexual impotence in men, it can induce abortion or cause barrenness in women, it can cause miscarriages, it can affect business, it can cause leprosy, tuberculosis, elephantiasis, insanity, epilepsy and can be used to make an employee be discharged from his job. Witchcraft is such a common phenomenon which malicious relatives, neighbours or workmates can employ to destroy an enemy, a rivalry and anyone one wants to get out of the way.

Witchcraft has been a crime long before the introduction of English law in East Africa, and in most African societies, it has always been one of the very few crimes for which death was the mandatory punishment. The putting to death of

witches is an extremely common practice in traditional society which appears sporadically in present-day society. In one case, the defendents killed the deceased immediately when they caught him performing an act which they genuinely believed to be an act of witchcraft. The victim was killed by forcible insertion of unripe bananas into his rectum through the anus. In their confession to the killing the appellants said "that they had...killed him in the way, in the olden times, was considered proper for the killing of a wizard".⁴⁵

In the present study, five prisoners stated that they had killed the victims because the deceased were witches; or they had accused the offenders of being witches. In one case, a Pokoth man killed his father-in-law because the latter had complained that the former was practicing witchcraft on members of his family. The prisoner said:

We were at the home of the deceased, and it was at night. The deceased who was my father-in-law begun saying that I had bewitched his grandson. This was very bad, and I told him to stop all that so that we could discuss it the next day. He refused and continued^v to quarrel that I was a witch, and threatened to kill me. He got hold of a panga and wanted to cut me; I got hold of him and while we were struggling, he was cut on the hand, the hand nearly dropped off, he bled and bled and died after about two hours.

In another case, the prisoner stated that:

The deceased was my elder brother, but he was a witch and everybody on the village knew that he was a witch. He bewitched my son and he died. When this happened, I talked to him about it, we quarrelled, then we fought. He brought a panga to cut me, I got it from him and killed him at once.

Fear of bewitchment very often leads the believer to commit murder. For impotence or poverty, or for repeated abortions of a wife, a man may seek remedy by paying a visit to a diviner who may prescribe certain portions of a particular person, such as a young girl in menstruation or a first born male of a relative, or a woman who has passed child-bearing age. In Bugerere in Buganda I was told that several homicide victims are found with their right hand thumbs cut off, and small pieces of flesh cut out of the sole of the feet. A few cases have also been known in Toro in which female victims have had their vaginas excised out for medicinal purposes.⁴⁶ The belief and fear of witchcraft is closely related to what are called ritual murders, such as are reported now and then from Ghana and other parts of West Africa.⁴⁷

From these studies, it would appear that some of the criminal homicide cases which result from long-standing but undefined or unstated and unsettled grudges may have their genesis in suspicions of witchcraft. For as noted

earlier on, no social fact in most of Africa goes and passes without an explanation, even in today's society, a motor accident which is purely a result of the physical law that no two solid objects can occupy the same space at the same time, may easily be attributed to the evil works of an enemy. The argument being that why should it be this particular person that gets killed and not another one, or why should he not have crossed the road before the vehicle arrived. For most people, the concept of 'accident' carries no meaning; for what is an accident: Is it something that happens by chance, or happens because it is destined to happen or is it because somebody has intended and manipulated the systems that it should happen? In such a confused state of mind, the individual concerned may consult diviners who will identify the cause of the occurrence and with this awareness, the individual nurses a grudge till a day arrives when he meets his assumed enemy over a beer party and violence and homicide terminate the conflict situation.

Night-dancing, a very common practice in East Africa is also regarded as a form of witchcraft. The night-dancer usually does so in order to pass on the evils that would befall him and his family to others. In some cases, he maliciously dances in front of his neighbours' houses in order to cause evil, death or some other misfortune. This in Orunyankore is known as Okukyeyera. Night-dancers are usually reported to go out at night (after midnight) naked

or dressed in dry banana leaves or grasses, painted with soot and carrying a dried hand of a human child. In Uganda, the common practice of punishing night-dancers is to beat them and drive them out of the village but not to kill them as would be the case with witches. In Buyerere, the chiefs said that a village on which lives a night-dancer always has an abundance of food, especially bananas. Perhaps it is for this belief that they are beaten rather than killed when caught in the act.

Witchcraft, Professor Clinard has noted, is found in African homicide studies but not in same studies carried out in Europe and America.⁴⁸

7. Cattle raids

In the present study of criminal homicide offenders, only two cases were recorded as having been involving cattle raids. Cattle raids is an endemic cultural behaviour among the cattle people of the Nandi, Kipsigis, Masai and other members of the Karamojong cluster. Raiding and counter raiding is a daily experience of these Nilo-Hamitic people. According to the Masai, and other related people, and this is in their beliefs and value systems, all the cattle that are now owned by non-Hamitic people were stolen from them, and it is the duty of every able-bodied male to help in recovering the stolen herds. In addition to this belief, raiding and returning with cattle confers high social status and is one of the methods in which young men mature to manhood. The Nilo-Hamitic people take cattle raids not as a crime but as

a social obligation, and for this reason, criminal homicides involving raiders and the raided are very common. These homicides are not reflected in the present study as most of the culprits hardly ever get arrested, and those who get arrested and convicted are normally sentenced to less than four years and therefore are not properly represented in the Kamiti sample of offenders. The two cases of cattle raids that appear in this are of two Samburu men who, with others, went to raid cattle from the Turkana. The men stated in the following words:

We were many people, it was during the day and we had gone to raid the Turkana. We only intended to collect the cattle but never intended to kill anybody. During raid, as we were trying to get away with the cattle, the Turkana attacked us, and there was a brief but fierce battle in which several Turkana were killed, but we do not know who killed them because we were many. But were arrested and are serving life sentence.

The institution of cattle raids is still a problem in Kenya and Uganda because of the resistance to change of the cattle people to stop their practices, but cultures take time to change, and it is hoped that with the spread of education, these raids, in time will be stopped.

CONCLUSIONS:

The classification of motive in criminal homicide, as

Wolfgang noted, assumes vast proportions. Motive must not be mixed up with intention or mens rea. Motive is what induces a person to do or not to do an act or to form an intention. Motive is irrelevant as far as criminal responsibility is concerned; and the commission or the omission of an act does not make a person guilty unless he has a guilty mind. The two important elements of a crime are: one, the 'actus reus' (the prohibited act) and two, the 'mens rea' (the intention or malice aforethought). In listing the motives in the preceding chapter, effort was made to list together the cases in which a given motive led to the formation of intention and the perpetration of the act.

Drunkenness is best listed as a contributing factor rather than a motive, it is only in cases of extreme intoxication when the person cannot form an intention, that is when he is insane due to the effects of alcohol that, drunkenness can be said to be a motive. Belief in witchcraft and sorcery are best understood in their cultural context, and it is in such cases, that enacted law appears to conflict with some of the cultural values of the indigenous people.

Reference to chapter six

1. See Rupert Cross and Philip Asterley Jones, An Introduction to Criminal Law, Seventh Edition, Butherworths, London 1972 p. 37.

2. The problem is that a motive may originate in conscious or unconscious processes of the mind, in the latter case, the individual may not be aware of the objective to be realised. See Also George A. Theodorson and Achilles G. Theodorson, A Modern Dictionary of Sociology, Thomas Y. Crowell and Company, New York, 1969.
3. Simmel viewed conflict as serving the important function of resolving divergent dualisms, and as a way of achieving some kind of unity, even if it be through the annihilation of one of the conflicting parties. See Georg Simmel, Conflict, the Web of Group-Affiliations, page 13.
4. J.H.M. Beattie, Homicide and Suicide in Bunyoro, in Paul Bohannan (editor), African Homicide and Suicide Princeton University Press, New Jersey, 1960, p. 141.
5. F. Tennyson Jesse, Murder and Its Motives Dolphine Books, Doubleday and Company, Inc., New York, 1965.
6. Marshall B. Clinard, Sociology of Deviant Behaviour Fourth Edition, Holt, Rinehart and Winston, Inc. New York 1974, p. 296.
7. Tibamanya M. Mushanga, Criminal Homicide in Western Uganda.

8. R.E.S. Tanner, Homicide in Uganda 1964. The Scandinavian Institute of African Studies, Uppsala, 1970, table 12 on page 93, Tanner's list of Motives is very confusing, for instance, robbery of household effects is listed separately from 'victim caught suspected of robbery', 'victim in possession of stolen goods', 'robbery of bicycles,' 'theft of livestock;' 'victim attempted to rob offender,' and 'Robbery of cash over 200 shillings.' All these should have been grouped together under a general motive of theft and robbery. The same thing could be done with "Quarrel over drink", and "Offender drunk, no known motive."
9. Tanner, Ibid. p. 46.
10. Carolyn Fluehr-Lobban, "An Analysis of Homicide in the Afro-Arab Sudan", in Sudan Notes and Records 1974, see table 16 on page 32 of the mimeographed paper.
11. Leigh Bienen, Criminal Homicide in Western Nigeria, Journal of African Law, Spring 1974.
12. Marshall B. Clinard and Daniel J. Abbott, Crime in Developing Countries: A Comparative Perspective, John Wiley and Sons, New York, 1973, p. 39.
13. Ibidem.
14. Clinard and Abbott, Property Crime in Kampala, Uganda: Preliminary Report, November, 1971.

15. Musa T. Mushanga, Violent Deaths in Western Uganda
East African Law Journal, 1972.
16. East African Standard, Nairobi, Monday 12 February, 1973.
17. Daily Nation (Kenya) Wednesday 6th February, 1974.
18. Tibamanya M. Mushanga, Deviant Behaviour, Adult
Education and Rural Development, Annual Social
Science Conference of the East African Universities
1973, paper no. 43.
19. Ruth Shonle Cavan, Criminology, Second edition,
1956, pp. 214-215.
20. Marvin E. Wolfgang and Franco Ferracuti,
The subculture of violence, p. 190.
21. Case (CRB) no 16/55, Fort Portal Toro.
22. See Tibamanya M. Mushanga, Criminal Homicide in
Uganda.
23. CRB case no 557/64 Fort Portal Toro, Uganda.
24. Marvin E. Wolfgang, victim-Precipitated Criminal
Homicide in Marvin E. Wolfgang (editor) Studies in
Homicide, Harper and Row, 1967, pa. 73.
25. Ibidem.
26. Fluehr-Lobban, op.cit. Fluehr-Lobban has noted that
suspicions of adultery drive a man to violence more
readily than actual witness to infidelity. In

Islamic states, the killing of an adulterer is upheld, but homicide cases are tried by the criminal courts and not in Sharia courts.

27. Crimes of Violence, Vol. 11 p. 230. To illustrate the trivial nature of the sort of things disputes, fights and homicides result from the staff Report cited one newspaper analysis of such situations as given by detectives.

"Murders result from little ol' arguments over nothing at all" noted a veteran Dallas homicide detective. "Tempers flare. A fight starts, and somebody gets stabbed or shot. I've worked on cases where the principals had been arguing over a 10 cents record on a jute box, or over a dollar gambling debt from a dice game."

"You got a cigaret?"

Naw, I ain't got any"

Or the fateful conversation may begin like this

"Hey, you're lookin' at me."

"No I ain't."

"Yes you are. Why you lookin' at me?"

The staff report added that:

"Homicide or assault may be the easiest ways to terminate altercations for people of lower socioeconomic status who possess limited verbal skills.

28. Fluehr-Lobban, op.cit.
29. Robert C. Bensing and Oliver Schroeder, Homicide in an Urban Community, Charles C. Thomas, Publisher Springfield, Illinois, U.S.A. 1960, p. 72.
30. Fluehr-Lobban, op.cit.
31. Mushanga, Criminal Homicide in Western Uganda. op.cit., see Tanner op.cit. table 1 on p. 85 for the years 1960 to 1964.
32. Marvin E. Wolfgang and Franco Ferracuti, The Subculture of Violence; Towards an Integrated theory in Criminology, 1967, p. 206. see also Herman Mannheim, Comparative Criminology, Routledge and Kegan Paul. London, 1965, vol. 1 chapters 14 and 15.
33. Marvin E. Wolfgang, Patterns in Criminal Homicide, Harper and Row, 1967, p. 119.
34. Mushanga, Criminal Homicide in Western Uganda, op.cit.
35. See the Penal Code of Kenya, Section 12.
36. See Edwin H. Sutherland and Donald R. Cressey, Criminology, 8th edition, J.B. Lippincott company, 1970, p. 157. See also Cross and Jones op.cit. pp. 77-86.
37. Tolani Asuni, Homicide in Western Nigeria, British Journal of Psychiatry, (1969), 115 p. 1112.

38. T. Adeoye Lambo, Malignant Anxiety; A syndrome Associated with Criminal Conduct in Africans, Journal of Mental Science (1962) 108.
39. Ibidem.
40. Evelyn Gibson and S. Klein, Murder 1957-1968 A Home office statistical Division Report on Murder in England and Wales, Her Majesty 'Stationery Office, 1969, Table 2, p. 3. See also their earlier Report Published in 1961.
41. See the Laws of Kenya Cap. 67, section 3, 1962 Laws of Uganda Cap. 108, 1964, and Laws of Tanganyika Cap. 18, 1954.
42. Witchcraft Act, section 2 Cap. 108, Laws of Uganda, 1964, p. 2444.
43. Witchcraft Act sections 3 and 11, Cap. 67 Laws of Kenya, 1962. For a detailed discussion and criticism of the law of witchcraft in East Africa, see Onesimus K. Mutungi, Witchcraft and the Criminal Law in East Africa, Valparaiso University Law Review, Vol. 5 no. 3 1971.
44. Witchcraft Ordinance, Section 2 Cap. 18, Laws of Tanganyika, 454.
45. Mutungi, op.oit.
46. Mushanga, Criminal Homicide in Western Uganda.

47. See Drum Magazine, October 1972. The Wuher Ritual Murder in Ghana. In this case a senior chief died, junior chiefs had a duty to provide certain human organs that were necessary for the smooth enstoolment of the new senior chief. Consequently, a young man was killed in order to obtain his heart for the ritual of enstooling the new senior chief. For a full account of the extent and nature of witchcraft in Africa, see John Middleton and E.H. Winter, Witchcraft and Sorcery in East Africa Routledge and Kegan Paul, London, 1963.
48. Marshall B. Clinard, in an introduction to Tibamanya M. Mushanga, Criminal Homicide in Western Uganda, East African Literature Bureau, 1974.

CHAPTER SEVENA PROFILE OF CRIMINAL HOMICIDE: CONCLUSIONS

In the following paragraphs, which will be the conclusion of this study, effort is made to see how various variables that have been discussed in the preceding three chapters are associated, in general terms, in the construction of a profile of criminal homicide. The Kamiti sample of 108 criminal homicide prisoners was used for comparison with findings from other studies especially those done in Africa, and in this respect five other works have been used. These include Tanner's Homicide in Uganda 1964 (1970), Mushanga's Criminal Homicide in Western Uganda (1974) Leigh Bienen's study of Criminal Homicide in Western Nigeria (1973), Paul Bohannan's African Homicide and Suicide, (1960), and Fluehr-Lobban's study of Homicide in the Sudan (1974). Criminal homicide, like any other crime, or deviant behaviour, is characteristic of social life, and as such cannot be considered to be pathological. It is in this respect that Durkheim considered crime as a normal human behaviour.¹ What is pathological are abnormal high rates of homicide in any given society at a particular point in time. The normality of criminal homicide can be demonstrated by almost constant rates of homicide in some societies, such as England and Wales. In both of those countries, the number of reported criminal homicide between 1957 and 1968 ranged from the high

recorded figure of 154 in 1967 to the lowest recorded number of 114 in 1958.²

One major issue that needs to be considered by future researchers is why do some communities, societies or countries have very minimal fluctuation rates of homicides while others are experiencing increases year after year? Can these differences be attributed to criminal subcultures, or to differences in police efficiency or inefficiency, or the high rates in some of the countries indicate, as Radzinowicz noted, the degree of lawlessness prevailing in such countries?³

From the African Studies just mentioned above, and from studies carried out in other countries especially in U.S.A., Britain and Italy, it is obvious that the majority of the criminal homicides have a lot in common whether these are perpetrated by Blacks in U.S.A., and Africa, or by Whites.

Since we know that there is a large gap between the reported rates and the true rates everywhere, this gap, we suspect, must be much greater in some of the African countries because of a number of interrelated factors. The most important of these include mistrust of the police and the judiciary by the majority of the people. Preliminary findings on Police-public relationship in Kampala and Nairobi show that over 60% of the public have no confidence in either the police or the judiciary.⁴ Secondly, poor communication which makes it difficult for citizens to contact

the police also helpsto keep some homicides out of the police records, as does, corruption, inefficiency, tribalism, politics, poor training leading to poor investigative techniques, and fear of retaliation and revenge all appear to enlarge the figure of unknown homicides in Africa.

In some societies or subcultures such as among the Gisu and Karamojong of Eastern Uganda, violence and homicide are such common occurrences that not many people are inclined to report them unless they find that either the case is too obvious or involves one's personal interest, that there is no alternative but to report the matter to the police. Since violence can be part of a group's culture, its occurrence stops to provoke uneasiness and a desire to have something done, since cultural facts are, by definition, 'normal vis-a-vis the group concerned. A youth of 20 years who has witnessed about five or more murders is not likely to be excited as his age mate who witnesses a homicide for the first time. Individual attitude towards violence and bloodshed can be explained in terms of differential association theory as outlined by Sutherland.⁵ The reaction to violent stimuli is likely to be the use of violence in interpersonal disputes, altercations and other situations depending on socialisation under which the individual respondent was reared. The four major variables of the theory of differential

association, of priority, Intensity, Duration and frequency are critical as much as excessive definitions of the use of violence over definitions of the use of non-violent methods of settling disputes. With repetition, public tolerance of violence is increased and incorporated in the mechanisms of social control and child-rearing. This gives rise to what is generally heard that the people of 'X' ethnic group are fond of fighting, or what may be called group character. The drunkenness to which Veli Verkko attributed homicide in Finland⁶ could be cited as a case in point. The Finns violence in relation to drinking is not because they grew and distill more alcoholic drinks than other northern Europeans, it is because of their cultural definition of the use of alcohol.

In the definition and construction of the profile of homicide, attempt is made to show how various variables are associated. This requires the testing of all hypotheses together for determining the hypothesized variables in relation to the crime of violent homicide. The concept of violence is stressed here in that these variables may not be applicable in cases of homicide without violence, such as poisoning.

HYPOTHESES TESTING.

All subjects that constitute the Kamiti sample are violent slayers, most of whom committed murder and some committed manslaughter. The murderers, had had their

sentences of death commuted to life imprisonment. The manslaughters were those serving long-term prison sentences ranging from four years to life imprisonment.

We saw earlier that the majority of these offenders were aged between 18 and 30 years at the time they committed their crimes; and according to the sign test used on the distribution of the sampled population, this is generally true of offenders in Kenya; and for our purposes, it could be said to be true of the majority of violent criminal homicides, as has been shown by other studies.

There are six principle or maximum security prisons in Kenya and Kamiti is one of them. Any convict can be sent to any of these six prisons as long as he is sentenced to what is called a long term sentence, which means any sentence of four years or more. Kamiti was singled out for the study and therefore the 108 convicts that were interviewed are typical of those in other prisons, with the exception of female offenders.

The variables tested in the form of questions could only receive either a "Yes" or "No" response. We will refer to these responses as the 'positive' or 'Yes' and we will represent the "Positive" with an 'X' symbol and 'Y' will symbolise the 'negative' or 'No' responses. The questions were put to the interviewee independently, i.e. each in its own turn, for instance, the inmate (interviewee) was asked whether he was married or not at the time he

committed (or is alleged to have committed) the homicide, or whether he was drunk, or whether him and the deceased were drinking together at the time of the homicide, or whether him and his victim were related, and so on.

There are 108 respondents in the sample, and we wish to test whether the 'X' responses are more generally characteristic of these offenders, i.e. whether there are more 'X' responses over the expected median of 54, in respect of the questions posed than the 'Y' responses. There are 14 questions posed, and using distribution-free statistical test which relies on ranks,⁷ we can assume that each of the 108 respondents questioned on some aspect of the 'contributing' factors or related factors to homicide was drawn independently and randomly from the larger population of criminal homicide offenders.

The responses to the major questions asked were as follows:-

<u>Question</u>	<u>Yes</u>	<u>No</u>	<u>Sum</u>
1. Offender was unemployed	70	38	108
2. Offender not married?	47	61	108
3. Offender used to drink alcohol	78	29	108
4. Offender had no previous crime record	101	7	108
5. Offender of rural background	105	3	108
6. Offender literate	59	49	108
7. Offender knew the deceased	87	21	108
8. Offender was related to deceased	65	43	108

<u>Question</u>	<u>Yes</u>	<u>No</u>	<u>Sum</u>
9. Offender was drunk	52	56	108
10. Homicide occurred inside a house	48	60	108
11. Homicide occurred at night	65	43	108
12. Deceased was drunk	56	52	108
13. Offender was drinking with deceased	44	64	108
14. Offender and deceased are of same tribe	83	25	108

The above table of questions and responses is shown below in relation to the 'Yes' or X, and 'No' or Y, median and their ranks in a descending order.

Order in which
questions were

asked	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Yes - X	6	13	5	1	9	3	7	11	18	8	10	14	2	4
No - Y	9	2	10	14	6	12	8	4	3	7	5	1	13	11

In the following table, we denote by: -

'a' the number of Y responses greater than the Y median, 43;

'b' the number of X responses less than Y median; and

also we consider the number of Y units greater than X median

65, and the number of Y responses less than X median. These

can be tabulated as follows:-

	X less than Ym	X greater than Ym	Sum
Y greater than Xm	b = 0	14	B=0
Y less than Xm	a = 14	0	A=14
Sum	14	14	14

In the above table, B denotes the sum in the first row, while A denotes the sum in the second row. This is because in the critical statistical tables B and b must be in the same row and A and B must be in the same sum column. Table VIII of critical value for the Bromqvist Double Median Test for association gives the critical value for b as 1, and entering the table with a, A, B. The calculated value of b = 0. Since the calculated value is less than the given critical value, the association of variables is established.

THE PROFILE OF CRIMINAL HOMICIDE WITH VIOLENCE:

1. Criminal homicide is a near-monopoly of males.

Some of the variables that related to criminal homicide offenders and victims, are common knowledge, for example, males are generally known to be involved in crimes of violence, and in crime as a whole. Sutherland and Cressey have stated that:

"The crime rate for men is greatly in excess of the rate for women - in all nations, all age groups, all periods of history for which organised statistics are available, and for all types of crime except those peculiar to women, such as infanticide and abortion."⁸

Wolfgang has noted that:

"If aggression is associated with age and sex, homicide as an explicit behavioural form of aggression is especially so. Almost Universally it can be asserted that the highest incidence of assaultive crimes like homicide are committed by young offenders, most of whom are in their twenties, many of whom are in their late teens or early thirties. Males predominate everywhere."⁹

Thus, on sex, nearly all authorities are agreed that violent criminal homicide is predominantly, committed by males.¹⁰

2. The majority of criminal homicide offenders are young men, aged between 18 and 30 years.

This observation cannot be overstressed; that young males between 18 and 30 are responsible for the majority of violent acts such as homicide. Studies everywhere have reported this, it is confirmed by the Kamiti sample that young men constitute the majority of the dangerous group in society. In relation to age, the Kamiti samples were interviewed and asked about their marital status prior to

the commission of the homicide. The data show that 61 out of 108 of the offenders were married. This observation cannot be generalised because of cultural values relative to the age and social maturity of male members of society. For example, the Bahima of Ankole, a cattle-keeping people, on the whole marry when they are in their late twenties or early thirties while the Banyankore, with whom they share the same territory marry quite early, i.e. when about 16-20.¹¹ In societies where the male youths have to attend school and university, the age at marriage is higher than in purely peasant communities. Therefore marital status is relative to the social structure and the dominant culture of the group concerned.

3. Alcohol plays a significant role in criminal homicide situations.

The present sample shows that 79 out of 108 persons who committed homicide were also users of alcoholic beverages prior to the crime, and of those 52 reported that they were actually under the influence of alcohol or had taken alcohol or were in the drinking process when violence erupted and ended in the death of the victim. Many studies, such as those of Veli Verkko in Finland, Wolfgang in U.S.A., Fluehr-Lobban in the Sudan, Mushanga in Uganda, Bensing and Schroeder in U.S.A. have shown that in the majority of cases, alcohol was present. In a study by Tolani Asuni in Western Nigeria, alcohol was found not

to be an important factor. Asuni explains that:

"It is significant that neither alcohol or abuse of drugs featured in any of these cases. ...Alcoholism is not yet an overt problem in this State. The local alcoholic beverage is palm wine, which is a juice tapped from a species of the palm tree. Its alcoholic content is low, but increases with fermentation."¹²

This observation by Asuni has recently been corroborated by the findings of Bienen in her study of homicide in the same area. The problem noted in this study is that methods for the determination of the degree of drunkenness in either the offender or in the victim do not exist in most of these areas. For example, the studies in Uganda, Nigeria and the Sudan indicate that urine and blood tests for alcohol are not carried out as a routine, and for this reason, the true role of alcohol in violence is not clearly shown. But there is little doubt that angers and hatreds which are normally suppressed find their way out when the individual becomes intoxicated, and therefore, drunkenness is closely related to violent homicide.

4. Criminal homicide is generally a crime of passion, and only a small per cent of it is premeditated.

On the whole, criminal homicide offenders are not 'criminal' in the sense of being hardened offenders or recidivists. The Kamiti sample shows that only seven out

of 108 had had trouble with the law. Wolfgang has showed the significance of differentiating having a police record, a court record, and a prison record.¹³

The present survey indicates that the average criminal homicide offender, unlike a robber with aggravation, is most likely to be a first offender - that is, a young male who has had no previous police, court or prison record. This is in agreement with the observation made by Clinard that the majority of the criminal homicide offenders do not regard themselves as criminals as do robbers and other habitual offenders. Criminal homicides, in the majority of cases, coming as a result of emotional excitation and lack of mens rea, and therefore erupt in the heat of passion.¹⁴

5. Motives in the majority of homicide cases are trivial, resulting from interpersonal interaction and relationships.

Marital disharmony, disputes, domestic altercations, arguments over small amounts of money are the most frequent starting points in which fight start and end up in homicide. Very few cases are results of serious matters, but even in these so-called serious ones, there is always an element of emotionalism resulting from jealousy, and sexual infidelity, and usually, the motive is not clearly perceived in such cases.

6. The majority of the offenders, and the victims, have rural background which thing indicates the cultural element in criminal homicide.

Studies that have been carried out in Africa have been based on data collected from rural cases; while studies (the majority of them) that have been carried out in U.S.A. have been done in urban areas. This has tended to give an impression that criminal homicide is an urban phenomenon. The present study, like others that have been done on the African continent, shows that criminal homicide is predominantly a rural phenomenon; partly because over 95% of the African people live in rural areas as opposed to the Americans the majority of whom live in urban and semi-urban communities. It would appear that rural homicides are committed in culturally defined situations, while urban homicides tend to be related to robberies with violence or in culture conflict situations. Urban homicides in Africa are expected to rise in relation and as a consequence of rapid urbanisation and industrialisation, and the mental conditions, malignant anxiety and frenzied anxiety as shown by Asuni and Lambo, which are a result of detriabalisation, marginality, and alienation are expected to increase and contribute to the number of urban homioides in Africa, as the processes that create them not only increase but intensify in the rapidly growing cities.

7. Criminal homicide, in general, involves the people who not only know each other, but also who are related.

This has been shown by nearly all the studies that have been done on the subject. Victims and offenders are primarily people of the same compound if not of the same family. In this connection, husbands tend to kill their wives, and wives kill their husbands or their children. Men on the whole kill their female sexual partners such as wives, and lovers. It is only in exceptional cases that people kill those they do not know unless the motive is for robbery of some sort. It is therefore, in the process of living the day to-day life that violence is mostly likely to erupt. This is explained in terms of the differential association stressing frequency, duration, priority and intensity of contact of the victim and offender as members of the same cultural group. This means that where the interaction is infrequent, and the duration brief and the level of contact very superficial, dangerous disputes or conflicts are not likely to end in such tragic episodes as criminal homicide.

8. Criminal homicide being a phenomenon in which the participants are known or related to one another, is overwhelmingly an intra ethnic, and intra racial phenomenon.

Nearly all the studies done in America, such as those of Bensing and Schroeder, Wolfgang, Bullock, Cavan, Calvin Schmid, Harlan, Emil Frankel, Voss and Hepburn and the annual Uniform Crime Reports by the Federal Bureau of Investigations show that criminal homicide, and other crimes of violence such as aggravated assault and forcible rape in the majority of cases involve people of the same race, and who know one another. Interracial criminal homicides in U.S.A. committed by Negroes against whites and vice versa usually involve another crime such as a robbery. The Kamiti study shows that of the 108 offenders, 83 killed men or women of their own tribes. The three cases in which Indians were victims involved robbery with violence.

9. Criminal homicide is associated to the weapons that a culture defines as for offensive or defensive.

American studies show that the bulk of their homicides are committed with firearms. The Presidential Commission in 1970 reported that:

"During 1963, 4,760 persons were murdered by firearms. During 1965, 5,600 murders, 34,700 aggravated assaults, and the vast majority of the

68,400 armed robberies were committed by means of firearms."¹⁶

For the year 1971, the Uniform Crime Report reported that:

"Firearms continued to be the predominant weapon used in murder... For the year 1971, as in previous three years, 65 per cent of the homicide victims were killed through use of a firearm."¹⁷

Neither the Uniform Crime Reports, nor other studies done in U.S.A. and Europe report the use of spears. Guns are culturally owned in those societies for defensive and offensive purposes, while spears, pangas, and sticks predominate in African studies of homicide.¹⁸ Members of a given group will tend to use the commonly used weapon for the purpose of defence or offence.

10. Criminal homicide is predominantly a phenomenon which is committed by and against individuals at the lower end of socio-economic-educational scale.

Several studies have shown that criminal homicide, just like aggravated assault and forcible rape is committed by persons who are, in several ways, at the bottom of whatever social scale is used. The victim and the offender, in most cases, have similar characteristics. The President's Commission in U.S.A. listed a number of variables characteristic of violent offenders,¹⁹ and all of them show that the violent offender (and the victim) is a person experiencing social

disadvantage. The offender, and very often his victim, is unemployed, if he has a job, he is employed in the kind of job that gives no status such as a cleaner, a porter, labourer, lorry driver, factory employee, unskilled or semi-skilled. He is likely to have had inadequate or no education at all, and has very little at stake in society.²⁰ Therefore, poverty, unemployment, or self-employment, poor or no education, under-employment, working in menial jobs, and lack of self-esteem resulting from one's achievement, appointment or contribution to social betterment are quite characteristic of criminal homicide offenders. This profile of criminal homicide is merely an indication of the central tendencies of the visible characteristics that can be identified to apply to the majority of criminal homicide situation; and therefore, there are many exceptions, but they are "exceptions" and should be understood as such.

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HOMICIDE CASE STUDIES IN KENYA

by

Tibamanya M. Mushanga

A

OFFENDER - MSHTAKIWA

February, 1974

1. Tribe..... Age..... Sex..... Prison No.....
Kabila Umri Mke/Mme
2. Religion Protestant Catholic Muslim Traditional
Dini Protestanti Katoliki Muisilamu Dini ya Kienye
3. Occupation
Kazi
4. Are you married?
Je, Umeoa/Umeolewa?
5. How many wives??
Una wake wangapi?
6. How many children do you have?
Una watoto wangapi?
7. Were you married in church or traditionally?
Ulioa kanisani au kulingana na mila ya kienyeji?
8. Have you got brothers and sisters? YES/NO
Una ndugu na akina dada?
9. Do you drink alcohol? YES/NO
We unakunywa vinyaji vya kulevya?
10. Both father and mother alive? YES/NO
Baba na mama wako hai?
11. Father died? YES/NO
Baba amekufa?
12. Mother died? YES/NO
Mama amekufa?
13. Father died when child? YES/NO
Baba alikufa upokuwa mtoto?

14. Mother died when child? YES/NO
Mama alikufa ulipokuwa mtoto?
15. Brought up by relatives? YES/NO
Ulilewa na majaa?
- 16a. Had your father ever been to prison? YES/NO
Baba yako alipata kufungwa?
- 1 b. For what reason?
Kwanini?
17. Had your mother ever been to prison? YES/NO
Mama yako alipata kufungwa?
18. Has any of your brothers been to prison YES/NO
Kuna mmoja wa ndugu zako aliyewahi kufungwa?
19. Has any of your sisters been to prison? YES/NO
Kuna mmoja wa dada zako aliyewahi kufungwa?
20. Has any of your relatives been to prison? YES/NO
Kuna mmoja wa jamaa yako aliyewahi kufungwa?
21. Can you write and read? YES/NO
Waweza kusoma na kuandika?
22. Did you go to school? YES/NO
Uliwahi kwenda shuleni?
23. What standard did you reach?
Ulifika darasa gani?
24. Where did you grow up? Town/Rural area.
Je ulilelewa wapi? Mjini/Mashambani.
25. Where have you lived most of the time? Town/Rural area
Je emeishi wapi sana? Mjini/Mashambani.
26. Would you describe your self as a town person or a village person? Town/Rural area.
Je, waweza kusema wewe ni mtu wa Mjini/Mashambani.
mashambani au mjini?
27. Had you been involved in a court case before? YES/NO
Umewahi kushitakiwa kotini kwa hatia nyingine kabla ya kuja hapa?
28. Have you ever been in prison before? YES/NO
Ulipata kufungwa gerezani mbeleni?

B

1. Did you know the deceased? YES/NO
Ulimjua aliyekufa?
2. Were you related? YES/NO
Mlikuwa ukoo moja?
3. How was he/she related to you
Mlikuwa na ukoo gani?
4. What was the reason for killing him/her
Ulimuua kwa nini?
5. What did you use-weapon?
Ulitumia silaha gani?
6. Was there a fight between you and the deceased
before the killing? YES/NO
Palikuwa na vita kabla ya mauaji?
7. Had you drunk alcohol? YES/NO
Ulikuwa mlevi?
8. Did the killing take place at your home? YES/NO
Mauaji yalitokea kwako nyumbani?
9. Or at the home of the deceased? YES/NO
Ama yalitokea kwa aliyekufa?
10. Were you inside a house? OUT/IN
Ulikuwa ndani ya nyumba au inje?
11. Are you here for killing one person or more? ONE/MORE
Uko hapa kwa kuua mtu mmoja au zaidi? MMOJA/ZAIDI
12. If you killed more than one, how many?
Kama uliua zaidi ya mmoja ni wangapi?
13. Did you "intend to kill? YES/NO
Ulinuia kuua?
14. Did the deceased die immediately? YES/NO
Alikufa hapo hapo huyo mtu?
15. Was the deceased taken to hospital? YES/NO
Aliyekufa alipelekwa hosipitalini?
16. On what part of the body was injury inflicted:.....
Sehemu gani ya mwili iliumia?

17. How soon after the incident did the deceased die?
 Huyo mtu alikufa baada ya muda gani?
18. When this happened, were there other people around? YES/NO
 Palikuwa na watu wngine wakati wa kifo?
19. Was there a dispute between you and the deceased? YES/NO
 Palikuwa na ugomvi kati yako na yeye?
20. Who arrested you?
 Nani aliyekushika?
21. Did you report to police or to the chief yourself? YES/NO
 Ulipiga ripoti kwa chifu au polisi mwenyewe?
22. How far were you from the nearest police station
 when this happened?
 Ulikuwa umbali gani na kituo cha polisi yalipotendeka?
23. Tell me briefly what happened.
 Niambie kwa ufupi yaliyotendeka.

24. How soon after were you arrested: Immediately/hours after/
 days/ weeks. Saa hiyo hiyo/ baada
 Ulishikwa baada ya mda gani? ya masaa/ baada ya
 masiku/ baada ya majuma.
25. When you were arrested, were you beaten? YES/NO
 Ulipigwa baada ya kushikwa?
26. What time of the day was it? Night/Day
 Ni wakati gani wa siku? Usiku/Mchana.
27. What day of the week?
 Ilikuwa siku gani ya wiki?
28. What month of the year?
 Ilikuwa ni mwezi gani
29. What year?
 Mwaka gani?
30. What hour of the day or night?
 Ilikua saa ngapi ya usiku au mchana?

31. How long is your sentence?
Kifungo chako ni cha mda gani?
32. How long have you served?
Umemaliza kiasi gani cha kifungo?
33. How long was it before you were sentenced?
Kabla ya kuhukumiwa ulikaa muda gani baada ya kushikwa?
34. Where did the court sit?
Mahakama yalikutana wapi?

C

DECEASED

1. Tribe Age..... Sex.....
Kabila Umri Mke/Mume
2. Religion Protestant Catholic Muslim Traditional
Dini Protesitanti Catoliki Muisilamu Dini ya kienyeji
3. Occupation
Kazi
4. Was deceased married? YES/NO
Aliyekufa alikuwa amelewa?
5. Was deceased drunk? YES/NO
Aliyekufa alikuwa amelewa?
6. Were you drinking together? YES/NO
Mlikuwa mkinywa pamoja?
7. Did you know deceased? YES/NO
Ulimjua aliyekufa?
8. How many children did deceased leave?
Aliyekufa aliwacha watoto wangapi?
9. How far was deceased's house from your home?
Nyumba ya mfu ailikua umbali gani na yako?
10. Give me five reasons of why people kill others?
Nipe sababu tano ambazo hufanya watu kuuana?

1.
2.
3.
4.
5.
11. Suppose what happened happens to you again, do you think you would kill again? YES/NO
Kwa mfano yaliotukia yakitukia tena, je utaua tena?
12. Who is taking care of your children?
Nani analea watoto wako?
13. Who is taking care of the deceased's children?
Nani analea watoto wa mfu?
14. In your tribe, how were slayers punished?
Katika kabila lako wauaji waliadhibiwa namna gani?
15. Thank you very much, and bye-bye.
Asante saana, kwaheri.