

BOURGEOIS SOCIAL REFORMISM:

The Factories Act Revisted

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By J. S. R. TURATAAHA

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PREFACE AND ACKNOWLEDGEMENTS

In present day conditions in Kenya, where the state has nakedly come out to oppress and repress all revolutionary elements and organic movements, the struggle of the proletariat is the pivot of the Kenyan revolutionary process. The victory in this struggle can only be achieved through the common effort of all progressive forces led by the working class. The proletariat heads the struggle for all working people for peace, democracy, national independence and socialism. The Kenyan working class is a great social force now. It keeps growing, with fresh groups from the urban middle strata and proletarianised peasants continually swelling its ranks. This growing class, not yet schooled in the irreconcilable class struggle, is liable to fall under the spell of the illusions about the feasibility of bourgeois economic and social reformism arising out of bourgeois ideology. This effort is the result of an attempt to grapple with this issue, which specifically handles the Factories Act as a specimen of the said illusory bourgeois ideology. It comes out in a polemic against economic romanticism and any antiseptic reformist tendencies that might be intended to abort the impending workers' revolution in Kenya.

In this respect, my particular thanks go to Mr. Willy Mutunga, who gave me the challenge to stop shouting and come out with a concrete study on the condition of the workers. His rigorous criticism and comments on the work as it progressed encouraged me with comradely and revolutionary enthusiasm.

My thanks also go to Dr. Ombaka who kindly agreed to take over as my supervisor after Mr. Mutunga had fallen victim to the Kenyan State repressive machinery. I thank all exploited proletarians in East African Industries who helped me alot during my field research. I thank all comrades in the Faculty of Law whose discussions with me helped me alot. I thank them all, including the successive governments of the Republic of Uganda, my motherland, who have financed my education at this University.

Needless to say, the final responsibility lies with me, but the views expressed here are entirely those of a class and therefore belong to society, of which I am but a product.

Turyataaha Jack Stevens,
Nairobi,
28th July, 1982.

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ABBREVIATIONS

A.C.	Appeal cases
All.E.R.	All England Law Reports
E.A.	Eastern Africa Law Reports
E.A.L.R.	East Africa Law Review
I.D.S.	Institute of Development Studies
K.B.	Kings Bench
Q.B.	Queens Bench

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In a modern state, law must not only correspond to the general economic condition and be its expression, but must also be an internally coherent expression which does not, owing to inner contradictions, reduce itself to nought. And in order to achieve this, the faithful reflection of economic conditions suffers increasingly.

- FREDERICK ENGELS

INTRODUCTION

In Kenya today, the process of Industrialisation is largely dominated by the factory system. Factories involved in mass-production of goods have sprung up with unprecedented speed employing a huge army of labourers and wielding a considerable capital-intensive power. The industrial process in Kenya, like in most third world countries that have been integrated into the capitalist system, is dominated by foreign firms in form of Multi-national corporations. They have set up highly protected subsidiary factories to manufacture here in Kenya what they formerly exported. At the end of the 1970's, Kenya's new Industrial Sector was still almost entirely foreign owned.¹ This is nearly the same case today. Through joint ventures, the State has tacitly assisted this process of foreign domination in the Industrial Sector. The consequence is that there has been considerable export of finance capital, which, with the assistance of its local agents, the 'Comprador' bourgeoisie, has delved into the process of exploitation of workers through the imperialist relations of production that have accompanied it.

The driving force behind these International firms is the search for markets and hence as much profits as possible. This is a general rule of capitalist production. The problem therefore arises whether, in their process of striving for more profits through the process of production, the safety, health and welfare of the worker will be considered and provided for. It is the writer's view that the two issues are antithetical. Capitalist production necessarily negates the welfare of the workers. Why then, do we have the Factories Act, Cap 514, which purports to do this? How did it come into being? What is its proper function, when dymystified? These are some of the issues that

will take a central place in this paper.

The Factories Act must be seen in the wider perspective of those laws promulgated for the welfare of workers and peasants and generally the exploited classes. The reforms brought about by this Act are not to be seen as a unilateral act by the so-called welfare-state. Rather, as I will prove by a methodology of historical analysis that will be adopted, it is the result of the struggle of the workers to obtain better working conditions and state intervention to cure the principal contradictions in the system and thus give capitalism a further lease of life. It is clear that

the ruling exploiter classes carry out reforms not because they are particularly concerned about human progress, as their ideologists like to assert, but because they are pressurised to do so by the revolutionary struggle of the exploited masses.

The results of this struggle are consolidated by some socio-economic and political reforms. These reforms of course bring partial changes in the existing socio-economic and political system and improve the condition of the working people to that extent. But they do not and cannot solve the fundamental antagonistic contradictions between the hostile classes.²

This dissertation will therefore be based on and try to prove the above postulate.

In chapter one, we deal with general theory and conceptual framework. Since factories are concerned with production of commodities, we shall develop the concept of production as being the material basis of life. This will necessarily lead us to the concept of classes. The state as an institution of the ruling class will also be examined. We

will also deal with the myth of freedom of contract of employment since it is always asserted that if the worker does not want to be subjected to an unhealthy environment, he is not forced to work there and can therefore quit. A marxist theory of law is developed, the role of law being seen as an instrument used by the ruling class to enhance its interests. The Factories Act will be analysed in the light of this analysis of the role of law. We conclude by examining the issue of underdevelopment and see it as necessarily leading to the negation of the improvement of the working environment.

In chapter two, we examine the rise of the factory system in England. We analyse the pre-capitalist socio-economic formations and then proceed to the era of modern Industrial capitalism based on wage labour, on which emphasis will be laid especially the period of the Industrial Revolution and the introduction of machinery as the distinctive mark.

We go on to consider the effects of the factory system in England. We highlight the issues of the formation of antagonistic classes, division of labour in production, the relationship between capital and wage labour and increased poverty of the workers, misery and other social problems.³

The above effects will be seen as having been a threat to the continuance of capitalism as a mode of production. They therefore had to be regulated in order to save the system.

In the same chapter, we therefore deal specifically with a historical survey of the development of the Factory Acts in England and reasons for this development. This covers the period between 1802 to 1961.

In the same chapter, we zoom down home to Kenya and examine the rise of Industry simultaneously with attempts at the regulation of the working environment both in the colonial and neo-colonial state.

In chapter Three, we deal with the legal framework of the Factories Act.

Chapter Four is concerned with the examination the implementation of the legal rules. This will be based on empirical data derived from book research and a specific field analysis of East African Industries Ltd.

Chapter Five will examine the efficacy of the Act. We give a critical critique of the Act, followed by recommendations for short-run reform. The conclusion considers general transformative revolutionary strategies as being a final solution to the problem of workers' misery in the factories.

The evils that the Industrial process has given rise to in the Kenyan working environment are an inevitable consequence of the capitalist mode of production. The financial oligarchy that monopolises the Industrial Sector cannot waste its profits in ensuring the welfare of the workers in the factories. At most, it can only institute such reforms that are necessary for the worker to reproduce himself and thus remain available to provide wage labour for the capitalists. In order to emancipate the working class therefore, the struggle will not be won in improving the working conditions. Marx clearly provided the solution:

For us, the issue cannot be the alteration of private property but only its annihilation, not smoothing over of class antagonism but the abolition of classes, not the improvement of existing society but the foundation of a new one.⁴

The factory-system has created socialisation of production whereas the factories i.e. the means of production are still privately owned. The relations of production have become fetters to the further development of productive forces. This is a basic contradiction which necessarily calls for the liberation of the said productive forces by means of a change in the mode of production through a Socialist Revolution.

CHAPTER ONE

GENERAL THEORY AND CONCEPTUAL FRAMEWORK

1:1 Production

From the early periods, people have grappled with the issue as to what constitutes the conditions of material life. There has been a debate as to what actually leads to the development of human society. Various views were put forward. Some philosophers were of the view that it is nature that determines development of human society. However, this could not be accepted as nature surrounded all beings, including wild animals, and yet they had not developed to the stage of man. The idea that geographical environment is the determinant issue was also rejected "in as much as the changes and development of society proceeded at an incomparably faster rate than the changes and development of the geographical environment"¹ Yet other philosophers were of the view that God's will is the determinant factor. This was disproved by science. Other idealists were convinced that the development of human society is conditioned by the actions of statesmen and military generals.

The marxist theory of historical materialism provided the real answer to this problem. Then it was seen that men must eat, drink and clothe in order to live. They therefore had to produce these things. They had to work. It was therefore clear that production of material wealth was the basis of social life . Marx and Engels wrote:

... we must begin by stating the first premise of all human existence and, therefore, of all history, the premise, namely, that men must be in a position to live in order to be able to "make history." But life involves before everything else eating and drinking, a habitation, clothing and many other things. The first

historical act is thus the production of the means to satisfy these needs, the production of material life itself. And indeed this is ... a fundamental condition of all history, which ... must daily and hourly be fulfilled merely in order to sustain human life.²

It is therefore clear that by producing their means of existence, men are indirectly producing their actual material life.

In producing, man had to utilise his labour. Without labour, man could not exist. Indeed, Engels noted correctly that labour created man himself.³

In Kenya today, the source of wealth is mainly from agricultural and Industrial production. The factory workers employed in the factories are therefore engaged in production of material wealth for all Kenyans, without which there would be no life. In our view, this is the most important section of the community, without which we would find it difficult to sustain our daily lives. The pertinent question which would therefore arise is whether there is need to provide for the welfare and continued existence of this sector of the community. This issue must automatically be answered in the positive. When we examine the provisions in the Factories Act⁴ for health, welfare and safety of the factory workers, we should therefore continually bear in mind that these are the people, who, through their labour, are daily producing the material basis of social life for all people.

From the moment men began to produce, production acquired two aspects: the productive forces and relations of production. Productive forces include means of production especially the instruments of labour plus the people who produce material wealth.

In production, men do not act individually. There is a continued interaction between them. Production has to be social. It is therefore clear that the social nature of production brings those people involved into definite relations. This is what Marx termed relations of production. He wrote, in the often quoted statement:

In the Social production of their life, men enter into definite relations that are indispensable and independent of their will, relations of production which correspond to a definite stage of development of their material productive forces. The sum total of these relations of production constitutes the economic structure of society, the real foundation, on which arises a legal and political superstructure ...

For our purposes, we have to note few things. First, in production men enter into relations of production. Secondly men cannot exist without entering into them. Thirdly, they do not realise, neither can they refuse to enter into these relations of production. The relations are, as it were, independent of men's will. ^{Finally} Thirdly and lastly, these relations of production determine the type of economic structure; that is specific relations of production are identified with a specific mode of production and therefore with a particular socio-economic formation.

In history, there has been five types of relations of production: those of primitive society based on communalism, slavery based on slave labour, feudal relations of production based on feudal property and serf labour; capitalist relations of production based on capital and wage labour, and socialist relations based on "comradely cooperation and socialist assistance". These will be further analysed in chapter two.

The process of production in society is a complex one. Basically,

we have to start with labour itself. Man applies his labour in his daily activities in order to appropriate nature and produce what he wants. This is what distinguishes him from other creatures. He can utilise his labour in order to achieve a premeditated plan; that is, he can apply it in order to fulfil his wants. Through this process, man creates commodities with use values.

In the process of production, man has also to possess instruments of labour. An instrument of labour is a thing, or a complex of things, which the labourer interposes between himself and the subject of his labour, and which serves as the conductor of his activity. Instruments of labour include machines, tools e.t.c.

The result of the production process is a commodity or a product. But this product may re-enter the process in form of a raw-material, which may then become part of the means of production. Commenting on the process of production outlined above, Marx wrote:

The labour-process ... is human action with a view to the production of use-values, appropriation of natural substances to human requirements; it is the necessary condition for effecting exchange of matter between man and Nature; it is the ever-lasting Nature - imposed condition of human existence; and therefore is independent of every social phase of that existence or rather, is common to every such phase.⁵

This process has therefore existed ever since man began to produce in order to sustain himself.

With the evolution of an exchange economy, men began to produce commodities. In exchanging these commodities, what determined the value of each? By value is meant the proportional quantities of exchange.

Marx rejected the view of classical political economy which held that it is supply and demand which fix the value of commodities. In propagating his own law of value, he first determined the fact that all commodities contain one social substance:- namely labour. In producing any commodity, a certain amount of labour has to be bestowed or spent on it. The value of any commodity is therefore determined by the amount of labour embodied in it. He wrote:

A commodity has value because it is a crystallisation of social labour. The greatness of its value, depends upon the greater or less amount of that social substance contained in it; that is to say on the relative mass of labour necessary for its production. The relative values of commodities, therefore, determined by the respective quantities or amounts of labour, worked up, realised, fixed in them.

The correlative quantities of commodities which can be produced in the same time of labour are equal or the value of one commodity is to the value of another commodity as the quantity of labour fixed in the one is to the quantity of labour fixed in the other.⁶

Labour power is also a commodity. Like any other commodity, its value is therefore determined by the labour necessary to produce it. In order for the labourer to live, he must have necessaries like food, clothes, etc. The value of labour power is therefore determined by the value required to produce these necessaries. This is the Marxist Labour Theory of value.

From these premises, we can therefore easily discuss the concept of the production of surplus value.⁷ Let us assume that the amount of daily necessaries for a labourer can be realised within six hours of work; and

that Shs.20, (according to the labour theory of value) is the monetary equivalent of the labour-power expended within this time. This means that within six hours, he would produce for the capitalist, the value equivalent to the Shs.20. And he would be paid for this. At this point, there is no surplus value created. But the capitalist would argue that he bought the labour power. It is his commodity. He therefore possesses the right to utilise it as long as possible. The value of labour power is determined by the quantity of labour necessary to reproduce it but its use is determined by the active energies. The capitalist will therefore argue that he has the right to use the labour power for twelve hours since it is his commodity. After twelve hours, the labourer has produced value equivalent to Shs.40. Generally, the living costs of the worker are lower than the total value he creates. The capitalist therefore pays the worker the Shs.20, which is the amount necessary for reproduction of the labour power of the worker, and pockets the other Shs. 20 as surplus value. Concisely, surplus value is defined as "the monetary form of the social surplus product ... the monetary form of that part of the worker's production which he surrenders to the owner of the means of production without receiving anything in return."⁸

1:2 The theory of classes and class struggle

The objective social and economic conditions for the origin of classes among all peoples were the development of productive forces and the emergence of surplus product, the social division of labour, the beginning of exchange and commodity production and the rise of private property and material inequality. In defining classes, Lenin wrote:

classes are large groups of people differing from each other by the place they occupy in a historically determined system of social production, by their relation (in most cases fixed and formulated in law) to the means of production, by their role in the organisation of labour, and consequently by their diversions of the share of social

wealth of which they dispose and the mode of acquiring it. Classes are groups of people one of which can appropriate the labour of another owing to the different places they occupy in a definite system of social economy.⁹

Engels¹⁰ traced the origin of class-formation from the stage of barbarism to the era of civilisation. In the stage of barbarism, there existed the gentile organisation of society whereby all property was communally held. Production for the needs of the society was communal.

However in the lower stage of barbarism, there was an increase in production. More work was necessitated to be done and hence there was need for more labour power. This led to war in search of captives who were made slaves.

In the upper stage of barbarism, there was increased activity in production and division of labour, slavery which had been a nascent and sporadic factor now became an essential part of the system. The distinction between rich and poor was added to that of freeman and slave.

With the threshold of civilisation, the established division of labour was strengthened. There also arose a class that took no part in production - namely the merchants - which subjugated and exploited the producers. Meanwhile, the land which was no longer communally held was also amassed among the rich individuals through sale and there arose the class of landed property.

The rise of the bourgeoisie and proletariat was due to economic causes. Both classes arose in consequence of the economic condition or mode of production. In discussing the development of the bourgeoisie and the proletariat, Marx gives good illustrations of the manner in which envisages the emergence of a new class.

In the middle ages, the citizens in each town were compelled to unite against the landed nobility to save their skins. The extension of trade, the establishment of communications, led the separate towns to get to know other towns which had asserted the same interests in the struggle with the same antagonist. Out of the many local corporations of burghers there arose only gradually the burgher class ... The burghers had created the conditions in so far as they had torn themselves free from feudal ties, and were created by them in so far as they were determined by their antagonism to the feudal system ... The bourgeoisie itself with its conditions develops only gradually, splits according to the division of labour into various actions, and finally absorbs all earlier possessing classes (while it develops the majority of the earlier non-possessing, and a part of the earlier possessing class into a new class, the proletariat) in the measure to which all earlier property is transformed into industrial capital.¹¹

The above quotation summarises the origin and development of the bourgeoisie as a class also came the proletariat which was always its accompanying shadow. In brief, Engels defined the bourgeoisie as the class of modern capitalists, owners of means of production and employers of wage labour, and proletariat as the class of modern wage workers who, having no means of production of their own, are reduced to selling their labour-power in order to live.

Because of the antagonism of their interests, class society has always been pregnant with class struggles, which have occasionally burst out in form of a revolution.

The slaves waged an open struggle against their masters until they were set free. Relations of production may no longer be suited to the developing productive forces. When the two are no longer compatible, the former have to be "burst asunder." Thus the bourgeois revolution which destroyed the feudal relations of production came about because these relations were no longer suited to the already developed productive forces. Similarly with the present bourgeois society

For many a decade past, the history of industry and commerce is but the history of the revolt of modern productive forces against modern conditions of production, against the property relations that are the conditions of the bourgeois and its rule.¹²

The proletariat which is the 'grave-digger' of the bourgeois will wield this weapon through the socialist revolution which will inevitably bring down the rule of capital.

Karl Marx believed that individualisation and control of production and the alienation of the right of ownership and control of property by some members of society at the expense of others, was a condition sine qua non for the emergence of class structure in Europe.

If we apply this test to the Kenyan conditions in the pre-colonial era, then we find that the concept of classes was unknown.¹³ Land was held on a communal basis and the surplus value produced was used for the benefit of the whole community. Nkrumah, in examination of class struggles in Africa takes a similar view.

Under communalism, for example, land and means of production belonged to the community. There was peoples' ownership. Labour was the need and habit of all. When a certain piece of land was allocated to an individual for his personal use, he was not free to do as he liked with it ... It was when private property relationships emerged, and as communalism gave way to slavery and feudalism that the class struggle

began.¹⁴

With the advent of colonialism in Kenya, the era of class formation was ushered in and consequently that of class struggles.¹⁵ Communalist socio-economic patterns began to collapse as a result of the introduction of export crops. Capitalism, individualism and tendencies to private ownership grew. The emergence of Industries has led to the creation of workers in factories, who, together with the urban unemployed form the class proletarians. Thus, the writer of a Kenyan sessional paper was palpably wrong when he asserted that

No class problem arose in traditional African Society and none exists today among Africans.¹⁶

It is clear that today in Kenya, International capital with the aid of the comprador bourgeoisie, is the ruling class which is busy exploiting the workers and peasants of this country. The core of class society has established itself - that is concentration of means of production in a few hands, its ultimate control by a few owners who are also wielders of economic power, and exploitation of the non-propertied class by the owners of land and factories. The factory workers automatically fall within the exploited class. And like all other class societies, there is an open class struggle being waged between the two classes

So long as food, clothing, shelter and education for all children become harder and harder to get for all people, especially the poor, one must expect an unprecedented rising - Marx called it a revolution - by the poor classes of this country. The increasing number of peasant workers agricultural workers, factory workers cannot be said to be wholly unaware or unconcious of their common sufferings and interests.¹⁷

This prediction, made by a young Kenyan in 1974, has not yet come true, but it is still too early to judge him.

1:3 Freedom of Contract of Employment.

As we pointed out in the introduction, it is always argued that the factory worker has freedom of contract and the right to or not to work, and that if he therefore feels that he does not want to be subjected to unhealthy and dangerous conditions in the factory, he can quit at any time. It is therefore imperative that we demystify this myth of freedom of contract at the outset. When the bourgeois revolution in Europe felled the fetters of feudal relations of production, capital and wage labour relations were introduced. But capitalism needed 'free' labour. For its interests, the serf had to be freed from the land he was tied to so as to be constantly on the market for provision of labour to the capitalist. By freeing him from land, the labourer therefore had no other means of production for himself. He was then forced to go to the factories and sell his labour power for a living. In such conditions, to assert that the labourer has freedom of contract is not only misleading but also positively false legal fiction. One writer has labelled the concept a verbal symbol rather than a social fact.¹⁸ When the labourer is stripped off all means of production, he is forced to work for the capitalist, otherwise he will die of hunger. Even in the feudal era with the suppression of slavery, the freedom granted to the slave was seen by one writer to be illusory.¹⁹ What he wrote about the illusory freedom of the serf is much more true when applied to today's wage labourer.

There cannot be freedom of contract without equality between the parties. The economic power of companies and other employers relegate the worker to a position where he has to accept any terms imposed on him.

This is done through the so called standard form contracts which are the order of the day. Judicial intervention and legislation has come in as a result of realisation that the so called freedom of contract is only illusory. The doctrine of fundamental breach is an example. However, the reforms being brought about are designed to give capitalism "a further lease of life." In demystifying the concept, one writer has laid it bare and shown its proper function in a capitalist society:

Freedom of contract, stripped of its ideological cloak - whereby individuals are supposed to be free to enter into contracts when they are not - means no more or less than freedom to exploit and be exploited. In a class society where parties will not have equal bargaining power ... it is false to talk of freedom of contract.²⁰

1:4 The role of law.

Law, like the State, arose with the introduction of private property. It is part of the superstructure that corresponds to an economic base. Hence the Marxist theory holds that law is an instrument in the hands of the ruling class used to enhance its interests. The coercive power of the state uses law for its own ends. Thus law come in to protect private property in general. The law of contract is an instrument used for the enhancement of capitalism as a mode of production. The criminal law is legislated in order that the existing bourgeois order is not tampered with by disgruntled proletarians.

How then, should we judge those particular laws, like the Factories Act, which purport to be for the interests of the working class? The answer to this question is provided by an examination of the proper function of law and bourgeois legal ideology.

One of the functions of law is to reproduce the material conditions of production, labour power, and the existing relations of production. Seen in this perspective, the function of a particular legislation like the Factories Act becomes clear. Through its safety, health and welfare provisions, it ensures that the worker remains alive to be exploited; to continue providing wage-labour and therefore sanctify the existing relations of production.

The function of all bourgeois ideology is to obscure the objective causes of the misery to which bourgeois rule subjects the people. Legal ideology is not different. While at the same time undertaking the mystification of the law, it goes ahead to discredit all attempts that try to expose the true nature of the juridical forms. The misery of the workers, and Kenya in particular, is a result of International capitalism and Imperialism and the contradictions arising therefrom. Through introducing legislative reforms like the Factories Act, the state would have us believe that it is the inappropriateness of the laws that has led to this misery. This would therefore be a true legal cloak to hide imperialism which is the principal contradiction. Bourgeois legal ideology would have achieved its task.

The reality however is that "law reform" does precisely what it says. - it reforms the law: it is an attempt at systemisation. It leaves the substantive relations unchanged ... The point of theoretico-didactic interest here is that the more the law is rationalised and systematised, the more it would obscure its relationship with the economy.²¹

Having exposed the true function of bourgeois legal ideology, we need only look behind the legal rules and discover what is being obscured.

In our case, it is not that our environmental law is defective that we have impoverishment of the workers and degradation of the environment. Rather, this is an inescapable consequence of capitalism as a mode of production.

1:5 Under-development and Environment.

Most of the factories in Kenya today are owned by foreign companies and multi-national corporations whose sole aim is to make as much profits as possible, which profits will be repatriated to the so called metropolitan mother countries. The economic wealth of Kenya is being drained off to contribute towards International capitalist accumulation. This is why we label Kenya an under-developed country. Kenya has been drawn and intergrated into the capitalist camp as a result of foreign domination. The effects of capitalism are well known: these include poverty, exploitation, waste, pollution, unemployment, monopoly, political repression, imperialism, war, racism, sexism, alienation etc.

The point we want to make here for our purposes is that the destructive effects of capitalist exploitation necessary lead to neglect and ^{rad}degeration of the environment. The profits made by the factory owners, are accumulated abroad or invested in other businesses. None is used for example to set up projects to deal with pollution, or to build hospitals and housing for the workers, or to replace old machines that have become dangerous. At best, what the capitalists can do is only to provide those essentials that the worker needs to remain barely alive. Capitalist exploitation and environmental regulation are anti-thetical. They cannot exist side by side. Environmental laws and regulation would be contrary to the spirit of capitalism. Environmental pollution or degradation is an inevitable evil that cannot be eliminated so long as the factories and other origins of pollution remain in the hands of foreign private capitalists whose sole aim is to make as much profits as possible

CHAPTER TWO

GENESIS OF THE FACTORY SYSTEM AND A HISTORICAL-ANALYTICAL SURVEY OF THE
DEVELOPMENT OF THE FACTORY ACTS IN ENGLAND AND KENYA

2:1 The Beginnings of the Feudal System.

It is a mistake to imagine that what is happening in the industrial world today has no reference to what happened in the middle Ages. The transformation of the economic life of the country side in Britain really began in the 18th Century but the seeds which were to flower into modern Industry were sown long before then. The Stone Age comprised the beginnings of division of labour and specialisation. Archaeologists speak of some pre-historic stone, horn and bone "industries" where the earliest miners toiled as long ago as 10,000 B.C. But for our purposes, we shall trace the origin of industry from the ^ufe^udal era in England.

Feudalism existed in England before 1066, but the Norman conquest introduced a more definite political feudalism whereby the king was the owner of all land and he distributed it to the lords. A noble owned many manors, he also distributed them to lords of the manor employing serfs. Feudalism as a mode of production was static, basically aimed at preserving the power of the nobility.

The economic structure was based on the manorial system. This system is important to note as it was in complete contrast with the factory system. It was a closed economy in which there was little dealing with outside markets, production was for the little community of the manor.

The limitations of the manorial system encouraged the growth of opposite forces. Things like needles, thread, weapons etc. could not be manufactured in the manor. They could be obtained from the nearby markets and fairs in the towns that had grown at the trade-routes. The money-economy was therefore introduced which would later influence the decay

of the manorial system and feudalism as a whole. Meanwhile, the merchant class became stronger because of this trade and we therefore now have an emerging bourgeoisie still in its infancy stage.

The merchants started forming associations called guilds to promote their particular trades. Craftsmen also formed their own guilds. The immediate consequence of the guilds on manufacturing was far-reaching.

Division of labour soon developed between the guild-towns. The immediate consequence was the rise of the manufacturing branches of production which had outgrown the guild - system. The trade in these manufactures ... was restricted to the home-market. This hastened the investment of merchant capital into the handicraft industry. The concentrating of population in the countryside and the towns provided ready markets for increased production. Moreover, the rising demand for clothing material due to the growth in population and the growing accumulation and mobilisation of natural capital through accelerated circulation, gave weaving a great stimulus. It became the first and principal manufacture.¹

The people engaged in this manufacture got loans from the merchants and bought raw-materials on which they could work. However, later, the merchants would themselves buy the raw-materials, give them to the producers (weavers) at home and pay them for the work done while taking away the product for sale at a profit. This meant that the weavers were deprived of their means of production and became mere wage earners.

In order to economise and organise the system of manufacture, the merchants now provided 'one roof' under which workers would work on raw-materials supplied by the merchant. But instead of buying the product from them as the merchant formerly did, he now paid them wages only and the product was his own. Marx called this type of organisation manufactories. They flourished because of the abundance of labour provided by peasants escaping from the guild towns and serfs being disbanded from their feudal masters. Apart from the operations undertaken, the manufactory was in all respects similar to the modern factory.

2:2 The Industrial Revolution in Manufacture.

Society is not static. The type of products produced in this period of manufacture were not enough and durable. There were new markets for British goods in the colonies and there was more ample raw material obtained. This necessarily called for the destruction of the system of manufacture and its displacement by a new system more well suited to the times. Marx writes:

At the same time, manufacturing was unable, either to seize upon the production of society to its full extent, or to revolutionise that production to its very core. It towered up to an economic work of art, on the broad foundation of the town handicrafts, and of the rural domestic industries. At a given stage in its development, the narrow technical basis on which manufacture rested, came into conflict with requirements of production that were created by manufacture itself.²

The Industrial revolution of the 18th century was the one that felled these fetters of the manufacture system. By the early 18th century, capitalist society in England had attained all the characteristics of capitalism as a mode of production. Even so, however, the nation was now ready to add something: to effectuate a revolution in the technique and method of manufacturing. This came in form of the Industrial revolution with the new technological inventions.

In 1733, John Kay of Bury invented the flying shuttle whereby the weaver could weave wider cloth more expeditiously. In 1735, John Wyatt invented the spinning machine. This was the one that really began the Industrial revolution. The Jenny invented by James Hargreaves of Standhill in 1764 also brought radical changes. Instead of one spindle, it now had eighteen that could be controlled by one operative. In 1767, Richard Arkwright invented the spinning throtle. After the steam-engine, this was the most important invention of the 18th century. In 1785, Crompton invented the Mule by combining the throtle and the jenny. These technological inventions were used for spinning cotton but were later adopted to spinning

of wool and later to flax. They were backed by the steam engine which provided motive power, invented by James Wyatt in 1764.

With the perfection of these machines, the factory system became the prevailing one in manufacture³. The heart of the mechanised process of the Industrial revolution was now in the factory.

2:3 Effects of the Factory System.

Engels summarises the effects of the factory system concretely thus

.... the victory of machine-work over handwork in the chief branches of English Industry was won; and the history of the latter from that time forward simply relates how the hand-workers have been driven by machinery from one position after another. The consequences of this, on the one hand, a rapid fall in price of all manufactured goods, prosperity of commerce and manufacture, the conquest of nearly all the unprotected foreign markets, the sudden multiplication of capital and national wealth; on the other hand, a still more rapid multiplication of the proletariat, the destruction of all security of employment for the working class, demoralisation, political excitement, and all those facts highly repugnant to Englishmen in comfortable circumstances ...⁴

We shall now deal specifically with these and other consequences.

The revolution of instruments of labour which attained its most highly developed form in the organised system of machinery in a factory first of all enabled appropriation of supplementary labour power by capital. Whole families could now be employed, including women and very young children. There was no distinction as to age or sex. The degree of exploitation was therefore considerably raised. Likewise, the working class, the proletariat, was now swelling. The capitalists were therefore nurturing their own grave-diggers. The capitalists were interested only in profits. They therefore exploited the workers to the maximum. The mortality rate of the operatives increased. The moral physical degradation caused by the capitalistic exploitation of women and children is exhaustively depicted by Engels⁵ and we need not say much here about it.

The factory system also brought about prolongation of the working-day. In as much as machinery increased the productiveness of labour, it also lengthened the working day. The value of a machine is determined by the labour-time necessary to reproduce it or a better machine. The shorter the period taken to reproduce its total value, the quicker is it reproduced, and the working day, the shorter is that period.⁶ This necessarily was also accompanied by an increase in the surplus value extracted by the capitalists.

Another consequence of the factory system was Intensification of labour. The lengthening of the working day could not continue forever. The lives of the workers were menaced and moreover a normal working day was fixed by Parliament in 1844. The best way to extract excess surplus value was therefore through the intensification of labour so that what was lost by shortening the duration of work could be gained through this intensification of labour. This was done by use of over-lookers, supervisors etc; the efficiency and speed of machines was increased and the workmen were given more machines to control. With this more intense exploitation of labour-power, the wealth of the manufacturers increased.

Another effect was also the perfection of division of labour at work. Each workman had his own special function. The division of labour also meant that the increase of the number of workmen became a technical necessity. Hence it helped in expanding that class of workers - the proletariat.

All the above effects were detrimental to the workers. Their health was threatened and safety could not be guaranteed. This was because the capitalists were busy exploiting the toiling masses with the aid of the newly discovered machines and factory system.

4 Development of the Factory Acts in England.

The first Factory Act was enacted in 1802.⁷ This was for the regulation of the hours of work of apprentices. The history of this Act is really appalling⁸. When the owners of the factory system wanted to procure more

profits, they started employing children by way of apprenticeship. The employment of masses of children became the foundation of industry. These children were consigned to their employers at the age of seven till they were twenty one. Their regular working hours, Saturday included, were from 5. a.m. to 10 p.m. with the exception of half an hour at 7 a.m. for breakfast and half an hour at twelve for lunch. The factories were crowded. They sometimes worked on Sunday from 6 a.m. till noon. Because of the over-crowding in the cotton mills, there were epidemics which continued unchecked. In 1795, a Board of Health was formed which urged the necessity for regulations. In 1802, Sir Robert Peel brought in a Bill on this subject which resulted in the 1802 Factory Act that was to apply to cotton and wollen mills. Debating the Bill, Lord Belgrave declared:

"Wealth was pursued in this country, with an eagerness to which every other consideration was sacrificed, and with excesses calculated to call down the vengeance of heaven, if the Legislature did not put a stop to them."⁹

The Act was therefore passed so that heaven could not bring vengeance on 'good old England.'

The Act prescribed that all cotton and wollen mills be kept clean and airy. Work hours of apprentices was limited to 12 hours. Part of the working day was to be given to general elementary education, boys and girls were to sleep in separate rooms, and not more than two in a bed and the Justices of the Peace were to appoint factory inspectors to enforce the Act. There was a vehement and hot-open hostility towards the Act by the employers as being, inter alia, "prejudicial to trade" and "impracticable."

But all said and done, the Act was almost a dead letter for lack of adequate machinery for its enforcement.

We have seen that the 1802 Act provided for apprentices only. But once these children became wage-earners, their working life became worse. Work from 3 a.m. to 10 p.m. was not unknown in very hot conditions. They were subjected to beatings and lashings by overseers and due to tiredness fell into machines which killed them. These deplorable conditions led to the formation of the Sadler Committee that exposed them.

Sir Robert Peel assisted by Robert Owen, introduced a Bill in 1815 to amend and extend the 1802 Act and abolish the existing conditions of work that were deleterious to the health of young children. The Bill passed through the House of Commons but was defeated in the House of Lords mainly at the instigation and hostility of the dominant school of classical economists who considered that there should be no restraint on the free-working of the economic forces.

Another committee was appointed which told of "the long hours, the heat, the food made nauseous by flue and dust and the use of the lash to enforce attention."¹⁰

The result was the passing of the 1819 Cotton Factories Regulation Act¹¹, which provided, inter alia, that no child below nine was to be employed, night work was forbidden. But, unfortunately, the old arrangement for Inspection under the 1802 Act was left intact and this destroyed its efficacy. Despite its continued violation, by 1825, only two convictions ever took place¹². The Act was therefore a dead letter.

History repeated itself in 1831 by an Act providing that persons below 21 working in cotton mills should not be employed at night and those below 18 were not to work for more than 12 hours.

In 1833, an Act was passed authorising the crown to appoint factory Inspectors in order to enforce the provisions of the Act. The Inspectors were also empowered to make rules for the due execution of the Act.

In the 1844 Act, an office of Factory Inspectors was created. There was prohibition of employment in wet humid conditions. The first provisions against moving machinery which was to be guarded and not to be cleaned while in motion were enacted. Inspectors were to report dangerous machinery and accidents.

In 1849, there was a further Act regulating the hours of labour.

In the 1844^{Act} first provisions securing the fencing of machinery had been passed in the face of opposition. In 1856, therefore the Factories Act restricted the operation of these provisions to those parts of mill gearing with which children, young persons and women were liable to come into contact either in passing or in their ordinary occupation at the factory. The 1864 Act provided for ventilation and cleaning of certain factories set out in the Act.

The 1867 Factory Acts Extension Act extended the scope of the Acts by defining a factory as premises in which heavy metals are worked. This included non-textile industries which had hitherto been excluded. It also included "premises in which fifty or more persons were employed in any manufacturing process." It is also observable that the notion of health and welfare in relation to dangerous occupation was becoming part of the accepted code.¹³

In 1878, the law was consolidated in the Factory and Workshop Act¹⁴. This Act provided the basis for modern legislation. Two writers summarise its contents:

It was an Act the influence of which on modern legislation is profound and which creates a pattern from which the Act of 1937 has not seriously departed. It contained one hundred and seven sections and six schedules. The provisions as to cleanliness and safety were redrawn with great precision and for the first time, the requirements of the law as to fencing were made absolute...¹¹

There were two amending Acts in 1891 & 1895. By the 1891 Act, sanitary provisions were re-enforced and additional powers given to factory Inspectors. The duties of fencing machinery were increased and many other provisions. The 1895 Act was to render precise the general obligations of earlier Acts. A factory was to be deemed over-crowded as to be dangerous to health if there wasn't two hundred and fifty cubic feet of space for each worker. There was to be wearing of apparel in places where there was to be infectious disease.

In 1901, there was a further consolidating and Amending Act. Between 1901 - 1937, legislation is now concerned with filling gaps created by discovery of new processes in industry.

Finally, the Factories Act, 1937 consolidated the above various Factory Acts to create a complete labour code. It is on this Act that the Kenya one is based.

The Factory Acts were always opposed by Industrialists on various petty grounds, but what comes out is that there was great influence of the laissez-faire policy advocated by Adam Smith and Co. But this did not prevent the passing¹⁶ of the legislation. The Benthamites who advocated for reform won the day. The so called welfare state had taken root and saw no danger in throwing a few crumbs to the workers. Even the Peels and Owens were great Industrialists, but they were the wise bourgeoisie, had read the works of Bentham, and saw imminent chaos in Industry if no reform was immediately effected.

On the other hand, the government of the day could not refuse to make concessions. The workers compelled the government to pass the new factory law by way of strikes, and breakage of machinery etc. It can be seen that the passing of the Acts was a hot war between that progressive faction of the bourgeoisie and the conservative reactionary one in the two 'great' English Parliaments.

2:5 Industry and Factory law in Kenya: a historical outlook.

Before colonialism, we had communalism as the mode of production in Kenya; with common ownership of the means of production, the main one of which was land. There was small scale handicraft production.

With the advent of colonialism the communal type of production was shattered by the agents of western capitalism. Pre-capitalist craft production of textiles and pottery was wiped out by competition of British Industrial goods. During the early period of colonialism, there was no attempt to develop the Industrial sector in Kenya. Nicola Swainson clearly observes:

The first stage of British colonialism in East Africa from the 1890's was concerned with the extraction of raw materials and foodstuffs. The imperial interest in primary production was accompanied by an assumption that the colonial territories would provide "captive markets" for the products of British Industry. It is not surprising that the colonial office was indifferent and often hostile to colonial attempts to develop the manufacturing Industry. ... Clearly, the colonial territories were considered as markets for British Industrial goods and the development of colonial manufacture represented a threat to British products in the home market.¹⁷

After the second world war, the new era was marked by multilateralism under the U.S. hegemony. Multi-National corporations became the principle forms of organisation for large scale capital. There was need to form subsidiaries in the whole world and thereby intensify exploitation of the world market. Kenya was no exception to this process. We therefore find that after 1945, the process of Industrialisation was speeded up with the increased penetration of Finance Capital. Most of this was from Britain. The colonial state was a mere extension of the motherland, creating the proper conditions for exploitation. In this respect, Industry was allowed to develop in Kenya, which itself consequently led to the under-development of Kenya in that profits were appropriated by the multinationals and repatriated to the motherland. Investment in Industry after 1945 was

now encouraged by the Imperialist government. The colonial state had more than a cursory interest in ensuring that Industry was managed in the best interests of the empire, for that was the very reason of its existence. Because of multilateral imperialism, British capital in foreign lands faced stiff competition and hence many British Industrial firms had to move to those areas. Indeed, Lenin had predicted that International capital has not hesitated to settle within the tariff wall and establish itself on foreign soil.¹⁸ This change was therefore also occasioned by the need to by-pass the tariff walls that had been erected after the Imperialist war in order to protect home Industry. It was also a phenomenon reflected in British Imperialist aims in the developing countries. Agricultural production had been set in motion by the export of capital to build the infrastructure and to initiate commodity production for the benefit of British Industries at home. No natural capitalist development was taking place in the colonies. It was being imposed on the pre-colonial communal mode of production. So no Industry emerged to absorb the surplus capital generated and expropriated from the peasantry, as happened in Europe. In Kenya, the Imperialist monopolies aimed at a certain production pattern which helped the artificial prolongation of moribund capitalism at home. This was the essence of Imperialism. At a later stage, the crisis brought about by the monopolistic competition was to compel certain monopolies to engage in import - substitution manufacturing. And it did. But even here such industrialisation was itself a product of parasitic and moribund monopoly capitalism. So that by 1950 when the present Factories Act was passed, industrialisation in Kenya had reached high intensity.

The first legislation concerned with Factories was the Boilers, Prime Movers and Machinery ordinance in 1917¹⁹. This had 17 sections and dealt with steam boilers, valves, conditions of prime movers, examination of prime movers by Inspectors, and prohibition by Inspector of use of steam boilers.

Prime movers, steam boilers and machinery were to have certificates. The Governor in ^ucouncil could refuse, revoke or suspend the certificate.

Hoists, teagles and fly wheels were to be securely fenced including all dangerous parts of machinery. The Governor was to appoint Inspectors, who were given wide powers. Penalty for non compliance was 1500 rupees.

This ordinance could not be enforced because of lack of qualified officers who could put it into operation.

The second and final legislation was the present Factories Act (Cap 514) which was passed in 1950 and brought into operation in 1951. What were the events leading to the passing of this important legislation? This must be seen in the light of workers' struggles from the 1930 - to the 1950's in Kenya²⁰. In the early stages, we see the workers struggling for the colonial government to recognise their organisation through trade unions. The government was forced, through strikes and agitation, to recognise them.

In 1935, the Labour Trade Union of Kenya was formed, whose aims were, inter alia, "to struggle for improvement of the economic conditions of the workers and promote their interests and welfare." It also provided that the employer pay medical expenses for accidents occurring while on duty. If the accident be so severe that the worker is rendered unfit for life or results in his death, then he or his family should be given compensation by the employers. These are some of the demands that we find incorporated in the Factories Act.

On 10th August 1935, a meeting of workers in Nairobi resolved that "the meeting strongly appeals to all workers of Kenya that for the sake of their health, they should unite and struggle for the demand"...²²

In 1936, 1937, 1938, 1939, strikes spread throughout Kenya whereby the workers demanded increase in wages, shortening of the working day and prohibition of employment of children.

On 11th June 1939, the Labour Trade Union of East Africa sent to the government a memorandum where it claimed that the conditions of the workers were appalling and that "the absence of any proper factory legislation ... has further increased the difficulties for the workers"²³ we now therefore see the workers directly demanding the passing of a law dealing with factories.

After the second imperialist war, the world Federation of Trade Unions passed a Charter providing, inter alia, for the protection of workers in all circumstances of life²⁴. The Employers immediately reacted to this by forming the Colonial Employers Federation whose objectives included "to watch over all legislative measures which may affect the interests of employers and to take such steps as are necessary or expedient with regard thereto." They were therefore completely opposed to the passing of any law that would be in the interests of the workers. In 1947, we had a general strike of about 15,000 workers that immediately spread to Kisumu, Kisii, Maseno, Luanda, Asembo Bay, and other places. There was further political agitation backed by strikes and an intensification in Trade Union activity and workers' struggles in general.

On 1st May 1949, the East African Trade Union Congress was formed and Rule 3(w) of its constitution demanded "the immediate enactment of modern factory laws and strict adherence to them." In its memo of 29/11/1949, it pointed out that a Factories Bill had been circulated to various chambers of commerce for study and comments but none of the unions had been consulted. It demanded copies of the Bill to be sent to it as well as the registered unions for their consideration. It is

doubtful whether the government ever did this.

The move to pass a factory law was started in 1947 with the help of a factory Inspector from the United Kingdom. After drafting the Bill "in consultation with persons who are likely to be affected by the matter" (namely the Industrialists and capitalists but not the workers,) it was laid before Parliament for debate.

The Bill was supported unanimously by the House, including "organised commerce and industry." This is not surprising as we point out later the proper role of this law in our critique.

The then Labor Commission, Mr. Hyde Clarke explained it thus:

The Bill does not do more than set up standards which are expected and known by Industrialists in most parts of the world, standards which I don't, for a moment, expect we will be able to achieve quickly; but it does set up standards and people building factories today will, at some time or other, have to meet these requirements. It is at least one of our aims to protect the good employer (note that!) against unfair competition on the part of those who save in production costs by a total disregard of health, safety and welfare of their workers."²⁵

Thus did he mystify the proper reason why the law was introduced as such. We will deal with this in our critique of the Act.

It was pointed out that the adoption of the Bill would "produce a labour code for this colony which will be second to none in the colonial empire."

The Bill was debated on the second reading, sent to a select committee, and passed into law in 1950 and brought into operation on 1st September, 1951.

CHAPTER THREE

THE LEGAL FRAMEWORK

:1 The Scope of the Act.

Under the Act, a "factory" is defined as any premises in which, or within the close or curtilage or precincts of which, persons are employed in manual labour in any process for or incidental to (a) the making of any article or of part of any article, or (b) the altering, repairing, ornamenting, finishing, cleaning or washing, or breaking up or demolition of any article, or (c) the adapting for sale of any article, being premises in which or within the close or curtilage or precincts of which the work is carried on by way of trade or for purposes of gain and to or over which the employer of the persons employed therein has the right of access or control.¹

First of all, a place cannot be a factory unless it is one in which manual labour is performed. What constitutes manual labour was laid down in Hoare & Robert Gree Ltd.² that

"... if the substantial purpose for which the place is used, is the employment of persons in manual labour, then the Act applies on the other hand if the place is only incidentally used for the purposes of manual labour - if for example, the place is a shop and the manual labour is merely incidental to the general business of the shop, then different considerations apply."

S. 5 (1)(a) and (b) are clear and straight forward. What is contraversial is S. 5(1)(c) which talks about the "adapting for sale" of any article. The English courts have held this to mean that something should be done to the article to make it a little different from what it was before.³

Secondly, the manual labour must operate by way of trade or for the purposes of gain. The object of this sub-section was to exempt operations of the government and public authorities which are not for trade or gain.⁴

The definition proceeds from the general to the particular and provides that some premises, whether or not they are factories according to the foregoing definition are to be considered such for the purposes of the Act. Such premises are listed from S. 5(1) C (i) to S. 5(1)(C)(ix).

If an owner or occupier gives permission to two or more persons to carry on work in a place which would constitute the workplace a factory if the workers were in employment of the owner or occupier, it shall be deemed to be a factory and the Act shall apply as if the owner of the place was the owner of the factory and the workers will be treated as if they were his employees.⁵

Premises may be a factory though they are in the open air, and where, within the close or curtilage of a factory, a place is used solely for some purpose other than the processes carried out in the factory, that place shall not be deemed to form part of the factory for the purposes of the Act, but if otherwise it would be a factory, it shall be deemed to be a separate factory.⁶

Part VIII contains provisions for special applications and extensions. Specified provisions of the Act will apply to premises where part of a building is a separate factory. The owner of the building, even if he is not the occupier is responsible for contravention of these provisions.⁷ But he can escape liability if the matters are outside his control. Moreover, the occupier is himself liable for machinery or plant belonging or supplied by him.⁸

Certain specified provisions of the Act shall apply to every dock, wharf, or quay as if it were a factory.⁹ Most of these provisions also apply to the process of loading, unloading or coaling of any ship, and to all machinery of plant used in that process.¹⁰

If steam-boilers are used in premises that do not form a factory or part of a factory, certain specified provisions apply to those premises as if it was a factory.¹¹

Finally, the Minister has power to extend the application of the Act to certain premises by notice in the Gazette.¹²

The Minister also has power to exempt certain factories in cases of emergency.

3:2 General Provisions as to Health.

These are to be found in Part IV of the Act. The general rule is that every factory is to be kept in a clean state and free from effluvia arising from any drain, sanitary convenience or nuisance.¹³ Without prejudice to the generality of this rule, the particular rules for securing cleanliness are subsequently set out. Accumulations of dirt and refuse are to be removed daily from floors, benches, staircases and passages, the floor of every workroom is to be cleaned at least once a week by washing or sweeping. Inside walls, partitions, ceilings, tops of rooms, and all walls, sides and tops of passages and staircases which have a smooth impervious surface must be washed with hot water and soap or cleaned by any other method once in every twelve months.

If they are kept painted with oil paint or varnished, they must be repainted or revarnished at least once in 5 years, and be washed or cleaned once in a year. In other cases, they must be kept white-washed or colourwashed. The Minister has power to vary or exempt these provisions from a factory where he thinks they are not required for the purpose of keeping the factory in a clean state or by reasons of special circumstances are inappropriate or inadequate for keeping the factory in a clean state.¹⁴

A factory must not, while work is carried on, be so overcrowded as to cause risk of injury to the health of the persons employed therein. Without prejudice to this provision, a factory is to be deemed overcrowded if the amount of space is less than three hundred and fifty cubic feet.

In calculating this, space above 14 feet from the floor is not to be considered. Every workroom should not be less than 9 feet in height.¹⁵ Note that the chief inspector has power to issue a certificate exempting a factory from these provisions as regards overcrowding.

Workrooms must be adequately ventilated by securing the circulation of fresh air.¹⁶ So if a worker contracts a disease due to lack of adequate ventilation, the employer will be held liable.¹⁷

Sufficient and suitable lighting, whether natural or artificial, must be provided in every part of the factory where people work or pass. Windows used for lighting should be kept clean.¹⁸ If the floor is wet and this wet can be removed by drainage, such drainage must be provided.¹⁹

Sufficient and suitable sanitary conveniences should be provided, maintained, kept clean, lighted and separate for each sex.²⁰

3:3 General Provisions as to Safety.

There are to be found in Part V of the Act comprising of 25 sections which deal with the problem of Industrial accidents arising out of mechanical and other causes. When debating the Factories Bill, it was stated that, and indeed it is, the most important part of the Act.

Every flywheel directly connected to any prime mover²¹ shall be securely fenced whether situated in an engine house or not. The head and tail race of every water wheel and of every water turbine, electric generators, motors and rotary converters, and every flywheel directly connected there to must be securely fenced.²² Transmission machinery must also be fenced unless they are in such position as to be safe as if they were securely fenced.²³ The Act then provides for devices to stop machines driving belts etc.²⁴ These can be done away with by the chief inspector.

The above provisions deal with Prime movers and Transmission machinery. S.23 deals with other machinery and provides that every dangerous

part of any machinery (other than Prime movers and transmission machinery) should be securely fenced unless it is in such position as to be safe as if it was securely fenced. If this can't be done by a fixed guard, then any other device which automatically prevents the operator from coming into contact with that part should be used.

In determining whether any part of a machine is safe by position or construction (so as not to require fencing), account is not to be taken of any act done by any person in contravention of instructions given to him, or of any person making an examination, lubrication or adjustment which must be done while the machine is in motion. In the case of any transmission machinery used in a process which the Inspector has declared that the stopping of the machine would interfere with that process, no account is to be taken of such person carrying out, in conformity with Inspector's directives, any lubrication or any amounting or shipping of belts, provided the person is over 18 years, and is a male, has been appointed by the occupier of the factory, has been trained sufficiently, has been provided with particular equipment and clothing, and there should be a person around to cope with any emergency, and the ladder used should be securely fixed.²⁵

The fencing and other safeguards provided by the employer in conformity with the Act should be of substantial construction and maintained in position while the parts are in motion, except when such parts are exposed for lubrication, examination or adjustment.²⁶ Let us now analyse what these fencing provisions mean in actual fact.

First it should be noted that the words used are "securely fenced", and not "reasonably" or "moderately" fenced. Thus an employer will not escape liability by showing that it was impossible to fence for commercial or any other reasons. In this particular case, the obligation to fence is absolute. Thus in John Sumners, V. Frost²⁷ a worker's hand was cut off by an unguarded wheel. It was held that if the result of a machine being

securely fenced was that it would not remain commercially practicable or mechanically possible, this provided no defence to compliance with the Act. The implication here was that if it is impossible to securely fence the machine, then it must not be used. The test of whether a machine is dangerous and should therefore be securely fenced is that of reasonable foreseeability.

Applying English cases, Sir Alastair Forbes had this to say in Kanji & Kanji:

"... the test of foreseeability applies both to the question whether a particular part of a machine is dangerous, and to whether it is "securely fenced," and in each case, the mere fact that an accident has happened is not conclusive ... The test is objective and the question is whether the employers ought to have reasonably foreseen the danger."²⁸

In this case, it was therefore held that the employer's failure to fence a dangerous machine created danger of an accident and he was therefore liable.

It seems to be the position that the duty to fence does not apply to materials in the machine so that if these materials get ejected and hurt a worker, the employer is not liable.²⁹ There is also some authority to the effect that the Act requires the workman to be fenced but this does not include his tools; so that if a workman's tool gets into contact with a dangerous machine and he is injured, then there is no liability.³⁰ However, a strict interpretation in Kenya should take the opposite view with regard to the fact that the object of the Act is to provide absolute safety for the worker.

It should also be noted that the fencing need not be such as to protect a man determined to come into contact with danger. The words "every dangerous part of any machinery" in S. 23(1) have been interpreted to mean that a machine is dangerous "if it is possible to cause injury to anybody acting in a way in which a human being may be reasonably expected

to act in circumstances which may be reasonably expected to occur."³¹

This includes prudent, alert and skilled workers and also careless and inattentive workers.

Substitutes to fencing dangerous machines will not enable the employer to evade liability.

In the case of machines intended to be driven by mechanical power, every set-screw, bolt, or key, revolving shaft, spindle, wheel or pinion must be sunk, encased or otherwise effectively guarded so as to prevent danger; and all spurs and other toothed or friction gearing which does not require frequent adjustment while in motion must either be safe by position or completely encased. Failure to comply with this is an offence for both the employer, and also a person who sells the machine, or lets it to be sold or let on hire for use in a factory in Kenya.³²

S.27 provides that vessels containing dangerous liquids be securely covered or fenced, and if not practicable, all reasonable steps must be taken to prevent people from falling into the vessel. In addition, a warning notice must be attached.

In the case of self-acting machines, they should not be allowed to traverse within a distance of 18 inches from any fixed structure.³³

Practicable steps should be taken by instructions to make sure employees don't come near it. Inexperienced workers must be trained and supervised first before working on a machine.³⁴

The Act contains elaborate and detailed provisions as regards Hoists, lifts, chains, ropes, lifting tackle, cranes and other lifting machines and due to lack of space, we shall not analyse them here. The reader is therefore referred to the Act.³⁵ Suffice it to say that they should be of good construction with adequate strength and properly maintained. They should be thoroughly examined at least once in 6 months (14 months for cranes and other lifting machines) by a person approved by the Chief Inspector.

Another important provision is that if any person is employed near a wheel-track or an overhead travelling crane in any place where he would be liable to be struck by the crane, effective measures must be taken to ensure that the crane does not approach within 20 feet of that place.³⁶

S.34 deals with floors, steps, passages and gangways which must be of sound construction and properly maintained. The section also provides for a safe means of access to the work place. It should be noted that the duty to provide safe means of access is qualified by the phrases "to every place which any person has at any time to work" and "as far as is reasonably practicable." The section does not provide for removal of substances likely to cause a person to slip. It would therefore appear that if a worker slips on grease on the floor and is hurt, there is no liability because the presence of the grease would not constitute a defect in the floor itself.³⁷ The words "as far as is reasonably practicable" are controversial, and are inserted to give the employer chance to escape liability under the section.

The Act further provides for precautions to be set up in places where dangerous fumes are likely to be present,³⁸ and with respect to explosive or inflammable gas or dust.³⁹

S.37, & 38 deal with construction and maintenance of steam boilers, steam receivers and steam containers. S.39 deals with Air receivers. Precautions against fire dealt with in S.41 and S.42 are also important since fires are not a rare phenomenon in factories. There should be fire extinguishers, inflammable substances must be kept in a fire-resisting store or other safe place, and adequate means of escape in case of fire should be provided. These should be kept free from obstruction. There should be free passage in workrooms for escape in case of fire, all doors must be constructed so as to open outwards, emergency doors must be taken to ensure that workers are familiar with means and routine of escape to be followed in case of fire.

[Note that the provisions regarding fire have been elaborately revised in England by an Act in 1959. This has no equivalent in Kenya and the position still remains as that of 1937 in England.]

The part of the Act dealing with safety ends with provisions giving the magistrate's court power to make orders as regards dangerous conditions, practices, and factories. These orders may prohibit any process that involves risk of injury.

3:4 General Provisions for Welfare.

The sixth part of the Act is concerned with general welfare provisions. An adequate supply of drinking water must be provided and maintained at suitable points conveniently accessible to all employees; alternatively, the water must be contained in suitable vessels and refilled daily.⁴⁰

Clean and convenient suitable washing facilities should be provided. The Chief Inspector has power to exempt from compliance with these provisions. He may also prescribe a standard of adequate and suitable washing facilities.⁴¹

There should be adequate and suitable accommodation for clothing not worn during work hours, and female workers whose work is done standing must be provided with seats to enable them take any advantage of any opportunity for resting which may occur in the course of their employment. A first aid box must be provided and maintained in readily accessible place and where more than 150 persons are employed, an additional box for every 150 persons. The first aid box should be placed under the charge of a responsible person always readily available. If an ambulance room is provided at the factory to ensure immediate treatment of injuries therein, the Chief Inspector may exempt the factory from the requirements laid down in the First Aid provisions.⁴²

3:5 Special Provisions and Rules as regards Health, Safety and Welfare (Part VII).

These provisions stipulate for the removal of dust or fumes where such would be injurious or offensive to the employees. Where there is poisonous substance used so as to give rise to dust or fumes, no meals should be taken in that room. Suitable protecting clothing must be provided where necessary.⁴³

S.55 is one of the most important sections and gives the Minister power to make rules in regard to machinery, plant equipment, appliance, process or description of manual labour, where these are of such a nature to cause risk to bodily injury, or be offensive to employees. Rules so made may prohibit, modify, or limit employment of the workers, prohibit, limit or control the use of any material or process or apply provisions relating to meals, ambulance, first aid, rest-rooms or arrangements for supervision of the workers. The rules may impose duties on owners, employees and other persons as well as on occupiers. Rules so made may apply to all or a class of factories. Where the Minister is satisfied that a dangerous trade is carried on in a factory, he may make rules imposing requirements such as appear to him to be reasonably practicable to secure the safety and health of persons engaged in such trade and may apply such rules to all factories in which such dangerous trade is carried on or to any specified class of such factories. 'Dangerous trade' in this respect means a trade where there is a risk of bodily injury or risk of injury to health of the workers therein.

3:6 The Administration and Enforcement of the Act.

The duty of administering the Act is borne by (a) The Government, (b) the Labour Commissioner, (c) factory Inspectors headed by the Chief Inspector and (d) local authorities.

The occupier of a factory, his agents or servants are required to provide such information an Inspector may require.

A person is deemed to have obstructed an inspector in the execution of his duties if he wilfully delays an inspector, fails to produce any register certificate notice or document, or wilfully withholds any information as to who is the occupier or conceals, prevents, (or attempts to do such) a person from appearing before an Inspector.

The obstruction gives rise to an offence punishable by a fine of not more than Shs. 600/= or three months imprisonment. With regard to the wide powers given to the Inspector, such small penalty neutralises them and can make people with factories evade inspection with impunity. S. 69(1) sets out the powers of the Inspector. He may enter, inspect and examine, by day or night any premises he has reasonable cause to believe to be a factory, provided that whenever it is practicable and will not defeat the object of his inspection, he has to notify the occupier of his arrival. This section gives the Inspector power to pay surprise visits, but after such surprise visit, he has to inform the occupier and labour commissioner why no notification was given.

The Inspector may use the services of a police officer if he has reasonable cause to apprehend any serious obstruction in the execution of his duty. He may require the owner/occupier to produce registers, certificates, notices and other documents kept in pursuance of the Act. He may make such examination and enquiry to ascertain whether the Act is being complied with. He may require any person he finds in a factory to provide such information as to who is the occupier of the factory. He may examine any person he finds in a factory and cause him to sign a declaration of the truth of the matters upon which he has been so examined. But no one may give any evidence tending to incriminate himself.

The Inspector may exercise such other powers as may be necessary for carrying the Act into effect.

The Inspector may also prosecute, conduct, or defend before any magistrate's court any charge, information, complaint or any other proceeding arising under the Act, and even if he is the prosecutor, he can himself give evidence as a witness.⁴⁵

The administration of the Act also covers the power given throughout the Act to the Minister to make rules and regulations; but he must first of all consult with the Labour Board.

Offences and Penalties (Part XI)

A contravention of the Act or of any regulation made under it constitutes an offence for which an occupier or owner is liable. If an employee fails to carry out the duties imposed upon him e.g. wearing protecting clothing, he is guilty of an offence. Where the offence is committed with the consent, connivance or facilitation of any officer of a company, he shall also be guilty of an offence. The general penalty for these offences (unless expressly provided for by particular sections) is a fine not exceeding 600/= or imprisonment for 3 months, and if the contravention continues after conviction, the penalty shall be 100/= for each day.⁴⁶

In addition to the penalty, the court may order the cause of the offence to be remedied within a specified period. S.75 provides that if a person is killed, or dies or suffers bodily injury in consequence of the occupier or owner of a factory having contravened the Act, he shall, without prejudice to other penalties, be liable to a fine of 2,000/= or in default of payment imprisonment for 6 months, and the money may be applied for the benefit of the injured person or his family as the Minister may determine.

For liability under this section, the injury or death must have been caused directly by the contravention, and the occupier/owner shall not be liable to a penalty under this section if a charge against him

under the Act in respect of the act or default which caused the death or injury has been heard and dismissed before the death or injury occurred. In this respect, the section contemplates the possibility of a prosecution for contravention of the Act under S.72 followed by a further prosecution under S.75 so that if a worker is injured as a consequence of an unfenced dangerous machine, the prosecution can rest its case both on S.23 (1) and 72 on the one hand for failure to securely fence the machine, and on S.75 for causing bodily injury. This was held to be the law in Bulewezi Plantations V.R. (1962) E.A. 106. A person who forges or gives false information is, without prejudice to any other penalty, guilty of an offence and is liable to a fine of 2000/= or three months' imprisonment.

Where the act in default is an act of an agent, servant, worker or any other person, he shall be guilty of an offence as if he were the owner or occupier. The owner or occupier can, on being charged, give notice to produce the actual offender.

A person found in a factory at any time at which work is going on or machinery in motion is, for the purposes of evidence, to be deemed as employed in the factory until the contrary is proved.

In concluding this chapter, we note down the subsidiary legislation that has been made under the Act.

The Factories (Postponment) Order (G.N.308/1951) sought to specify certain factories which would not be affected by the Act as of 1st September, 1952. It also sought to extend the time at which certain sections of the Act would come into operation.

The Factory (woodworking machinery) Rules (L.N. 431/1959) laid down rules to apply in factories where wood-working machines are worked. In such factories, rules were laid down regarding the fencing of circular saws, maintenance of such wood-working machines and the duties of employees in such factory.

The Factories (examination of Plant) order (G.N. 958/1951) gives rules as to the preparation of steam boilers for examination by the Inspector under S.37 of the Act. It lays out the necessary contents of a report made after such examination. It excludes certain provisions of S.30 relating to hoists and lifts from applying to certain classes of such laid down in the order. It also exempts certain classes of chain and lifting tackle from the requirements of S.31(1)(f). It also sets out types of steam boilers exempted from the requirements of S.37 and 38 of the Act.

The Factories (First Aid) Order (L.N. 666/1963) lays down the standards to which first-aid boxes or cupboards maintained in a factory as per S.50 (1) have to comply with. It provides the type of medicine to be kept in the first aid box or cupboard having regard to the number of employees in the particular factory.

The Factories (Cellulose Solution) Rules (L.N. 231/1957, L.N.87/64) apply to factories in which cellulose solutions are used or stored and provides for the construction of cabinets, spaces and ventilating ducts for such solutions. They provide for precautions to be taken against ignition of such solutions, means of escape in case of fire and disposal of waste material from such solutions. The Factories (Docks) Rules are very much detailed with 69 sections. Suffice it to say that they are related to provisions for safety on board of a ship, condition of lifting machinery, precautions in conducting processes on a ship and general duties as to maintenance and use of safety appliances on such ship.

The Factories (Extension of Application) order (L.N. 405/1957) was made under S.60 by the Minister in exercise of his power to extend certain provisions of the Act to certain premises not being factories or premises to which the Act was intended to apply.

The Factories (Form of Abstract) order L.N. 547/56 lays down the Abstract of the Act which has to be kept posted in prominent positions in every factory especially at Principal entrances. This would appear to be for the purpose of educating the relevant persons as to their duties and obligations under the Act.

The Factories (First Aid) Rules (L.N. 160/77) revokes the Factories (First Aid) order (Supra) and generally increases the quantity, grade and quality of drugs to be available. It also provides for trained personnel to be always available. Rule 5(1) provides that in a factory with between 10 and 50 employees there should be two people trained in first aid and at least one of them shall always be available in the work place during work hours. Where there are between 50 and 100 employees, there should be 3 such persons. Where there are more than 100 workers there should be 3 such personnel plus one additional for each extra hundred employees; and two such trained personnel shall always be available at all times during work-hours.

In a factory with more than 500 workers, there must be a first aid room always open and manned by a trained nurse during work hours. Offences, penalties and legal proceedings relating to these rules are, mutatis mutandi, the same as under the Act.

The Factories (Protection of Eyes) Rules (L.N. 44/1978) apply to all factories and set out the kinds of eye-protection instruments that should be provided to the worker in certain processes specified in schedule I of the Rules. All these are processes that would involve danger to the eyes of a workman.

The Factories (electric power (special) Rules 1979 (Leg. Notice 340/79) were made when it was realised that electricity is being used in factories at a high rate. The rules apply to generation, transformation,

conversion, switching, controlling, distribution and use of electrical energy in any factory to which the Factories Act applies. Conductors should be insulated. Construction of electric gadgets should be such as to prevent danger. There are detailed rules concerning the switchboard and other high-voltage equipments.

CHAPTER FOUR

THE IMPLEMENTATION OF THE LAW

4:1 General Survey of the Condition of the Working Class in Factories.

In this section, we attempt to give a schematic study of the condition of workers in factories¹. It therefore lays no claim as being exhaustive because it is virtually impossible to obtain all facts regarding factory conditions in the whole of Kenya.

In 1951, only four workers had died as a result of industrial accidents². In 1980, there were almost 5,000 industrial accidents in which 255 of them were fatal³. In this regard, Sh.11.8 million was paid in accident compensation. In 1981, there was 4,616 industrial accidents in which 848 workers lost their lives⁴. It should be noted that these figures are in no way accurate because of the scrupulous practice of some employers not to report accidents⁵.

The high increasing rate of industrial accidents and deaths has been blamed on the fact that with the advent of the Industrial revolution in the west, the prevailing view among industrialists was that each workman should look after himself and that if he entered dangerous employment, he accepted its risks. This view was forwarded by Mr. Githenji, Permanent Secretary in the Ministry of Labour, who went on to add that "This theory was exploitative and has no place in modern society"⁶. However, it is our contention that today, capitalism has taken a firm root and the view therefore gains much more strength.

The condition of workers in factories today is alarming. There is little concern for occupational health and safety. A brilliant and thorough research of chemical poisoning has put these facts in the limelight.⁷ It was found out that in local drugs manufacturing plants in Nairobi's industrial area, workers measure and mix chemical powders without

wearing head caps and hand gloves. In a pharmaceutical factory, it was found out that workers handling capsuling machines inhale powders from various compounds because they don't wear nose masks. Workers in photographic laboratories inhaled ammonia in badly ventilated darkrooms. The effects of chemicals on workers are drastic; but it was found out that "few firms take any measures to protect their workers from such hazards."⁸

Participants in the National Environmental Secretariat Seminar on working conditions and the environment held in January 1981 visited various factories in Kenya and found alarming conditions⁹. Coughs, cold and eye irritations were prevalent at a cement factory which had hardly any ventilations. Workers were poorly protected and wore paperbags and other improvised head-covers instead of helmets. Others wore masks on their foreheads instead of over their mouths and noses.

At a battery plant, the seminar participants observed workers handling lead wore short sub-standard gloves. It was reported that a worker who dried electrodes wore a mask on his chin! In a firm using asbestos in the manufacturing process, workers complained of skin and lung problems. Asbestos has been proved to be dangerous because exposure of all types of asbestos might cause asbestosis, a serious lung condition involving scarring which can lead to breathlessness in severe instances, among other lung ailments including lung cancer.

In Kenya, it has been found out that farmers use D.B.C.P. (dibromochloropropane) after having been mixed and prepared in various Kenyan chemical factories.¹⁰ This chemical was banned in the United States in 1977 by the U.S. Environment Protection Agency (E.P.A.). This was because it was found to be a cancer agent and caused sterility and lowered sperm levels among production workers. And yet, it is still in use in Kenya!

In Yala township, the Ulumbi White Sugar factory in March, 1982 was found in dismal conditions.¹¹ It had no first aid boxes, fire extinguishers and water hydrance while transmission machinery was not fenced as required by the law. The owner had failed to provide his employees with protective clothing and appliances like hand gloves, boots, overalls, goggles and gas masks. The only reason given was that the factory had been experiencing financial difficulties since it was set up in 1978. Therefore, the workers' lives had to be sacrificed to the interests of capital!

These are some of the many examples of how factory workers in Kenya are exposed to health and safety hazards in their course of selling their labour power for exploitation.

4:2 A case Study of East African Industries Ltd.

East African Industries (hereinafter reffered to as E.A.I) is a subsidiary of the London based multi-national Unilever.¹² Unilever comprises of some 500 companies spread in 75 countries producing mainly soap, detergents, toileteries, margarine, frozen and convenience foods, vegetables and meat products. To produce these goods, it exploits an arm of 350,000 workers in the 75 countries in which it operates.

In 1930, the Lever Brothers in Britain amalgamated with Van den Berghs and Jurgens of Holland to form Unilever. This was proof of the process of capitalist development whereby the sole motivation of the capitalists to realise and accumulate surplus value and profits inevitably leads to the concentration and centralisation of capital which is but an expression of the fact that there is a tendency for the organic composition of capital to rise. It was proof of the fact that competitive capitalism had given rise to contradictions in the process of bourgeois production which necessarily had to result in the formation of monopolies.¹³ Unilever was

such monopoly aimed at controlling effectively the areas of production in which it was involved.

E.A.I. was established during the second imperialist war by the colonial government to produce cooking fat, insecticides, pottery, caustic soda, ceramics and fabrics. The reason for its establishment was purportedly due to the fact that these products "had been previously imported from Europe (and) under war conditions, shipping had to be reserved for war time purposes, Such as shipping of arms and army personnel."¹⁴ However, as we have already observed, industrialisation in the colonial territories was a move aimed at direct exploitation of the workers in the colonial territories. The establishment of E.A.I. was no exception to this raison d'etre.

At that time, it was then known as Kenya Industrial Management Board (K.I.M.B.O). After the imperialist war, it went into partnership with the Commonwealth Development Corporation (C.D.C.) which had been set up by an Act of British Parliament to help in the process of exploitation through industries in the British Colonies by investing in Commercially viable enterprises.

In 1949, an agreement was signed whereby E.A.I. Ltd. was formed which took over the assets, liabilities and business of KIMBO.

In 1953, Unilever became partners. The company now concentrated on production of edible oils and later introduced other lines such as soaps and detergents. This again reflected the nature of monopoly capital whose tendency has always been specialisation in the exploitation of one field.

In 1977, the C.D.C. sold all its shares to the Kenya Government thus leaving E.A.I. a partnership between Unilever with 55% of the shares, and the government, through the I.C.D.C., which holds 45% of the shares.

The E.A.I. operates in the Industrial Area in Nairobi where it has constructed a factory on land leased to it cheaply by the Government of Kenya. It has installed machinery for producing edible fats, margarine, detergents, toilet soaps, tooth pastes, fruit squashes and personal care products. In this process, it exploits 1500 Kenyan workers who sell their labour power to it and are paid minimum wages in order to realise surplus value. These workers continue eating sukuma wiki without the edible fats of E.A.I. in it. These workers are alienated from the process of production in that they do not own the goods they produce.

The productive forces of E.A.I. are made up of the land on which the factory is built, the raw materials used in production, the machinery, and the workers. The sum total of these, with the exclusion of the workers, constitute the means of production, and are clearly owned by finance capital. The workers are principal actors in the productive process at the factory because without them, the whole production process would come to a standstill. They produce the surplus value in the form of profits, which is appropriated by the owners of the said means of production. This has been clearly shown by one writer:

The ownership of the means of production at the factory is clearly in the hands of finance capital, that is the merger of industrial and bank capital, reflected in E.A.I.'s operation by the participation of Unilever, banks and other financial institutions. This capital also extracts surplus value from the workers at E.A.I. This ownership of means of production is fundamental to these relations established among the people in the production of commodities at the factory.¹⁵

It is only pertinent that we point out that these relations of production at the factory are, in the final analysis, based on the exploitation of wage labour by capital.

With this brief review of the background of the E.A.I., we now turn to examine how these workers who produce the material goods at the factory, are catered for as regards their safety, health and welfare at the place of work with regard to the Factories Act.

The provisions regarding safety at work were found to have been adequately complied with. Mechanical energy in the factory is derived from an 11,000 volt electric generator. It was found that all fly wheels directly connected to the engines are securely fenced and all transmission appliances used to transmit power are also enclosed.

There are many machines in the factory which rotate at a very high speed so as to be dangerous. These can be found especially in the soap-manufacturing sector of the factory. It was observed that they have been fenced by means of fixed guards whereby a hollow concrete or iron structure has been constructed around the machine so that the latter rotates inside the guard. It cannot be in anyway opened and hence, there is no possibility of a worker getting injured by the machine except if he is determined to commit suicide.

There is some other type of fencing other than by use of a fixed guard. Here, a net-like structure has been constructed around the machine which structure can be opened at any time. We were made to understand that this is an automatic system; so that if this structure is opened to such an extent whereby danger of getting injured arises, the rotating machine inside will automatically stop functioning. On closing the fence, the machine resumes rotating. We were therefore satisfied that the fencing of these various machines is of substantial construction and has been properly maintained.

At this point, we can only point out that the whole process of deciding which machines should be fenced is a highly complex one and would need a professional Engineer to examine and come out with satisfactory analysis. In this regard, we therefore had a short-coming of the necessary knowledge in our examination of the dangerous machines.

In our tour, however, we observed a certain machine in the soapery which was rotating at a relatively high speed. It was bare and not fenced. We were made to understand that this is so because the worker has to

remove pieces of soap that stick in it. Here, there was complete ignorance of the law. We have seen that the law, as was interpreted in Kimothia v Bhaura,¹⁶ is such that every dangerous machine should be securely fenced. The obligation is absolute. It is submitted that it is no defence that it was impossible to fence for commercial or any other reasons. If it is impossible to securely fence the machine, then it must not be used at all.¹⁷

In the soap manufacturing section, caustic is widely used. The barrels in which it has been mixed with other ingredients were securely covered. However, there was one short-coming in that this being a dangerous liquid, there should have been warning notices attached to these vessels. We did not see any of such notices.

In our tour, we did not come across any hoists, lifts, lifting tackles, cranes or any other lifting machines.

Floors, steps, passages and gangways were found to be of sound construction. It was observed that all stairs are securely fenced on each side so that there is no possibility of a worker falling from them. In this respect, we were satisfied that there is a safe means of access to every workplace in the factory.

The position regarding precautions against fire was found satisfactory. One could not expect otherwise because the owners have a big stake to lose in case of a fire demolishing the factory. In this respect, one can conclude that it is not so much as to protect workers that fire precautions have been adequately taken, rather it is to protect the means of production and hence ensure no loss of capital through fire. The factory has trained a group of men for controlling fires before any fire brigade arrives at the scene. There is a set of alarms at the main entrance with a particular alarm connected to each of the workrooms - soap section, edible fats sections, etc. More to this, the alarms are directly connected to the Nairobi fire station. Fire extinguishers have been installed in all workrooms, and there is a mobile container always stationed near the main gate carrying around

twenty or more fire extinguishers. We observed that there is adequate means of escape by means of fire escape stairways to and from every workroom. Most of the workrooms are so arranged in lines so as to leave a space between which could be used by workers to escape in case of a fire breaking out. Doors to the workrooms open outwards so as to allow easier escape. However, in our interview with some of the workers, we got the impression that nothing has been done to thoroughly make them familiar with the means and routine of escape in case of fire as required by the law.

The position regarding occupational health was not alarming but neither can it be said that it was satisfactory. We found that the gist of the law is complied with. Most of the workroom floors, stairways, passages were adequately cleaned. However, when passing through the soap manufacturing section, it was observed that the floor is very slippery, but some workers were in the process of cleaning it. But we were made to understand that due to the process of manufacture, it is impossible to keep it permanently dry. The Edible Packing Section was found in a clean state apart from one section where the floor is continually wet. Again, we were told that it is virtually impossible to keep it permanently dry. In this regard, the law was not complied with since S.13 (a) of the Act provides that the Minister may exempt the provision if by reasons of special circumstances the factory cannot be kept in a clean state. In this respect, no permission has been sought from the Minister to do this.

There was no case of overcrowding in any of the workrooms, and sufficient ventilation was provided. There was sufficient lighting by way of electricity and we were made to understand that there is an automatic light system whereby if electric power is cut off, this lighting system automatically starts.

In the process of manufacturing soap, a large amount of caustic is used. This produces irritating gases both to the nose and eyes. It was found that the workers are using improvised handkerchiefs to cover their mouths and noses because they have not been provided with anything else. Some of them wore nothing at all!, either nothing had been provided, or they claimed to have been used to the nauseating gas. This showed that there was irresponsibility on the part of the management to educate them. The supervisor in this section himself claimed to have got used to the gases and wore nothing over his nose and mouth. He never knew that he is committing a crime punishable by three-months imprisonment or a fine of Sh.600 or both!

In the section manufacturing OMO, there was a lot of dust which could enter one's eyes. Some "dustmasters" or "unimasters" have been constructed to absorb the dust but either some of them are out of order, or cannot remove all the dust. Furthermore, the rooms where oil for manufacturing "cowboy" and other edible fats/^{is pumped}was found to be so hot so as to be dangerous to the workers operating the pumps.

A welfare block has been constructed where water for drinking is supplied. It contains washing facilities and changing rooms for both men and women. Those of supervisors are separate. Each worker has a very small cupboard for keeping his clothes which is securely locked. However, there is no reason why the cupboards cannot be enlarged. There is a canteen for meals whereby workers eat in shifts. There is a dispensary manned by four trained medical assistants. It was found to be satisfactory. More to this, each workroom contains first aid stretchers. There are clean separate toilets for each sex and most of the workers whose work is done while sitting have been provided with seats. However, there are two issues we would like to point out. First, it was found that the workers' rest-room contained very few wooden benches for resting. This is sharply in contradiction with that of supervisors which has expensive sofas and

even a bar and indoor games! Consequently, we found that the workers, who produce the material wealth of the factory were lying on the empty floor during break time!

We have already seen that the Factories (Form of Abstract) order requires that an Abstract of the Act should be kept posted in prominent positions at principal entrances. In the whole factory, this was not so, not even at the main entrance. This is a fragrant violation of the law. This is an important provision which must be complied with because it is the only way in which workers and managers alike can be made to understand their duties under the law.

In general, the position of occupational health, safety and welfare of workers at E.A.I. is not alarming in comparison with other factories, but there is no reason why the anomalies pointed out above cannot be rectified.

CHAPTER FIVE

THE EFFICACY OF THE ACT

Bourgeois Reformism: A critical critique of the Factories Act and its demystification.

In this section, we develop a critique of the law that will lay bare the Act and strip off its legal cloak to leave it what it is: a specimen of bourgeois reformism. We intend to, as it were, analyse, dissect and lay bare the form of the law to reveal the real substantive relations that lie underneath.

In our introduction, we pointed out the role of welfare reformism and that of legal ideology: to mystify the production relations while at the same time providing a framework through which the same can be maintained and reproduced. State intervention in labour legislation has and will always be to preserve and protect the necessary grounds on which capital can exercise unlimited exploitation. The present bourgeoisie in Kenya is a tool of monopoly capitalism and must therefore serve the latter's interests. Thomas Szentes has put it thus:

State intervention takes place in their (monopolies) interests and for the protection of the whole capitalists system of the economy in order to curb the spontaneous tendencies and effects. This intervention is made necessary by the fact that owing to the mechanism arising from private capitalist basis of the economy, the highly developed productive forces brought about periodically grave crises which threatened the existence of the whole capitalist order ...¹

This is the light in which we must conceptualise the Factories Act which is a product from the archives of bourgeois anachronism. Its pretense to be absolutely for protection of the workers as regards safety, health and welfare is shallow. The major benefit derived out of the Act is by capital and capitalism as a whole. Just as there is the legal fiction in Industrial relations that there is need for preservation of "Industrial peace" - which ultimately turns out to be in the interests of capital, so with the Factories Act. It aims at the preservation of "Industrial limb and life" which must, in the final analysis be in the interests of capital. By ensuring that the

workers do not die through accidents at work, or get ill, etc; the Factories Act thereby makes sure that they are available and fit to provide wage labour. It therefore ensures that the existing production relations are not tampered with by dangers that might be generated by greedy profit-making "Ultra-capitalists."

But there is always a limit for something that does not intend to destroy itself. Taking heed of the sacred mission of the monopolies in Kenya as being for maximisation of profits, the Factories Act had to be careful not to defeat this over-all objective. It had therefore to be half-hearted in order not to negate this capitalist - bourgeois life-blood. The personalities who debated the ordinance in the so called House of Representatives in 1951 were none- other than the representatives of the colonial state, Employers, and therefore of Imperialism and International capitalist

Let us give examples of various provisions of the half-heartedness of the Act. S.5 which defines the meaning of a factory gives a bunch of provisions intended to restrict the application of the Act. A factory could have been simply defined as "any place where machinery is utilised."

The Act is full of those legal fictions derived from English law which fictions are a syphilis that carry into every part of the Act the principle of rottenness. Let us examine these legal fictions.

One of these that runs throughout the whole body of the Act is the expression "practicable steps." The following are the sections where it is provided that 'practicable steps' shall be taken:-

S.36 (1) to prevent explosions, S.36(2) to prevent the spread and effects of such an explosion, S.27(1) to prevent a person from falling into a vessel with dangerous liquid. The same goes for S.37(9), S.46(2) to prevent drinking water from contamination. S.51 provides that all practicable

steps and measures shall be taken to protect employees against inhalation of dust or fumes or other impurities. So in Graham v Co-operative wholesale society,² it was held that the obligation here was to take all reasonable steps to prevent accumulation dust, yet not to prevent that dust from settling on the plaintiff. So, if all practicable steps are taken and yet an employee gets sick, injured or dies, there would be no liability. The employer would go scot-free.

S. 34(1), as already pointed out, the duty to provide a safe-means of access is qualified by the words "to every place at which any person has at any time to work" and "as far as is reasonably practicable". So in Davies v De Havilland Aircraft Co. (supra), the plaintiff was going to a canteen and slipped on a greasy floor. It was held that there was no liability since he was not going to a place of work.

We have seen that the test of whether a machine is dangerous and should therefore be securely fenced is that of reasonable foreseeability. In English jurisprudence, this is an elusive and vague concept. Why should a worker who is injured be left without a remedy simply because the employer did not foresee? The employer should be liable for all consequences that flow from the use of a dangerous machine, whether foreseeable or not.

S. 34(7) provides that where a person works from a ladder where he is likely to fall, all steps should be taken, "so far as is reasonably practicable" by fencing to ensure his safety.

Finally, S. 34(2) provides that all openings in floors shall be securely fenced, except in so far as the nature of the work renders such fencing impracticable.

In all the provisions outlined above, the safety health and life of the worker is subordinated to the interests of capital and profit-making which are seen as being paramount. Why can't it be provided that if effective steps cannot be taken, then the employer should stop using the process, machine or anything in question?

This is because it would be contrary to the spirit of capitalism. The sections also show that if in such cases, an employee dies or is injured, there is no liability; and yet this would have been caused by his presence in the factory; it would have been caused by capital, whose profits he was furthering. Why then, should the owners of this capital not be held liable, at least to relinquish a little from the profits he helped to make? But such is their greed. They would rather not part with a single coin. And this view is reinforced by the Act, which purports to be in the interests of the workers. Empty gabbage, that is what it is.

Another short coming of the Act is seen in the lacunae and gaps it contains. There are no provisions for the occupier or owner to give information as regards measures taken to provide for safety, health and welfare, there is no provision for periodic medical examination of the workers, there are no provisions restricting pollution, noise, vibrations or excessive heat and finally, as compared with Britain, there have been no amendments to bring the Act into uniformity with new Industrial conditions. The enforcement of the Act also leaves much to be desired. For example, the enforcement institutions are many, sharing various powers. This leads to ineffectiveness. The Minister, chief Inspector, Inspectors are given exempting power throughout the Act as can be seen from sections 22(6), 30(11), 36(4), 47(2), 47(3), and the Proviso to S. 14(3). This lays the Act to abuse. It shows that the capitalists are prepared to take back with one hand what they have given with the other. One should of course note that these officers belong to the same class as the Employers and in exercising the power to exempt, will give effect to their class bias.

S. 43 provides that the court's power to make an order as to dangerous conditions is to be discretionary by completely prohibiting, or in part the use of such conditions. The courts being for what they are - mouthpieces

of the ruling class will hesitate to completely prohibit such but might partially do so, hence, the production cycle and process of making of profits is not disturbed.

S. 77 making a worker, servant or agent liable fails to provide for vicarious liability. Hence the employer is not affected although the whole profit-making exercise is in his own interests. There are various other sections which show the deficiencies of the Act, but we shall be content with giving the above few examples.

From what we have analysed in chapter four above, the implementation of the law leaves much to be desired. The little that is given is further weakened by what happens on the ground. We have already observed that most factories fragrantly ignore to implement the law.

On the whole, one can only say that the law is necessarily an instrument for furthering the interests of the ruling class. In this respect, it reflects its class nature. The Factories Act and all such types of law that appear as creating a dislocation within the general pattern of oppressive laws, plus any other new rabbits coming out of the old hats of the agents of imperialism here in Kenya must be seen to be what they really are: camouflaged channels for the extraction of surplus from Kenya and give Imperialism a further lease of life.

5:2 Recommendations for Short-Run Reform.

In our critique of the Act above, we have analysed the shortcomings of the law and laid down what form the law should take. In this part, we intend to point out further lines of reform.

Recently, Dr. Hinsmans, director of the International Register of Potentially Toxic chemicals based in Paris blamed inadequate legislation to ensure industrial safety as the most serious contributing factor to occupational diseases and accidents.³

It is submitted that the Act emphasises visible accidents and covers very little of harmful chemicals, vapours and gases. The relevant section of the law, S. 53 is vague and not specific. It says: "where in any factory workers are employed in any process involving exposure to wet or any other injurious substance, suitable protective clothing and appliances shall be provided and maintained for the use of workers."² There is no reason why such injurious substances should not be listed down.

There should be established an independent agency for dealing with occupational health and safety. The present factory Inspectorate is inadequate. In our interview with the Chief Inspector of Factories, Mr. Kiara, the blame of lack of effective enforcement was laid on lack of manpower and inadequate facilities. For the 6,727 registered factories, there are only 41 inspectors out of which only 25 are active. This, combined with annual leaves, leaves a number of industries uninspected for a long time. There is need for bio-chemists to be employed in order to analyse which gases or chemicals are dangerous to health. Engineers should be employed to see what machines are dangerous so as not to be operated. Industrial hygiene is a complex phenomena that needs a highly trained personnel to analyse. Doctors should be available to see and detect diseases that might have been contracted by workers. Legal experts are needed to see that there is general compliance with the law. Occupational medicine has to be encouraged. There should be a Tripartite committee on the working environment composed of both F.K.E., C.O.T.U. and the government. In a word, the government should provide more finance for all this.

Inspectors should also carry out the role of advisors and not merely supervisors. The criminal sanction should be backed by administrative sanctions. Furthermore, the criminal sanction should be re-examined.⁴

The trivial monetary penalties have little influence upon those set not to observe the law. The penalty should be heavy to quantify the social costs of a transgression.

The inspectorate should have power to notify an occupier of a contravention and demand compliance with the law in a stated time limit. The inspectors should also have power to issue a prohibition notice after the stated deadline. The function of the court would be to re-inforce the prohibition order. If there is imminent danger, the inspector should issue a discontinuance order with immediate effect to remain in force until revoked by the court or until the employer complies with the law. Such devices above should be backed by a heavier sanction than that available for contravention of the substantive offence in question.

Workers' safety committees should be compulsorily set up in every factory with power to inspect the factory. Such committees should have power to sue the employer without being victimised.

A voluntary system should be encouraged. The primary responsibility for doing something lies with those who create the risks and those who work with them. Our present law encourages too much reliance on state regulation and rather too little on personal responsibility. Hence, there is need for legal machinery designed to motivate employers to go beyond the minimum requirements of the law and create a climate of opinion in which safety and health would be seen as a normal business objective. But the basic duty should be strictly enforced.

There is no protection in the law against public hazards such as pollution and noise. However, the Chief Inspector of Factories informed us that Noise and Air Pollution Rules are already been drafted. They should be brought into operation as soon as possible and in future, the total industrial environment should be encompassed by the new legislative framework.

Furthermore, any Industrial concern must indicate what it is going to do about its employees as regards safety, health and welfare. This should be done every six months.

Lastly, the government should foster close co-operation with the International labour organisation and obtain experts from it who could help in pointing out and solving the problems of industrial safety, health and welfare.

We are convinced that at least in the short run, the implementation of the above should alleviate and improve the case of the workers in factories. However, the workers should not expect these reforms to be given on a silver plate. They must struggle for them, while at the same time keeping in sight the overall objective and goal, which is the class struggle aimed at the economic emancipation of the whole proletariat as a class.

:3 Conclusions: Towards a General Agreement for Revolutionary Transformation.

The sum total observation from our analysis has been that the case for the workers in factories is a crucial one that has been consistently neglected by the powers that be. We observed that the workers through production of material wealth generate the material basis of life. The international bourgeoisie through their local compradors and agents exploit factory workers while negating the latter's safety, health and welfare. In this respect, we observed that the role of law has been to enhance the interests of the ruling class while at the same time giving concessions, which concessions, in the final analysis turn out to be to the advantage of the capitalists and their class as a whole. The oblique picture of occupational safety, health and welfare has been seen as an effect of capitalism as a mode of production. The history of the rise of Industry both in England and Kenya was seen as revolutionising production and exploiting workers mercilessly. The passing of the Factory Acts in both countries was a result of workers' struggles in the face of stiff opposition

from reactionary capitalists. Furthermore, we have seen that the law in Kenya is bogged down with reformism and restrictiveness. This is because the capitalists would be committing suicide if it was made perfect. Our investigations in Chapter four further showed that the little that is given to the workers' case by the law is fraglantly violated.

The solutions suggested above in our recommendations are not sufficient. A solution is not the change of laws per se, laws are themselves a reflection of the mode of production. It is submitted that any valid discussion of legal reforms in Kenya must as of necessity analyse the mode of production. The analysis will obviously wind on the recognition of the struggle between the oppressed and the oppressors.

The factory workers in Kenya are ^{none}~~more~~ other than the foremost representatives of the exploited population. Their position in the general system of capitalist relations makes them the sole fighters for the emancipation of the working class, for only on the higher stage of development of capitalism, large scale machine industry, creates the material conditions and social forces necessary for this struggle.

.In this respect, we do not underplay the struggle for improvement of the workers' conditions of employment. This struggle must, however, be regarded as a component part of the single revolutionary movement of the working class for democracy and socialism. At the first stage, the struggle for improvement of conditions of employment is alone capable of rousing the most backward strata of the exploited masses. However, this struggle itself is not capable of doing away with capitalist rule and bringing victory to the proletariat. We have seen that the general welfare of factory workers and the proletariat as a whole cannot be solved by reform of the law. As it were,

... the first step in the revolution by the working class is to raise the proletariat to the position of the ruling class, to win the battle of democracy.

The sacred mission of the working class should be and is the emancipation of the whole proletariat as a class. In Kenya today, this can only come about through the National Democratic Revolution.

Our thesis is that Kenya is a neo-colonial state, exploited, dominated and oppressed by imperialism. As such, its principal enemy is imperialism and monopoly capitalism. The task of the working class is therefore to overthrow that system based on such exploitation, domination and national oppression. The neo-colonial state, being the agent of Imperialism must be smashed and liquidated. The workers' final objective should be the seizure of political power and establish the socialist revolution through the dictatorship of the proletariat. Then, and only then, can all workers, including factory workers achieve their final emancipation from the present appalling and oppressive conditions in which they are bogged.

Introduction

FOOT NOTES

1. See Colin Leys: Under development in Kenya: The Political Economy of Neo-colonialism 1964-1971 London: Heineman (1975)
2. Glezerman, G. "Theory of Social Revolution" in Historical Materialism (Progress: Moscow 1968) P. 132
3. See generally Engels F, The Condition of the Working Class in England (Progress: Moscow)
4. Marx, K. "Adress of the Central Committee to the Communist League" quoted from Marx, Engels and Lenin: Historical Materialism (Moscow 1972) P. 113.

CHAPTER ONE

1. J. V. Stalin, Dialectical and Historical Materialism
(Calcutta 1978) P. 19.
2. K. Marx & F. Engels, The German Ideology (Progress) P.11
3. F. Engels, "The part played by labour in the transition from ape to man," in K. Marx and F. Engels,
Selected Works (London 1968) P.354. In this article, Engels analyses the vital role of labour and the production of tools in creating human society. He shows how as a result of a long historical process, the ape was transformed into a qualitatively new being - man.
4. Cap. 514, Laws of Kenya.
5. K. Marx: Capital I. (Moscow) P. 183 - 4
6. K. Marx.:Wages, Price and Profit in Selected Works (London) P. 202
7. For a deeper analysis, see: K. Marx. Capital I (Moscow) P. 186 - 198, E. Mandel Marxist Political Economy
F. Engels, Karl Marx in selected works (London) P. 365.
8. E. Mandel, Marxist Political Economy P.
9. Lenin, Collected Works (Moscow) vol. 29, 421
10. F. Engels, Origin of the Family, Private Property and State
11. K. Marx & F. Engels, German Ideology (New York 1939) P. 48.
12. Marx and Engels, The Manifesto of the Communist Party (London) P.40
13. But this was not so in the whole of pre-colonial Africa. In Uganda where you already had feudal kingdoms like Buganda and Bunyoro-Kitula, there was clearly the ruling class, a landed nobility and common peasants: See Nabudere, D.W, Imperialism and Revolution in Uganda
(Onyx Press and Tanzania Publishing House 1980)
14. K. Nkrumah, Class Struggles in Africa (Pan Africa 1970) P. 13-4

15. See Makhan Singh, History of Kenya's Trade Unions. (EAPH, 1969)
16. Sessional Paper No. 10 of 1965 Para 36.
17. Wanjohi D. Classes in Kenya (B.A. Dissertation, Department of Govt. 1974) P.108
18. Otto Kahn Freud, Labour and the law (London 1977) P.13-14.

The danger begins if "freedom of contract" is taken for a social fact rather than a verbal symbol. As a social fact, that which the law calls "freedom of contract" may in many spheres of life (not only in labour relations) be no more than the freedom to restrict or to give up one's freedom. Conversely to restrain a person's freedom of contract may be necessary to protect his freedom, that is to protect him against oppression which he may otherwise be constrained to impose upon himself through an act of his legally free and socially unfree will."

19. Linguet, Theorie de Lois Civile etc (Londres 1767)

Quoted by K. Marx, Theories of Surplus value (Moscow) P.336-339:

He wrote:-

It is the impossibility of living by any other means that compels our farm labourers to till the soil whose fruits they will not eat and our masons to construct buildings in which they will not live. It is want that drags them to those markets where they await masters who will do them kindness of buying them. It is want that compels them to go down their knee to the rich man in order to get permission to enrich him All that the (slaves) have gained is to be at every moment tormented by the fear of death from hunger, a calamity that at least never visited their bredecessors He is, free you say. Ah! That is his misfortune. He is bound to no one; but also no one is

bound to him. The meagre wage that he is promised is hardly equal to the price of his subsistence for the day which he gives in exchange When he has finished (working) he is dismissed as he was taken on without any concern as to whether the 20 or 30 sons that he has just earned for a hard day's labour will be enough to keep him if he finds no work the following day Wealth has to stamp on the ground and from it emerge legions of hard working men who contend among themselves for the honour of being at its disposal They must therefore find someone to hire them or die of hunger. Is that to be free? (emphasis mine)

20. W. Mutunga: "Kenya: Contract law and society - A study of Rivatex's Investment and Management agreements" (University of Nairobi, 1979) P. 7-8 (mimeo).
21. Botchwey Kwesi, "The Nature and Function of law in the development of social formation: appearance and reality" (1975) 8 EALR 215 at 227.

1. D. W. Nabudere, op cit. P.11
2. K. Marx Capital, Vol I (Moscow) P.368.
3. F. Engels, The condition of the working class in England
(Progress 1973) P.44.
4. ibid. P. 45.
5. ibid.
6. K. Marx Capital Vol. I (Moscow) P. 404.
7. 42 George III C 73
8. See Hammond, J.L. The Town Labourer 1760 - 1832, Longman, 1920
9. ibid. P. 151.
10. ibid. P. 168.
11. 59 George III C 60
12. Hammond, op cit P. 169.
13. Cooper, W.M. , & Wood J.C., Outlines of Industrial Law
(Butterworths 1962) P. 177.
14. 41 & 42, Vict. C 16.
15. Cooper & Wood, op cit P. 179.
16. See Holdsworth, A History of English Law (London 1965) Vol. XV P. 14-18.
17. Swainson, N., The Development of Corporate Capitalism in Kenya 1918-1977
(Heinemann 1980) P.26.
18. V.I Lenin, The development of Capitalism in Russia,
(Progress Publishers 4th ed. 1974) P. 493.
19. Ord. No. XI of 1917.
20. See Makhan Singh; History of Kenyas Trade Unions (E.A.P.H. 1969)
21. ibid. P. 51.
22. ibid. P. 53.
23. ibid. P. 102.
24. East Africa Standard 22nd November, 1945.
25. P.38. Factories Bill, 2nd reading, "Legislative Council Debates"
2nd series Vol. 37 1950 at P.38.
26. ibid. P. 43.

CHAPTER 3

1. Factories Act S.5(1)
2. (1907) 2 KB 315, at 320
3. Groove (Dudley Revenue Officer) v Lloyd's British Testing Co. Ltd.
(1931) AC 450, 467.
4. See Weston v London City Council 1941 1 KB 608, at 612-3
5. S. 5(3)
6. S. 5(6) and (5)
7. S.57 (1)
8. ibid
9. S.58
10. S.58 (2)(a)
11. S.59 (1)
12. S.60
13. S.13
14. S.13 (a) - (c). Note that damages are recoverable for breach of duty to keep the floor clean where the breach causes illness
Carroll v North British Locomotive Co. (1957) S.L.T. (sh ct) 2.
15. S.14 (1), (2), (3)
16. S.15
17. Nicholson and Others v Atlas Steel Foundry and Engineering Company Ltd.
(1957) 1 ALLER, 776.
18. S.16 (1), (2)
19. S.17
20. S.18
21. "Prime mover" means every engine, motor or other appliance which provides mechanical energy derived from steam, water, wind, electricity, the combustion of fuel, or other source (S.6).
22. S.21 (1), (2) (3)
23. S.22 (1)
24. S.22 (2) - (6)
25. S.24

CHAPTER 3 (CONT'D)

26. S.25
27. 1955 AC 740
28. Kanji v Kanji (1961) EA 411, 418
29. Nicholls v F. Austin (Leyton) Ltd. (1948) AC 477.
30. Sparrow v Fairey Aviation Co. (1961) All ER 869.
31. Walkerv Bletchley (1937) 1 All ER. P.175 - quoted with approval in Kanji and Kanji U.K. at 412.
32. S.26 (1) (2)
33. S.28
34. S.29
35. S.30 - 33
36. S.32(7)
37. This was actually held so in Latimer v AEC Ltd. 1952 28 B 701 and Davies v De Havilland Aircraft Co. Ltd. 1951 K B 50. But this defect was amended in Britain in 1959.
38. S.35
39. S.36
40. S.46
41. S.47
42. S.48-50
43. S.51-54
44. S.69 (4)
45. S.70
46. S.73

CHAPTER FOUR

FOOT NOTES

1. See Situma "Legislative Protection of Industry," (LL.M Thesis, UON 1982)
2. Factories Bill, 2nd reading "Legislative Council Debates" 2nd series Vol.37, 1950.
3. Daily Nation July, 14th 1981
4. Ibid June 12th 1982
5. ibid. Mr. Githenji, Permanent Secretary in the Ministry of Labour admitted that the actual figures could be higher.
6. Per Mr. Githenji, ibid.
7. Dorothy K. Munyakho "Chemical Poisoning: Workers' lives in danger" Sunday Nation, July 4th 1982.
8. ibid.
9. Post-visit Report of the National Environmental Secretariat Seminar on Working Conditions. I.D.S. January 1981.
10. Daily Nation July 4th 1982
11. ibid April 10th 1982
12. See J.K. Choge:"Law and Foreign Investment in Kenya: A case Study of E.A.I." an unpublished LL.B dissertation, U.O.N. 1981.
13. See Lenin: Imperialism, the Highest Stage of Capitalism (Progress, Moscow), D.W. Nabudere The Political Economy of Imperialism (Supra)
14. Standard March 30th 1978
15. Willy Mutunga;"Kenya: The Rents Acts and Society" (an unpublished manuscript, U.O. 1982).
16. (1970) E.A. 408
17. ibid P.410.

CHAPTER FIVE

1. Thomas Szentes; "Status quo and Socialism" (mimeo) University of Dar es Salaam; quoted by W. Mutunga "The dymystification of the Hire Purchase Act" (1975) E.A.L.R.
2. (1957) 1 All E.R., 654.
3. Daily Nation July 4th 1982
4. The Chief Inspector made us believe that there is already a draft ammendment bringing the fine of the employer up to Shs.20,000 and that of a worker who contravenes the law from Shs.600 to Shs. 1000.
5. Marx and Engels, Communist Manifesto (Progress Moscow, 1971) P.58.