Neutral Citation Number: [2018] EWHC 853 (QB)

Case No: HQ13X02162

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/04/2018

Before:

MR JUSTICE STEWART

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Between :

Kimathi & ors	**Claimants**
- and -	
The Foreign and Commonwealth Office	**Defendant**

- -
- -

Simon Myerson QC & Sophie Mitchell (instructed by **Tandem Law (Lead Solicitors)**) for the **Claimants**
Niazi Fetto, Mathew Gullick, Simon Murray & Stephen Kosmin (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 10 & 11 April 2018

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Judgment Approved

Mr Justice Stewart:

Introduction

1. This judgment follows the filing of skeleton arguments, evidence and schedules by both parties, and an oral hearing on 10 April 2018 subsequent to my ruling handed down on 20 March 2018 – [2018] EWHC 605 (QB). That judgment sets the background to this one and I do not repeat it. The issue I have to determine is that set out at paragraph 5 namely:

> "5. A substantial issue remains on the documents. This is that the Defendant objects to the Claimants relying, in the Test Case submissions, on documents which it alleges contradict the pleaded case in the Individual Particulars of Claim. Some, but not all, of these documents are said to be in conflict with judgment(s) of the Court in 2017, refusing applications by the Claimants to amend the IPOCs (Individual Particulars of Claim."

There are, however, other objections with which I have to deal, for example that documents are inadmissible as a matter of law to support the submissions being made.

In the judgment I determined that the Claimants were in breach of the Orders of 31 March 2017 and 30 June 2017 and thus needed relief from sanctions under CPR rule 3.9.

2. I now have a further witness statement from Steven Martin dated 20 March 2018 and, on behalf of the Defendant, a further witness statement from Ruth Bradbury dated 23 March 2018. In addition she has revised her previous witness statement dated 7 March 2018.

Relief from Sanctions

3. Rule 3.9 of the Civil Procedure Rules states:

> "**3.9 –** (1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the Court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including the need –
>
> (a) for litigation to be conducted efficiently and at proportionate cost; and
>
> (b) to enforce compliance with rules, practice directions and orders…"

The note at paragraph 3.9.4 of the White Book helpfully summarises the guidance given by the Court of Appeal in Denton v TH White Limited [2014] EWCA Civ.906 [2014] 1 WLR 3926 as follows:

> "…a judge should address an application for relief from sanctions in three stages. The first stage is to identify and assess the seriousness and significance of the "failure to comply with any rule, practice direction or court order" which engages r.3.9(1). If the breach is neither serious nor significant, the Court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate all the circumstances of the case, so as to enable the court to deal justly with the application including r.3.9 (1)(a)(b). The Court also gave guidance as to the importance of penalising parties who unreasonably oppose applications for relief from sanctions."

Mr Martin's 15th Witness Statement

4. The nub of Mr Martin's evidence is in paragraphs 26 and 27 where he says that the Claimants' representatives at no stage believed that the list served for each individual TC comprised the entirety of the evidence in that case. This includes leading counsel as well as the solicitors. They never drew a distinction between the documents adduced and had understood throughout, based on what was said between the parties and in court, that once a document was adduced it was adduced for all purposes. Had the Claimants understood the matter as I have now ruled, Mr Martin says they would without question:

   (a) Have either clarified the position and sought to mitigate "the very considerable extra work required, or listed every document in every list."

   (b) Had the understanding come after June 2017, have applied very much sooner for relief from sanctions and certainly would not have served the final submissions without applying for relief.

5. Mr Martin gives some detail as to why the misunderstanding occurred and it is necessary for me to deal with the particulars to some extent. Of course I accept, and the Defendant does not challenge, that the Claimants made a mistake. It was clear from Mr Myerson Q.C.'s submissions on 16 March 2018 that he had fully believed that the effect of the March and June 2017 Orders was otherwise than I have ruled.

6. Mr Martin refers to the following:

(i) The Claimants never viewed the Orders made in March and June 2017 as excluding from Test Case (TC) submissions any document adduced in evidence. It simply never occurred to the Claimants that documents in the case were to be viewed as separate, with the generic issues separated from the TC issues, and with each TC separated from the others.

- Nevertheless, that is not the effect of the two orders read together, as I have already ruled.

(ii) Mr Martin says that he has been told by Mr Cox Q.C. and Mr Myerson Q.C. that Mr Mansfield Q.C. confirmed to them that documents adduced were adduced for all purposes, and that they approached matters on that express basis.

- When documents were adduced they were adduced for all purposes but the purpose of the March 2017 and June 2017 orders, as properly construed, was to file and serve a list of documents, in respect of each individual TC, which complied with paragraph 3 of the June 2017 Order. This was a list of documents already adduced, so that the Defendant would know in advance the documents relevant to the individual cases. My construction of those orders is that they expressly created a subset of the documents already adduced, so if such adduced documents were not on the list ordered, they could not be relied upon in respect of the individual Test Case submissions.

(iii) Many of Mr Martin's paragraphs rely upon what was said by the Defendant and/or in open court so as to prove that which was accepted, namely how documents became adduced in evidence (see Mr Martin's statement paragraphs 8-13). This does not address the real issue.

(iv) I have read carefully what has been said about a note produced by Mr Mansfield on 15 June 2017, as set out in paragraph 8-13 of Mr Martin's statement, and also what Mr Myerson said to the court on 15 June 2017. None of that is inconsistent with my construction of the two orders in the case. The same goes for the extracts of the discussion in court on 15 June 2017 and 29 June 2017 set out in paragraphs 14-16 of Mr Martin's statement.

(v) Further, reading the evidence, I have no doubt that the Defendant did not appreciate at any stage until recently that the Claimants were labouring under their misinterpretation of the March 2017 and June 2017 Orders.

(vi) At paragraph 19 of Mr Martin's statement he says this:

"Moreover, the parties agreed that the Claimants could respond to the Defendant's submissions by adducing documents in response. The position now taken should logically exclude any such agreement, because if the document is not adduced in the list for a particular TC and used by them, it is regarded as not adduced at all."

Mr Martin refers to recent correspondence saying that the Defendant does not suggest that the Claimants should apply for relief from sanctions in relation to documents if they are properly adduced in that way at that stage, i.e. in response to the Defendant's submissions. I do not understand Mr Martin's points since paragraph 22 of the Order of 31 March 2017 set out the sanction as follows:

> "22……..the Claimants shall not be permitted to rely upon further documents without the permission of the Court save in response to documents adduced by the Defendants."

As the Defendant says: "Cs may accordingly adduce documents in response to those relied on in D's submissions in each TC. Such documents must necessarily be adduced both (a) after D has delivered its submissions, and (b) properly in response, rather than for any other purpose."

It is important to understand that the Defendant presented documents in the summer/autumn of 2017. These were documents across a whole range of issues.

There is nothing 'fundamentally unjust' in this, as Mr Myerson submitted. First, these were documents disclosed well before 2017 and to which both parties had full access. Secondly, the purpose of the Order was for the Defendant to know comprehensively which documents the Claimants relied on in respect of each Test Claimant at a time after their case had been closed, with the paragraph 22 proviso. As Mr Fetto said, the individual Test Cases were not opened by the Claimants, so the lists were their point of stability during June-December 2017.

(vii) The Test Claimants' submissions were served in tranches from the beginning of December 2017 until 26 January 2018. Mr Martin says (paragraphs 20-24) that, from the correspondence between the parties, he did not appreciate until 26 February 2018 that "cross-pollination" was a specific issue. "Cross-pollination" is whether a document listed for one Test Claimant could be used by another Test Claimant who did not list the document. In fact in the letter of 25 January 2018 the Defendant had said "…..the addition of documents not previously listed on TC documents lists served in June 2017, to TC documents lists served in TCs' closing submissions is contrary to Simon Myerson Q.C.'s express assurance in court. The Claimants should have made an application and should have flagged up the position beforehand." Mr Martin says (paragraph 22) "It is clear that I did not understand Ms Bradbury's point to be about cross-pollination or the use of documents which supported so-called inadmissible submissions, but rather about documents not adduced because they may have been disclosed late."

Ms Bradbury's Evidence

7. This review of Ms Bradbury's evidence is limited to the understanding of the parties in relation to what happened, giving rise to the orders of 31 March 2017 and 30 June 2017. I shall deal later with her evidence on the Defendant's prejudice.

8. At paragraphs 49-50 of her second witness statement, Ms Bradbury confirms:

   (a) That so far as the Defendant's legal team were concerned, the Claimants' correspondence and representations to the court in relation to the status and content of TC document lists were consistent with my ruling in the judgment of 20 March 2018.

   (b) That the Defendant's conduct and representations to the Claimants and court were consistent with that.

   (c) That the Defendant was not aware of any misapprehension on the Claimants' part.

   (d) The Defendant's understanding in relation to generic documents is that a document said to be relied upon for a particular topic may also be deployed on another topic, but that is distinct from and does not affect the requirements for listing the documents relied upon in individual Test Cases.

9. I shall not review the whole of the background evidence in Ms Bradbury's statement (which also refers to the sixth statement of Andrew Robertson and to her own first statement), but shall mention some key points demonstrating the Defendant's understanding as set out above:

   - On 31 March 2017 Mr Myerson said to the Court "…We can serve a list of documents in respect of which we will rely insofar as the Test Claimants are concerned by 17 June. That isn't to say that we will plead out every single document we may rely upon….but what we can do at this stage is to identify what those documents are…"

   - On 6 April 2017 in Court:

     "Mr Myerson:…We have agreed that the documents upon which the Claimants rely in respect of individual Test Cases will be provided at an agreed date in June.

     …

     ….That's why we said we would supply all the documents for the Test Claimants by June, so that the Defendant would be able to investigate the documents for themselves from June."

- Hearing 17 May 2017, Mr Mansfield QC Speaking Note:

  "3….

  …...

  ….the Defendant has to know on what documents the Claimants rely. It is not sufficient to say there are 85,000 pages of documents in Volume 32 of the Trial Bundle and we rely on all of them. Not least the Claimants have adduced no witnesses to speak to the generic issues. They seek to prove their cases on generic issues by reliance on documents.

  The same principles apply in the individual test cases."

- On 6 June 2017 the Claimants served lists of Test Case documents which were incomplete and sought a retrospective extension of time for completion of the remainder. In the letter they said "Service of the attached list is without prejudice to the Claimants' ability to rely upon documents that have been adduced generally in the litigation, including those referenced in the opening and supporting schedules, and documents included in bundles served when cross-examining the Defendant's witnesses." On 14 June 2017 the Defendant responded in some detail. They completed the letter by saying "Third, it is also important that the Claimants confirm that the lists served for individual Test Cases are exhaustive, as required by paragraph 21 of the Order of 31 March 2017 and that the Claimants do not intend to rely on any documents for each Test Case beyond those included on the final list for that Test Case as served. We would be grateful for confirmation of this by return." The Claimants responded on the same day saying the "list of documents relevant to the Test Case Claimants" was "the means adopted to ensure you were fully informed about the Test Cases", that "the lists served complied with the agreement and they are the final lists…"

- As to Mr Mansfield QC's Speaking Note for 15 June 2017, Ms Bradbury:

  (i) Refers to paragraph 24 of the Speaking Note which says "It is also important that Cs confirm that the lists served for individual TCs are exhaustive and that Cs do not intend to rely on any documents for each TC beyond those included on the final list for that TC as served."

  (ii) States that she has been informed by Mr Mansfield QC that his understanding at all material times of the evidential status of documents in the generic and Test Cases is reflected in the exchanges in court and the contents of the Defendant's Speaking Notes. His recollection is that he has not represented or agreed anything else in discussions with the Claimants.

10. As to events after service of the Test Case submissions between 1 December 2017 and 26 January 2018, Ms Bradbury says that the Claimants gave no advance or contemporaneous warning of amendments of the lists. The Defendant's Amended Individual Defences were filed and served on 17 January 2018 and members of the Defendant's legal team responsible for drafting the Test Case closing submissions were heavily engaged in that drafting process throughout December and January. As soon as resources permitted, the Defendant carefully analysed the new lists and then wrote to the Claimants on 25 January 2018. I have already quoted from this letter and Mr Martin's understanding of it.

11. Apart from the matters I have summarised above, the Defendant makes the following points:

    (i) Mr Myerson's skeleton (paragraph 2) says that the Claimants conclude "that TC lists were to be confined to documents not already adduced…". In fact the lists served in June 2017 contained over 200 documents which had already been adduced in opening, plus further documents adduced in cross-examination of the Defendant's witnesses.

    (ii) The Claimants listed identical documents in different lists. That implied to the Defendant a correct understanding by the Claimants of the March and June 2017 Orders.

    (iii) Mr Martin does not deal with either the 14 June 2017 correspondence or what Mr Myerson QC said on 7 November 2017, namely "The position that pertains is that, by two orders of the court, we have been asked to file and serve the list of documents on which we rely, which we have done, and we've identified in the case of each document the Test Claimant whose case relies upon it."

Documents in Cross-Examination Bundles for Defendant's Witnesses

12. Apart from Mr Willoughby Thompson who was interposed during the Claimants' opening in March 2017, cross-examination of the Defendant's witnesses began on 2 May 2017 and concluded on 14 June 2017. These were the witnesses of fact, not the Defendant's procedural witnesses. The Claimants produced bundles of documents for cross-examination of those witnesses of fact. There was correspondence between the parties in May/June 2017. A draft order was filed on 31 May 2017 and paragraphs 11-14 became incorporated with the same paragraph numbers in the Order of 30 June 2017. In short:

    (a) Documents actually put to a witness were to be considered adduced.

    (b) Any document not put to a witness – the Claimants had to inform the Defendant either:

(i) that it is none the less relevant and relied upon because it goes to a particular aspect of that witness' evidence, which shall be identified, and why the document was said to be relevant to that witness. The Defendant could then object but, if it did not do so, the document was deemed to be adduced. Or

(ii) That it is not relevant to that witness' evidence and is not relied upon save as in so far as it has already otherwise been adduced.

13. Ms Bradbury further deals with this matter in paragraphs 27-33 of her second witness statement. In summary:

- Documents in the cross-examination bundles had either already been adduced during the Claimants' Opening or were adduced for the first time by being put to a witness or by the process I have just set out above. Some documents were not adduced at all.

- The Defendant has reviewed documents from the cross-examination bundles, including those referred to on the spread sheet for TC20. They have done this, in the time available, in respect of three witnesses who include Mr Nazer, Mr Ross and Mr Aspinall. The Claimants included documents adduced for the first time during cross-examination in the Test Case list served in June 2017.

- By reference to the spreadsheet at exhibit REB2-4g, Ms Bradbury says that some, but not all, of the documents adduced for the first time in cross-examination of the Defendant's witnesses appear on the consolidated list. Therefore it appears that the Claimants have selected from those documents those on which they wished to rely for the individual test cases. The spreadsheet shows documents identified by the Defendant which had been adduced for the first time during the cross-examination process for three but not all of the Defendant's witnesses and which appear on the Claimant's consolidated list of Test Case documents and also (using information provided by the Claimants on 30 June 2017) for which particular Test Claimants reliance on those documents were relied upon.

- It appears that where a document is on the consolidated list served on 30 June, the corresponding individual lists have been checked, and that the documents adduced for the first time in cross-examination also appear on those corresponding individual lists.

- From this Ms Bradbury concludes that the individual lists and consolidated list served on 30 June 2017 therefore contained documents which were adduced:

(a) during the Claimants' Opening and before 28 April 2017;

(b) during the cross-examination of the Defendant's witnesses; and

(c) for the first time on the Test Case list.

14. At paragraph 21 Ms Bradbury says that "The Claimants at no time suggested they could rely in specific Test Cases upon documents deployed in cross-examination without placing them on the lists for those cases."

Analysis

15. I accept that the Claimants throughout did not understand the Orders of March 2017 and June 2017 to have the meaning which I have ruled. The Defendant, until recently, also did not know that the Claimants were under that misapprehension.

16. That deals with the factual background in terms of the subjective understanding of the Claimants.

17. At paragraph 28 of his statement Mr Martin says:

> "It must have been clear to the Defendant that we did not share their interpretation of the Order, given that the special damages submissions are based squarely on documents the Defendant adduced, on which it is now said we cannot rely."

As stated, there is nothing I have seen in what was said between the parties or what was said in court which evidences that the Defendant was aware that the Claimants did not share their interpretation of the Order – until recently. This is consistent with Mr Myerson's skeleton para 3 where he says: "Cs do not accuse D of misleading them, or of deliberate silence. They proceed on the basis that the parties simply did not test their assumptions with each other, and that things said which might otherwise have led to the position becoming clear, went unrecognised."

Two Authorities on Rule 3.9 – Denton Stage 2

18. Mr Myerson relied on Singh v Thoree [2015] EWHC 1305 (QB) and Lakatamia Shipping v Nobu Su [2014] EWHC 275 (Comm).

19. As regards Singh, he says that the mistake was worse in that case. The mistake there was a wrong assumption by the Defendant that time for filing his defence re-commenced once an amended claim was served adding an extra Defendant. At para 17, Williams Davis J said:

"17. I am perfectly satisfied that applying the criteria in Denton it is entirely appropriate that the court should exercise its discretion in granting this relief to the Appellant."

It is not possible to discern from the judgment at which stage of the 3 stages in Denton the Appellant succeeded. Therefore, it cannot be taken as authority that the breach was not serious/significant or that, if it was, the mistake was a good reason for the default.

20.1 As regards Lakatamia, Mr Myerson says that, even though the sanction was brought into effect, it is relevant that Cs' list is not illusory.

20.2 In Lakatamia, the relevant order was "unless standard disclosure is provided on or by 17 January 2014 the Defendant's defence and counterclaim shall be struck out." Contrary to the CPR, no time on 17 January 2014 was specified, but Hamblen J relied on the Commercial Court Guide for finding that compliance had to be by 4.30pm, while suggesting that (notwithstanding the Guide) it would be preferable to specify the time in the Order. The Defendants:

(a) offered exchange of lists by email at 4.45 pm on 17 January 2014. and received a holding response from the Claimants. They therefore, having heard no more, sent the list at 5.16pm.

(b) disclosed 8 further documents on 23 January 2014.

20.3 Before turning to Mr Myerson's reliance on the case, the following should be noted:-

- Lakatamia preceded Denton by some four months
- Hamblen J found the breach on 17 January 2014 to be "trivial" and such that it "caused no prejudice to the Claimant." On the facts therefore, the application succeeded on what would now be the less stringent Denton stage 1 criterion.
- As to whether there was a good reason for the default, the judge said (para 29) "…I accept that no good reason for the default has been made out, although there is an understandable explanation for it."

20.4 Hamblen J considered the authorities and found that the 8 documents disclosed on 23 January 2014 did not detract from the real compliance made on 17 January 2014 (paras 20-24). Therefore, there was no breach in this regard. The reliance on this in the present case is not justified. This point in Lakatamia turned on the wording of the Order and the sanction in that case, as explained by authority. A list which was not "illusory" had been exchanged. Therefore, the 8 documents served later did not

form part of the non-compliance. Here the sanction for what is a breach in respect of all documents now in issue is "…the Claimants shall not be permitted to rely upon further documents without the permission of the court save in response to documents adduced evidenced by the Defendants."

Therefore Lakatamia does not assist the Claimants. Indeed, as to whether there is good reason for the default, it is authority against them. I note that there is no material change from Mitchell in the Denton exposition of stage 2 – see Denton paragraphs 29-30. Therefore there is no good reason for the default.

[See also Jamadar v Bradford Teaching Hospitals NHS Foundation Trust [2016] EWCA Civ. 1001 at paragraph 39.]

Denton Stage 1

21. The following are helpful extracts from Denton:

> "25. The first stage is to identify and assess the seriousness or significance of the "failure to comply with any…court order"…….
>
> 26.…the focus of the enquiry at the first stage should not be on whether the breach has been trivial. Rather, it should be on whether the breach has been serious or significant. It was submitted on behalf of the Law Society and Bar Council that the test of triviality should be replaced by the test of immateriality and that an immaterial breach should be defined as one which "neither imperils future hearing dates nor otherwise disrupts the conduct of the litigation". Provided that this is understood as including the effect on litigation generally (and not only on the litigation in which the application is made), there are many circumstances in which materiality in this sense will be the most useful measure of whether a breach has been serious or significant."

22. The Court then went on to deal with other breaches with which were serious though not capable of affecting the efficient progress of litigation, e.g. failure to pay court fees. In the present case I consider that the test of immateriality is the one I should apply. Whether the breach is serious or significant depends here on whether it "imperils future hearing dates (or) otherwise disrupts the conduct of the litigation."

23. I have no doubt that the breach is serious if one looks at the extent of the non-compliance and the time, effort and disruption which would follow if the whole or a substantial number of the documents now sought to be relied on by TC20 and TC34 were permitted. There is then the issue of such documents in the 23 other Test Claimants' claims. The reality is that non-compliance took place in June 2017 i.e. a

number of months ago. The progress of this case is dealt with in my judgment of 28 March 2018 [2018] EWHC 686 (QB) at paragraphs 12-13 and paragraphs 92-94. I deal later with the extent of the breach and the disruption to the case and the extra work the Defendant would have to carry out.

Denton Stage 3

24. Rule 3.9(1) requires that I consider "all the circumstances of the case" and, in so doing, give particular weight to factors (a) and (b) in that rule. The Defendant rightly submits that the March and June 2017 Orders were to achieve proper efficiency and control of litigation, as far as possible, in relation to time and costs. They were also to ensure fairness and justice to both parties, the intention being to allow the Claimants sufficient time to prepare the lists, and for those lists to be informative to the Court and to the Defendant as to the documents relied upon in respect of each TC. It is important to remember that the trial began in May 2016, the TCs' oral evidence was taken in June/July 2016 and the end of the formal presentation of the Claimants' case/evidence was in April 2017.

25. On 14 March 2017, during the discussion about the TC document lists, I commented to the Claimants' leading counsel "In a sense you have had – I know you don't see it this way – a bit of luxury that there has been developments and evolution in your case and changes."

26. The promptness of the application is a relevant circumstance to be weighed in the balance, along with all the other circumstances. The Claimants submit that the application was made promptly because they did not appreciate the problem until very recently. That cannot, as a matter of law be correct, since the promptness consideration must be referring to promptness after the breach, not after the time when the Claimants came to realise that they may be in breach. The latter point can be taken into account to a limited extent as one of all the circumstances, in that this was not a wilful disregard of the court order.

27. Another circumstance to take into account is that the Defendant has agreed to relief in a substantial percentage of documents and restricts its objection to documents which are, they say, inadmissible generally or which contradict the pleaded case of a particular TC.

28. Further points are:

    (a) The Claimants seek to rely upon a number of documents as to credibility only. I deal with these individually, but I take into account that these documents are not as central in terms of proving the causes of action/damages.

    (b) On some occasions the document sought to be relied on is in conflict with TC20's or TC34's pleaded case and/or seems to support dates relevant to amendments which I refused last year. The Claimants seek to use the document for reliability of the Claimants account in the context of the evidence as a whole. I accept that the fact that a document may conflict with the

pleaded case does not, of itself, render it inadmissible. However, the relevance of such documents must be scrutinised carefully. I have done this and my summary reasons are contained in the Schedule.

Effect on Trial/Prejudice to the Defendant

29. I refer in my judgment of 16 March 2018 to the fact that the parties had narrowed the dispute on the documents which had originally been in issue. It was at my suggestion on a date prior to 16 March 2018 that the question of whether there was breach of an order requiring relief from sanctions was raised and then decided to be dealt with preliminarily. This was so that relevant principles would be followed. However the court must take account of the fact that it is not the Defendant's case that they cannot deal with the disputed documents. It is however essential to consider the evidence on the effect on the trial if they were allowed.

30. Mr Myerson suggests that the evidence demonstrates that the issues are not significant in terms of further work or delay and criticises Ms Bradbury's first statement, (the only one he had when he prepared his skeleton) on the basis that the Defendant can absorb documents without major difficulty and, by implication, that her estimates in her first statement were too great.

31. An analysis of Ms Bradbury's evidence is as follows:

    (i) Her estimate is that the additional work for each of the 25 Test Cases would be 5-7 days, resulting in the Defendant being required to carry out 175 days extra work over the next few months whilst it is preparing for its oral Test Case closings, considering the Claimants' replies and preparing its generic closings. She gives examples of the problems the Defendant has encountered in relation to the TC20 and TC34 schedules – problems with which Mr Myerson takes issue. In paragraphs 94-97 of her first statement she says that some documents have been found by counsel not to support the proposition for which they have been cited, whether on the face of the documents, or, more importantly in terms of extra time to respond, when viewed in the context of other documents which have to be researched.

    (ii) In her second statement Ms Bradbury says that at paragraphs 106 and 107 of her first statement she set out five topics relating to TC20 that counsel inform her would require significant research (the list being not exhaustive) and each topic could take between 3 to 5 days. That equates to an estimated 15-25 days for all 5 topics (plus any further time for other topics) if one person were undertaking the research. If several members of the Defendant's legal team take a topic each, the estimated 3-5 days would run concurrently and so it would be possible to complete the additional research in less than the estimated 15-25 days. In order to meet the deadline for service of the closing submissions for TC20 (30 April 2018) this is what the Defendant is doing. Members of the Defendant's counsel team who are familiar with the documents have been taken off other work so as to assist as much as

they can with TC20's closing submissions. In her words it is a case of "all hands to the pump" in order to complete the necessary work. When the work is complete on TC20, those counsel will assist as far as they are able with the research necessary for TC34.

(iii) This, she says, is a short term solution which the Defendant is employing in order to meet the deadline of the Test Case closings of TC20 and TC34. She says it is far from clear how the Defendant will manage the remaining 23 Test Case closings if required to carry out extensive additional research. If the utilisation of the Defendant's counsel resource continues at the current level, the Defendant will have to give careful consideration to the timetable for the remaining Test Case closings that follow TC20 and TC34, or face the prospect that it will not have sufficiently prepared its generic closing submissions by the time the Test Case closing submissions have been completed.

32. The total of 175 days is, Ms Bradbury says, not intended to suggest that the Defendant requires a stay or adjournment of that period in order to be able to conduct the research. The parties and the Court envisaged a rolling schedule for the Defendant's Test Case closings. The additional work would therefore be spread across the whole period of the Test Case closings and would not be required as a single period. Nevertheless it represents a substantial additional amount of work across that period.

33. The work has already started for TC20 and TC34 as a matter of precaution. These are the only Test Claimants whose schedules I can at present consider. I appreciate that they are being used as examples and that there are another 23 Test Claimants. It is difficult fully to estimate in advance the time which will be required and the disruption. However, I accept that if all, or most, documents were permitted there will be substantial extra work for the Defendant and that there is a probability of further disruption.

34. TC20's submission from the Defendant is now due on 30 April 2018. It has been put back 4 weeks by agreement. The Defendant, after considering the matter between counsel, and on instructions, told me that the effective cause of the 4 week extension was to deal with the 21 documents they have agreed to allow in, plus time for dealing with this application and some time built in to take account of the risk that the Claimants may succeed to some extent on the disputed documents. This gives an indication of the extra work and time which would be required if relief was granted in a substantial number of disputed documents. It is also clear that, by agreeing to certain documents, although those documents will not in future disrupt the trial process, the Defendant's preparation has already expanded as a result of the default. The Court must therefore be very cautious in adding to that burden such that the timetable risks real disruption.

35. When considering the schedules and potential prejudice/disruption to the trial:

(i) I have looked at each document individually, and also at the cumulative effect of any granting of relief from sanctions.

(ii) I must be aware that if I grant relief on some documents, but not on others, that substantially increases the risk of 23 further schedules on which to rule i.e. one in respect of each TC. Last year, in respect of an application to amend the Individual Particulars of Claim, I allowed some partial amendments for 4 TCs in the hope/expectation that these were samples – see [2017] EWHC 938 (QB). What in fact happened was there had to be a further 5 days hearing (plus enormous preparation for all) resulting in two lengthy judgments [2017] EWHC 2145 (QB) and [2017] EWHC 2703 (QB) plus over 300 pages of schedules. Any risk of that sort must be avoided or at least reduced so far as possible if this case is not to be disrupted.

The Schedules of Disputed Documents

36. I attach to this judgment the schedules of disputed documents relating to the two TCs (TC20 and TC34) on which the full exercise has been carried out and which are the first two TC final submissions scheduled to be heard after Whitsun. There may have to be further rulings in relation to disputed documents for the other 23 TCs and General Submissions, unless this judgment forms a template for agreement. That process itself may take up the parties' time at a key point in the trial. Further, this dispute so far has, by reason of the Claimants' breach, taken up a number of days of the parties' and the Court's time.

36.1 The parties have agreed, subject to court approval, relief from sanctions in respect of a number of documents. I am satisfied that this is because they will not cause any further substantial disruption to the trial and I therefore approve them. That agreement should not be used against the Defendant by suggesting that the disputed documents will not be disruptive, if allowed.

36.2 The Defendant objects to 35 out of the entries for documents not listed in TC20's list of 56 documents and to 20 of the 37 not on TC34's list. [The number in respect of the other Test Claimants is not yet known by me. I understand that all TCs are in breach.] This, however, sets out the extent of the breach in respect of TCs 20 and 34.

36.3 As the Defendant points out, the Claimants have therefore, by agreement, had relief from sanctions in respect of about 40% of the entries for non-listed documents for those two TCs.

37. In the schedules the Defendant has repeated these first 3 points in respect of each document:

> "(1) Cs have not explained why this document was not on the list in June 2017.
>
> (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. The submission that "This document is already adduced" is not understood as the effect of

the failure to list the document in accordance with the requirements of the March and June Orders is that it has not been adduced for reliance by TC20 in her Closing Submissions.

(3) Cs have not explained why they did not alert D to this document in relation to (TC20) when they became aware that they wished to rely upon it."

38. As to these, following the same numbering:-

(1) There is no detailed explanation on the schedule, but the impression from the evidence is that it did not (fully) become apparent until the submissions were being drafted, after the June 2017 list was served. That said, the Defendant points out that almost all of the documents had been in the Claimants' possession for months, if not years, prior to June 2017. Further, from what Mr Cox QC said – see (3) below – it appears that the process was one of continuous realisation during the summer and autumn of 2017.

(2) (i) As above in relation to the statement that "Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC."

(ii) I accept and deal with each document on the basis that "It is for Cs to persuade the court of the relevance and importance of the document such that the court should permit reliance."

(iii) I also accept that, where the document is said by the Claimants to have been "already adduced", this does not answer the fact that it was not on the June 2017 list for that TC.

(3) This point is correct and I take note of it. It is in "all the circumstances of the case" under Denton stage 3. I therefore weigh it in the balance. In addition is the Defendant's comment that the Claimants have not clearly explained what they thought was the purpose and effect of their listing obligations under the March and June 2017 Orders. Also, some documents were entirely new and yet not even those were communicated as such by the Claimants to the Defendant. Indeed Mr Cox QC said in Court on 27 February 2018 "The way this has come about is that during the latter part of last year, whilst certainly I was in court listening to the Defendant's opening, submissions were being drafted by the juniors in the first instance and further researches were undertaken, further helpful documents emerged, and so we thought the transparent way to deal with this was to put them in the submissions and then make an application." The Defendant's opening commenced in July 2017. I find the suggestion, in respect of these documents, that an application would be made after the submissions had been served to be one which is, to say the least, surprising, particularly when no notice was given to the Defendant.

Summary

39. The schedules set out my rulings applying the law as set out above. In short:-

    (a) Apart from some documents which go to special damages only, 2 documents have been permitted for TC20 and 1 document for TC34.

    (b) These documents have only been permitted because I consider (i) that they have some possible substantial probative value and (ii) they will not cause, individually or cumulatively, substantial disruption to the trial or prejudice to the Defendant.

40. I trust that the remaining TCs' documents will be scrutinised very carefully as a result of this ruling and sensible decisions made. Apart from the Special Damages documents, very few have been permitted. I do not expect there to be contested hearings for each of the 23 remaining individual cases.

TC20 Schedule

Row #	Submission Page (Para)	Document ref (first page)	Page ref	Document name	On another TC June list?	In a bundle?	Adduced elsewhere?	Cs' Submissions	D's Submissions in response	Judge's Comments
1	6 (25)	32-15277	32-15277	Memorandum on the aggregation of the population into villages in rural areas (CYF-0000038150) {C} †		Cs' Opening, Folder 4; Opening para 634 FN 701		This document is already adduced. In the TC Submission it is part of a chronology about villagisation. The issue between the parties is not whether Cs can make a submission about that chronology. Cs' case is that C can make any submssion she can properly justify. Here, D agrees the document at 32-22103a (in the same para), which says that 2/3 of the population are now living in villages. The issue is whether the Court can be referred to a document that suppports C's evidence (§27 of	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. The submission that "This document is already adduced" is not understood as the effect of the failure to list the document in accordance with the requirements of the March and	(1)The Claimants say "the issue is whether the court can be referred to the document that supports C's evidence (paragraph 27 of the submissions)".However paragraph 27 of the submissions refers to TC20 saying she lived in Gikonda for about a year. Gikonda was her home village not part of the villagisation programme. The pleaded case is the date of possible removal from Gikonda was towards the end of 1953. The document is dated 12 April 1954. The document does not therefore support anything in paragraph 27 of the submissions. (2) As to "The document does not conflict with TC20's case. The submissions cite TC20's evidence and this document

								the submission). In Opening it was adduced specifically to show the progress of villagisation (p2798 Consolidated Transcript): moreover, at p2808 of that transcript the issue of 500 people a village was noted and at p2801 the Erskine Appreciation was cited to show the position in July 1954. Cs accordingly submit that the document goes to the same point as its citation in Opening. Cs explain why the document was not on the TC's list in the skeleton argument and Mr Martin's latest witness statement. The document does	June Orders is that it has not been adduced for reliance by TC20 in her Closing Submissions. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an unpleaded allegation as to date (1954), which amendment was expressly refused by the Court in the Liability Amendments Judgment. Having failed in their application for an amendment to plead the date of the index events having been after the 1954 absolute	accords with the pleaded case that TC20 was in a village in 1954" – It does follow from the pleaded case that TC20 was in Thuita village from the end of 1953 for around 2 years. The submissions are under the heading "Gikonda and removal to Thuita". The heading "Thuita Village" begins at paragraph 45 of the submissions. There is nothing in the submission which expressly or impliedly supports the pleaded case. (3) It is further said that any limitation on pleading determines the tort for which TC20 can recover – "not whether her representatives can submit that her evidence is worthy of belief and thus assists the Court to determine the claim." However it is unclear

								not conflict with TC20's case. The submission cites TC20's evidence and this document accords with the pleaded case that TC20 was in a village in 1954. Any limitation on pleading determines the torts for which TC20 can recover - not whether her representatives can submit that her evidence is worthy of belief and thus assists the Court to determine the claim.	time-bar because of, among other reasons, the extraordinary prejudice that would be caused to the D by the need to interrogate documents on that proposed timeline, the Cs seek that the D undertake precisely that work now. (5) Deployment of this document in TC20's case to identify the number, size and population of villages in Nyeri is substantially different to that in the Opening. The Opening provided: "Opening para 634. Beginning in March 1953, villagisation had been introduced as an ad hoc measure in various locations throughout the	from the submission as to how this document assists in showing that TC20's evidence is "worthy of belief". Therefore it is not clear that this document is in conflict with the present pleading; however, it is also not clear that it is relevant to support TC20's case in any substantial way. Therefore the relevance and importance of this document has not been demonstrated and relief from sanctions is not granted in respect of it. (4) No extra work, or cost, or potential disruption to the trial timetable is justified.

									Kikuyu reserves, although it was not until the War Council's decision to mandate forced villagisation in June 1954 that it became a full-scale policy . Footnote 701 KNA, AB 2/53/1, "Memorandum on the aggregation of the population into villages in rural areas", 12th April 1954; and PRO, CO 822/481/1, Press Office, Handout No.28, 19th March 1953. (CYF-0000038150) [32,15277] It is no coincidence that the decision was made by the War Council and no doubt that the issue of where people lived was determined by the security forces view of what was necessary for security."	

									(6) Contrary to Cs' suggestion that the fact of D having agreed document 32-22103a is relevant to the relief from sanctions application, it is not. That document was listed on the TC20 June List and so Cs' reliance on the same was not in breach of the March and June Orders. D's objection to documents in support of Cs' submissions that contradict TC20's pleaded case was limited, for the purposes of this application, to those documents for which Cs require relief from sanctions. However, to the extent that the Cs assert that 32-22103a is equivalent to the	

									document in issue, it suggests that the prejudice to the Cs by the application of the sanction is minimal. (7) Cs' submissions state that "this document accords with the pleaded case that TC20 was in a village in 1954". However, that assertion reflects neither TC20's pleaded case nor her submissions, neither of which are so general. By reason of the Liability Amendments Judgment, TC20's pledaed case is that she was removed from Gikonda to Thuita Village towards the end of 1953. In TC20's Closing Submissions at [26], the document in issue appears under the	

									sub-heading "Gikonda and Removal to Thuita": TC20's submission at [27] that TC20 is therefore not one regarding TC20's presence in "a village", but a specific submission regarding removal to Thuita Village from Gikonda. (8) Contrary to the position stated by Mr Myerson QC in his Skeleton Argument, Cs have not expressly stated in TC20's Closing Submissions that TC20 will not seek to recover in respect of this allegation. This, however, is apparent from Cs' submissions in this schedule.	

2	6 (25)	32-17239	32-17239	Minutes of a Discussion on Village Development in African Reserves [DC/MRU/2/1/4] (SAV-025419) {D}[DE] †		Ds' Response Bundle Vol.2; TC xx bundle A		As above. This is part of the same submission. However, here D has adduced the evidence. Its case must therefore be that, even though the documents D adduced were largely unknown to Cs when the list was prepared, TC20 should have anticipated both that this document was required, and that it needed listing separately.	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an	(1) This document is cited at paragraph 25 of the submissions in support of the proposition "In May 1954, there were 60 villages in progress in the whole of Nyeri, and only 88 planned." The comments in respect of document 1 are repeated. (2) As to the point that the Defendant has adduced this evidence, the Court agrees with the point made by the Defendant. See also the main judgment paragraph 6(vi). The reason for refusal of the relief from sanctions in respect of this document is that contained in paragraph 1 above, however.

									unpleaded allegation as to date (1954), which amendment was expressly refused by the Court in the Liability Amendments Judgment. (5) The document has not been adduced by the Claimant in any other circumstances in these proceedings. (6) The points referred to in respect of Row 1 are repeated, as applicable, in view of the Cs' submission that "this is part of the same submission". (7) The submission as to TC20's "anticipation" of this document is not understood. That Cs did not fully interrogate the disclosure in order to advance a case on the	

									documents by the time of the March and June Orders taking effect is evidence of lack of a 'good reason' for the purposes of the Denton test and so redounds in D's favour. (8) In any event, because the document contradicts TC20's pleaded case, it is denied that it was ever "required". Indeed, TC20 should not be permitted to rely upon it.	

3	7 (27)	32-29907	32-29908	Surrender terms for Mau Mau terrorists [RGT 15 FCO REF FCO 141/6450] (SAV-016173) {D}		Ds' Land Reform Bundle; A_21		The document is cited to support the submission that D knew the impact of its policies, this telegram having been sent to the SoS. That does not contradict anything in TC20's case. Having cited the document, D now seeks to limit the use of it.	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an	(1) This document is cited for the proposition "The Impact of the Administration's Policies was clear: Certainly by February 1955 the distress of family dislocation and its impact on women and children in particular was known to D". (2) This document is still under the heading "Gikonda and Removal to Thuita" which, on the pleaded case, occurred at the end of 1953. (3) It is not clear, in any event, what relevance this has to TC20's case. It cannot support TC20's credibility. It is rather a generic matter. (4) Point (4) in relation to document (1) is repeated.

									unpleaded allegation as to date (1954-1955), which amendment was expressly refused by the Court in the Liability Amendments Judgment. The submission that "The document is cited to support the submission that D knew the impact of its policies, this telegram having been sent to the SoS" ignores the fact that in [27] of TC20's Closing Submissions it is expressly indexed to "February 1955" and the footnote accompanying the submission reaffirms that date: "The information comes from February 1955". (5) The document has not been	

									adduced by the Claimant in any other circumstances in these proceedings. (6) The deployment of the document is novel in TC20' case. TC20 relies on the document to assert D's knowledge of distress and the date of the same. (7) The document is prima facie the subject of a sanction by reason of the Cs' failure to comply with the March and June Orders. The position is compounded by the fact that the document is deployed in support of a submission as to date that contradicts TC20's pleaded case. The suggestion that D is seeking to limit	

									the use of the document is rejected: rather, D is simply submitting that in such circumstances, relief from the sanction in the March and June Orders should not be granted.	

4	8 (33)	32-21190	32-21195	WAR/C/Min.37 War Council Thirty-seventh Meeting [Hanslope; TNA FCO 141/5549] (CYF-0000009976) {C}			On Schedule B of documents not adduced.	This document goes to TC20's evidence about weapons carried by the police. It does not change any date. It supports her evidence. It has not previously been adduced directly, although it is a War Council Minute, so hardly unknown. The document is placed in context within TC20's submissions (see §§32, 35), so D must confront the point in any event.	(1) Cs have not explained why this document was not on list in June 2017. The fact that Cs describe the document as "hardly unknown" in their submissions is such that Cs' own omission to include the document on the June 2017 list and to explain that omission are striking. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not	(1) This document is minute 467 of the War Council's Meeting on 10 August 1954. The War Council had before them a note from the Secretary on the replies received from the State of Emergency Committee on the number of precision weapons held by, and demanded for, non-regular forces, and the system for authorising demands. (2) The Claimants say that the documents have to be placed in context within TC20's submissions and refer to paragraphs 32-35. The context at paragraphs 32-35 (in particular paragraph 34) is in relation to the Home Guard and Tribal Police having rifles after 1954 and during 1956-1957. (3) TC20's submission (paragraph 32) is "TC 20 also describes Kenyan policemen carrying rifles" and

									explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an unpleaded allegation as to date (1954), which amendment was expressly refused by the Court in the Liability Amendments Judgment. In the context of TC20's submissions, it is notable that reliance on this document at [33] falls in the section entitled "Gikonda and Removal to Thuita" (as to which see above), and that the neighbouring submissions at [34] of TC20's	that the Home Guard did not. (4) In submissions it became apparent that the Claimants wished to rely upon this document for two purposes: (i) that the police had precision weapons (ii) that the Home Guard did not. (5) The submission that the Home Guard did not had not been specifically pinpointed before in the application. This illustrates the problem that if the Defendant had agreed to this document on the basis that the police had weapons, there may have been a further dispute as to whether the Claimants could rely upon it for the fact that the Home Guard did not. The Defendant may also wish to investigate other documents as to whether the Home Guard at the time did not have such

									Closing Submissions also refer to matters "after 1954" and "by 1956/1957". (5) To place this document in context will likely require multiple other documents to be presented to the Court: this might be disproportionate in the context of the litigation. (6) The document has not been adduced by the Claimant in any other circumstances in these proceedings. (7) As to the submission that "D must confront the point in any event", this is strong evidence that the prejudice to TC20 of the omission of the document is minimal. In that context, Cs' case	weapons. (6) In any event, the Court has to take account of regional variations and the fact that this document was 8 months after the pleaded case. Further, there can be arguments as to whether it proves at all that the Home Guard did not hold such weapons. There is room for argument (and possible future research) on this point. (7) It seems to the Court that this document causes more problems than it solves. It risks further investigation and argument and its probative value is extremely limited.

									for relief from sanctions is to be rejected.	

5	8 (36)	32-15904	32-15927	Appreciation and Military Plan, and Administrative Plan- 20.06.1954 [VP 1 1] (SAV-019766) {D}		Ds' Response Bundle; Vol. 2, Non-British Security Forces bundle.		This document is one showing the deployment of soldiers. It supports TC20's case that she was arrested by soldiers and does not contradict her pleaded case. The document refers to S Tetu but that district was next door to where TC20 was situated in Nyeri. The assistance it affords the Court in that context is a matter for submssion.	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an	(1) The Claimant's pleaded case is that she was arrested in late 1953. Documents showing "in May/July 1954 soldiers were required in South Tetu…." (submission paragraph 36) would be of little or no relevance to support TC20's case that she was arrested by soldiers about 6 months earlier. (2) As the Claimants accept, the document refers to South Tetu. They then say: "That district was next door to where TC20 was situated in Nyeri." However the Defendant points out TC20's oral evidence was that Gikonda "is not in Nyeri District, it is in Muranga District" and her part 18 response is that Thuita village is also in Muranga. Her pleaded case in Part 18 is that Gikonda was in Muranga at that time. Further, TC20

									unpleaded allegation as to date (1954), which amendment was expressly refused by the Court in the Liability Amendments Judgment. In the context of TC20's submissions, it is notable that reliance on this document at [36] of TC20's Closing Submissions falls in the section entitled "Gikonda and Removal to Thuita" (as to which see above). Contrary to the Cs' submissions, it is denied that a document described in [36] as evidencing "in May - July 1954 soldiers were required in South Tetu to support the administration" provides support for TC20's pleaded case that the	did not identify soldiers and said that njonis were not limited to soldiers. [Even had Gikonda been in Nyeri, the document would be of little, if any, relevance.] (3) On looking at page 19696, if Gikonda was not in Nyeri, the document may be unhelpful to TC20 [see "Forces Available"]. This potentially lends to further investigation. (4) Therefore the relevance and importance of this document is not made out in TC20's case. (5) Point (4) in relation to document (1) is repeated.

									alleged removal from Gikonda to Thuita Village took place in late 1953. (5) The deployment in TC20's case is novel in TC20's case and was not previously adduced by the Claimant. (6) The document is irrelevant as it concerns a different district. Cs' assertion that "TC20 was situated in Nyeri" is contradicted by her pleadings and her evidence and amounts to a very late change of case, which ought to have been the subject of an amendment application. TC20's oral evidence was that Gikonda "is not in Nyeri district, it's in Muranga district." [33-1960] At no stage in re-	

									examination of the Claimant or the Claimant's Closing Submissions was it asserted that the Claimant was wrong or mistaken in her evidence in that regard: the Claimant's case can only be that Gikonda was in Murang'a District (then known as Fort Hall District). TC20 pleaded that Thuita Village is in Kiria-ini, Murang'a (Part 18 Response §166.a.). Accordingly, the Cs' basis for the assertion that a document concerning South Tetu might be relevant is itself erroneous.	

6	8 (36)	32-19690	32-19692	Plan for Nyeri and Nanyuki: Districts for Phase II [Hanslope] (CYF-0000005212) {C} *EST C*	TC 39			This document deals with the deployment of the army in S Tetu. As above.	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an	See comments in relation to document number 5 above.

									unpleaded allegation as to date (1954), which amendment was expressly refused by the Court in the Liability Amendments Judgment. (5) The deployment in TC20's case is novel in TC20's case. The document is not on the updated TC39 list nor referred to in the TC39 Closing Submissions: accordingly, the Cs are incorrect when so asserting. (6) The document is irrelevant as it concerns a different district. D's submissions as to the document at Row 5 above are repeated as applicable. Insofar as Cs' submissions repeat the assertion that "TC20 was	

									situated in Nyeri", that is a very late change of TC20's case, contrary to her evidence and current pleadings. (7) The document does not support the proposition for which it is relied upon in the Closing Submissions. (8) This 16 page document will be disproportionate to place in context.	

7	8 (36)	32-33973	32-33979	Directive Closer Control of the Population [Hanslope] (CYF-0000004968) {C} †		Cs' Opening Folder 8; Opening para 685 FN 775		This document deals with the deployment of the army in S Tetu. As above. The document is referred to at p2912 of the consolidated transcript of Opening. It was referred to fully and at p2923 (having moved on to a different document) Cs said that the security forces watched villages.	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an	(1) In the submission at paragraph 36 this document is referenced for "Even when the administration had taken control of the population in mid 1955, the military was able to give assistance." (2) This document is dated 30 May 1955 and comes from the District Commissioner's office in Nyeri. (3) The points in relation to document 5 above are repeated. (4) As the Defendant says at point (5), deployment of this document in the Opening was in a very different context. In fact although the document as a whole was substantially opened, the page now relied upon (32-33979) was not opened to the Court. (5) (a) This is a document to support

									unpleaded allegation as to date (1954-55), which amendment was expressly refused by the Court in the Liability Amendments Judgment. (5) Deployment of this document in TC20's case is substantially different to that in the Opening, in which it was cited as follows: "Opening para 685. Greet Kershaw, nee Sluiter, compiled the most comprehensive account of life in a loyalist village, Kabare to the south of Mount Kenya, in 1956. In Kabare, the custom of men living in separate huts from women and children conflicted with the policy of each	that even in mid-1955 the military was able to give assistance. On any view this was long after TC20's arrest. (b) The document probably, but not necessarily, supports the submission. However, it leads to potential further investigation by the Defendant. (6) Point 4 in relation to document 1 is repeated.

									family being given only one hut. Virtually all of the men of the village had therefore moved, en masse, to the Home Guard post. Communal labour was required of all those in the village, and involved the use of compulsion by the Provincial Administration's local officers, on occasion without rest, food or water until the work was done Footnote 775 TNA WO 32/21902 C426031 Telegram to the Secretary of State 24th August 1955; AA 45/1A Vol.I SEC/DC/AA.10 District Commissioner's Office Directive 13th May 1955; AA 45/3A Vol. I PEC.51/267 Plan to War Council	

									Secretariat from Provincial Joint Operations 1st July 1955 (CYF-0000000532 [32,37557] / CYF-0000004968 [32,33973] / CYF-0000005978 [32,35853]). Communal labour was therefore understood to be punitive, but for what offence was unclear, as loyalists had to work as part of the communal labour gangs. Restrictive curfews were imposed on all Kabare's residents without distinction between loyalists and those that supported the insurgents. The regulations that required livestock be housed overnight also applied to all Kabare's	

									residents. Those who confessed were forced to work without food and water for a week Footnote AA/45/55/2/6. (CYF-0000006487) [32,40296]." (6) The document concerns a different district. D's submissions as to the document at Row 5 above are repeated, as applicable. Insofar as Cs' submissions repeat the assertion that "TC20 was situated in Nyeri", that is a very late change of TC20's case, contrary to her evidence and current pleadings. (7) This is a 9 page document that will be disproportionate to place in context.	

8	9 (38)	32-31072	32-31072	Letter from Bishop of Mombasa to Chief Native Commissioner [Hanslope] (CYF-0000004789/SAV-006799) {C} Duplicate Reference 32-31074		Ken Aspinall Bundle tab 15		This is already adduced. The document concerns an incident at Limuru. The fact that it comes from the Bishop of Mobassa does not mean it happened in Mombassa. It supports TC20's submission about behaviour by the security forces. It is the behaviour, not the date, that is critical. In any event, the document itself says, "we had hoped this sort of thing had ended".	(1) Cs have not explained why this document was not on list in June 2017. The submission that "[t]his is already adduced" is not understood as the effect of the failure to list the document in accordance with the requirements of the March and June Orders is that it has not been adduced for reliance by TC20 in her Closing Submissions. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court	(1) It is said that this document "supports TC20's submission about behaviour by the security forces." (2) The document refers to a sweep said to have been carried out on 26 February 1955 on a theological college at Limuru. It is said that the DO had ordered that the college should not be included in the sweep but two Africans and a European corporal began a sweep on the students' quarters at the theological college and ordered African women members of the staff and certain students out onto the road. Two non-Kikuyu were said to have been struck across the face and one of them further knocked about with the butt of a rifle in the presence and under the direction of the European corporal. (3) There are

									should permit reliance. D notes that Ken Aspinall was cross-examined on 14 June 2017, so in advance of the date for submission of the TC20 list by the June Order. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an unpleaded allegation as to date (1954-55), which amendment was expressly refused by the Court in the Liability Amendments Judgment. Cs' submissions do	references to other matters but those are wholly non-specific. (4) The document is of little if any relevance to what was happening in TC20's area many miles away. Therefore the very limited (if any) relevance to the documents TC20's submissions does not justify relief from sanctions. (5) Point (4) in relation to document 1 is repeated.

									not say that they are not intending to rely on the document as to date: indeed, Cs' submissions are only that the date is not "critical" and in any event, the document supports a submission as to date. (5) The document is irrelevant by reason of location. The event alleged in the letter took place at Limuru, a location that has no relevance to TC20's pleaded case. The sender and recipient of the letter dated 1 March 1955 were both in Nairobi, which has no relevance to TC20's pleaded case. (6) The document is irrelevant or of minimal weight as to its substance, if true as to its	

									contents. The incidents described in the document only concern students at the Theological College in Limuru and their wives. TC20 is not said to fall within either of those categories. The document is accordingly not supportive of TC20's allegations of her experiences.	

9	11 (43.4)	32-30987	32-30987	Letter from Secretary for African Affairs to the Deputy Governor and Minister for African Affairs [Hanslope] (CYF-0000006264) {C}	TC 16			This document deals with the burning of huts. It supports TC20's evidence that this is what happened to her. The date is not the critical issue: TC20's case is that her hut is burned, whether she can recover for it or not. The evidence supports her. This document was included as adduced in CIV 3 and 4. This is now said to be an error, but it certainly went to Cs' understanding of the position regarding adduced documents.	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an	(1) The relevance of this appears to be that huts were burned and therefore TC20's case that her hut was burned is supported. (2) This goes to credibility only. (3) Other documents show hut burning at different dates, though this document may suggest that it happened contrary to instructions. (4) The relevance and probative value of this document is extremely limited, particularly given the date of the document and the fact that, absent the court finding for the Claimants on s32 <u>and</u> the court ruling against TC20 on the case put forward on the evidence, but in her favour on the case pleaded, the Claimants say they cannot recover for the hut damage. (5) Point (4) in document 1 is

									unpleaded allegation as to date (1954-55), which amendment was expressly refused by the Court in the Liability Amendments Judgment. Cs' submissions do not say that they are not intending to rely on the document as to date: indeed, Cs' submissions are only that the date is not "critical". (5) Deployment in TC20's case is novel. Contrary to the Claimant's assertion, the document is not on the updated document list for TC16 nor referred to in TC16's Closing Submissions. (6) To place this document in context will likely require multiple other documents	repeated.

									to be presented to the Court: this might be disproportionate in the context of the litigation. (7) The Cs’ reference to an alleged error by D in respect of inclusion of the document in CIV 3 and 4 is not understood. (8) Cs’ submissions that “TC20's case is that her hut is burned, whether she can recover for it or not” indicate that TC20 does not anticipate relief in respect of the allegation of the burning of her hut. In that context, it is not apparent to the D why it should incur considerable costs and time responding to a point that does not sound in relief.	

10	11 (43.5)	32-50431	32-50431	Letter to District Commissioner, Fort Hall, from John Waiguru s/o Kamotho, re: Claim that hut and property were destroyed for the purpose of new villages [KNA DC-MUR-3-9-10] (CYF-0000031268) {C}			D: Agree, subject to possible further documents in response	This document is adduced by way of reply to D's submissions. D now seeks to limit its use. It deals with the burning of huts. It supports TC20's evidence that this is what happened to her. The date is not the critical issue: TC20's case is that her hut is burned, whether she can recover for it or not. The evidence supports her.	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. For avoidance of doubt, insofar as Cs submit that "[t]his document	(1) See the comments in relation to document 9 above. (2) However there are additional points here, namely: (a) Although the Claimant says that the date is "not the critical issue", this document is 29 September 1956, therefore nearly 3 years after TC20 says her hut was burned, though it is not clear from the documents when the author says his hut was burned. (b) The compensation application of this document is in relation to location 8 Fort Hall. That is not directly relevant to TC20's case. Therefore the relevance of this document is even less than that of document 9.

									is adduced by way of reply to D's submissions", this document does not respond to a document relied upon by D in its submissions in this test case, which submissions have not yet been delivered. (4) This document is apparently relied upon in support of an unpleaded allegation as to date (1954-55), which amendment was expressly refused by the Court in the Liability Amendments Judgment. Cs' submissions do not say that they are not intending to rely on the document as to date: indeed, Cs' submissions are only that the date is not "critical". (5) The	

									compensation application concerns Location 8 Fort Hall, a place irrelevant to this test case (as to which see row 5 above). (6) Cs’ submissions that “TC20's case is that her hut is burned, whether she can recover for it or not” indicate that TC20 does not anticipate relief in respect of the allegation of the burning of her hut. In that context, it is not apparent to the D why it should incur considerable costs and time responding to a point that does not sound in relief. (7) The document is prima facie the subject of a sanction by reason of the Cs' failure to comply with the March and June	

									Orders. The position is compounded by the fact that the document is deployed in support of a submission as to date that contradicts TC20's pleaded case. The suggestion that D is seeking to limit the use of the document is rejected: rather, D is simply submitting that in such circumstances, relief from the sanction in the March and June Orders should not be granted.	
11	11 (46)	32-15583	32-15583	Paper on Village Settlement for District Team (CYF-0000033834) {C}		Keith Ross Bundle 10		This document has already been adduced. The parties agreed that not every document included in a witness bundle had to be put in order to be	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or	(1) In paragraph 46 of TC20's submission it says: "TC20 can identify the Chief, Peter Njuru, who lived in the post near the village [16-139] as was common [32-15583]." (2) The document

								adduced. This is not the time to go behind that agreement. The document suports TC20's evidence that the Chief she can identify lived near the village. It is unclear whether D actually disputes this. If not, then an admission can be made. The fact that this is a different district is a matter for submission. See also below.	its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. D notes that Keith Ross was cross-examined on 11 May 2017, so in advance of the date for submission of the TC20 list by the June Order. Further, the submission that "[t]his is already adduced" is not understood as the effect of the failure to list the document in accordance with the requirements of the March and June Orders is that it has not been adduced for reliance by TC20 in	relied upon is in relation to Nyeri 22 April 1954 and refers to “villages had tended to be sited so close to KG posts as to mask the field of fire and to render certain posts almost indefensible.” (3) That may have been the case in Nyeri; it may have been common and applicable also in TC20’s district. (4) The Defendant’s position is that it does not know at this distance in time and without documents which specifically support TC20’s case. The Defendant cannot therefore make admissions. (5) In the circumstances the relevance/probative value of this document is extremely limited and there is merit in the Defendant’s submission that this is a document

									her Closing Submissions. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an unpleaded allegation as to date (1954-55), which amendment was expressly refused by the Court in the Liability Amendments Judgment. That the document dated 22 April 1954 is in support of a date inconsistent with the Claimant's pleading must be understood in the context of AIPOC §15 and her	"operating at high levels of generality in respect of ….other locations….to those pleaded by TC20. Investigation of such documents is costly and time consuming." (6) Point (4) in relation to document 1 is repeated.

									Witness Statement [16-138] at §12 alleging that the post was constructed upon TC20's arrival at Thuita Village. TC20's Closing Submissions at [48] provide: "Accordingly [i.e. in view of the documents referred to at, for example, [46] of TC20's Closing Submissions], it seems likely that TC20 arrived in Thuita around the end of 1954 or the beginning of 1955." (5) The deployment of this document in TC20's case is novel, in that it is used to describe the relative locations of villages and posts. The document does not appear to have been put	

									to Keith Ross. (6) This document concerns Nyeri, a different district to that in issue in TC20. This document is therefore of no relevance to the facts of TC20's case. The Cs' assertion that "The fact that this is a different district is a matter for submission" is misguided: TC20 cannot seek to change her case as to that point at this late point in the proceedings (as appears to be anticipated by Cs – see above) absent an amendment. The issues of a change of case and need for an amendment are central to the relief from sanctions application and not a matter to be held over to	

									TC20's Closing Submissions. (7) Cs' submission that D make an admission, in view of this document, as to the location of the chief in TC20's claim to the location of her alleged village is plainly untenable in that context. As with the entirety of TC20's claim, there is no document directly addressing the facts and matters alleged in her pleaded claim: there are only documents operating at high levels of generality in respect of other individuals, other locations or other dates to those pleaded by TC20. Investigation of such documents is costly and time-consuming. (8) Ruth Bradbury's latest	

									witness statement addresses the Cs' erroneous submission that: "This document has already been adduced. The parties agreed that not every document included in a witness bundle had to be put in order to be adduced. This is not the time to go behind that agreement."	
12	11 (47)	32-15578	32-15578-9	Letter from District Commissioner, Nyeri to Office of the District Commissioner, Nyeri: Paper on Village Settlement for District Team [KNA DC/MRU/2/1/4] (CYF-0000020828) {C} †		Cs' Opening Folder 4; Opening para 635 FN 704		This is the same document as above. It was adduced in Opening and is found at p2808 of the Consolidated Transcript. At p2809 the point is expressly made that the village is so close to a KG Post that it masks the field of fire. At p2810 siting is mentioned (no detail). The point	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and	(1) This is the same document as document 11. It is relied upon in paragraph 47 of TC20's submission for the following "In order to ensure close control, posts were situated within 500 yards of the villages in both Nyeri specifically [32-15578-9]…" (2) The points made as to the different area, in relation to

								is far from novel - it is exactly what was said in opening.	importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an unpleaded allegation as to date (1954-55), which amendment was expressly refused by the Court in the Liability Amendments Judgment. TC20's Closing Submissions at [48] provide: "Accordingly [i.e. in view of the documents referred to at, for	document 11 above, apply equally here. (3) As point (5) of the Defendant's submissions states, it was not used in the opening for this purpose. (4) In the oral opening (page 2808-2809 of the consolidated transcript) Mr Myerson QC said: "He is making some of the points he has made earlier, that villages tend to be sited so close they mask the arc of fire, so you can't defend them." That is a reference to 32-15578. There is no reference to 32-15579 that "no settlement will be at greater distance from the KG post than 500 yards." In short, it was never specifically stated that "posts were situated within 500 yards of the villages". (5) However the main point is the same as

									example, [47] of TC20's Closing Submissions], it seems likely that TC20 arrived in Thuita around the end of 1954 or the beginning of 1955." (5) The deployment of this document in TC20's case is novel, in that it is used to describe the relative locations of villages and posts. The Opening provided: "Opening para 635: For the Kikuyu, Embu and Meru, who traditionally lived in small, scattered settlements, villagisation was a considerable disruption to normal life. It forced people into larger villages surrounded by barbed wire and under Home	that referred to in relation to document 11 above. [I do not consider there is much merit in the Defendant's point (8) since that refers to whether the document was correct to say that "once settled in a village, whether voluntary or punitive, the people come to appreciate it."] (6) Point (4) in relation to document 1 is repeated.

									Guard "protection". There was neither consultation, nor preparation: by the end of July 1954, over half those living in South Nyeri, Fort Hall, Embu and Meru were in villages, whereas in Kiambu the figure was only about 2 per cent. The administration was aware that the Kikuyu disliked villagisation and that it was contrary to custom. For example, a memorandum by the District Commissioner Nyeri describes villages as "*alien" and "anti-social*" to Kikuyu. During a meeting at Government house on 1st March 1954 attended by the	

									Secretary of State and the Governor, it was said that villagisation was contrary to Kikuyus custom. The defendant's suggestion that for the Kikuyu there was some equivalence between life before and during villagisation is unsustainable. Footnote 704: Minute of meeting at Government House Nairobi 1/3/54 (CYF-0000018186) [32,14265] 1 KNA DC/MRU/2/1/4, DC Nyeri, "Paper on Village Settlement for District Team", 22 April 1954, 2. (CYF-0000020828,2) [32,15579]" (6) This document concerns Nyeri, a different district to that in issue in TC20. This	

									document is therefore of no relevance to the facts of TC20's case. TC20 cannot seek to change her case as to that point at this late point in the proceedings (as appears to be anticipated by Cs' assertion in their submissions as to the relevance of Nyeri in respect of, for example, Row 5 – see above) absent an amendment. The issues of a change of case and need for an amendment are central to the relief from sanctions application and not a matter to be held over to TC20's Closing Submissions. (7) In Mr Myerson QC's oral opening at p.2808, when referring to this document, he did	

									not assert, as is suggested in [47] of TC20's Closing Submissions, that there was a general policy or rule whereby "Posts were situated within 500 yards of the village in both Nyeri specifically …" Rather, the passage cited as to villages masking the field of fire renders "certain posts almost indefensible. The reference at p.2810 relied on by Cs as to 'siting' was as follows: "Siting of villages, needs of the sublocation". The submission advanced at [47] of TC20's Closing Submission is therefore not "exactly what was said in opening". (8) At p.2809, when noting that the document	

									provided that "[t]here is considerable evidence that once settled in a village, whether voluntary or punitive, the pople [sic] come to appreciate it", Mr Myerson QC cast doubt on the truth of the contents of the document. If Cs' own case is that the truth of the contents of a document on which they rely is doubtful, it can be anticipated that the research required by D to respond to that document will be onerous and require reference to other documents to place it in context.	

13	11 (47)	32-15904	32-15908-11	Appreciation and Military Plan, and Administrative Plan- 20.06.1954 [VP 1 1] (SAV-019766) {D}		Ds' Response Bundle; Vol. 2, Non-British Security Forces bundle tab ____		This document supports the case about the placement of village KG posts. D adduced it. It makes the point that the position in Nyeri was applied throughout Central Province. The part of the document relied upon is specified.	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an	(1) This is in the same paragraph of the submissions, namely paragraph 47. It is in relation to posts being sited within 500 yards of the villages also "throughout Central Province". It covers the period 1 May-31 August 1954. As the Defendant says, it is a plan for the future. It is TC20's pleaded case that she arrived in Thuita village towards the end of 1953. (2) There is some probative value in this document. (3) Although a plan for the future, the document does reflect the fact that 99 KG posts were already sited in Fort Hall (where Thuita was) and that <u>may</u> assist TC20's case that her village was close to the KG post. Paragraph 47 of the submissions would need slight amendment to reflect the admission

									unpleaded allegation as to date (1954-55), which amendment was expressly refused by the Court in the Liability Amendments Judgment. The Cs' submissions do not suggest otherwise. The document cited is a "Plan" and the measures described in the pages cited by TC20 therein appear to be steps to be taken upon that plan being implemented (- they appear under the heading "Measures to be Taken by the Civil Administration to Obtain Stricter Control of the Reserves" [32-15907]). As the document itself concerns the period 1 May 1954 to 31 August 1954	of this document and the refusal of document 12. (4) On that basis and because most other documents have been refused leading to little cumulative effect, this document is permitted.

									[32-15904] and is prospective in its language, it follows that it does not address the period of TC20's arrival at Thuita Village. TC20's Closing Submissions at [48] provide: "Accordingly [i.e. in view of the documents referred to at, for example, [47] of TC20's Closing Submissions], it seems likely that TC20 arrived in Thuita around the end of 1954 or the beginning of 1955." (5) The deployment of this document in TC20's case is novel, in that it is used to describe the relative locations of villages and posts. (6) This is a 31 page document, which will be	

									disproportionate to place in context in all the circumstances. It is no answer that "The part of the document relied upon is specified." As is clear from the analysis at (4) above, to be properly contextualised, further pages of the document must be considered. (8) The document does not support the proposition asserted: it details proposals and recommendations, whereas TC20 deploys it as if those proposals had taken effect. Moreover, on the pages cited, there is no specific reference to posts being situated "within 500 yards of the villages".	

14	12 (50)	32-20470	32-20472	Fort Hall District: Notes for His Excellency Fort Hall D.E.C. Minute 376 List of priorities for the district [Baring Papers Durham] (CYF-0000011827) {C} †		Cs' Opening Folder 6; Opening para 650 FN 728		This document was opened. It supports TC20's account about her interrogation. It is not primarily relevant to date. Priority 5, from which the relevant passage is taken, was cited at p65.	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an	(1) It is correct, as the Defendant says, that priority 5 on page 32-20472 was not referred to in the written opening. However it was referred to, as regards its opening sentence, during the oral opening submissions of the Claimants. The reference is at page 2889 of the consolidated transcript where Mr Myerson said: "priority 5 is: "….the Kikuyu tribe of which of these 20% are strong Mau Mau supporters should not be allowed to return to normal conditions prematurely." This leads into the part of priority 5 now sought to be relied upon. (2) The date of the document is 20 July 1954 and it is a Fort Hall document. On TC20's pleaded case it is some 6 months after she was removed to Thuita and

									unpleaded allegation as to date (1954-55), which amendment was expressly refused by the Court in the Liability Amendments Judgment: TC20's Closing Submissions at [48] provide "[a]ccordingly, it seems likely that TC20 arrived in Thuita around the end of 1954 or the beginning of 1955." That this is TC20's submission is apparent from the use of the word "ongoing" in TC20's Closing Submissions at [50]: "This is consistent with ongoing administration policy …" Cs' submissions do not say that they are not intending to rely on the document as to	interrogated. (See paragraph 20 of the IPOC). I can understand the Claimants' point the document is "not primarily relevant to date." (3) The document is only used to support the submission in the citation from it in paragraph 50 of the submissions i.e. that there was a reason to interrogate people who were villagised. Restricted to that point, I am not persuaded that there will be, on this document alone, substantial further work for the Defendant. Therefore this document is permitted.

									date: indeed, Cs' submissions provide that the document "is not primarily relevant to date". (5) The deployment of this document in TC20's case is novel, in that it is used to describe the 'administration policy to identify adherence to Mau Mau' (i.e. 'Priority 5' in the document). In contrast, the Opening referred to 'Priority 1'. The Opening provided: "Opening para 650. Forced communal labour was not paid, nor was it the type of community assistance that one person or family might give to another in their community prior to the emergency. TC 17 Mwangi	

									Matheri made this distinction very clear in his evidence: “It was part of the punishment because I was not being paid. If you didn’t work, the sub – chief would take you back for detention. It was not voluntary ”. Footnote 727 Day 6, p.62, line 23. [33,1928] The point is illustrated by a report from the Fort Hall Emergency Committee to the Governor, which refers to the “”bad areas still being punished”, and the fact that the amount of soil conservation work being done in the district was several times that done in previous years. Footnote 728 Report from the Fort Hall Emergency	

									Committee to the Governor 20/7/54 (CYF-0000011827) [32,20471] The point is well made by a Rehabilitation Progress Report in 1955, which refers to the hardship of communal labour in the villages and, to a "natural tendency of the villagers to resent the better conditions of feeding pay and recreation of detainees in comparison to their own lot of hardship and unpaid communal labour". It is a measure of the desperate nature of life in the villages that some may have thought it compared unfavourably with detention. Footnote 729 Rehabilitation Progress Report 1955 3/1/56 (CYF-	

									0000041032) [32,43404] This report also refers to the "inordinate delay in allowing detainees … who have co-operated … to climb the ladder to freedom" [32,43407]" (6) To place this document in context will likely require multiple other documents to be presented to the Court: this might be disproportionate in the context of the litigation in respect of a document relied upon at the highest level of generality.	
15	12 (51)	32-40084	32-40093	War Council 139th Meeting [Hanslope; FCO 141/] (CYF-0000010082) {C}			On Schedule B of documents not adduced.	This is a new document, which shows that screening teams had white leaders. The date of the document is not relevant	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became	(1) In paragraph 51 of TC20's submissions she says "A War Council minute identifies the existence of Europeans on screening teams in

								because the document itself shows this is a pre-existing position.	aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an unpleaded allegation as to date (1954-55), which amendment was expressly refused by the Court in the Liability	October 1955 as leaders of the team." She then cites this document, 32-40093. It is a War Council meeting minute 1449 dealing with the question of extra pay for European leaders of tracker teams, with the Deputy Director of Operations considering that "the European leaders of screening teams were more important at the present time, than leaders of tracker teams." (2) The Claimants submit that the date of the document is not relevant "because the document itself shows this is a pre-existing position." As the Defendant points out, TC20's submission refers specifically to "October 1955". However, in any event, the minute does not give any indication as to for how long there had been European

									Amendments Judgment. Cs' assertion that "[t]he date of the document is not relevant because the document itself shows this is a pre-existing position" is in marked contrast with the TC20 Closing Submissions at [51], which refer to the position "in October 1955" and not the position prior to that date (as is now asserted). Cs' modification of the position stated in the TC20 Closing Submissions is good evidence of the risk of serious prejudice to the D if this and other challenged documents are admitted, namely that Cs will seek to deploy them in support of	leaders of screening teams. This is in the context of TC20's pleaded case that she arrived at Thuita around the end of 1953, and her submission at paragraph 48 that "it seemed likely that TC20 arrived in Thuita around the end of 1954 or the beginning of 1955." (3) The Claimants have not shown the alleged importance of this document in relation to TC20's case, given its date of October 1955. It is, at best, very weak evidence of a pre-existing position as at the end of 1954/beginning of 1955 not at the end of 1953. Therefore relief from sanctions is not justified. (4) Point (4) in relation to document 1 is repeated.

									submissions not previously advanced. Cs should not be permitted, in this application for relief from sanctions, to amend the substance of the TC20 Closing Submissions, which at [48] provide: "[a]ccordingly, it seems likely that TC20 arrived in Thuita around the end of 1954 or the beginning of 1955." (5) The deployment of this document in TC20's case is novel. It has not been deployed otherwise in these proceedings.	

16	12 (52.2)	32-35001	32-35001-2	Chief Secretary's Complaints Co-ordinating Committee Meeting [Hanslope] (CYF-0000041906) {C} †		Cs' Opening Folder 8; Opening para 330 FN 338		This document is a CCC minute, which has already been adduced by virtue of Schedule 3 to the Opening. At pp1839-40 of the consolidated Transcript, both incidents are set out. The issue is not different now. Cs' submission has lawys been that the CCC was the tip of the iceberg and TC20's submission is that, even so, violence is well-documented. The document records a shooting in Meru.	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. The submission that the document has "already been adduced" is not understood as the effect of the failure to list the document in accordance with the requirements of the March and June Orders is that it has not been adduced for	(1) The submission at paragraph 52 is "The interrogation was to obtain information about the Mau Mau oath, where, why and with whom she had taken it [16-139]. Violence during screening is well documented: … 52.2 The shooting whilst screening in Meru, and assault while screening at Makadara screening centre in June 1955 [32-35001-2; 32-36193]…" (2) The use of the document in the Claimants' written opening was not the one for which it is used now. (3) In oral opening submissions Mr Cox QC went through these documents including these two incidents, however. (4) At least one (and perhaps both) instances are at Meru and are of little if any

									reliance by TC20 in her Closing Submissions. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an unpleaded allegation as to date (1954-55), which amendment was expressly refused by the Court in the Liability Amendments Judgment. TC20's Closing Submissions at [48] provide: "Accordingly, it seems likely that TC20 arrived in Thuita around the end of 1954 or the beginning of	relevance to TC20's case. (5) Further, as regards the "alleged shooting of an African under interrogation in Meru district", the minute records that Sergeant Murray of the Kenya Regiment had been sentenced to nine months imprisonment. Referring to the consolidated transcripts of the Claimants' opening there is the following exchange recorded in relation to this incident: "Mr Justice Stewart: That was on the face of it one that was negligent wasn't it? Mr Cox: One that? Mr Justice Stewart: Was negligent; is that right? Is that the one that was …. Mr Cox: Yes Mr Justice Stewart: - so it was like a manslaughter, if anything? Mr Cox: Yes, yes, yes. What is rather odd in

									1955.” (5) The deployment of this document in TC20's case is different to that in the Opening. The Opening provided: “Opening para 330. These decisions could be attributable to there genuinely being insufficient evidence Footnote 338 CAB 19/4 Vol I: CSCCC minutes: Chief Secretary's Complaints Co-ordinating Committee Meeting [Hanslope] (CYF-0000041895) [32,20203]; Chief Secretary's Complaints Co-Ordinating Committee Meeting: 10/08/1954 [Hanslope] (CYF-0000008369) [32,21171]; Chief Secretary's Complaints Co-	our submission is that the sentence was subject to confirmation by the Commander in Chief and the Governor. ….. Mr Justice Stewart: But subject to that, it comes out that there is nothing to put it on notice that something went awry, is there? Mr Cox: Yes” The exchange was based on to what extent the complaint co-ordinating committee properly investigated. Further a negligent shooting of an African under interrogation has practically no probative value in support of the submission that “violence during screening is well documented.” (6) Point (4) in relation to document 1 is repeated.

									Ordinating Committee Meeting: 26/07/1954 [Hanslope] (CYF-0000008370) [32,20610]; Chief Secretary's Complaints Co-Ordinating Committee Meeting [Hanslope] (CYF-0000008356) [32,25069]; Chief Secretary's Complaints Co-ordinating Committee Meeting [Hanslope] (CYF-0000041896) [32,22016]; Chief Secretary's Complaints Co-ordinating Committee Meeting [Hanslope] (CYF-0000041943) [32,24347]; Chief Secretary's Complaints Co-ordinating Committee Meeting	

									[Hanslope] (CYF-0000041906) [32,35001]; Chief Secretary's Complaints Co-ordinating Committee Meeting [Hanslope] (CYF-0000041911) [32,37249]. But a failure to take criminal charges seriously and investigate them quickly and effectively is, itself, capable of producing precisely that outcome. Only three men were convicted for rape and one for indecent assault during the Emergency." (6) The document is irrelevant as it concerns a different district, namely Meru District. Events in Meru District form no part of TC20's pleaded case.	

									(7) This document does not support the proposition for which it is relied upon. Cs assert at [52.2] of TC20's Closing Submissions that the document supports the proposition that there was well-documented violence including "[t]he shooting whilst screening in Meru". However, [32-35001] makes reference to an "alleged shooting" of an African "under interrogation.	
17	12 (52.2)	32-36192	32-36193	Chief Secretary's Complaints Co-ordinating Committee Meeting [Hanslope] (CYF-0000041909) {C} †		Cs' Opening Folder 8; Opening para 466 FN 513		This document follows through the second reference in the document above. The parties have always recognised that the evidence of what ultimately happened is important (often because D wishes	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in	(1) This is the second document referred to in the extract from TC20's submissions at paragraph 52 as set out in relation to document 16 above. (2) Document 16 is the CCC minutes of 6 June 1955. This document is the CCC minutes of 11 July 1955. It shows

								to pray it in aid).	relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. The submission that the document has "already been adduced" is not understood as the effect of the failure to list the document in accordance with the requirements of the March and June Orders is that it has not been adduced for reliance by TC20 in her Closing Submissions. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished	(minute 380) that 5 Kikuyu Guard had been sentenced to imprisonment, having been convicted of assault at Makadara screening centre. The same points apply in relation to this document as in relation to document 16 (but not the additional points which refer to the alleged shooting incident, which is not replicated in this document).

									to rely upon it. (4) This document is apparently relied upon in support of an unpleaded allegation as to date (1954-55), which amendment was expressly refused by the Court in the Liability Amendments Judgment. TC20's Closing Submissions at [48] provide: "Accordingly, it seems likely that TC20 arrived in Thuita around the end of 1954 or the beginning of 1955." (5) The deployment of this document in TC20's case is different to that in the Opening. Cs' suggestion in respect of the document in Row 16 that the submission that	

									violence was well-documented is the same as the submission that the CCC minutes record the 'tip of the iceberg' is strained: the latter suggests the former not to have been the case. The Opening provided: "Opening para 466. The totality of the evidence suggests that the cases recorded in the CCC minutes are essentially the 'tip of the iceberg'. However, a significant feature of the minutes is their reflection of the constant stream of complaints that persisted after the directive to the security forces issued by Erskine in the wake of the Griffiths revelations. Nor did the number or	

									frequency of complaints diminish with the passage of time. Reference to a few of the documents illustrate the point (though a substantial number of the minutes are available). Footnote 513 CCC Minute 26/4/54 (CYF-0000041917) [32,15697]; CCC Minute 31/5/54 (CYF-0000008375) [32,17508]; CCC Minute 28/6/54 (CYF-0000008372) [32,19391]; CCC Minute 23/8/54 CYF-0000008368 [32,21636]; CCC Minute 20/9/54 (CYF-0000008363) [32,22559]; CCC Minute 4/10/54 (CYF-0000041942) [32,22969]; CCC Minute 15/11/54 (CYF-0000008356) [32,25069]; CCC Minute 7/3/55 CYF-0000008337	

									[32,31396]; CCC Minute 6/6/55 (CYF-0000041906) [32,35001]; CCC Minute 11/7/55 (CYF-0000041909) [32,36192]; CCC Minute 5/9/55 (CYF-0000041959) [32,37996]; CCC Minute 9/1/56 (CYF-0000041966) [32,43544]; CCC Minute 13/6/56 (CYF-0000008415) [32,47870]; CCC Minute 18/7/56 (CYF-0000008414) [32,48862]; CCC Minute 5/9/56 (CYF-0000008413) [32,49990]; CCC Minute 18/4/57 (CYF-0000008406) [32,54173]; CCC Minute 19/6/57(CYF-0000040965) [32,13425]; CCC Minute 20/11/57(CYF-0000041077) [32,58256]; CCC Minute 16/7 58 (CYF-0000008393) [32,60299]; CCC Minute 1/1/59 (CYF-0000001513)	

									[32,61762]; CCC Minute 8/7/59 (CYF-0000040891) [32,68098]; CCC Minute 27/7 59 (CYF-0000040894) [32,68636]; CCC Minute 9/9/59 (CYF-0000040899) [32,69064]." (6) The document is irrelevant as it concerns a different district, namely Meru District. Events in Meru District form no part of TC20's pleaded case. (7) This document does not support the proposition for which it is relied upon. Cs assert at [52.2] of TC20's Closing Submissions that the document supports the proposition that there was well-documented violence including "[t]he shooting whilst screening in Meru". However,	

									[32-35001] makes reference to an "alleged shooting" of an African "under interrogation": that allegation is distinct from the content of the document accordingly. (8) The relevance to the relief from sanctions application of Cs' submission that "[t]he parties have always recognised that the evidence of what ultimately happened is important (often because D wishes to pray it in aid)" is not understood. In any event, D's submission that it cannot argue a positive case in reliance on the documents is well-rehearsed and need not be repeated in this schedule.	

18	12 (52.3)	32-29950	32-29950-1	Letter from R.C. Catling, Commissioner of Police, to The Chief Secretary: Alleged Offences by District Officers [Hanslope] (CYF-0000007911) {C} †		Cs' Opening Folder 7; Opening para 281 FN 266		This document was opened. It supports TC20's case that there was violence in screening. The document relates to Thuita village, at which TC20 was detained for 2 years from 1953 and deal with events in 1954. It therefore relates to the same time period as TC20 pleads. the document itself was not referred to in Opening, but the incident with which it deals was canvassed fully at pp1908-1914 and starts with Mr Cox QC saying that the proposition advanced was that the Amnesty was there to dispose of cases against the administration. The document proposes a	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an	(1) This is another document in support of paragraph 52, namely that "Violence during screening is well documented". It is paragraph 52.3 which states "Inmates of a screening camp being battered to death and tortured [32-29950-1]. (2) This document shows at (d) that a temporary district officer at "Theta" screening camp, Thika" had been charged with murder, the allegation being that on 9 October 1954 one inmate was beaten to death and some 10 or 12 others injured. It added "There is a mass of conflicting evidence in this case, 50% of which affects Simon" (the temporary district officer). The author of the letter, Mr Catling, Commissioner for Police, suggested discussion of the four cases with the

								discussion between the Chief Secretary and the Police Commissioner, so clearly supports such a proposition. The context is fully laid out in the lengthy discussion.	unpleaded allegation as to date (1954-55), which amendment was expressly refused by the Court in the Liability Amendments Judgment. TC20's Closing Submissions at [48] provide: "Accordingly, it seems likely that TC20 arrived in Thuita around the end of 1954 or the beginning of 1955." The document is dated 6 February 1955. (5) Cs' submissions for relief from sanctions do not appear to relate to this document. Contrary to Cs' submissions, the document makes no mention of 'Thuita village'. Indeed, the factual relevance of the document appears	Attorney General, Assistant Commissioner, CID and himself, before reference is made to the Ministry for African Affairs and Provincial Commissioner for Central Province. (3) The Claimants submit that this incident was in relation to TC20's village and, according to her pleading, she was there for 3 years from late 1953. It therefore covered the period during which her pleading said she was there. (4) The Claimants accept that the document was not referred to in the Claimants' written opening (in fact as the Defendant states – point (7) – it was referred to but for a different purpose). (5) The Defendant disputes that the document relates to "Thuita village". If this

									minimal. (6) Without prejudice to the point above, an analysis of the transcript of the Court's exchanges with Mr Cox QC demonstrates that to understand this document in context, a considerable number of additional documents must be reviewed and presented to the Court (see e.g. p.1905 of the Consolidated Transcript of Cs' Opening). Indeed, Mr Cox QC himself at p.1906 states expressly that the document he was then referring to does not support his contention, but that "we submit the court here must look at the whole picture", before stating at p.1908	is correct then, as the document says, the factual relevance of the document appears minimal." This may well lead to further work. (6) Nor was the document itself referred to in the section of the oral submissions to which the Claimants make reference. As the Claimants say "The incident with which it deals was canvassed fully at pp1908-1914 and starts with Mr Cox QC saying that the proposition advanced was that the amnesty was there to dispose of cases against the Administration." (7) Essentially the document contains allegations of offences by district officers in different districts. One of them is by the temporary District Officer Simon in "Thika District" at "Theta screening camp." The

									that the document "demands careful examination in the context of the whole of the evidence." By way of example, at p.1912, the Judge asked to consider the document in the context of the MacPherson Report at [32-27486] at [32-27488]. (7) The deployment of this document in TC20's case is different to that in the Opening. The Opening provided: "Opening para 281. A July 1953 Memorandum on "Development and Integration of Intelligence services" states "In an Emergency such as the present one, Special Branch plays a major part in providing the operations	Defendant says that this would need following through. (8) The Defendant submits that the document does not support the proposition for which it is relied upon, there being no reference to torture in the document. However the pleading is one of violence during screening. Further, the Defendant says that TC20 does not allege torture in her pleaded case. However in paragraph 21 of her IPOC she alleges that during interrogation at Thuita village she was physically assaulted by two of the policemen. (9) Apart from the location – see (5) above – the reality is that an unproven allegation is of limited probative value. It could also lead to further work/disruption if allowed in for this

									intelligence required for planning operations. To enable it to carry out its task it has been reinforced by military officers", and continues under the heading "Operational Intelligence" "Little can be said in public on this subject, but every effort has, and is being, made by the civil and military authorities to ensure that operational intelligence is obtained, assessed and passed on to the user with greatest possible speed. To this end Special Branch has been augmented by military and Kenya Police Reserve Officers and, in addition CID	point. (10) Point (4) in relation to document (1) is repeated.

									teams have been established in all the operational districts to deal with, inter alia, the interrogation of captured terrorists. The closer liaison is maintained between these teams and Special Branch" Footnote 266 CAB MM/3/4 "Extracts from Secretariat Top secret File No INT/10/4AA Vol 1 - "Intelligence Notes for Chief Secretary on Development and Integration of Intelligence Services" 23 July 1953 [Hanslope] (CYF-0000042506) [32,7717]; E16/3/8a Catling , Commissioner of Police to the Chief Secretary "Alleged Offences by District Officers 6 February 1955 [Hanslope] (CYF-	

									0000007911) [32,29950]; DO6 Gribble, Director of Intelligence and Security "The Routing of Intelligence", 29 October 1953 [KNA VP 9 10] (CYF-0000030580) [32,9829]; AA 45/55/2A Witness Statement of FDM Erskine 9 October 1954 [Hanslope] (CYF-0000006307) [32,23368]; Central Province Emergency Committee Meeting held on 17th February 1956 [Hanslope] (CYF-0000006060) [32,44786]." (6) This document does not support the proposition for which it is relied upon: there is no reference to torture in the documents. In any event, TC20 does not allege torture in her	

									pleaded case so the relevance of the document is denied.	
19	15 (64)	32-44263	32-44263	Letter from Provincial Commissioner Central Province to Minister for Legal Affairs [Hanslope] (CYF-0000005142) {C}			Objected to by D. Overlooked on Schedule B. Cs seek to adduce 32-44263.	This document goes to establish that the Admninistration knew there had been brutality in Fort Hall at the time at which TC20 was experiencing exactly that. It does not relate to a change of date, but exemplifies what was happening to TC20 at the time of the pleaded incidents. The document is placed in context by the next	(1) This document is no longer challenged by D. Cs' submissions clarify that the document is not being relied upon to bolster a change of pleaded date. The hearing on 10 April 2018 is confined to documents supporting submissions which contradict TC20's pleading. (2) That the document is no longer challenged for the purposes of the forthcoming	As the Defendant states, this document is no longer challenged.

								references.	hearing is without prejudice to D's submissions that will be made in due course in respect of this document and in respect of Cs' submissions that the document "goes to establish that the Admninistration [sic] knew there had been brutality in Fort Hall".	

20	15 (64)	32-44398	32-44398	Letter to C.M. Johnston [Hanslope] (CYF-0000040947) {C}			On Schedule B of documents not adduced.	As above.	(1) This document is no longer challenged by D. Cs' submissions clarify that the document is not being relied upon to bolster a change of pleaded date. The hearing on 10 April 2018 is confined to documents supporting submissions which contradict TC20's pleading. (2) That the document is no longer challenged for the purposes of the forthcoming hearing is without prejudice to D's submissions that will be made in due course in respect of this document and in respect of Cs' submissions that the document "goes to establish that the Admninistration [sic] knew there	As the Defendant states, this document is no longer challenged.

									had been brutality in Fort Hall".	

21	15 (64)	32-44554	32-44554	Letter from C.M. Johnston to Minister for African Affairs [Hanslope] (CYF-0000040948) {C} †		Cs' Opening Folder 9; Opening para 630 FN 697.		This document was footnoted in the Opening. It demonstrates that the administration was more concerned with its own skin than investigating brutality. Again, it does not contradict any date in the pleading but supports it. The matter was put squarely in Opening at p123.	(1) This document is no longer challenged by D. Cs' submissions clarify that the document is not being relied upon to bolster a change of pleaded date. The hearing on 10 April 2018 is confined to documents supporting submissions which contradict TC20's pleading. (2) That the document is no longer challenged for the purposes of the forthcoming hearing is without prejudice to D's submissions that will be made in due course in respect of this document and in respect of Cs' submissions that the document "demonstrates that the administration was more	As the Defendant states, this document is no longer challenged.

									concerned with its own skin than investigating brutality", an assertion that is not found in TC20's Closing Submissions.	

22	18 (70.4)	32-15277	32-15278	Memorandum on the aggregation of the population into villages in rural areas (CYF-0000038150) {C} †		Cs' Opening Folder 4; Opening para 634 FN 701		This document has been addressed as document 1 above. In this paragraph of the submission the document supports the fact that the disruption of normal life caused by villages was known about in 1954. It does not remotely contradict TC20's pleaded case. Quite the contrary: §26 of the IPOC [16-0f] says precisely that.	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an	(1) This is the same as document 1. (2) Here it is sought to be used in paragraph 70.4 of TC20's submissions where she says "The village disrupted family life and did not allow food production on site. When villages were proposed, in 1954, both of these things were supposed to be dealt with appropriately [32-15728]." (3) The Claimants say that this does not remotely contradict TC20's pleaded case and quite the contrary because paragraph 26 of the IPOC says precisely that. Paragraph 26 of the IPOC does say "The Claimant was unable to carry on her normal family life with her health and, work for pay and private life in these circumstances." That was in relation to "Githanga village. The submission at

									unpleaded allegation as to date (1954), which amendment was expressly refused by the Court in the Liability Amendments Judgment. TC20's Closing Submissions at [48] provide: "Accordingly, it seems likely that TC20 arrived in Thuita around the end of 1954 or the beginning of 1955." TC20's Closing Submission at [70.4] adopts the same dates as that impermissible submission in that it provides "[w]hen villages were proposed, in 1954 …", suggesting that villagisation commenced only from 1954. By contrast, Cs' contention in this schedule that	paragraph 70 was in relation to Thuita village. However at paragraph 23 the Claimant does say about Githanga village that "The living and working conditions were similar to those experienced at Thuita village…" (4) The Claimants say that in this paragraph of the submission (70.4) "The document supports the fact that disruption of normal life caused by villages was known about in 1954." That is not what the submission says. The submission expressly refers the document to the contention that when proposed in 1954, family life and food production on site were supposed to be dealt with appropriately (5) The document was not referred to in the written opening at paragraph 634 for either contention.

									TC20's Closing Submission at [70.4] is concerned with date of knowledge and so "supports the fact that the disruption of normal life caused by villages was known about in 1954" is not consistent with the language used in TC20's Closing Submission. (5) Deployment of this document in TC20's case is substantially different to that in the Opening. The Opening concerned the alleged adoption of villagisation as a policy, and not disruption to family life and food production. The Opening provided: "Opening para 634. Beginning in March 1953, villagisation had	(6) Point (4) in relation to document 1 is repeated.

									been introduced as an ad hoc measure in various locations throughout the Kikuyu reserves, although it was not until the War Council's decision to mandate forced villagisation in June 1954 that it became a full-scale policy. Footnote 701 KNA, AB 2/53/1, "Memorandum on the aggregation of the population into villages in rural areas", 12th April 1954; and PRO, CO 822/481/1, Press Office, Handout No.28, 19th March 1953. (CYF-0000038150) [32,15277] It is no coincidence that the decision was made by the War Council and no doubt that the issue of where people lived was	

									determined by the security forces view of what was necessary for security.”	
23	19 (72.5)	32-31382	32-31383	Control of Villages - Nyeri District: Note by the Secretary of the War Council WAR/C.523 [Hanslope; FCO 141/] (CYF-0000010317) {C}			On Schedule B of documents not adduced.	This document supports TC20's account of what happened by confirming that where she was villagised was thought to be a bad location (see §23of the submissions). It is not contradictory of the pleaded case at all. Nor is context required the document speaks for itself.	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and	(1) This is by reference to paragraph 72 of TC20’s submissions. “The submission that the documentation supports poor conditions in Fort Hall and Nyeri and the punitive nature of villages. D knew that this was detention and that it was wrong.” In 72.4 it is said that TC20’s evidence shows that she was in a “bad area” and 72.5 is that that contention

								At p2912 of the Consolidated Transcript Cs start to deal with a document dealing with villages: at p2919 there is a reference to bad villages in Nyeri, so it is hardly the case that this issue has never been raised.	importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) This document is apparently relied upon in support of an unpleaded allegation as to date (1954-55), which amendment was expressly refused by the Court in the Liability Amendments Judgment. TC20's Closing Submissions at [48] provide: "Accordingly, it seems likely that TC20 arrived in Thuita around the	is supported by the documentation: "In March 1955, Tetu was said to be a bad division and the decision was to fortify the villages there [32-31383]." (2) The document deals with Nyeri district, one of the divisions being North Tetu. TC20 was not in Nyeri district/North Tetu. Therefore there is little if any relevance in this document. (3) The document is dated 7 March 1955. On the Claimant's pleaded case she was in Thuita for some two years after about the end of 1953. Although it may be said that what was found in or about early March 1955 might, by inference, relate back to the period she was there, the probative value of this document has not been made out. (4) Point (4) in relation

									end of 1954 or the beginning of 1955." TC20's Closing Submissions at [72.5], when read in the context of the other sub-paragraphs of [72] including in particular [72.4], and by reason of the phrase "[t]hat [i.e. the submission in [72.4]] is supported by the documentation" appear to submit that the events in March 1955 described in the document in issue were an example of the alleged re-affirmation of the policy of villagisation in 1955 that "TC20 experienced". (5) The deployment of this document in TC20's case is novel. The document has not	to document 1 is repeated.

									otherwise been adduced in these proceedings. Cs' submissions refer to various documents on villagisation referred to in the course of the oral Opening. However, the document in issue was never previously adduced. (6) To place this document in context will likely require multiple other documents to be presented to the Court: this might be disproportionate in the context of the litigation in respect of a document relied upon at the highest level of generality. That other documents referring to 'bad villages' were referred to in the oral Opening	

									indicates that placing this document in issue might be disproportionate. (7) The document concerns and is deployed as to Tetu, which is not a relevant location on the facts of TC20's case. Row 5 above is repeated as to Cs' assertion that "TC20 was situated in Nyeri", which is contradicted by her pleadings and her evidence and amounts to a very late change of case, which ought to have been the subject of an amendment application.	
24	22 (73.14)	32-42042	32-42042	Extract from Official Report of 14.12.55 (House of Commons) Communal Labour [KNA OP/1/985] (CYF-0000002898)		Cs' Opening Folder 9; Opening para 367 FN 385		The Claimants no longer seek to rely on this document in this schedule. This is Hansard and the Judgment	(1) Cs no longer seek to have this document adduced in TC20's Closing Submissions. (2) The submission	The Claimants no longer seek to rely upon this in TC20's closing submissions.

				{C} †				addresses the issue identified in the Submission.	in TC20's Closing Submissions at [73.14] in reliance on this document falls to be deleted accordingly.	
25	22 (73.14)	32-41238	32-41238	ADM.45/58 Telegram No.1341 Communal labour by women [KNA OP/1/985] (CYF-0000002901) {C}			D: Agree, subject to possible further documents in response	This is the document upon which the Hansard extract is based (Submission §73.14). It seems to be agreed, as a response to D's Generic presentation, but not for the purpose of a test case Submission (see Skeleton 21st March 2018). The document shows how the hours of forced labour were minimised: having forcibly removed the population and burned their homes, the Administration comeppled them to build new homes for themsleves, but	(1) This document is being deployed in respect of an extract from Hansard, which the Cs now accept that they cannot adduce (see Row 24). Cs' reliance on [32-41238] in TC20's Closing Submissions at [73.14] loses meaning in the absence of that Hansard document. (2) As necessary, further submissions in respect of this document will be advanced at the hearing on Hansard documents. (3) In any event, Cs have not explained why this document was not	(1) Paragraph 73.14 of TC20's submissions reads "In December 1955 Lennox-Boyd told Barbara Castle that agricultural communal work was limited to 2 days a week in Fort Hall [32-42042]. His answer was based on Baring's telegram, which discounted time taken by villagers in building their own huts, which was not classified as communal labour [32-41238]." (2) The first document [32-42042] is document 24 upon which the Claimants no longer rely. The Defendant says that 73.14 loses meaning in the absence of the Hansard document. (3) This may be strictly correct, but there could be minor re-

								discounted the time spent doing so. Moreover, TC20's evidence contradicts this account so (presumably) D would wish to assert its truth in any event.	on list in June 2017. (4) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (5) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (6) The deployment of this document in TC20's case is novel. The document has not otherwise been	wording of the second sentence so as to make sense of the fact that a telegram from Baring discounted time taken by villagers in building their own huts which was not classified as communal labour. (4) It seems to the Court that if TC20's house had been burned down and that she was removed to a village and had to build her own new home, then prima facie, that is communal labour and this document proves nothing of any significance. If, however, the Defendant asserts that it would not be communal labour, or makes a similarly related submission, then the Document may have a relevance and my decision on this document may have to be revisited under this application (without prejudice to

									adduced in these proceedings. (7) To place this document in context will likely require multiple documents to be referred to and relied upon: this might be disproportionate in the context of the litigation.	the Claimants' right under paragraph 22 of the Order of 31 March 2017).

26	28 (93)	32-59119	32-59119	WAR/C.1110 War Council Village Policy - Central Province Memorandum by the Minister for African Affairs [TNA CO822/1259] (CYF-0000001603) {C}	TCs 17, 33 & 39			This document was in TC17's list and used in TC17's Submissions. On her pleading TC20 was at Gikonda for a year after the Emergency (say end 1953); she was at Thuita for around 2 years (end 1955); she was at Githanga for around 2 years (end 1957). The document relates to events in March 1958 - easily within a tolerable margin of error for 3 separate time periods: TC20 could well be 3 months out on each period of "around" a year or two. The document talks about relaxation of villagisation: it does not need to address pass legislation	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) The document is apparently relied upon in support of an	(1) This refers to paragraph 93 of TC20's submissions. This comments on TC20's evidence of her apprehension and detention for a pass violation. It continues "If TC 20 is accurate, this happened in 1959-60. The documents show that reduction of control was gradual. For example, in March 1958 the War Council allowed for limited relaxation [32-59119]." (2) The Defendant focuses first on 1959-1960 in the submission and says (rightly) that this is not supported by the pleaded case. (3) However the Claimant submits that, on the pleaded case, the document is relevant as to time because, within a few months, her pleaded case is that she came out of Githanga about the end of 1957. This,

								specifically to be of forensic value.	unpleaded allegation as to date (1959-60), which follows from an amendment refused by the Court in the Liability Amendments Judgment. TC20's Closing Submissions at [93] provided: "… this happened in 1959-60." That assertion falls to be considered in the context of [76] of the Claimant's Closing Submissions providing: "C was transferred to Githanga [16-140], probably at the beginning of 1957, having been at Thuita for approximately two years." Given that the date of the Claimant's transfer to Githanga Village has been	they say, is within tolerable margins of March 1958. (4) The Claimants, however, accept that "the document talks about relaxation of villagisation"; they say "It does not need to address pass legislation specifically to be of forensic value." (5) The Claimant has not made out a proper case as to why this document has real relevance and/or importance in relation to the allegation it is said to support. At best it is peripheral only and does not warrant any further disruption or costs. It is therefore not permitted. (6) Point (4) in relation to document 1 is repeated.

									calculated with reference to the time she spent at Thuita Village having commenced in 1955 (contrary to the Liability Amendments Judgment), it follows that the TC20's Closing Submissions at [76] also advance a case contrary and necessarily inconsistent with her pleaded case as to the date of alleged incidents in Githanga Village, and so too TC20's Closing Submissions at [93] advance a case contrary and necessarily inconsistent with her pleaded case as to the date of alleged incidents concerning a pass violation. (5) The alleged breadth of the terms "around	

									two years" at AIPOC §22 (such that TC20 was allegedly in Thuita Village from 1953 to around 1955) and §23 (such that TC20 was allegedly in Gikonda Village from 1955 to around 1957) cannot on a proper construction of TC20's pleaded case permit a submission to be advanced that the events addressed in TC20's Closing Submissions at [93] "happened in 1959-1960". The pleaded case places those events in excess of one year earlier (see further the Liability Amendments Judgment as to the significance of the time period of in excess of one year). To advance	

									such a changed case would require an amendment to be made to TC20's pleading, as to which no application has been made. (6) The document does not support the proposition for which it is relied upon: it concerns de-villagisation and not relaxation of pass rules as asserted in the TC20 Closing Submissions at [93]. It is conspicuous that in this schedule, Cs' submissions accept that the document does not concern relaxation of pass rules as asserted in the TC20 Closing Submissions. In that context, D is faced with having to respond to	

									submissions in TC20's Closing Submissions as to the effect of a document that the Cs accept do not reflect the content of the document: such a position is highly prejudicial and wasteful of resources at this very late stage in the proceedings. (7) To place this document in context will likely require multiple documents to be referred to and relied upon: this might be disproportionate in the context of the litigation. (8) Contrary to Cs' submission, the document is not referred to in the list for TC33 or the TC33 Closing Submissions.	
27	38 (141)	32-52091a	32-52091n	Colonial Office Report on The Colony and		Ds' Response, Land Reform Bundle; A_30		D has adduced this document, which deals with	(1) Cs have not explained why this document was not	(1) This document is sought to be used in support of wage

				Protectorate of Kenya for the Year 1956				values at the relevant time. In fact, this document should have been referred to in D's Counter-Schedule of special damage but it was not. Had it been then C would have relied upon it then. As it is it constitutes the best evidence available to the Court and restricting its use is unjustified. So, too, is suggesting that Cs can use it to respond to D's generic submissions because none have yet been made and there is no guarantee that this will be such a topic. D further says that Cs cannot use the document to advance a positive case: that is *not* the same as	on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) The deployment of this document in TC20's case is novel. The document has not otherwise been	figures. It is a document which the Defendant adduced, being a report on Kenya for the year 1956. Two pages deal with wage rates. However these comments are relevant to all remaining TC20 documents except Documents 31 and 39. The parties agreed this. (2) The Defendant relies upon TC20's special damages schedule and details in the Reply to the Part 18 request. It therefore objects to these figures. (3) The Claimants say that the documents should have been referred to in D's Counterschedule but was not. There was no duty upon the Defendant to do that. (4) The Defendant says this is a 172 page document which is likely to require multiple other

								asserting the documents can only be used in response, but is a further limitation upon the use that can be made of documents and has never once been canvassed before this topic arose.	adduced by Cs in these proceedings. (5) The document is objected to insofar as it is relied upon by TC20 to seek special damages on a higher basis of calculation or in excess of the sums pleaded by TC20 (as set out in the Scott Schedule accompanying her pleading e.g. at [1-220bi] and [1-220bn to 1-220bo]). D relies upon the Amended Counter-Schedule, which pleaded: "If and to the extent that the Claimant's Closing Submissions reduce the basis of calculation and/or quantum of any head of damage, the Claimant is bound by that later document [i.e. the	documents to be referred to and relied upon. However two pages are relied upon as to wage rates in 1956. (5) Mr Myerson Q.C. said this document was in a mass of undifferentiated documents in the KNA. The Claimants did not spot it until the Defendant adduced it after June 2017. (6) The figures now relied upon are greater for some items of Special Damage and less for others. On TC20's case the global result is a lesser figure, in TC34's case a greater figure. (7) There will have to be amendment of the Schedule and Counterschedule of Special Damage. (8) Apart from that:- (a) I am unconvinced that there will be any substantially greater work for the Defendant; in fact

									TC20 Closing Submissions]." (6) This is a 172 page document that will be disproportionate to place in context, as that will likely require multiple other documents to be referred to and relied upon. (7) Cs' submission that D ought to have pleaded evidence in the TC20 Counter-Schedule is misguided. There is no such obligation. A fortiori, Cs cannot point to the absence of the document from the TC20 Counter-Schedule as a proper explanation of why Cs did not adduce the document in TC20's June list. (8) Restriction of the use of the	their workload may diminish and the time spent in work on these issues may diminish. This is because, at the moment, there appear to be a number of disparate sources to support the present claims. These will be made redundant. (b) The Court can adjust for earlier years not covered by this document. That is part of damages assessment generally. (c) The TCs must be looked at individually; some claims may possibly go up; some, like TC20, reduce. (9) The overriding objective and my Denton stage 3 discretion must be in favour of allowing relief from sanctions for this document. (10) There may be arguments about periods of claim but those are nothing to do with this document being allowed in.

									document in TC20's case is a consequence of both Cs' breach of the March and June Orders and the consequent sanction and that TC20 should not be permitted to use the figures in this document to augment the sums claimed as special damages.	

28	39 (142)	32-6433	32-6433	Compensation for land and goods used by government during emergency [AA 45/52 FCO REF FCO 141/6204] (SAV-015595) {D} [DE] †		Ds' Response Bundle Vol.1 Compensation Bundle tab ______		As above.	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) The deployment of this document in TC20's case is	This is a document which the Defendant adduced to illustrate schemes of compensation and ex gratia payments to loyalists. This particular document is in relation to property loss. The same considerations and the same answers apply as in relation to document 27.

									novel. The document has not otherwise been adduced by Cs in these proceedings. (5) The document is objected to insofar as it is relied upon by TC20 to seek special damages on a higher basis of calculation or in excess of the sums pleaded by TC20 (as set out in the Scott Schedule accompanying her pleading e.g. at [1-220bi] and [1-220bn to 1-220bo]). D relies upon the Amended Counter-Schedule, which pleaded: “If and to the extent that the Claimant’s Closing Submissions reduce the basis of calculation and/or quantum of any head of damage, the	

									Claimant is bound by that later document [i.e. the TC20 Closing Submissions].” (6) Cs’ submission that D ought to have pleaded evidence in the TC20 Counter-Schedule is misguided. There is no such obligation. A fortiori, Cs cannot point to the absence of the document from the TC20 Counter-Schedule as a proper explanation of why Cs did not adduce the document in TC20’s June list. (7) Restriction of the use of the document in TC20’s case is a consequence of both Cs’ breach of the March and June Orders and the consequent sanction and that	

									TC20 should not be permitted to use the figures in this document to augment the sums claimed as special damages.	

29	39 (142)	32-81171	32-81450	KNA file DC.MUR 3.10.31 [KNA file DC.MUR 3.10.31] (SAV-045301) {D}[DE] †			D: Agree, subject to possible further documents in response	The document is very lengthy but the precise page has been identified. D's agree this document as a response to its generic presentation but not for the purpose of a test case. These documents are also adduced for TC20 and they consist of the best evidence (adduced by D but not relied on in D's Counter Schedules attached to the individual Defences) available to assess special damages. D is able to adduce further documents for the test cases. If those documents also go to the general point about the value of	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. For avoidance of doubt, this document does not respond to a	(1) This is also a property loss document. In this case it is a claim by a “Mr Njuguna” dated 5 October 1956. (2) This raises the same issues as document 27 and the answer is the same.

								special damages then on D's anlysis they should have been adduced earlier. Cs do not object to that, but rely on it in support of their submission that D is not treating both sides equally here. D's case is that each TC should have identified all documents by June 2017 and that adducing a document for general purposes is not good enough (despite what was said by Mr Mansfield QC in open court and to Mr Cox QC and Mr Myerson QC). D has not provided any evidence of when this was said. It merely says that it was the position. If it was not made	document relied upon by D in its submissions in this test case, which submissions have not yet been delivered. (4) The deployment of the document is novel in TC20's case. It has not been otherwise adduced. (5) This document is 337 pages long. To place it in context might be disproportionate in the context of the litigation. (6) The document is objected to insofar as it is relied upon by TC20 to seek special damages on a higher basis of calculation or in excess of the sums pleaded by TC20 (as set out in the Scott Schedule accompanying her pleading e.g. at [1-220bi] and [1-	

								express, then D adopting a different position for itself is evidence that Cs were justified in understanding the position as explained by Mr Martin in his witness statement of 20th March 2018. The document itself is evidence of contemporaneous value.	220bn to 1-220bo]). D relies upon the Amended Counter-Schedule, which pleaded: "If and to the extent that the Claimant's Closing Submissions reduce the basis of calculation and/or quantum of any head of damage, the Claimant is bound by that later document [i.e. the TC20 Closing Submissions]." That the document is said to be of "ev of contemporaneous value" is insufficient for the grant of relief if the document is relied upon by TC20 to seek special damages in excess of the sums pleaded by TC20. (7) Cs' apparent submission that D ought to have	

									pleaded evidence in the TC20 Counter-Schedule is misguided. There is no such obligation. A fortiori, Cs cannot point to the absence of the document from the TC20 Counter-Schedule as a proper explanation of why Cs did not adduce the document in TC20's June list. (8) Restriction of the use of the document in TC20's case is a consequence of both Cs' breach of the March and June Orders and the consequent sanction and that TC20 should not be permitted to use the figures in this document to augment the sums claimed as special damages. (9) Cs' submission	

									that "D is not treating both sides equally here" is not understood. The Cs appear to be rehearsing their mistaken construction of the March and June Orders, which is not a good reason for relief from sanctions. The issue arising on this application is not whether D is or even should treat Cs fairly: it is that Cs breached the March and June Orders and need relief from the effects of that breach. (10) Cs' submission as to what was said by Mr Mansfield QC is addressed in Ruth Bradbury's latest witness statement. That evidence is adopted, including reference to the	

									14 June 2017 letter.	

30	39 (142)	32-20206	32-20206	Compensation Claims [DC/MUR/3/10/13] (SAV-002606) {D}[DE] †		Ds' Response Bundle Vol.3 Compensation Bundle tab ____		As above, save that this was adduced by D.	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) The deployment of the document is novel in TC20's case. It	This raises the same issues as for document 27 and the answer is the same.

									has not been otherwise adduced. (5) The document is objected to insofar as it is relied upon by TC20 to seek special damages on a higher basis of calculation or in excess of the sums pleaded by TC20 (as set out in the Scott Schedule accompanying her pleading e.g. at [1-220bi] and [1-220bn to 1-220bo]). D relies upon the Amended Counter-Schedule, which pleaded: "If and to the extent that the Claimant's Closing Submissions reduce the basis of calculation and/or quantum of any head of damage, the Claimant is bound by that later document [i.e. the	

									TC20 Closing Submissions].” (6) Cs’ apparent submission that D ought to have pleaded evidence in the TC20 Counter-Schedule is misguided. There is no such obligation. A fortiori, Cs cannot point to the absence of the document from the TC20 Counter-Schedule as a proper explanation of why Cs did not adduce the document in TC20’s June list. (7) Restriction of the use of the document in TC20’s case is a consequence of both Cs’ breach of the March and June Orders and the consequent sanction and that TC20 should not be permitted to use the figures in	

									this document to augment the sums claimed as special damages. (8) Such as Cs' submission "as above" was intended to capture other documents concerning special damages, those submissions are repeated, as applicable.	

31	39 (142)	32-53961	32-53961	Compensation for land and goods used by government during emergency [AA 45/52 FCO REF FCO 141/6204] (SAV-015616) {D}			D: Agree	As 29 above	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) The deployment of the document is novel in TC20's case. It	Not permitted. This raises a somewhat complex and unpleaded problem of potential double counting of loss of earnings and loss of value of crop production, see point (4) on document (1).

									has not been otherwise adduced by Cs in these proceedings. For avoidance of doubt, this document does not respond to a document relied upon by D in its submissions in this test case, which submissions have not yet been delivered. (5) The document is objected to insofar as it is relied upon by TC20 to seek special damages on a higher basis of calculation or in excess of the sums pleaded by TC20 (as set out in the Scott Schedule accompanying her pleading e.g. at [1-220bi] and [1-220bn to 1-220bo]). D relies upon the Amended Counter-Schedule,	

									which pleaded: “If and to the extent that the Claimant’s Closing Submissions reduce the basis of calculation and/or quantum of any head of damage, the Claimant is bound by that later document [i.e. the TC20 Closing Submissions].” (6) Cs’ apparent submission that D ought to have pleaded evidence in the TC20 Counter-Schedule is misguided. There is no such obligation. A fortiori, Cs cannot point to the absence of the document from the TC20 Counter-Schedule as a proper explanation of why Cs did not adduce the document in TC20’s June list.	

									(7) Restriction of the use of the document in TC20's case is a consequence of both Cs' breach of the March and June Orders and the consequent sanction and that TC20 should not be permitted to use the figures in this document to augment the sums claimed as special damages. (8) Cs' submission that "D is not treating both sides equally here" is not understood. The Cs appear to be rehearsing their mistaken construction of the March and June Orders, which is not a good reason for relief from sanctions. The issue arising on this application is not whether D is or even should	

									treat Cs fairly: it is that Cs breached the March and June Orders and need relief from the effects of that breach. (9) Cs' submission as to what was said by Mr Mansfield QC is addressed in Ruth Bradbury's latest witness statement. That evidence is adopted, including reference to the 14 June 2017 letter.	

32	39 (143)	32-81171	32-81390-1	KNA file DC.MUR 3.10.31 [KNA file DC.MUR 3.10.31] (SAV-045301) {D}[DE] †			D: Agree, subject to possible further documents in response	As 29 above	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) The deployment of the document is novel in TC20's case. It	This raises the same issues as for document 27 and the answer is the same.

									has not been otherwise adduced. For avoidance of doubt, this document does not respond to a document relied upon by D in its submissions in this test case, which submissions have not yet been delivered. (5) This document is 337 pages long. To place it in context might be disproportionate in the context of the litigation. (6) The document is objected to insofar as it is relied upon by TC20 to seek special damages on a higher basis of calculation or in excess of the sums pleaded by TC20 (as set out in the Scott Schedule accompanying her pleading e.g. at [1-220bi] and [1-	

									220bn to 1-220bo]). D relies upon the Amended Counter-Schedule, which pleaded: “If and to the extent that the Claimant’s Closing Submissions reduce the basis of calculation and/or quantum of any head of damage, the Claimant is bound by that later document [i.e. the TC20 Closing Submissions].” (7) Cs’ apparent submission that D ought to have pleaded evidence in the TC20 Counter-Schedule is misguided. There is no such obligation. A fortiori, Cs cannot point to the absence of the document from the TC20 Counter-Schedule as a proper	

									explanation of why Cs did not adduce the document in TC20's June list. (8) Restriction of the use of the document in TC20's case is a consequence of both Cs' breach of the March and June Orders and the consequent sanction and that TC20 should not be permitted to use the figures in this document to augment the sums claimed as special damages. (9) Cs' submission that "D is not treating both sides equally here" is not understood. The Cs appear to be rehearsing their mistaken construction of the March and June Orders, which is not a good reason for relief from	

									sanctions. The issue arising on this application is not whether D is or even should treat Cs fairly: it is that Cs breached the March and June Orders and need relief from the effects of that breach. (10) Cs' submission as to what was said by Mr Mansfield QC is addressed in Ruth Bradbury's latest witness statement. That evidence is adopted, including reference to the 14 June 2017 letter.	

33	39 (143)	32-81171	32-81450-1	KNA file DC.MUR 3.10.31 [KNA file DC.MUR 3.10.31] (SAV-045301) {D}[DE] †			D: Agree, subject to possible further documents in response	As 29 above	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) The deployment of the document is novel in TC20's case. It	This raises the same issues as for document 27 and the answer is the same.

									has not been otherwise adduced. For avoidance of doubt, this document does not respond to a document relied upon by D in its submissions in this test case, which submissions have not yet been delivered. (5) This document is 337 pages long. To place it in context might be disproportionate in the context of the litigation. (6) The document is objected to insofar as it is relied upon by TC20 to seek special damages on a higher basis of calculation or in excess of the sums pleaded by TC20 (as set out in the Scott Schedule accompanying her pleading e.g. at [1-220bi] and [1-	

									220bn to 1-220bo]). D relies upon the Amended Counter-Schedule, which pleaded: "If and to the extent that the Claimant's Closing Submissions reduce the basis of calculation and/or quantum of any head of damage, the Claimant is bound by that later document [i.e. the TC20 Closing Submissions]." (7) Cs' apparent submission that D ought to have pleaded evidence in the TC20 Counter-Schedule is misguided. There is no such obligation. A fortiori, Cs cannot point to the absence of the document from the TC20 Counter-Schedule as a proper	

									explanation of why Cs did not adduce the document in TC20's June list. (8) Restriction of the use of the document in TC20's case is a consequence of both Cs' breach of the March and June Orders and the consequent sanction and that TC20 should not be permitted to use the figures in this document to augment the sums claimed as special damages. (9) Cs' submission that "D is not treating both sides equally here" is not understood. The Cs appear to be rehearsing their mistaken construction of the March and June Orders, which is not a good reason for relief from	

									sanctions. The issue arising on this application is not whether D is or even should treat Cs fairly: it is that Cs breached the March and June Orders and need relief from the effects of that breach. (10) Cs' submission as to what was said by Mr Mansfield QC is addressed in Ruth Bradbury's latest witness statement. That evidence is adopted, including reference to the 14 June 2017 letter.	

34	39 (144)	32-82270	32-82274	Manual - Appendix A - Procedure for the Payment of Wages [JZ12] (SAV-024221) {D}		Ds' Communal Labour Bundle; A_25		As 29 above.	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) The deployment of the document is novel in TC20's case. It	This raises the same issues as for document 27 and the answer is the same.

									has not been otherwise adduced. For avoidance of doubt, this document does not respond to a document relied upon by D in its submissions in this test case, which submissions have not yet been delivered. (5) This document is 11 pages long. To place it in context might be disproportionate in the context of the litigation. (6) The document is objected to insofar as it is relied upon by TC20 to seek special damages on a higher basis of calculation or in excess of the sums pleaded by TC20 (as set out in the Scott Schedule accompanying her pleading e.g. at [1-220bi] and [1-	

									220bn to 1-220bo]). D relies upon the Amended Counter-Schedule, which pleaded: “If and to the extent that the Claimant’s Closing Submissions reduce the basis of calculation and/or quantum of any head of damage, the Claimant is bound by that later document [i.e. the TC20 Closing Submissions].” (7) In any event, the document does not support the proposition asserted, namely that the value of TC20's alleged forced labour was 8KSh per month. (8) Cs’ apparent submission that D ought to have pleaded evidence in the TC20 Counter-Schedule is misguided.	

									There is no such obligation. A fortiori, Cs cannot point to the absence of the document from the TC20 Counter-Schedule as a proper explanation of why Cs did not adduce the document in TC20's June list. (9) Restriction of the use of the document in TC20's case is a consequence of both Cs' breach of the March and June Orders and the consequent sanction and that TC20 should not be permitted to use the figures in this document to augment the sums claimed as special damages. (10) Cs' submission that "D is not treating both sides equally here" is not	

									understood. The Cs appear to be rehearsing their mistaken construction of the March and June Orders, which is not a good reason for relief from sanctions. The issue arising on this application is not whether D is or even should treat Cs fairly: it is that Cs breached the March and June Orders and need relief from the effects of that breach. (11) Cs' submission as to what was said by Mr Mansfield QC is addressed in Ruth Bradbury's latest witness statement. That evidence is adopted, including reference to the 14 June 2017 letter.	

35	45 (178.1)	32-81171	32-81450	KNA file DC.MUR 3.10.31 [KNA file DC.MUR 3.10.31] (SAV-045301) {D}[DE] †			D: Agree, subject to possible further documents in response	As 29 above.	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) The deployment of the document is novel in TC20's case. It	This raises the same issues as for document 27 and the answer is the same.

									has not been otherwise adduced. For avoidance of doubt, this document does not respond to a document relied upon by D in its submissions in this test case, which submissions have not yet been delivered. (5) This document is 337 pages long. To place it in context might be disproportionate in the context of the litigation. (6) The document is objected to insofar as it is relied upon by TC20 to seek special damages on a higher basis of calculation or in excess of the sums pleaded by TC20 (as set out in the Scott Schedule accompanying her pleading e.g. at [1-220bi] and [1-	

									220bn to 1-220bo]). D relies upon the Amended Counter-Schedule, which pleaded: “If and to the extent that the Claimant’s Closing Submissions reduce the basis of calculation and/or quantum of any head of damage, the Claimant is bound by that later document [i.e. the TC20 Closing Submissions].” (7) Cs’ apparent submission that D ought to have pleaded evidence in the TC20 Counter-Schedule is misguided. There is no such obligation. A fortiori, Cs cannot point to the absence of the document from the TC20 Counter-Schedule as a proper	

									explanation of why Cs did not adduce the document in TC20's June list. (8) Restriction of the use of the document in TC20's case is a consequence of both Cs' breach of the March and June Orders and the consequent sanction and that TC20 should not be permitted to use the figures in this document to augment the sums claimed as special damages. (9) Cs' submission that "D is not treating both sides equally here" is not understood. The Cs appear to be rehearsing their mistaken construction of the March and June Orders, which is not a good reason for relief from	

									sanctions. The issue arising on this application is not whether D is or even should treat Cs fairly: it is that Cs breached the March and June Orders and need relief from the effects of that breach. (10) Cs' submission as to what was said by Mr Mansfield QC is addressed in Ruth Bradbury's latest witness statement. That evidence is adopted, including reference to the 14 June 2017 letter.	

36	45 (178.2)	32-81171	32-81450	KNA file DC.MUR 3.10.31 [KNA file DC.MUR 3.10.31] (SAV-045301) {D}[DE] †			D: Agree, subject to possible further documents in response	As 29 above	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) The deployment of the document is novel in TC20's case. It	This raises the same issues as for document 27 and the answer is the same.

									has not been otherwise adduced. For avoidance of doubt, this document does not respond to a document relied upon by D in its submissions in this test case, which submissions have not yet been delivered. (5) This document is 337 pages long. To place it in context might be disproportionate in the context of the litigation. (6) The document is objected to insofar as it is relied upon by TC20 to seek special damages on a higher basis of calculation or in excess of the sums pleaded by TC20 (as set out in the Scott Schedule accompanying her pleading e.g. at [1-220bi] and [1-	

									220bn to 1-220bo]). D relies upon the Amended Counter-Schedule, which pleaded: “If and to the extent that the Claimant’s Closing Submissions reduce the basis of calculation and/or quantum of any head of damage, the Claimant is bound by that later document [i.e. the TC20 Closing Submissions].” (7) Cs’ apparent submission that D ought to have pleaded evidence in the TC20 Counter-Schedule is misguided. There is no such obligation. A fortiori, Cs cannot point to the absence of the document from the TC20 Counter-Schedule as a proper	

									explanation of why Cs did not adduce the document in TC20's June list. (8) Restriction of the use of the document in TC20's case is a consequence of both Cs' breach of the March and June Orders and the consequent sanction and that TC20 should not be permitted to use the figures in this document to augment the sums claimed as special damages. (9) Cs' submission that "D is not treating both sides equally here" is not understood. The Cs appear to be rehearsing their mistaken construction of the March and June Orders, which is not a good reason for relief from	

									sanctions. The issue arising on this application is not whether D is or even should treat Cs fairly: it is that Cs breached the March and June Orders and need relief from the effects of that breach. (10) Cs' submission as to what was said by Mr Mansfield QC is addressed in Ruth Bradbury's latest witness statement. That evidence is adopted, including reference to the 14 June 2017 letter.	
37	45 (178.3)	32-20206	32-20206	Compensation Claims [DC/MUR/3/10/13] (SAV-002606) {D}[DE] †		Ds' Response Bundle Vol.3 Compensation Bundle tab ___		duplicate of No 30 above	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged	This is a duplicate of document 30.

									importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) The deployment of the document is novel in TC20's case. It has not been otherwise adduced. For avoidance of doubt, this document does not respond to a document relied upon by D in its submissions in this test case, which	

									submissions have not yet been delivered. (5) The document is objected to insofar as it is relied upon by TC20 to seek special damages on a higher basis of calculation or in excess of the sums pleaded by TC20 (as set out in the Scott Schedule accompanying her pleading e.g. at [1-220bi] and [1-220bn to 1-220bo]). D relies upon the Amended Counter-Schedule, which pleaded: "If and to the extent that the Claimant's Closing Submissions reduce the basis of calculation and/or quantum of any head of damage, the Claimant is bound by that later document [i.e. the	

									TC20 Closing Submissions].” (6) Cs’ apparent submission that D ought to have pleaded evidence in the TC20 Counter-Schedule is misguided. There is no such obligation. A fortiori, Cs cannot point to the absence of the document from the TC20 Counter-Schedule as a proper explanation of why Cs did not adduce the document in TC20’s June list. (7) Restriction of the use of the document in TC20’s case is a consequence of both Cs’ breach of the March and June Orders and the consequent sanction and that TC20 should not be permitted to use the figures in	

									this document to augment the sums claimed as special damages. (8) Such as Cs' submission at Row 30 stating "as above" was intended to capture other documents concerning special damages, those submissions are repeated, as applicable.	
38	45 (178.4)	32-20206	32-20206	Compensation Claims [DC/MUR/3/10/13] (SAV-002606) {D}[DE] †		Ds' Response Bundle Vol.3 Compensation Bundle tab ___		duplicate of Nos 30 and 38 above	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such	This is a duplicate of documents 30 and 37.

									that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in relation to TC20 when they became aware that they wished to rely upon it. (4) The deployment of the document is novel in TC20's case. It has not been otherwise adduced. For avoidance of doubt, this document does not respond to a document relied upon by D in its submissions in this test case, which submissions have not yet been delivered. (5) The document is objected to insofar as it is relied upon by TC20 to seek	

									special damages on a higher basis of calculation or in excess of the sums pleaded by TC20 (as set out in the Scott Schedule accompanying her pleading e.g. at [1-220bi] and [1-220bn to 1-220bo]). D relies upon the Amended Counter-Schedule, which pleaded: "If and to the extent that the Claimant's Closing Submissions reduce the basis of calculation and/or quantum of any head of damage, the Claimant is bound by that later document [i.e. the TC20 Closing Submissions]." (6) Cs' apparent submission that D ought to have pleaded evidence in the TC20 Counter-Schedule	

									is misguided. There is no such obligation. A fortiori, Cs cannot point to the absence of the document from the TC20 Counter-Schedule as a proper explanation of why Cs did not adduce the document in TC20's June list. (7) Restriction of the use of the document in TC20's case is a consequence of both Cs' breach of the March and June Orders and the consequent sanction and that TC20 should not be permitted to use the figures in this document to augment the sums claimed as special damages. (8) Such as Cs' submission at Row 30 stating "as above" was	

									intended to capture other documents concerning special damages, those submissions are repeated, as applicable.	
39	45 (178.5)	32-53961	32-53961	Compensation for land and goods used by government during emergency [AA 45/52 FCO REF FCO 141/6204] (SAV-015616) {D}			D: Agree	As 29 above and duplicate of No 31 above	(1) Cs have not explained why this document was not on list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. It is for Cs to persuade the Court of the relevance and importance of the document such that the Court should permit reliance. (3) Cs have not explained why they did not alert D to this document in	This is a duplicate of document 31. The answer is the same.

									relation to TC20 when they became aware that they wished to rely upon it. (4) The deployment of the document is novel in TC20's case. It has not been otherwise adduced by Cs in these proceedings. For avoidance of doubt, this document does not respond to a document relied upon by D in its submissions in this test case, which submissions have not yet been delivered. (5) The document is objected to insofar as it is relied upon by TC20 to seek special damages on a higher basis of calculation or in excess of the sums pleaded by TC20 (as set out in the	

									Scott Schedule accompanying her pleading e.g. at [1-220bi] and [1-220bn to 1-220bo]). D relies upon the Amended Counter-Schedule, which pleaded: “If and to the extent that the Claimant’s Closing Submissions reduce the basis of calculation and/or quantum of any head of damage, the Claimant is bound by that later document [i.e. the TC20 Closing Submissions].” (6) Cs’ apparent submission that D ought to have pleaded evidence in the TC20 Counter-Schedule is misguided. There is no such obligation. A fortiori, Cs cannot point to the absence of the	

									document from the TC20 Counter-Schedule as a proper explanation of why Cs did not adduce the document in TC20's June list. (7) Restriction of the use of the document in TC20's case is a consequence of both Cs' breach of the March and June Orders and the consequent sanction and that TC20 should not be permitted to use the figures in this document to augment the sums claimed as special damages. (8) Cs' submission that "D is not treating both sides equally here" is not understood. The Cs appear to be rehearsing their mistaken construction of the March and	

									June Orders, which is not a good reason for relief from sanctions. The issue arising on this application is not whether D is or even should treat Cs fairly: it is that Cs breached the March and June Orders and need relief from the effects of that breach. (9) Cs' submission as to what was said by Mr Mansfield QC is addressed in Ruth Bradbury's latest witness statement. That evidence is adopted, including reference to the 14 June 2017 letter.	

TC34 Schedule

Row #	Submission Page (Para)	Document ref (first page)	Page ref	Document name	On another TC June list?	In a bundle?	Adduced elsewhere?	Cs' Submissions	D's Submissions in response	Judge's Comments
1	4 (14a)	32-18320	32-18325	Minutes of the first meeting of a permanent working party to consider the movement of detainees. Held in the Office of the Minister For Defence on 31st May 1954 [TNA WO276/428] (CYF-0000000314) {C}	TCs 13, 26 & 29			This document is adduced via TC26's Submission (regarding another camp). Here, it demonstrates the progress of Manyani. TC34's pleaded case is that he was arrested in 1955. The Submission is	(1) Cs have not explained why this document was not on TC34's list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. (3) Cs have not explained why they did not alert D to this	(1) The document deals with projected numbers and building at Manyani for May-June 1954. (2) The time of arrival at Manyani, according to the Claimants' documentation, is something of a moving target in that: a. Paragraph 9 IPOC (not subject to the August 2017 amendment hearing) states "In 1955 the Claimant was working in Nairobi". Thereafter

								more precise and puts the dates 3 months either side of 1955. It is not contradictory of TC34's pleaded case to make such a submission: rather it supports it. Whilst D says further research is required it has not specified what that is. The same point arises in other test cases, and the whole issue of Manyani has been extensively researched already.	document in relation to this TC when they became aware that they wished to rely upon it (if earlier than date of submissions being served). (4) This document is relied on in support of a novel submission that contradicts TC34's pleaded case, i.e. that he was arrested between September 1954 and March 1955 (para. 14 of TC34's Closing) or possibly even earlier than September 1954 ("Summer 1954" at para. 97 of TC34's Closing). TC34's pleaded case has always been that he was arrested "in 1955" (IPOC para 9, [28-0c]). TC34 was unable to give further details of the date in his Part 18 Response [28-	it says he was taken to 3 places where he remained for a few days and to Langata where he remained for two weeks before being transferred to Manyani. b. The permitted amendment at paragraph 18 IPOC says "The Claimant will rely on documentation in support of his claim and for its full terms and effects at trial which indicate he arrived after October 1954". This is consistent with his arriving in 1955. Documents are relied upon in support of this permitted amendment. None of these is document 1 in this schedule or the other documents in this schedule. c. At paragraph 14a of the submissions it states that this Claimant "is likely to have been sent to Manyani after September 1954." This is consistent with his arriving after October 1954, but it is not the same. d. In paragraph 97 of his submissions it is said

									96]. No application has ever been made to amend this date (including when Cs applied to amend dates in the IPOCs in 2017) and no notice of any change was given to D before TC34's Closing was served in December 2017, immediately after his final amended IPOC (still alleging a date in 1955) was served. (5) It is for Cs to persuade the court of the relevance and importance of the document such that the court should permit reliance. (6) Cs' only reliance on this document in another Test Case Closing (TC26 at para.78) relates to a different camp (Kandara Camp). In	"assuming him to have been apprehended in Summer 1954." This is inconsistent with the pleadings and the earlier submissions. (3) The Claimants, especially in view of the fact that in August 2017 they were relying on specific documents to show that TC34 arrived in Manyani after October 1954, do not explain why document 1 (or document 2) is important in relation to his case. That is a factor militating against relief from sanctions. (4) If the document is of greater importance, then the Defendant's submission that they would have to do further research and potentially adduce further documents to place this document into context becomes more relevant. That would waste time and resources, the effect of which cannot be properly measured at this stage. (5) For those reasons the document is refused.

									TC34's closing it is relied on in relation to Manyani. (7) It is not clear what (if any) relevance this document has to TC34's case, even taking the submissions made in contradiction of TC34's pleaded case referred to at item (4) above into account. The document deals with detainee transfers between camps during May and June 1954. The general assertion in Cs' submissions that it "demonstrates the progress of Manyani" is not an adequate explanation, particularly given the document is cited for the position as at 31 May 1954. To the extent it is relevant, then further research would need to be	

									undertaken to address the point being made in reliance on this document (if and to the extent Cs explain its relevance to TC34's case, which they have not), and potentially further documents adduced to place it into context, which could be disproportionate.	
2	4 (14a)	32-22330	32-22332	Letter from Stott to the Director of Medical Services, re: Typhoid outbreak at Manyani [TNA CO822/801] (CYF-0000001178) {C} †		Cs' Opening Folder 6; Opening FN 870		This document details the progress of Camp 3 where TC34 was likely to have been placed. Again, it helps fix the time of TC34's arrival at Manyani. It does not contradict his pleaded case. Moreover, D's suggestion	(1) Cs have not explained why this document was not on TC34's list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. (3) Cs have not explained why they did not alert D to this document in relation to this TC when they	(1) See the comments above in relation to document 1. (2) This document is used in support of the submission that by 14 September 1954, Camp Three still contained relatively few people [32-22332]. (3) In the written opening paragraph 757 it states "TC34 is one of those who saw the typhoid at first hand. The medical adviser to the Office of Labour described many men being made to work, despite their obvious incapacity, and stated

								that the document was opened about typhoid and that the issue about Camp 3 is new is wrong. The point about there only being 2 camps when the document was compied was made expressly by Mr Cox QC at p3404 of the Consolidated Transcript. Mr Cox went on to refer to another document [32-23428], which expressly makes the point that Camp 3 was largely unoccupied until September 1954. Accordingly, if D does have to	became aware that they wished to rely upon it (if earlier than date of submissions being served). (4) This document is relied on in support of a novel submission that contradicts TC34's pleaded case, point (4) in the list for item 1 above is repeated. (5) The document pre-dates TC34's pleaded date of arrival at Manyani by between 3 and 15 months. (6) It is for Cs to persuade the court of the relevance and importance of the document such that the court should permit reliance. To the extent it is relevant, then further research would need to be undertaken to address the point being made in	"*some detainees in the compound were so ill as to be quite unable to walk by themselves.*" There is then a footnote reference 870, which refers to document 22332. This exact point was made by Mr Cox QC in oral opening and was referenced to this document. That is in the consolidated transcript [page 3347]. This is a different point from the one for which the document is now sought to be used. (4) It is correct, as the Claimants state, that at page 3404 of the consolidated transcript, reference is made by Mr Cox QC to the document [at 22330] to show "There were just two camps at that stage." Nevertheless, TC34's case was not amended to change camp 30 to compound 30 in camp 3 until the judgment in August 2017. Even then this document was not relied upon among those which the Claimants cited in support of the

								research the point it has sat on its hands for almost 16 months, and neglected to deal with the point in its own documents. That cannot be attributed to Cs.	reliance on this document, and potentially further documents adduced to place it into context, which could be disproportionate. (7) In the written Opening, this document was relied on for a different point (the spread of typhoid at Manyani), see Footnotes 822 and 870. It is accepted that orally on 21 December 2016 [33-7495] Mr Cox QC referred to this document (but not to the page now relied on, [32-22332]) for the additional proposition (which the document does not in fact support, because it refers to the existence of three camps) that "there were just two camps at that	amendment. Therefore the same points as to the importance of the document to TC34's case having not been made out and the possible disruption, as referred to in relation to document 1, apply equally here.

									stage". No reference was however made to the potential significance of the point then being made, whether generally or in relation to TC34's case. At that time, TC34's case was that he was detained in "Camp 30" at Manyani. Cs did not notify D of any change to that case until TC34's Amended IPOC was served in 2017. Even then, this document was not identified either in the amendment application or in TC34's June 2017 documents list. Point 1 above is repeated.	

3	5 (17)	32-19558	32-19560	Report by Nairobi Extra-Provincial District Emergency Committee on the Situation in Nairobi consequent upon the end of Operation "Anvil" [TNA Co822/703] (CYF-0000000928) {C}	TCs 17 & 26			This document explains why TC34 was not arrested during Anvil. D's proposition that this contradicts his pleaded case is wrong. It supports it by showing how the documents support his evidence. It is therefore evidence of his credibility. D has presented its own evidence on Anvil and has, presumably, done the research required to counter TC34's argument that he was not arrested in Anvil (although that	(1) Cs have not explained why this document was not on TC34's list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. (3) Cs have not explained why they did not alert D to this document in relation to this TC when they became aware that they wished to rely upon it (if earlier than date of submissions being served). (4) This document appears to be relied on in support of a novel submission that contradicts TC34's pleaded case, point (4) for item 1 above is repeated. (5) The document pre-dates TC34's	(1) This document is referred to in paragraph 17 of TC34's submissions in this context "In or around 1954/55, TC34 was staying near Mathare Mental Hospital, Nairobi [33-3215y]. He had been restricted from accessing his Council house in Makongeni, Nairobi, due to a curfew [28-160]. A report by the Nairobi Extra-Provincial District Emergency Committee on the Situation in Nairobi following Operation Anvil speaks of the need to tighten up control in Nairobi [32-19560]. TC34 had his own carpentry business. At [60], the report explains that workers with good employment had been spared arrest during Anvil because of fear of disrupting essential services. This may explain why TC34 was not detained during Anvil. However, because those workers were also more likely to be leaders and organisers of Mau Mau, the report stressed that

								is not D's case). Otherwise it is difficult to envisage what research is required. Equally the appointment of a Chief set out at 32-19570 is consistent with TC34's case and not, insofar as one can tell, disputed by D.	pleaded date of arrest by between 6 and 18 months. (6) It is for Cs to persuade the court of the relevance and importance of the document such that the court should permit reliance. (7) The document no longer appears on the updated TC17 and TC26 lists and the deployment of this document is novel in these proceedings (8) To place this document into context will require further research into Cs' new and different case and potentially the deployment of further documents arising from such research, which could be disproportionate. (9) TC34 has never alleged that he was present in	there could be no relaxation of control measures, otherwise the gains from Anvil would be lost. At [70], the appointment of a Chief to Makongeni [28-160] is detailed, demonstrating the greater administrative control of TC34's home area following Anvil, consistent with his evidence." This document is therefore relied upon for two pages not just page 19560. (2)The Claimants submit that this is evidence of credibility to show why TC34 was not arrested during Anvil, and that it is consistent with his evidence that there was greater administrative control of TC34's home area following Anvil. (3)To the extent that the Claimants wish to rely on this for TC34's credibility, the document has little if any importance. TC34 said that after he took the second oath in or about 1953 he was in between

									Nairobi, but not arrested, during Operation Anvil. In cross-examination, he said that after taking the second Mau Mau oath about a year after the declaration of the Emergency [33-3215k] he lived both in Nairobi and in his home village and was "in between" the two places [33-3215p]. (10) TC34 has alleged in his pleaded case and evidence-in-chief that he was arrested in 1955, although in re-examination when asked by his Leading Counsel to date his arrest by reference to the time at which he took the second oath, he said that he was arrested 3-4 months after taking the second oath, i.e. during	Nairobi and his home village.(Caselines 33-3215p). He has never said in evidence that he was present in Nairobi during Operation Anvil, but not arrested. (4) Whether or not the Defendant is correct that the Claimant wishes to rely upon the document also to date TC34's arrest to a point in the latter part of 1954, relief from sanctions is not granted as the document is of limited relevance in the circumstances. No further time or potential disruption should be spent in dealing with it. Operation Anvil was not mentioned during TC34's oral evidence. This is subject to (5) below however. (5) One small point of some potential relevance emerges from page 32-19570 in that greater administrative control in June 1954 may assist in the consistency of TC34's evidence. On that basis the document is

									the first quarter of 1954 [33-3215au to 33-3215av] (though this different account has not been adopted in TC34's case). This document deals with the situation in Nairobi at the end of June 1954, which is at least 6 months before his pleaded date of arrest and several months after the different date of arrest he gave when asked about it in re-examination. Cs appear to rely on this document to seek to date TC34's arrest not just to a point after Operation Anvil, but to a point in the latter part of 1954 (cf. paras 14 and 97 of TC34's Closing). That is contrary to his pleaded case. To the extent that Cs are relying on	admitted, but only as to the title and the date on 32-19558, the sub-title on 32-19570 and the sentence on 32-19570 “Two chiefs have been installed in the railway locations of Makongeni and Muthurwa.”

									this document, it is not to support TC34's credibility because TC34 has never alleged such a date of arrest whether in his pleaded case or in evidence, nor has TC34 alleged he was present in Nairobi during Operation Anvil, but not arrested.	

4	7 (23a)	32-7070	32-7089-98	General Erskine The Kenya Emergency July 1953 - May 1955 [TNA WO 276/511] (CYF-0000043681) {C} Duplicate references 32-33067 & 32-33292		Cs' Opening Folder 8		This document details the activity of the British Army in Nairobi between Anvil and and the end of 1954. It is therefore relevant to the case as pleaded by TC34. It does not, contrary to D's assertion, contradict it. D appears to have forgotten the various occasions on which the Court said that dates were to be interpreted within tolerable limits. The submission demonstrates that TC34's account of his arrest, after Anvil, by soldiers is	(1) Cs have not explained why this document was not on TC34's list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. (3) Cs have not explained why they did not alert D to this document in relation to this TC when they became aware that they wished to rely upon it (if earlier than date of submissions being served). (4) This document appears to be relied on in support of a novel submission as to date of arrest that contradicts TC34's pleaded case, as the section relied on [32-7089/7098]	(1)See document 1 as regards the moving target of TC34's alleged arrest. The pages relied on in this document go only to 1954, not the pleaded arrest date in 1955. Whether or not the court is prepared to allow some leeway in respect of these specific pleadings 1955 will be a matter for final submissions. (2)The document goes to credibility only, on the Claimants' submission. It is said to demonstrate "That TC34's account of his arrest, after Anvil, by soldiers is likely to be credible." It has not been specifically pleaded by the Defendant or stated by them that there were no soldiers in or around Nairobi after Anvil whether in 1954 or 1955. This document is of limited relevance at best. Point 3 made in relation to document 1 above as to time/potential disruption is repeated.

								likely to be credible. Given that D prepared questions on credibility, suported by documents (which Cs agreed it did not have to put to the Cs in evidence), it is to be assumed that any research to challenge this point has already been done. Otherwise D was not prepared for cross-examination.	relates only to 1954. TC34's pleaded case has always been that he was arrested at in 1955. Point (4) of item 1 above is repeated. (5) Cs reference to D having "forgotten the various occasions on which the Court said that dates were to be interpreted within tolerable limits" is embarrassing in its lack of particularity as to any such statements by the Court whether in general terms or in relation to TC34's case. As to the importance of the pleaded dates, the Defendant will rely on the Court's judgment of 18 August 2017, including paragraphs 25 and 28 thereof and the reasons	The Defendant would have to investigate details of soldiers' presence in around Nairobi in late 1954.

									given for the refusal of the amendments as to date in the cases of TC19 and TC21. (6) TC34's pleaded case is and has always been that he was arrested in 1955. No application was made in 2017 or has been made now to amend that pleading. Rather than seeking to advance the pleaded case and to deploy documents relating to the activities of British troops in Nairobi in 1955 in support of the pleaded contention, Cs now seek to advance a new and different case and to assert, using documents such as the passages in this document relied on relating to 1954, that TC34	

									was or may have been arrested in September 1954 (see para. 14 of TC34’s Closing) and/or at some even earlier point in ‘Summer 1954’ (see para. 97 of TC34’s closing). (5) It is for Cs to persuade the court of the relevance and importance of the document such that the court should permit reliance. (6) In order to meet the new case being advanced by Cs, further research would be required to place it into context and potentially the deployment of further documents, which could be disproportionate. Cs’ reference to D’s researches into events after Operation Anvil for the purposes of cross-	

									examination ignores the point that TC34's pleaded case has always been that he was arrested at an unspecified date in 1955, rather than in e.g. 'Summer 1954' (para. 97 of TC34's closing).	
5	7 (23c)	32-27215a	32-27215a	Table - 49 Independent Infantry Brigade Location Statement (CYF-0000023471){C}			On Schedule B, documents not adduced in TC subs.	This document details also the activity of the British Army in Nairobi between Anvil and and the end of 1954. It is therefore relevant to the case as pleaded by TC34. It actually relates to the position on	The submissions made on item 4 immediately above are repeated, mutatis mutandis. Insofar as Cs seek to use this and other documents in this Schedule to establish for the purpose of TC34's case "the activity of the British Army in Nairobi between Anvil and and [sic] the end of	(1)This document is relied upon to show that the Inniskillings "were at Muthaiga on 15 December 1954 [32-27215a] (2)The comments in relation to document 4 above are repeated. (3) In any event, document 32-32142a (not the subject of objection) is a historical record for the year ending 1 April 1955 of the 1st Battalion the Royals Inniskilling Fusiliers and states that they were in Nairobi

								15th December 1954, which D says contradicts TC34's case (by 17 days). AS above.	1954", then this is impermissible for all the reasons already given above. TC34's case has never been that he was the subject of action by the army in Nairobi between Operation Anvil and the end of 1954. As already noted above, to the extent that a different account was given in re-examination by TC34 (which account has not been adopted as his case), it was that he was arrested before Operation Anvil. The deployment of this document is novel in these proceedings.	and Thuita district between June and August, Meru district August to November and Nairobi (less company detachment at Meru) December to April. The document says that the Inniskillings were at Muthaiga where TC34 says he was taken. However the potential work and disruption created by investigating these documents is not justified by its very limited potential probative value.

6	8 (28b)	32-37804	32-37804-6	M.M.I.C. Handing over Report - September, 1955. [Hanslope] (CYF-0000006132) {C} †	TC 18			This document is adduced in TC18's Submission. It relates to the proposition that psychological torture was used to destroy resistance - as TC34 allges happened to him. D's first objection is that it does not specify the method adopted to TC34. That is a submission about weight only, and fails to acknowledge that D did not challenge TC34's account in this respect. The submission is clear that the documents support the type of	Cs have not addressed the precondition for D's continued objection to this document. D's revised objections to Cs' documents not on TC34's June 2017 documents list are to documents which are relied on to support submissions which contradict TC34's pleaded case. If this document is to be used to support the new (and D contends impermissible) allegation that TC34 was in fact detained and interrogated at the MMIC at Embakasi (and not, as pleaded, the CID in Nairobi), which is made at paragraph 26 of TC34's Closing, then D continues to object to it. If it is not deployed	(1)This is in support of TC34's account of being shown severed heads. It is said that there is documentary evidence that the screening teams deployed techniques including "psychological" methods, intended to destroy resistance. This is one of three referred to. It is about sleep deprivation being used as a technique. (2) On the basis that this document is deployed solely for the reasons given in the Claimants' comments in the schedule, namely for the purposes of psychological torture being used to destroy resistance, the Defendant withdraws this objection, without prejudice to the position that it will take in relation to the relevance for TC34's claim and/or the assertion made in reliance on the document. (3)Therefore the document is permitted on this express basis.

								treatment to which TC34 was subjected, and the determination to 'break' prisoners. No further research is required unless D denies that such methods were adopted. If D does deny that, then the failure to put its true case to TC34 is rendered yet more stark. To avoid obtaining the evidence of the man to whom the events happened by failing to put a positive case that he is untruthful or inaccurate would be wholly unfair.	to support that allegation, and its use is confined to the proposition referred to in Cs' submissions in this Schedule, then in common with the other documents referred to at paragraph 28 of TC34's Closing which were also not in TC34's list of documents, D will withdraw its objection, entirely without prejudice to the position that it will take in Closing generally and in particular as to its relevance to TC34's claim and/or the the assertion made in the Closing in reliance on this document. For ease of reference, the terms of D's earlier objection in the original Schedule provided to Cs and the Court are	

									set out below: (1) Cs have not explained why this document was not on TC34's list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. (3) Cs have not explained why they did not alert D to this document in relation to this TC when they became aware that they wished to rely upon it (if earlier than date of submissions being served). (4) It is for Cs to persuade the court of the relevance and importance of the document such that the court should permit reliance. (5) This document is relied on in	

									TC18's closing solely in relation to the proposition that TC18 was detained at the MMIC. The Court refused to permit an amendment to TC18's pleaded case to allege this, in the August 2017 judgment. The only basis upon which this document appears to have been 'adduced' is to support a proposition that the Court has refused to permit Cs to advance. (6) The document does not refer to the use of severed heads as a method of interrogation. Insofar as it is relied on for the proposition that 'sleep deprivation' was used in one case at the MMIC, that does not bear	

									on TC34's case that he was shown severed heads when interrogated at the CID in Nairobi. (7) It is not clear whether the reference to this document is also being used to support the new (and D contends impermissible) allegation that TC34 was in fact detained at the MMIC at Embakasi (not the CID in Nairobi), made at paragraph 26 of TC34's Closing. (8) The deployment of this document is (save for the impermissible use in TC18's case) novel in these proceedings and would require further research to place it into context and potentially the deployment of	

									further documents, which could be disproportionate. No TC claims they were detained at the MMIC.	
7	29 (106)	32-11390	32-11390	Troop Locations map (WO 32_21721) 15 December 1953 {C}			Permission to adduce based upon Order 9/9/16.	This document goes to support TC34's credibility. The issue is whether Yatta and Mwea Camps are the same. That was TC34's evidence, as his	(1) Cs have not explained why this document was not on TC34's list in June 2017. (2) Cs have not explained when they became aware of this document and/or its alleged importance in relation to this TC. (3) Cs have	(1)The submissions on behalf of TC34 are contrary to the Claimants' comments that the document goes to support TC34's credibility. At paragraph 107 of the submissions it says that the two camps (i.e Mwea Works Camp and Yatta) "were separated, but close enough together to be viewed as a unit". At paragraph 172 under the

								Submission sets out at §106. D said Yatta was not a Mwea camp. The document shows that the 2 places are next to each other (Yatta is above the key; Mwea is NW of Yatta). D's argument that this contradicts TC34's pleaded case assumes that he was either at Yatta or Mwea: that entirely ignores the submission D must answer. TC34 pleads he went to *"the Mwea Works Camp"*. His evidence was that this *was* Yatta. An amendment to suggest	not explained why they did not alert D to this document in relation to this TC when they became aware that they wished to rely upon it (if earlier than date of submissions being served). (4) This document appears to be relied on in support of a submission that contradicts TC34's pleaded case, i.e. that TC34 was detained at Yatta Works Camp and not at Mwea Works Camp. The Court refused Cs' application to amend TC34's pleaded case to raise this allegation in the August 2017 Judgment. The Defendant relies on the Court's judgment and the reasons given therein. (5) Cs'	heading "Mwea Works Camp" it states "TC34 was transferred to Works Camps (plural) on the Mwea Plain….." (my addition in brackets). (2)In the August 2017 schedule to the judgment on this point I said "The first mention of Yatta was in the Test Claimant's oral evidence where he said that he was in Yatta for 6-8 months and that Yatta was part of Mwea. He said that in his statement where he refers to Mwea Works Camp it was the same as Yatta Camp. The proposal to amend to include Yatta is not allowed. The whole basis of the pleading and the witness statement was that the Claimant was held in Mwea Works Camp……It is too late to introduce Yatta into the pleadings. I accept that there is real prejudice here. This is an entirely new case and would require substantial documentary research. Further see points (x) and (xi) in relation to TC14." (3)The Claimants say the

								that TC34 was detained in *both* places was refused and Cs do not go behind that. The schedule to the Judgment of Aug 2017 records TC34's evidence that Yatta was part of Mwea, but says that it was too late to introduce Yatta into the pleading. TC34 has not done so. Instead Cs have sought to reconcile the pleading and his evidence, as they are entitled (indeed obliged) to do. D is not compelled to research Yatta camp, but merely to answer the submission	explanation of their reliance on this document contradicts the terms of the pleaded case, TC34's written Closing and the Court's August 2017 Judgment. The document is not relied on in the written Closing solely in relation to TC34's credibility. The written Closing seeks (paras 106-111 and 172) to obtain a remedy from the Court by way of damages for 'fear and trespass assault' in relation to TC34's presence at a works camp in Mwea. (6) TC34's pleaded case and evidence-in-chief was that the camp in question was Mwea Works Camp (a specific individual camp).	issue is "whether Yatta and Mwea Camps are the same." That is not the pleaded issue and was not allowed to be a pleaded issue, by the reasoning in the above comments. In fact the pleading which was sought to be amended was "the Claimant was held at the Mwea Works Camp for six months, during which he worked in other places, including Gathiguri and Yatta…" Therefore in that pleading the Claimants sought to distinguish Mwea Works Camp and Yatta. It is impermissible for the Claimants to suggest that TC34 was in Yatta whether as a separate camp or a part of the Mwea Works Camp. Trying to introduce the document in this manner when it has been refused as an amendment is inconsistent with the reasoning in the amendments refusal. (4) Even using the document to show that TC34's oral evidence relating to Yatta was credible is prejudicial for

								that TC34 may have been correct in regarding the 2 places as the same.	The Court refused an amendment to alter the pleaded case to refer to Yatta Works Camp, which amendment was said to reflect TC34's oral evidence. The case being advanced at paragraphs 106-111 and 172 of TC34's Closing appears to D to be that TC34 was detained at Yatta Works Camp, given the frequent references to documents (including this one) relating to the camp at Yatta, and that damages flow from his detention there. TC34's Closing states "Whilst D did not classify Yatta as a Mwea camp, geographically it is close to the Mwea Plain [32-	similar reasons for my refusal of the amendment. As the Defendant says" The Court having refused the amendment in those terms, Cs ought not now to be permitted, by way of relief from the sanction for not including these documents in TC34 June 2017 document list, to advance the very same case in relation to the credibility of TC34's oral evidence…"

									11309]… Cs submit he may have been regarding Mwea (correctly) as a geographical area, rather than referring to a particular camp." (para. 106 of TC34's Closing) and "Z detainees were unsuitable for Yatta, consistent with TC34's evidence of his classification [32-84100-1]" (para.107 of TC34's Closing). Cs' submissions in this Schedule put it thus: "The issue is whether Yatta and Mwea Camps are the same. That was TC34's evidence, as his Submission sets out at §106." Even if (which is denied), as Cs submissions state, the issue is, despite the Court's refusal of the amendment	

									in the August 2017 Judgment, whether Yatta and Mwea Works Camps "are the same" then Cs should have sought to amend the pleaded case to raise that issue. (7) Even if this document were relied on solely for the proposition that TC34's oral evidence relating to Yatta was credible, this prejudices D to a similar extent to that which caused the Court to refuse the amendment to paragraph 28 of TC34's pleaded case in the 18 August 2017 Judgment. The Court refused the proposed amendment because, "The first mention of Yatta was in the Test Claimant's oral evidence where he said	

									that he was in Yatta for 6-8 months and that Yatta was part of Mwea. He said that in his statement where he referred to Mwea Works Camp it was the same as Yatta Camp. The proposal to amend to include Yatta is not allowed. The whole basis of the pleading and the witness statement was that the Claimant was held in Mwea Works Camp … It is too late to introduce Yatta into the pleading. I accept that there is real prejudice here. This is an entirely new case and would require substantial documentary research…” The Court having refused the amendment in	

									those terms, Cs ought not now to be permitted, by way of relief from the sanction for not including these documents in TC34’s June 2017 documents list, to advance the very same case in relation to the credibility of TC34’s oral evidence (and, for the reasons given in the preceding point (6), Cs’ reliance on this document in TC34’s Closing goes to the substance of TC34’s claim for damages, not to credibility alone). Cs’ submission is (now) to the effect that “Yatta and Mwea Camps are the same”. To counter that submission would require D to undertake precisely the work (and at a much later stage)	

									that the Court ruled it ought not to have to undertake when refusing the amendment to introduce Yatta into TC34's pleaded case in August 2017.	
8	30 (107)	32-19659	32-19659	Letter from Commissioner for Community Development and Rehabilitation to The Commandant, Yatta Works Camp; The Commandant, Mwea Works Camp; The Commandant, Tebere Works Camp [AB.1.106] (SAV-041645) {D}			On Schedule B, documents not adduced in TC subs.	The document shows that Yatta and Mwea were one unit. That supports TC34's credibility and demonstrates that the submission made by him may be correct. As above.	See item 7 above. Additionally, the deployment of this document is novel.	Refused for the same reasons as document 7.
	30 (107)	32-47576	32-47576	Emergency, Works Camps - Central Province, Thika (Yatta) [AH/9/27] (SAV-002370) {D}	TC 31			This document shows the relationship between Mwea and Yatta. It therefore supports TC34's credibility	See item 7 above.	Refused for the same reasons as document 7.

								and supports his submission. As above.		
10	30 (107)	32-31730	32-31730	Memoranda for official committee on resettlement [AA 51/8/2/1A FCO REF FCO 141/6268] (SAV-015701) {D}			Opening - handed up 28/03/2017	This document was adduced in Opening. It supports the proposition that the furrow extended 40 miles. As above.	See item 7 above.	Refused for the same reasons as document 7.
11	30 (107)	32-84100	32-81400-1	Report - Proposal for Labour Camps on the Aldev Scheme at Yatta [AB.1.103] (SAV-041534) {D}			D: Agreed, subject to possible further documents in response	D agreed that this could go in as a response to its presentation of documents, subject to its putting in documents in response. That raises the issue of the restricted use of documents, addressed in the Skeleton to be served 21st March 2018. Otherwise, as above.	See item 7 above. This document does not respond to a document relied upon by D in its submissions in this test case, which submissions have not yet been delivered.	Refused for the same reasons as document 7. [This document does not respond to a document relied upon by the Defendant. Paragraph 22 of the Order of 31 March 2017 allows responses to documents relied upon by the Defendant in its submissions in relation to a particular test case – see main judgment].

12	30 (107)	32-54948	32-54949	Saving No. 1519/57 from the Officer Administering the Government of Kenya to the Secretary of State for the Colonies, re: Employment of Detainees [TNA CO822/1235] (CYF-0000001425) {C} †		Cs' Opening Folder 12		This shows that D was informed of progress of the Yatta furrow and also that it extended from the R Thika to the Yatta Plateau. It was adduced in Opening. It supports TC34's evidence. As above.	See item 7 above.	Refused for the same reasons as document 7.
13	31 (111d)	32-21122	32-21122	Council of Ministers Resettlement Committee Memorandum by the Minister for Defence Works Projects for Detainees Screened "Grey" [KNA AH/9/32] (CYF-0000002349) {C}	TCs 10, 17, 21 & 31			This document shows that those working on the Yatta Furrow were used as forced labour and supports TC34's evidence in that respect. It is adduced by TC10. It is dated August 1954 and therefore shows that the position was	See item 7 above.	Refused for the same reasons as document 7.

								unchanged (the furrow took a long time to complete as the previous documents showed). As above.		
14	49 (192a)	32-81171	32-81450	KNA file DC.MUR 3.10.31 [KNA file DC.MUR 3.10.31] (SAV-045301) {D}[DE] †			D: Agreed, subject to possible further documents in response	These documents are also adduced for TC20 and they consist of the best evidence (adduced by D but not relied on in D's Counter Schedules attached to the individual Defences) available to assess special damages. D is able to adduce further documents for the test cases. If those documents also go to the general point	The submissions made on this document in TC20's Schedule are adopted. Insofar as objection is taken to this document being deployed to advance submissions which increase the amount of special damages claimed, the relevant section of TC34's Closing starts at paragraph 192. TC34's special damages claim is set out in Cs' schedule at [1-220bq]. The amounts claimed at paragraphs 192.a, 192.b, 192.c, 192.d,	(1) Relief from sanctions is not granted in relation to this document because: (a) In the generic Schedule of Loss against the claim for house and working tools there is said to be a nil claim. See also the Part 18 Request at Caselines 1-220bi. (2) Whilst special damages changes as to figures only will be allowed in relation to documents 16 onwards, for the same reasons as in relation to document 27 of TC20's schedule, to allow this document would probably lead to a contested hearing on the amendment of the schedule of loss. Such contested hearing must be avoided, particularly in the circumstances in

								about the value of special damages then on D's anlysis they should have been adduced earlier. Cs do not object to that, but rely on it in support of their submission that D is not treating both sides equally here. D's case is that each TC should have identified all documents by June 2017 and that adducing a document for general purposes is not good enough (despite what was said by Mr Mansfield QC in open court and to Mr Cox QC and Mr	192.e, 192.f and 192.g of TC34's Closing in reliance on this and other documents exceed the amounts claimed in the Schedule of Special Damages. This document does not respond to a document relied upon by D in its submissions in this test case, which submissions have not yet been delivered.	(3) below. (3) The claims are relatively very modest and the documents (14 & 15) are based on somebody else's claim valuation in the 1950s. Their probative value is therefore not of the highest order.

								Myerson QC). D has not provided any evidence of when this was said. It merely says that it was the position. If it was not made express, then D adopting a different position for itself is evidence that Cs were justified in understanding the position as explained by Mr Martin in his witness statement of 20th March 2018.		
15	49 (192b)	32-81171	32-81451	KNA file DC.MUR 3.10.31 [KNA file DC.MUR 3.10.31] (SAV-045301) {D}[DE] †			D: Agreed, subject to possible further documents in response	As above.	The submissions made on this document in TC20's Schedule are adopted. Insofar as objection is taken to this document being deployed to advance submissions which increase the amount of	See comments in relation to document 14 above.

									special damages claimed, the relevant section of TC34's Closing starts at paragraph 192. TC34's special damages claim is set out in Cs' schedule at [1-220bq]. The amounts claimed at paragraphs 192.a, 192.b, 192.c, 192.d, 192.e, 192.f and 192.g of TC34's Closing in reliance on this and other documents exceed the amounts claimed in the Schedule of Special Damages. This document does not respond to a document relied upon by D in its submissions in this test case, which submissions have not yet been delivered.	

16	49 (192c)	32-81171	32-81451	KNA file DC.MUR 3.10.31 [KNA file DC.MUR 3.10.31] (SAV-045301) {D}[DE] †			D: Agreed, subject to possible further documents in response	As above.	The submissions made on this document in TC20's Schedule are adopted. Insofar as objection is taken to this document being deployed to advance submissions which increase the amount of special damages claimed, the relevant section of TC34's Closing starts at paragraph 192. TC34's special damages claim is set out in Cs' schedule at [1-220bq]. The amounts claimed at paragraphs 192.a, 192.b, 192.c, 192.d, 192.e, 192.f and 192.g of TC34's Closing in reliance on this and other documents exceed the amounts claimed in the Schedule of Special Damages. This	See the comments in relation to document 27 of TC20's schedule.

									document does not respond to a document relied upon by D in its submissions in this test case, which submissions have not yet been delivered.	
17	49 (192d)	32-81171	32-81451	KNA file DC.MUR 3.10.31 [KNA file DC.MUR 3.10.31] (SAV-045301) {D}[DE] †			D: Agreed, subject to possible further documents in response	As above.	The submissions made on this document in TC20's Schedule are adopted. Insofar as objection is taken to this document being deployed to advance submissions which increase the amount of special damages claimed, the relevant section of TC34's Closing starts at paragraph 192. TC34's special damages claim is set out in Cs' schedule at [1-220bq]. The amounts claimed at paragraphs 192.a, 192.b, 192.c, 192.d, 192.e, 192.f and	See the comments in relation to document 27 of TC20's schedule.

									192.g of TC34's Closing in reliance on this and other documents exceed the amounts claimed in the Schedule of Special Damages. This document does not respond to a document relied upon by D in its submissions in this test case, which submissions have not yet been delivered.	
18	49 (192f)	32-20206	32-20206	Compensation Claims [DC/MUR/3/10/13] (SAV-002606) {D}[DE] †		D: Response Bundle, Vol. 3, Compensation Bundle tab ___		As above.	The submissions made on this document in TC20's Schedule are adopted. Insofar as objection is taken to this document being deployed to advance submissions which increase the amount of special damages claimed, the relevant section of TC34's Closing starts at paragraph 192.	See the comments in relation to document 27 of TC20's schedule.

									TC34's special damages claim is set out in Cs' schedule at [1-220bq]. The amounts claimed at paragraphs 192.a, 192.b, 192.c, 192.d, 192.e, 192.f and 192.g of TC34's Closing in reliance on this and other documents exceed the amounts claimed in the Schedule of Special Damages.	
19	49 (192g)	32-20206	32-20206	Compensation Claims [DC/MUR/3/10/13] (SAV-002606) {D}[DE] †		D: Response Bundle, Vol. 3, Compensation Bundle tab ___		As above.	The submissions made on this document in TC20's Schedule are adopted. Insofar as objection is taken to this document being deployed to advance submissions which increase the amount of special damages claimed, the relevant section of TC34's Closing starts at paragraph 192.	See the comments in relation to document 27 of TC20's schedule.

									TC34's special damages claim is set out in Cs' schedule at [1-220bq]. The amounts claimed at paragraphs 192.a, 192.b, 192.c, 192.d, 192.e, 192.f and 192.g of TC34's Closing in reliance on this and other documents exceed the amounts claimed in the Schedule of Special Damages.	
20	49 (192h)	32-20206	32-20206	Compensation Claims [DC/MUR/3/10/13] (SAV-002606) {D}[DE] †		D: Response Bundle, Vol. 3, Compensation Bundle tab ___		As above.	The submissions made on this document in TC20's Schedule are adopted. Insofar as objection is taken to this document being deployed to advance submissions which increase the amount of special damages claimed, the relevant section of TC34's Closing starts at paragraph 192.	See the comments in relation to document 27 of TC20's schedule.

									TC34's special damages claim is set out in Cs' schedule at [1-220bq]. The amounts claimed at paragraphs 192.a, 192.b, 192.c, 192.d, 192.e, 192.f and 192.g of TC34's Closing in reliance on this and other documents exceed the amounts claimed in the Schedule of Special Damages.	
21	50 (193)	32-52091a	32-52091n	Colonial Office Report on The Colony and Protectorate of Kenya for the Year 1956		D: Land Reform Bundle; A_30		As above.	D does not pursue its objection, on the basis that although TC34's claim in relation to wages at paragraph 194 of his Closing substantially exceeds that in the Schedule of Special Damages Claimed at [1-220bq], the difference relates to the period of the wages claim and the document	On the basis that the difference relates to the periods of the wages claim, and the document is not being deployed to advance submissions contrary to TC34's pleaded case on the level of wages, the Defendant does not pursue its objection to this document.

									it is not being deployed to advance submissions which are contrary to TC34's pleaded case on the level of wages. D's position in relation to this document generally, and to Cs submissions in reliance upon it (including the period and amount of TC34's wages claim), is otherwise reserved. Insofar as the document is sought to be deployed for any other purpose than in relation to the rate of wages to be applied (which D does not understand to be the case), D will maintain its objection.	