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Detention without Trial in Sierra Leone and the Gold Coast, 1865–1890

Zubayr's detention did not follow any kind of preliminary assessment of whether he had been guilty of any kind of offence, as in the cases of Abdullah of Perak or Langalibalele, and neither was he a defeated enemy, like Cetshwayo. His was a preventative detention, of a potential troublemaker. He was not, however, the first African political prisoner to be detained by virtue of an ordinance passed simply to hold him. In the four years before his detention, ten ordinances were passed in Sierra Leone and the Gold Coast to allow political prisoners there to be held without trial. In the following sixteen years, thirty-eight more such ordinances would be passed in these colonies.[1] Further ordinances were also passed in Gambia and (after 1886) the colony of Lagos. It was in West Africa that the Colonial Office pioneered the use of *ad hominem* ordinances to detain people who had committed no offence, for political reasons. This chapter will explore the origins of the policy of passing ordinances to detain political prisoners, and the different purposes for which they were used in the 1880s.

The British Presence in West Africa

The use of such ordinances developed at a time when British policy in West Africa was undergoing significant transition. In 1865, when

[1] This does not count the ordinances passed in Sierra Leone for the reception of those already detained in the Gold Coast and vice versa.

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a select committee of the House of Commons recommended a gradual withdrawal from West Africa,[2] there was only a small British presence in the region. Britain's most important colony – and one which the committee wished to retain – was Sierra Leone. It had become a crown colony in 1808, when the British government assumed control of the peninsula from the abolitionist Sierra Leone Company. In 1861, part of the Koya chiefdom – British Quiah – and some territory at the mouth of the Sherbro River was ceded to the British, but the colony remained very limited in extent.[3] At the same time, numerous treaties were made with local rulers.[4] Such treaties were often entered into to suppress the slave trade within the territory of the ruler, and to open it to British traders; and they also often stipulated that disputes between the ruler and any other chief in his dominions were to be referred to the Governor to determine.[5]

Although the chiefs received a stipend in return from the British government, the treaties did not create protectorates, nor did the local chiefs consider that a protectorate existed.[6] However, in many of the treaties, sovereign rights were ceded over land within a quarter of a mile of a river. The British also sought to exert a degree of extraterritorial jurisdiction over the hinterland.[7] An Order in Council was issued in 1850 (under the provisions of the 1843 Foreign Jurisdiction Act)[8] providing for extraterritorial jurisdiction over

[2] PP 1865 (412) V. 1, iii.

[3] Christopher Fyfe, *A History of Sierra Leone* (Oxford, Oxford University Press, 1962), pp. 310–12. See further Bronwen Everill, *Abolition and Empire in Sierra Leone and Liberia* (Basingstoke, Palgrave Macmillan, 2013).

[4] In 1865, eighty-two treaties entered into by the Sierra Leone Government were still in force, of which fifty-seven were treaties of amity and commerce. See CO 879/35/1 for a 'Collection of Treaties with Native Chiefs &c on the West Coast of Africa'.

[5] See Inge Van Hulle, *Britain and International Law in West Africa: The Practice of Empire* (Oxford, Oxford University Press, 2020), ch. 2; and Richard Huzzey, *Freedom Burning: Anti-slavery and Empire in Victorian Britain* (Ithaca and London, Cornell University Press, 2012), pp. 141–147.

[6] Evidence of Col. Ord to the select committee, PP 1865 (412), q. 518, p. 26; and see his 1865 Report, PP 1865 (412), p. 349.

[7] See W. Ross Johnston, *Sovereignty and Protection: A Study of British Jurisdictional Imperialism in the Late Nineteenth Century* (Durham, Duke University Press, 1973); and Inge Van Hulle, 'British Protection, Extraterritoriality and Protectorates in West Africa, 1807–80', in Lauren Benton, Adam Clulow and Bain Attwood (eds.), *Protection and Empire: A Global History* (Cambridge, Cambridge University Press, 2018), pp. 194–210.

[8] 6 & 7 Vic. c. 94.

crimes recognised in English law which had been committed in areas outside the colony whose rulers had entered into treaties conferring such power.[9] The order and treaties were intended only to confer jurisdiction over British subjects, liberated Africans and others living in the colony who had committed crimes in the hinterland. However, in 1871, the West Africa Settlements Act conferred extraterritorial jurisdiction over anyone who was not the subject of a civilised power, who had committed offences within twenty miles of the boundary of a British settlement or 'adjacent protectorates' against any British subject or person living within these areas, and who had been apprehended in these areas.[10]

The colonial settlements at the Gold Coast were also very small.[11] Originally forts owned by the Royal African Company, they had come into government hands in 1821 when the successor African Company was dissolved. Formally under Sierra Leone, the four forts at Dixcove, Cape Coast, Anomabo and Accra were in practice left to a committee of merchants to run until the crown resumed control in 1843. In this year, Britain set up separate governments both for the Gold Coast settlements and for Gambia (in effect Bathurst), which were now formally separated from Sierra Leone. The precise extent of British territory on the Gold Coast was undefined, though it was often taken to be the land within a cannon-shot from the forts.[12] Beyond that territory, officials by the 1860s spoke of a 'protectorate', without being entirely clear as to its nature. The expression 'Natives under British protection' – referring to the Fanti – had been used in an 1817 treaty with the Asante, but nothing

[9] PP 1854–55 (383) XXXVII. 375, No. 7, p. 34. It was implemented in 1853 after the necessary treaties had been signed. The 1861 Sierra Leone Offences Act (24 & 25 Vict. c. 31) made the colony's laws applicable to all British subjects in the hinterland, while making no claim to any sovereign rights over this land.

[10] 34 & 35 Vict. c. 8. In drafting this legislation, the Colonial Office accepted the rule that one country could not exercise jurisdiction over the subjects of another, but limited its application to the subjects of 'civilized powers'. See Johnston, *Sovereignty and Protection*, pp. 72–74.

[11] See David Kimble, *A Political History of Ghana, 1850–1928* (Oxford, Oxford University Press, 1963); and Rebecca Shumway, 'Palavers and Treaty Making in the British Acquisition of the Gold Coast Colony (West Africa)', in Saliha Belmessous (ed.), *Empire by Treaty: Negotiating European Expansion, 1600–1900* (Oxford, Oxford University Press, 2014), pp. 161–183.

[12] PP 1865 (412), p. 41, q. 883. See also Kimble, *A Political History of Ghana*, pp. 209–210.

was said about the nature of the protection given.[13] A further step in the development of British 'protection' over the coastal rulers came in 1844, when a number of Fanti rulers signed a Bond, which acknowledged the exercise of British 'power and jurisdiction' in places adjacent to the forts and settlements. It stipulated that murders, robberies 'and other crimes' would be tried by the Queen's officers and the chiefs of the district, 'moulding the customs of the country to the general principles of British law'.[14] An Order in Council issued in the same year under the 1843 Foreign Jurisdiction Act also gave colonial courts the power to try crimes committed in 'places adjacent to Her Majesty's forts and settlements'. In this case, the jurisdiction was aimed to cover Africans living in the hinterland of the forts, for the Order in Council stipulated that judges should observe such local customs as were compatible with the principles of English law. [15]

In April 1852, a 'legislative assembly of native chiefs upon the Gold Coast', presided over by the Governor, was set up by agreement, and instituted a poll tax on the 'population enjoying the protection of the British Government'. It was agreed that a proclamation on the basis of these resolutions would be implemented by the Governor, and would be 'binding upon the whole of the native population being under the protection of the British Government'.[16] Nonetheless, if there was a 'protectorate' over the Fanti, it was not clearly defined by treaty or ordinance, but was merely implied from instruments such as the Bond and the Poll-Tax Ordinance. Officials testifying to the 1865 committee saw the commitments implied by protection as being

[13] 'Treaty with Ashantee. Peace and Commerce', Art IV, in Edward Hertslet, *A Complete Collection of the Treaties and Conventions and Reciprocal Regulations at Present Subsisting between Great Britain and Foreign Powers*, vol. XII (London, Butterworths, 1871) [henceforth Hertslet, *Commercial Treaties*], p. 1.

[14] Declaration of Fantee Chiefs: Hertslet, *Commercial Treaties*, vol. XII, p. 30. See also J. B. Danquah, 'The Historical Significance of the Bond of 1844', *Transactions of the Historical Society of Ghana*, vol. 3 (1957), pp. 3–29. The declaration was aimed at the suppression of the practice of human sacrifice, on which see Ivor Wilks, *Asante in the Nineteenth Century: The Structure and Evolution of a Political Order* (Cambridge, Cambridge University Press, 1975), pp. 591–592.

[15] PP 1854–55 (383), No. 5, p. 81. At that point, only Sierra Leone had a Supreme Court (as required by the 1843 Act).

[16] PP 1865 (412), p. 420. The tax proved hard to collect and by 1861 had ceased to be paid. See Kimble, *A Political History of Ghana*, ch. 4.

very vague.[17] Nor were these commitments regarded as desirable by the British at this point. As the draft report of the select committee put it, 'The protectorate of tribes about our forts on the Gold Coast assumes an indefinite and unintelligible responsibility on our part, uncompensated by any adequate advantage to the tribes'.[18] This was not something which the British then wanted to expand. With a view to retrenchment, in the aftermath of the select committee, a single 'Government of our West African Settlements' based at Freetown was set up, covering not only Sierra Leone, the Gold Coast and Gambia, but also Lagos, which had been ceded to Britain in 1861.

In the event, the policy of retrenchment proved impossible to execute. It was rethought after the Asante invaded the 'protectorate' in 1873, claiming that they had sovereign rights over Elmina, which the British had acquired by treaty from the Dutch in 1872.[19] In the ensuing war, the Asante were crushed, and their capital Kumasi destroyed. In the subsequent treaty of Fomena, Britain's right to Elmina was confirmed, and a heavy indemnity of 50,000 ounces of gold was imposed on the Asante.[20] Although the Colonial Office did not at this stage want to annex Asante, it wanted to define its position on the Gold Coast more clearly. In July 1874, Letters Patent were therefore issued which again separated the Gold Coast and Lagos from Sierra Leone, and created a separate Gold Coast Colony, with its own Legislative and Executive Councils.[21] This was followed by an Order in Council which gave the Legislative Council powers under the 1843 Foreign Jurisdiction Act to legislate in respect of the adjacent territories.[22] A proclamation was prepared to define these legislative

[17] In his 1865 report, Col. Ord suggested that the Fantis understood 'protection' in terms of Great Britain's duty to protect them militarily from the Asante: this was not specified in the treaties and Ord suggested that any such duty implied by the payment of tax was removed by its non-payment: PP 1865 (412), Appx. No. 1, p. 356. See also the evidence of T. F. Elliott, PP 1865 (412), q. 125, p. 7; Sir Benjamin Pine, PP 1865 (412), q. 2988ff., p. 127. See also Shumway, 'Palavers and Treaty Making', pp. 166–169.

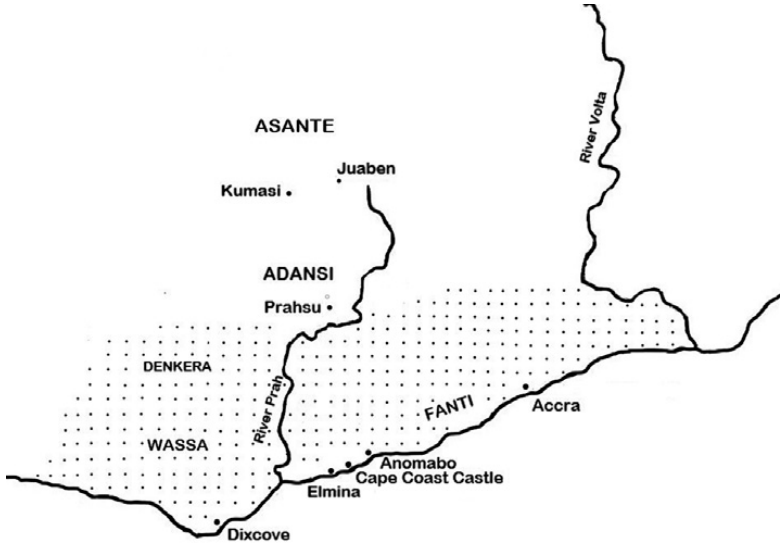
[18] PP 1865 (412), p. xiv, quoted in Kimble, *A Political History of Ghana*, p. 207.

[19] Michael Crowder, *West Africa under Colonial Rule* (London, Hutchinson, 1968), p. 146.

[20] See *Parl. Debs.*, 3rd ser., vol. 218, col. 1592 (24 May 1874).

[21] PP 1875 (1140) LII. 325, Appx. No 1, p. 97.

[22] PP 1875 (1139) LII. 277, enc. in No. 1, p. 1.



MAP 3 The Gold Coast and Asante

powers as well as the extent of the protectorate, something which officials in London felt would have the effect of turning it virtually into a colony.[23] In fact, the proclamation itself was never issued, though a Supreme Court Ordinance was passed in 1876, which introduced English law to the Gold Coast as it stood in July 1874.[24] This was designed to cover not only the British settlements on the coast, but also the territory inland to the Prah. Two years later, a Native Jurisdiction Ordinance was passed, which defined and limited the powers of chiefs in the protected areas, in effect putting them under the power of the Governor and his council. Any chief who refused to recognise the authority of the crown would lose his power.[25]

[23] PP 1875 (c. 1139), enc. in No. 2, p. 5; Minute by E. Fairfield, 6 November 1874, CO 96/112, quoted in Robert B. Seidman, 'A Note on the Construction of the Gold Coast Reception Statute', *Journal of African Law*, vol. 13 (1969), pp. 45–51 at p. 46.

[24] Gold Coast Supreme Court Ordinance, 1876, ss. 17, 85.

[25] See Francis Agbodeka, *African Politics and British Policy in the Gold Coast, 1868–1900: A Study in the Forms and Force of Protest* (London, Longman, 1971), pp. 113–116; and Native Jurisdiction Ordinance No. 8 of 1878; cf. The Gold Coast Native Jurisdiction Ordinance, No. 5 of 1883. See G. E. Metcalfe, *Great Britain and Ghana: Documents of Ghana History, 1807–1957* (Edinburgh, University of Ghana, 1964), pp. 390–393.

The precise relationship between colony and protectorate – and even their geographic areas – remained undefined, however, until 1891, when the Protected Territories were annexed to the Gold Coast Colony.[26]

Britain's change of policy in the Gold Coast was in part a response to the perceived threat of Asante. However, in the aftermath of the 1873–1874 war, that kingdom suffered a period of instability. The kingdom, at whose head stood the Asantehene, was made up of a number of constituent kingdoms or states. These included the 'metropolitan' Amantoo states, whose kings participated in the election of the Asantehene and his placing on the golden stool, and the 'provincial' Amansin states. From the mid 1870s, a number of kings from these states began to rebel or secede, many seeking refuge within the protectorate.[27] While the British were happy to see the break-up of the powerful Asante state, until the end of the 1880s, the Colonial Office wished to avoid direct intervention (even when local officials were calling for it), and sought rather to maintain peace as far as possible with this neighbouring state.

Detention without Legal Authority

In an era in which British colonial possessions in West Africa were small, the authorities faced potential threats to their stability from Africans resident outside the colony, over whom British jurisdiction was often questionable. The question of how to deal with them – and how far the demands of legalism had to be complied with – was one which increasingly came to concern the Colonial Office in London. Before 1881, a number of chiefs were detained in the region without legal authority. For instance, in 1853 Cally Mahdoo, the chief of Madina in the Sierra Leone hinterland, was briefly detained in Freetown. As part of Britain's policy to suppress the slave trade, Cally Mahdoo was required, under a treaty signed with Bey Sherbro in 1852, to prevent slaves being traded in his area.[28] However, he proved to be 'refractory', and seemed rather to be encouraging slave trading. When he refused to hand over two liberated Africans who had

[26] Kimble, *A Political History of Ghana*, pp. 313–315.
[27] See Agbodeka, *African Politics and British Policy in the Gold Coast*, ch. 4.
[28] CO 879/35/1, No. 49, p. 152.

brought a man they had enslaved to Madina, Governor Kennedy lost patience and ordered him to come to Freetown, the order being backed by a threat to burn his town.[29] He was not kept long. As Commander Reed (who brought him to Freetown) put it, 'Cally Mahdoo has been properly humbled, and will, no doubt, in future, respect British power and British justice.'[30] In fact, there was no legal basis for this brief detention. As a report from the Queen's Advocate in Freetown showed, in this case the British had no jurisdiction over the Africans accused of slave dealing, let alone the Chief of Madina himself.[31] However, this did not bother the *Illustrated London News*, which reported that he had been 'brought as a hostage for the men demanded'[32] – in effect mimicking a common practice of hostage-taking in the region.

Thomas S. Caulker, chief of the Plaintain Islands, had a similar experience in 1859. One of the numerous descendants of Thomas Corker who became rival chiefs in the Sherbro region,[33] he had entered a number of treaties with the British.[34] Caulker came to the attention of the colonial authorities when in early 1859 he claimed land in Sherbro and 'created great disturbance and jealousy among the Native Chiefs',[35] as well as clashing with the French commodore in the region. It was in this context that Commodore Wise, commander of the *Vesuvius*, intervened and brought him to Sierra Leone, where he promised not to engage in any more wars to obtain territory in the Sherbro country. The Acting Governor allowed Caulker to return to the Plaintain Islands, on condition that he sign a peace treaty, promising not to meddle in any lands beyond his own.[36] The British looked no more closely into the legal basis of Caulker's removal than they did into that of Cally Mahdoo.[37] Nor was the government interpreter, T. G. Lawson, much concerned with the legal basis of his

[29] PP 1852–53 (1680) LXV. 291, No. 12, p. 23, with enclosures.
[30] PP 1852–53 (1680), enc. 5 in No. 12, p. 27. [31] PP 1852–53 (1680), enc. in No. 13, p. 28.
[32] *Illustrated London News*, 14 May 1853.
[33] See Imodale Caulker-Burnet, *The Caulkers of Sierra Leone: The Story of a Ruling Family and Their Times* (Bloomington, Xlibris, 2010).
[34] CO 879/35/1, No. 39, p. 129; No. 54, p. 159.
[35] Acting Governor Fitzjames to the Duke of Newcastle, 11 August 1859, CO 267/264/9145.
[36] CO 879/35/1, Nos. 58–59, p. 168.
[37] Caulker's treaty with the British omitted the frequently used clause referring disputes between warring factions to the Governor, and allowing other chiefs to join with him in punishing any who refused to comply with his decision.

actions when he brought two other chiefs from British Sherbro to Sierra Leone in 1870 and 'placed [them] under my care as hostages'.[38]

The first important political detention on the Gold Coast was that of John Aggery, king of Cape Coast, in 1867.[39] Aggery's election as king of Cape Coast in January 1865 was ratified by Governor Richard Pine, though the new king did not swear any oath of allegiance to the British crown. Irritated by the way the British exercised their jurisdiction over Africans, Aggery began to exert his own jurisdiction at Cape Coast in ways that antagonised the Governor. When Pine protested that his actions violated the compact between the Queen and the 'tribes under her protection', Aggery reminded him of his 'right as King to rule over my country'.[40] Tensions continued to rise, particularly after a riot occurred in September between the townspeople and troops from the West Indian regiments, which resulted in two civilian deaths, and which Aggery described to the Secretary of State as 'a general attack upon the natives generally'.[41] Eventually, on 6 December 1866, Aggery wrote an angry letter to the Administrator of the Gold Coast, Edward Conran, in which he protested against the insults he had received as king. He also alluded to the 'fearful acts ... when my people were butchered by your soldiers', and stated his presumption that 'your object is to endeavour all in your power to incite me and my people to enact more of those fearful things that took place in Jamaica' – an allusion to the recent events in Morant Bay.[42] This was the last straw for Conran, who 'made a prisoner of this arrogant man' on 8 December, and shipped him to Sierra Leone, at the same time deposing him as king and closing his courts.[43]

Once Aggery had arrived in Sierra Leone, officials began to consider legal questions in a way not done in the preceding cases. Governor-in-Chief Samuel Blackall's legal adviser thought that Aggery could be tried for sedition (under the jurisdiction derived from the Foreign Jurisdiction Act), but worried that the ex-king would be able to

[38] CO 879/4/3, enc. 2 in No. 107, p. 124.
[39] See John K. Osei-Tutu, 'Contesting British Sovereignty in Cape Coast, Ghana: Insights from King John Aggery's Correspondences 1865–72', *Transactions of the Historical Society of Ghana*, vol. 7 n.s. (2003), pp. 231–251; and Kimble, *A Political History of Ghana*, ch. 5.
[40] PP 1867 (198) XLIX. 287, encs. 4–5 in No. 1, pp. 5–7.
[41] PP 1867 (198), enc. in No. 9, p. 44. [42] PP 1867 (198), enc. 1 in No. 23, p. 72.
[43] PP 1867 (198), enc. 1 in No. 23, p. 73.

return to Cape Coast after his sentence had expired and cause more trouble. He suggested that it might be more prudent to exile him.[44] In London, the Secretary of State, Carnarvon – then dealing with controversy raised by the use of martial law in Jamaica – asked his officials a number of questions pertaining to the legality of Aggery's detention. The advice he received was that there had been no legal authority to deport him from the Gold Coast.[45] Nor was it possible to try him at Sierra Leone, since the Gold Coast, which had obtained its own Supreme Court in 1853, was no longer under the jurisdiction of Freetown. Although the legal adviser at the Colonial Office, H. T. Holland, considered the possibility that Aggery might be charged with sedition at the Gold Coast – since 'we have in fact treated the native Chiefs within the Protectorate in some cases as if they were British subjects & imprisoned them'[46] – Carnarvon concluded that there remained doubts both about 'how he can be tried at the G. Coast' and about the possible outcome of any such trial.

Although things looked unpromising from the government's point of view, Carnarvon had no doubt that there had to be 'an end to the absurdity of a native "king" in the town of C[ape] C[oast]'. He proposed that 'Aggery's deposition should be effected by the broad & undisguised exercise of the Supreme Power which created him "King"', through a formal proclamation.[47] This was duly done, and Aggery was banished to Bulama Island where he remained until 1869, when he was allowed to return to Cape Coast on renouncing any claims to kingly power. In this case, the Colonial Office remained aware that it was acting outside any lawful authority, but it did so on grounds of policy. Nor were these events unknown in England, for papers relating to the case were printed by the House of Commons in 1867. Furthermore, the British press was untroubled by Aggery's detention, *The Times* quoting Governor Blackall's view that British presence on the Gold Coast had not yet 'done much towards civilizing

[44] PP 1867 (198), enc. 2 in No. 23, p. 73.

[45] Conran did not appear to have acted under powers derived from the Foreign Jurisdiction Act; but even if he had, he had not complied with its provisions. Minutes by T. H. Elliott and H. T. Holland, 8 and 11 February 1867, CO 96/72, ff. 249, 251.

[46] Minute by Holland, 11 February 1867, CO 96/72, f. 251. Cf. PP 1865 (412), p. 315, q. 8140.

[47] CO 96/72, f. 255, minute dated 12 February 1867.

the natives' and that 'nothing but a firm enforcement of British law over those chiefs' could prevent 'a return to the abominations of slavery and torture, in which they appear to rejoice'.[48]

Six years later, another African king challenging British authority on the Gold Coast, Kobina Edjen of Elmina, was detained without any authorising legal instruments, and with only minimal advice on precedents. Although he was 'on the best terms with the Government' after the cession of Elmina to the British,[49] things changed towards the end of November 1872, when a new Administrator, Col. R. W. Harley, arrived with a much more high-handed approach towards the Africans. This could be seen, for instance, in his detention in Elmina of two feuding kings from Sekondi, who had to be released in early March after Governor Hennessy reprimanded him for acting without first seeking legal advice.[50] In the same month, Harley summoned Kobina Edjen and his chiefs to the palaver hall of Elmina Castle to take an oath of allegiance to the Queen, since he suspected the king of having entered into an alliance with the Asante king, who was planning to back his claims to Elmina with an invasion (which led to the war of 1873–1874).[51] Having already been antagonised by Harley on other matters, the king became angry when asked to take the oath, and declared, 'I am not afraid of your power. You may hang me if you like. I will not sign any paper. Myself and some of the people of Elmina have taken fetish oath to oppose the English Government coming to Elmina, and we have not broken that oath yet.'[52] No sooner had he finished than he was told that he and two other chiefs were now prisoners, and would be taken to Cape Coast Castle. Harley told the Secretary of State, Kimberley, that this arrest had 'helped to checkmate the Ashantee movements and plans', and had forestalled a general rising on the coast.[53] The men were removed to Freetown towards the end of April before any instructions had been received from London. No legal instrument was prepared to authorise this, though

[48] *The Times*, 4 July 1867, p. 10 (quoting PP 1867 (198), No. 23 at p. 72).
[49] See CO 879/4/1, enc. in No. 75, p. 82; No. 183, p. 299; PP 1874 (890) XLVI. 1, No. 126, p. 221.
[50] Hennessy to Harley, 8 February 1873, CO 879/4/1, No. 186, p. 308.
[51] CO 879/4/1, No. 237, p. 422. [52] CO 879/4/1, enc. in No. 237 at p. 428.
[53] CO 879/4/1, No. 270, p. 499.

the government interpreter, T. G. Lawson (who was instructed to take Kobina Edjen to Freetown) prepared a memorandum for the Governor in Chief containing a number of precedents, including those of Cally Mahdoo, Thomas S. Caulker and Aggery.[54] Although Kimberley initially refused to authorise the removal – on the grounds that 'so extreme a measure' should not be resorted to without clear proof of an emergency – he later sanctioned it after receiving a further despatch.[55] In this case, the pressure for detention came from a zealous local administrator, but London was content in the end to take his word for its necessity, and asked for no further legal authority than his list of precedents.[56]

Into the late 1870s, detentions without legal authority continued both in the Gold Coast and in Sierra Leone. For instance, in 1880, the Sierra Leone government made plans to detain Lahai Bundoo and Bocary Bombolie, who were involved in disturbances in the Quiah district which threatened British interests. W. W. Streeter, the administrator in chief, laid a trap for Lahai Bundoo, summoning him to Songo Town to discuss peace, with plans to remove him to Freetown by coercion '*if necessary*'; but Lahai Bundoo did not fall for it.[57] However, Bocary Bombolie – a man who had been imprisoned in 1857 for slave dealing, and whose continued slaving activity had previously led the Governor to threaten to detain him – was taken into custody.[58] Reading Streeter's comment that he did 'not propose to release him until quiet has been thoroughly restored', Augustus Hemming (one of the more senior clerks in the African and Mediterranean Department at the Colonial Office) minuted that this was 'Roughish justice but I suppose inevitable while we stay in these countries'.[59] In the end, a peace treaty was brokered in September 1880 between Lahai Bundoo and Gbannah Sehrey to end this Quiah war,

[54] PP 1874 (890), enc. 2 in No. 51, p. 85.
[55] CO 879/4/1, No. 284, p. 524; CO 879/4/3, No. 18, p. 24.
[56] In 1877, Governor Freeling received a petition requesting that Kobina Edjen and his two chiefs be allowed to return, but the conditions imposed by the Governor – that he could return only as a private individual – were declined. Précis: Quabina Edjen's deportation: CO 96/167/17382.
[57] W. W. Streeter to W. Budge, 23 May 1880, CO 267/340/8793.
[58] Lawson to Streeter, 3 July 1880, CO 267/341/11080.
[59] Streeter to Kimberley, 3 July 1880, Minute by A. Hemming, 23 July 1880, CO 267/341/11080.

and Bocary Bombolie was released.[60] However, his warman Doombuyah, who had been detained in January for raiding British territory and abducting twenty-three people, remained in custody.

Regularising Detentions

Driven by the Secretary of State, Kimberley, after 1881 the Colonial Office began to insist that detentions in West Africa be put on a legal footing, through the passing of ordinances which would need to be approved in London. The impetus for change came from concerns over the treatment of a number of men both in the Gold Coast and in Sierra Leone. One of the most prominent was Asafu Agyei, who had been detained first in 1877, and then again in 1880, as a result of his plotting against Asante. He was the ruler of Juaben, the most powerful of the Amantoo states, and had been in conflict with the Asantehene since General Wolseley's march on Kumasi in 1874.[61] Although the British initially supported this secessionist ruler as a counter-weight to Asante, matters were complicated when Juaben fell back under Asante control in 1875, forcing Asafu Agyei and his followers to flee into the British protected area. Asafu Agyei's attempts to launch military attacks on Asante from here now became an embarrassment for the British.[62] The authorities at the Gold Coast were also worried by the support Asafu Agyei enjoyed from King Tackie of Accra. After Asafu Agyei ignored a warning that he would be expelled if he did not desist from his activities,[63] he was summoned by Governor Freeling and informed that he was now a state prisoner and a 'hostage for the good behaviour of his people'. Six of his chiefs and his daughter (the Queen) were also

[60] Streeter to Kimberley, 16 September 1880, CO 267/341/15411, Streeter to Kimberley, 18 September 1880, CO 267/341/15742.

[61] On the context, see Wilks, *Asante in the Nineteenth Century*, pp. 511–512; Kimble, *A Political History of Ghana*, pp. 270–279; Agbodeka, *African Politics and British Policy in the Gold Coast*, pp. 78–84; and R. Addo-Fening, 'The Background to the Deportation of King Asafo Agyei and the Foundation of New Dwaben', *Transactions of the Historical Society of Ghana*, vol. 14:2 (1973), pp. 213–228.

[62] Freeling to Carnarvon, 2 January 1877, CO 96/120/1313, f. 5.

[63] Governor Freeling to Carnarvon, 18 July 1877, CO 96/121/9758, f. 348.

detained.[64] Having first been sent to Elmina, Asafu Agyei was deported to Lagos, where he was held until October 1879.[65]

On his return from Lagos, Asafu Agyei resumed his intrigues with Tackie. By now, he had also fallen out with his daughter, Queen Afracoomah, both over who had the right to the stool of Juabin and over whether to continue to plot against Asante. Tackie, who had by now been formally deprived of most of his powers by the British, offered to settle the dispute between them – though he was clearly in favour of Asafu Agyei's claims – and attempted to compel the Queen to submit by force. This led Governor H. T. Ussher to intervene by arresting both men. They were subsequently examined by the Council (along with other witnesses), which came to the unanimous conclusion that they were guilty of treasonable practices against the protectorate, and that Asafu Agyei should be sent back to Lagos, and Tackie to Elmina.[66] When the matter was referred to the Colonial Office, Hemming considered the permanent deportation of Asafu Agyei to Lagos to be a 'proper step'. Although he thought it possible to try Tackie in the Supreme Court – since he was 'to a certain extent a British subject' – he considered it unlikely that a jury would convict him, and thought it better 'to dispense with the ordinary forms of law & deal with him out of hand' by deporting him to Sierra Leone. However, the Secretary of State, Kimberley, responded that Tackie should be sent to Sierra Leone only 'if it can *be legally done*'.[67] Given his doubts, Kimberley suggested legislation to authorise the detention or deportation both of Asafu Agyei and of Tackie, and the Gold Coast Ordinance No. 1 of 1881 was duly passed to effect this.[68] He also informed the authorities in Sierra Leone that an ordinance would be

[64] Governor Freeling to Carnarvon, 10 August 1877, CO 96/121/10857, f. 429; Freeling to Carnarvon 23 August 1877, CO 96/121/11622, f. 518; Addo-Fening, 'The Background to the Deportation of King Asafo Agyei', p. 221. A large amount of arms and ammunition was recovered: Freeling to Carnarvon, 13 September 1877, CO 96/122/12609, f. 29.

[65] Addo-Fening, 'The Background to the Deportation of King Asafo Agyei', pp. 223–224. Although Freeling also considered sending Tackie to Lagos, he decided to give him one last chance, to avoid any instability which might follow from removing him from his stool. Freeling to Carnarvon 14 August 1877, CO 96/121/11380, f. 452.

[66] CO 96/132/769, ff. 248ff., Minutes of Proceedings of Executive Council.

[67] Kimberley minute, 23 January 1881, CO 96/132/769, f. 182.

[68] Kimberley minute 3 February 1881, CO 96/132/769; Rowe to Kimberley, 17 May 1881, CO 96/134/10415.

needed there, and sent the Mauritian ordinance authorising Abdullah of Perak's detention as an example. In the event, this ordinance was not needed, for Tackie continued to be held at Elmina until his release in 1883.[69] By contrast, Asafu Agyei was not released, despite petitions from the Juabin chiefs, since Governor Rowe considered him 'a difficult man to manage', who was best kept well away from the Juabins.[70]

Around the same time, the Colonial Office came to be concerned about the fate of a number of political prisoners being held in Freetown, either on the government's initiative or at the request of an African chief.[71] Towards the end of 1875, one 'of the ringleaders of a band of marauders' by the name of Vangang, who had attacked British subjects in June in British Sherbro, was placed in Freetown gaol after being handed over by chiefs he had subsequently attacked.[72] Governor Rowe's plan to release him in April 1880 was shelved when Vangang was hospitalised because of ill health.[73] Another detainee was William T. G. Caulker, who in 1878 challenged the authority of his kinsman chief George Caulker in the Cockborroh district, in defiance of an agreement of 1870 which had settled the succession to various territories held by the Caulker family.[74] When George heard that William was at a Mission Station in Shenge, he had him put in the stocks, and (according to T. G. Lawson) would have had him put to death. Fearing that this might lead to a wider conflagration, Governor Rowe sent Lt. A. W. Bright Smith to intervene, who told the chief that 'that he had much better deliver the prisoner to me to bring to Freetown for His Excellency to judge'.[75] William was then taken to Freetown, and

[69] Rowe to Earl of Derby, 9 March 1883, CO 96/149/6186.

[70] Minute by Samuel Rowe, 31 August 1882, CO 96/141/14566, f. 37. Asafu Agyei died in exile in Lagos in 1886: Addo-Fening, 'The Background to the Deportation of King Asafo Agyei', p. 225.

[71] See esp. Trina Leah Hogg, 'From Bandits to Political Prisoners: Deportation and Detention on the Sierra Leone Frontier', in Nathan Riley Carpenter and Benjamin N. Lawrence (eds.), *Africans in Exile: Mobility, Law and Identity* (Bloomington, Indiana University Press, 2018), pp. 54–68.

[72] Havelock to Kimberley, 15 September 1881, CO 267/345/17577; PP 1875 (c. 1343) LII. 779, encs. 1 and 2 in No. 21, pp. 42–43. Hogg identifies Vangang as the first political prisoner to be detained.

[73] Havelock to Kimberley, 15 September 1881, CO 267/345/17577.

[74] For the settlement (confirmed by treaty), see CO 879/35/1, No. 74, p. 191.

[75] Reports of Arthur W. Bright Smith (11 October 1878), J. B. Elliott (2 October 1878) and T. G. Lawson (9 May 1881) in CO 267/344/9812. See also PP 1887 (c. 5236) LX. 263, No. 102, p. 127.

placed in the gaol. Although Rowe intended to investigate the matter fully, pressure of other business meant that he had not got round to it by the time of his appointment as Governor of the Gold Coast in January 1881. These were not the only men detained in Freetown without proper legal authority. Sharkah Bollontoh and Mustapha, whose plunder of a canoe in 1877 threatened to lead to a tribal war, were ordered to be detained in March 1880 at the request of the chiefs.[76] Another man accused of being the 'prime mover and perpetrator' of plundering against British traders was Beah Jack, who was also detained in 1880 after being handed over by another chief.[77]

In the spring of 1881, officials at the Colonial Office became aware of these apparently forgotten detainees. In April, a letter from W. T. G. Caulker reached Kimberley, asking for his detention to be looked into.[78] When a number of other prisoners petitioned for their release in May,[79] Francis Pinkett, the administrator in chief in Freetown, wrote to London explaining the circumstances in which they had been detained, and expressed his doubts about the wisdom of releasing them. However, officials in London were troubled that men like Caulker remained in prison without having their cases investigated.[80] The matter was referred to Governor Havelock, who handed Vangang over to Chief Lahai Serifoo (holding him responsible for his good conduct)[81] and released Caulker on a solemn promise not to leave Freetown until he was given permission to do so.[82] As for Sharkah Bollontoh and Mustapha, Havelock conceded that their imprisonment was illegal, but he feared their release might lead to a petty war.[83] To put matters on a legal footing, he drafted an ordinance to empower the detention of any 'persons dangerous to the peace or good order of the settlement'. However, London refused to sanction so general an ordinance.[84] In the meantime, pressure on the Colonial Office mounted when the Liberal MP Charles Hopwood

[76] A. Havelock to Kimberley 29 July 1881, CO 267/344/14804.
[77] See Hogg, 'From Bandits to Political Prisoners', p. 61, Havelock to Kimberley, 27 August 1881, CO 267/345/16535.
[78] CO 267/344/9812. [79] CO 267/344/10442.
[80] CO 267/344/9812, minute dated 9 June 1881.
[81] Havelock to Kimberley, 15 September 1881, CO 267/345/17577.
[82] Havelock to Kimberley, 28 July 1881, CO 267/344/14794.
[83] Havelock to Kimberley, 29 July 1881, CO 267/344/14804.
[84] Draft despatch to Havelock, CO 267/345/16535.

raised their cases in parliament, prompting the undersecretary of state, Leonard Courtney, to admit that 'they are State prisoners, detained without any clear warrant of law', but adding that he expected them to be released soon.[85]

Sharkah Bollontoh and Mustapha were released in August 1881 (when the Governor in Chief found a way of settling the dispute arising from the original plunder).[86] Doombuyah and Beah Jack were not. 'Doombuyah seems to have made a raid on British territory', Edward Wingfield (assistant undersecretary of state) noted, 'and may therefore be regarded as somewhat in the nature of a prisoner of war.' Although he felt that Beah Jack might be freed (since 'it is not stated whether Beah Jack's acts of plunder and outrage were committed on British Territory'), Kimberley thought he needed to be kept in detention, since the chiefs were unable to control him, and 'the interests of our settlements require that disorder should not exist on our borders'. He therefore asked Havelock to pass an ordinance to legalise the detention of Doombuyah and Beah Jack retrospectively, and to authorise their deportation to Lagos (where they might be allowed more freedoms than they could enjoy in Freetown gaol).[87] As requested, the Gold Coast also passed an ordinance to allow their detention in Lagos.[88] With this legislation, the Colonial Office sought to give a legal stamp to the detention and deportation of men who were perceived to be troublemakers from beyond the borders of the colony.[89]

In light of Kimberley's new policy that special ordinances had to be passed 'when it is necessary for political reasons to remove & detain a chief in custody against whom there is no legal case',[90] officials also began to examine other cases. After Hopwood had raised the matter privately,[91] they realised that the legality of the king of Elmina's

[85] *Parl. Debs.*, 3rd ser, vol. 45, col. 726 (23 August 1881).
[86] A. E. Havelock to Kimberley, 25 August 1881, CO 267/345/16534.
[87] Minutes dated 20–21 September 1881, and draft despatch dated 28 September: CO 267/345/16535 (enclosing a copy of the Mauritius ordinance No. 9 of 1877); Havelock to Kimberley, 27 October 1881: CO 267/345/20055; Ordinance No. 8 of 1881.
[88] Ordinance No. 5 of 1882: Political Prisoners Detention (Doombuyah and Beah Jack).
[89] Doombuyah never returned to Sierra Leone, and died in the Colonial Hospital in Lagos in March 1891. CO 267/389/9856.
[90] Minute by R. Meade, 26 August 1882, CO 96/141/15042.
[91] Précis: Quabina Edjen's deportation: CO 96/167/17382.

detention in Freetown had not 'occurred to any one until now'; and an ordinance was passed in due course to authorise it.[92] The new policy of passing ordinances was driven by the Secretary of State himself, who, like Carnarvon, was concerned with the legality of these detentions. Unlike Carnarvon in 1867, Kimberley had a recent precedent which could provide a model for a legal means of detention: the ordinance for the removal and detention of Abdullah of Perak. Troublesome West African chiefs did not attract the kind of public support which the Zulu leaders or Urabi had enjoyed in metropolitan circles. Nonetheless, the kind of awkward questions posed by parliamentarians like Hopwood did beg questions about whether the British imperial authorities could detain troublemakers without any legal authority. The answer given by the Colonial Office was to provide a formal cover for these detentions, in the form of *ad hominem* ordinances. This formal compliance with the rule of law was something that Kimberley – who had, after all, defended the Cape's right to detain Langalibalele by special legislation – was comfortable with. At the same time, his policy was driven not only by the need for legal forms to be observed: he was also concerned about the fate of men who were detained without any form of investigation of their cases. Even when men were held without any kind of trial, the Colonial Office wanted to ensure that the cases of detainees would be reviewed, both by the Secretary of State, when deciding to allow or disallow detention ordinances, and by the local Governor with periodic review.

'Peacekeeping' Detentions in Sierra Leone

Once the first detention ordinances had been passed, others followed thick and fast. Within the next ten years, Sierra Leone passed another fifteen ordinances authorising the detention or deportation of African chiefs. In this colony, the authorities were primarily interested in maintaining the peace, such that British interests would not be

[92] Gold Coast Ordinance No. 14 of 1883, Political Prisoner Detention (Quabina Edjen), was passed after Ordinance No. 10 of 1882: Political Prisoner Detention (Quabina Edjen) was disallowed on account of its faulty drafting (CO 96/144/21415). Although Kobina Edjen petitioned to be allowed to return to the Gold Coast in 1885 (CO 96/167/17382), he would not be released until 1895: PP 1896 (c. 7944–10) LVII. 331, p. 30.

unsettled. They consequently sought to intervene when wars between different African factions disrupted the country behind the colony, and when areas regarded as within British protection were attacked.[93] In this area, where British jurisdiction over Africans beyond the frontiers of the colony was uncertain, detention ordinances provided a means to assert authority.

A number of ordinances were passed to allow the detention of particular individuals who were perceived to be troublemakers. They included Buyah Sammah, the local chief at Kitchum (near Mambolo) on the Great Scarcies river (an area within British jurisdiction). He was accused both of extorting from European traders rent which should have been paid to the Mambolo chiefs and of transferring his allegiance to a neighbouring ruler under French influence. On hearing of this, Havelock proceeded to the spot with armed police, deposed him and ordered him to repay the extorted money. Havelock's action was clearly designed to remind the locals of British authority in the area, as well as shoring up the authority of Mambolo over Kitchum. As a further security for good order, he brought Buyah Sammah to Freetown and lodged him in the debtor's prison, passing an ordinance to legalise his detention in May 1882.[94] By the time London came to approve of the ordinance, he had been released.[95] In August, another ordinance was passed to legalise the capture and detention of Lahsurru.[96] He was arrested as a result of disturbances on the Jong River (in Sherbro) in May 1882, when Acting Commandant W. M. Laborde, who had gone to attend the coronation of the Sycammah king of the Jong Country, encountered a hostile reception, which resulted in his being assaulted, and his boat being captured and plundered.[97] Havelock duly proceeded to the spot to demand an explanation and restoration of the items taken. After

[93] It should be noted that the British had tried and executed those accused of murdering British subjects within twenty miles of the frontier: for instance, John Caulker, Kinigbo and Vermah were tried and executed in 1876 for the murder of a police constable in an attack at Sherbro: CO 879/9/6, No. 38, p. 50; PP 1876 (c. 1402) LII. 403, No. 53, p. 62; No. 60, p. 65.

[94] Havelock to Kimberley, 25 May 1882, CO 267/348/10609, CO 267/348/10610.

[95] Hemming minute, 22 June 1882, CO 267/348/11006.

[96] Havelock to Kimberley, 24 August 1882, CO 267/349/16647, enclosing report on Ordinance No. 14 of 1882.

[97] See PP 1883 (c. 3597) XLVIII. 317, p. 3 and PP 1882 (c. 3420) XLVI. 551.

shots had been exchanged, Havelock set fire to the huts of those concerned in the outbreak and then detained Lahsurru, who was thought to be behind all the trouble.[98] Perhaps as a result of the inquiries by Charles Hopwood, the papers relating to this affair were published; though there was not much concern over the fact that Lahsurru had been detained without charge.[99] However, he would not be released until the end of 1888.[100]

The policy of detaining troublesome chiefs was taken one step further by Francis Pinkett, who took over as Administrator while Havelock was in London. Pinkett was worried about lawlessness in Sherbro, which was affecting trade. He was particularly concerned at the activities of Chief Gpow, whose men had seized a boat bringing the monthly pay for the policemen stationed at Barmany, at the edge of the area under British protection. Hearing of this, Pinkett took a steamer with fifty-five policemen to open up the Boom and Kittam rivers by destroying Gpow's defences.[101] Pinkett failed to capture Gpow, but in June he arrested Bey Yormah, Tongofoorah and Gangarah, Gpow's chief men. This action did not impress the Secretary of State, the Earl of Derby, when he was asked to approve an ordinance to authorise their detention. Since Tongofoorah was accused of leading the attack on the pay-boat within British territory, Derby felt he should be charged in an ordinary court for robbery rather than being held as a political prisoner. As for the other two, there was 'scarcely sufficient evidence' to justify their detention. Derby was prepared to defer to Pinkett's view of the necessity of detaining them in the short term, but wanted Havelock to reconsider it on his return.[102] By the time of Havelock's return, Gangarah had died in Freetown gaol, but Bey Yormah and another detainee, Langobah, were freed, while Tongofoorah was charged in a civilian court.[103]

[98] See PP 1882 (c. 3420), p. 4; PP 1883 (c. 3597), No. 9 at p. 16.

[99] *The Times* wrote 'Lahsurru doubtless has earned his term of imprisonment by turbulence and disorder.' 18 December 1882, p. 9. However, 'A West African merchant' retorted that Lahi-Sarrihoo (as his name was properly spelled) was a 'loyal native West African' whose detention was 'only another instance of that want of tact and knowledge by British officials which lies at the root of nearly all our troubles in that country'. *The Times*, 26 December 1882, p. 8 (also in PP 1883 (c. 3597), Appx. 2, p. 31).

[100] CO 267/372/24677.

[101] PP 1883 (c. 3765) XLVIII. 349, No. 1, p. 1.

[102] PP 1883 (c. 3765), No. 15, p. 40.

[103] John Joseph Crooks, *A History of the Colony of Sierra Leone* (Dublin, Browne and Nolan, 1903), p. 265.

Besides using ordinances to deal with individual troublemakers, the British also detained numerous warrior chiefs during the persistent Yoni wars in the late 1880s. At this time, the Yonis were seeking to expand their trade routes, which led them to conflicts with the Mende people. In November 1885, they raided and plundered Songo Town – which was within British jurisdiction – killing a number of Africans and taking others into slavery.[104] Seven of the raiders were captured. Initial plans to prosecute foundered on doubts over whether the evidence gathered against them would secure a conviction. Instead a first ordinance was passed to detain them 'until it be possible to make some farther arrangement of the difficulties between the Yonnie and Bompeh-Sherbro and Mendi tribes than has yet been effected',[105] and further ordinances followed to allow their deportation to Gambia.[106] The relative indifference of the British to jurisdictional niceties is shown by the fact that the men detained under the ordinance included a man not involved in the raid, Bye Jabbee, who was unsettling affairs in areas outside British jurisdiction, and whose detention was requested by a local chief enjoying British support, Bocarry Governor. He was not brought to Freetown until the day before the Council met, when his name was added to the ordinance just before it passed.

In 1887 the conflict flared up again with a Yoni attack in February on another town, Macourie, notionally within British jurisdiction.[107] The attack was led by Koliama, who was captured by the Mendes, handed over to Madam Yoko, chief of Senehu, and then passed on to the British. Administrator J. S. Hay thought that he should be detained and deported (like the earlier Yoni detainees) if there was not enough evidence to convict.[108] The Secretary of State, H. T. Holland, duly authorised an ordinance on the model of that passed one year earlier, though he added in a subsequent despatch that this process should be used only in cases of urgent necessity, and that Governor Rowe should

[104] For the history of these conflicts, see Fyfe, *A History of Sierra Leone*, pp. 448–484.
[105] Governor Rowe to Colonial Office, 17 June 1886, CO 267/363/12500. Ordinance No. 1 of 1886 authorised the detention of Sesi, Sey Yammo, Yamba, Angumanah Barfeh alias Blackey, Will Mormoh Sankoh and Bye Jabbee.
[106] Ordinance No. 17 of 1886 (Sierra Leone) and Ordinance No. 1 of 1887 (Gambia).
[107] PP 1887 (c. 5236), No. 47, p. 66. [108] PP 1887 (c. 5236), No. 77, p. 92 with enclosure.

review it on his return.[109] More Yoni raids followed in November. On this occasion, the British felt that a severe lesson should be given for what was seen as a serious violation of the 'British Protectorate'.[110] An expeditionary force was sent under Col. Sir Francis De Winton, which was intended to capture the war chiefs – especially Kondor, Congor and Kallowah – who were regarded as the instigators of the raids on British territory,[111] and to demonstrate British power by destroying the Yoni war towns. De Winter also sought to recoup some of the cost of the campaign by fining chiefs who had supported or given protection to the Yonis.[112] One of these was Bey Simmareh of Massimerah,[113] who was taken as a prisoner to Freetown, after he failed to keep his promise to find the wanted men.[114] He was released only when the Colonial Office overruled Rowe's wish to continue his detention.[115]

Most of the leaders were subsequently captured and sent to Freetown as prisoners of war.[116] There, the Yoni prisoners were divided into various classes. Those put in the first class were to be deported to Lagos:[117] besides Congor and Kallowah, they also

[109] PP 1887 (c. 5236), Nos. 63–64, pp. 80–81. Ordinance No. 5 of 1887, 'An Ordinance to legalise the capture, detention and confinement of Koliama', passed on 15 April 1887. Officials on the ground also proposed detaining another chief, Commander, who was accused by Madam Yoko of instigating the Yoni attack: however, Holland felt that he should only be given a warning: PP 1887 (c. 5236), Nos. 57–58, p. 76.

[110] PP 1888 (c. 5358) LXXV. 669, No. 6, p. 2.

[111] PP 1888 (c. 5358), No. 22 at p. 20; PP 1887 (c. 5236), No. 47, p. 66, enc. 1 in No. 47, p. 68; CO 879/27/2, enc. 3 in No. 103A, p. 99.

[112] CO 879/27/2, No. 78, p. 83. De Winter spoke of Kondor, Congor, Kallowah, Yamba Fakla and Selah and Rabbin Bundu as the main leaders: CO 879/27/2, enc. 3 in No. 103A, p. 99.

[113] For earlier suspicions against this chief, see CO 879/27/2, No. 74, p. 77.

[114] CO 879/27/2, enc. 5 in No. 103A at pp. 104–105. Rowe and De Winter had hoped that Bey Simmareh would be able to hand over the Yoni leaders, and his failure to do so increased the fine imposed on him.

[115] CO 879/27/6, No. 41, p. 55.

[116] They included Congor, Kallowah, Pa Mela, Yamba Fakla and Selah, as well as Alimamy Conteh, the uncle of Koliama, who had helped Congor gather war men. PP 1888 (c. 5358) No. 59, p. 73. For the capture of Kallowah, see PP 1888 (c. 5358), No. 60, p. 74.

[117] Ordinance No. 13 of 1888: Political Prisoners, CO 267/372/23716. Hay advised against sending the men to Gambia, where other Yoni leaders had already been deported.

included Koliama (who had already been detained under an earlier ordinance).[118] The rest, having been in prison for nine months, were thought to have been taught the necessary lesson, and so could be released. Besides authorising the deportation of the Yoni prisoners, the ordinance also covered the deportation of the Mende chief, Commander, who had been investigated earlier in the year for assisting the Yoni raiders.[119] In these cases, there was no discussion of putting the men on trial. The question of whether to try Yoni warriors was, however, raised and dismissed in November 1889, when the British captured Pa Mahung.[120] Although the Queen's Advocate felt that he had satisfactory evidence to prosecute him, he concluded that 'a conviction for murder could not be expected having regard to the fact that the prisoner was engaged in what, to native minds, is called "war"'. In his view, there was no reason why he should be treated differently from the other Yoni ringleaders, 'who are now political prisoners'.[121] An ordinance was duly passed to authorise his detention.[122] Kondor – the one remaining Yoni leader at large – was also later captured, and an ordinance was passed in 1890 to authorise his detention and deportation.[123] At this point, some of the Yoni prisoners in Gambia petitioned for their release, claiming that they had not known they had violated any British laws when engaged in their warfare. However, the petition fell on deaf ears, not least because their deportation was so recent. Assistant undersecretary of state Robert Meade minuted, 'They will be none the worse for a little imprisonment.'[124]

The Yoni warriors were not the only fighting chiefs to find themselves detained and exiled. The Largo chief Makaia, who in 1887 launched attacks in the Sulima District on towns held by

[118] The others in this class were Yamba Fakla and Selah, and Alimany Conteh. The last named was released on the ground that he had been promised a pardon if he brought in the 'robber chiefs', which he had done. CO 879/29/5, No. 1, p. 1; PP 1888 (c. 5358), enc. 5 in No. 58, p. 66.

[119] Despite earlier suspicions, he was not detained until December 1887. PP 1888 (c. 5358), enc. 5 in No. 58, p. 66.

[120] Officer commanding detachment at Robari to Administrator of Gold Coast colony, 4 December 1889, CO 267/382/10052.

[121] CO 267/382/10052. [122] He died in Freetown gaol in January 1891: CO 267/388/3162.

[123] Ordinance No. 2 of 1890, CO 267/381/3393.

[124] Minute, 19 March 1890, CO 267/381/5118.

Bocarry Governor's allies, was captured in 1889 and deported along with his ally Gpabor.[125] Bocarry Governor himself had by then been exiled, when the British concluded that his presence in Sulima was not conducive to peace. Efforts were at first made to persuade him to come voluntarily to Freetown, which he eventually did in February 1888.[126] However, by November, the Colonial Office had concluded that his removal (along with his supporter George Bapoo) was necessary for the restoration of peace in the Sulima district. 'It may be a somewhat high handed measure to seize & deport these men', Hemming minuted, 'but, as it appears to be impossible to persuade the W[ar] O[ffice] to undertake a punitive expedition, there seems to be no other or better way of pacifying the country.'[127] Since it was felt that they could not be kept under such surveillance in Sierra Leone as would prevent their communicating with their allies at Sulima, ordinances were passed to allow their removal to Gambia.[128]

Although some of these warriors might have been tried in the ordinary courts for offences committed within British jurisdiction, for the most part they seem to have been regarded as prisoners of war, whose continued detention (by ordinance) was considered necessary after the end of any hostilities. However, in other cases, detention by ordinance was used to overturn an inconvenient trial outcome. One example of this was Ordinance No. 9 of 1888, dealing with Momodou Canoobah, Richard Canraybah Caulker and others. It arose from the trial of William T. G. Caulker, who had previously been detained for his part in earlier Caulker wars. Although a peace had been brokered between the warring Caulkers after William's release from detention in 1881,[129] the conflict boiled over again very violently in May 1887, when William, with the support of his uncle Momodou

[125] Ordinances Nos. 6 and 9 of 1889.

[126] PP 1887 (c. 5236), enc. in No. 132, p. 172; CO 879/27/2, No. 71, p. 74, enc. in No. 78, p. 84; CO 879/27/6, No. 13, p. 24.

[127] Minute, 25 November 1888, CO 267/37123020; PP 1889 (c. 5740) LVI. 853, No. 7, p. 10; CO 879/29/5, No. 8, p. 11.

[128] PP 1889 (c. 5740), No. 45, p. 53. Given that the coastal chiefs had threatened to kill Bocarry Governor if he returned to the Gallinas, his removal might have been beneficial for his own safety. Fyfe, *A History of Sierra Leone*, p. 480. Bocarry Governor returned to the Kissy Asylum in Sierra Leone in 1891, having been diagnosed as insane: CO 267/388/8679.

[129] Report of Chief Justice to Rowe, 7 May 1888, CO 267/371/15336.

Canoobah and cousin Richard, launched an attack on Shaingay, with the aim of deposing chief Thomas Neale Caulker.[130] When reminded by the Deputy Governor Hay that he had agreed to keep the peace, William justified the insurrection on the grounds of the despotic acts of Thomas.[131] The Inspector-General of Police, Capt. Halkett, was sent with a force to quell the disturbances, which had taken place in an area notionally under British jurisdiction.[132] Thirteen of the leaders, including William, were apprehended and brought to Freetown, with a view to putting them on trial for murder.

A trial duly followed in January 1888 of eight of the war leaders, including William Caulker, for the murder of Gbannah Sengeh, one of the victims of the attack who had later died in Freetown.[133] After a protracted and expensive trial, three of the accused were convicted: Lahai (who was proven to be one of the war party sent to seize Thomas), William Caulker and Richard Caulker. The two Caulkers were not proven to have been at Shaingay, but the jury – who had been asked to find a special verdict – found that they should, as reasonable men, have known that sending the warboys there would lead to loss of life.[134] The jury's recommendation of mercy was rejected by the Executive Council,[135] and all three were executed.[136] These events troubled Charles Hopwood, who wrote to the Colonial Office expressing concern that the men had been tried for what were acts of war. When the question was referred back to the Chief Justice, Quayle Jones, he disputed the proposition that they were acts of war – 'for both Bompeh and Shaingay are as much British territory as Freetown itself'[137] – but also expressed his doubts about the utility of protracted court proceedings in such cases. Although the men were

[130] PP 1887 (c. 5236), No. 97, p. 125.
[131] PP 1887 (c. 5236), encs. 1–2 in No. 102 at pp. 134–135.
[132] As Hay noted, the jurisdiction had 'never as yet been actively exercised'. PP 1887 (c. 5236), No. 97, p. 125.
[133] PP 1887 (c. 5236), enc. in No. 107, p. 139.
[134] Report of Chief Justice to Rowe, 7 May 1888, CO 267/371/15336.
[135] Maltby to Knutsford, 15 October 1888, CO 267/371/21627. According to Chief Justice W. H. Quayle Jones, the jury's recommendation 'simply amounted to this, that it was the custom of the country to break the law in this way when it suited them'. Chief Justice to Rowe, 9 July 1888, CO 267/371/15336.
[136] Both the Secretary of State and his officials privately noted that it would have been sufficient to execute William: CO 267/371/15336.
[137] Chief Justice to Rowe, 9 July 1888, CO 267/371/15336.

legally guilty of murder, he thought that criminal trials following the rules of English law were no more suitable in such cases than they would have been in the middle ages 'when the Great Feudal Lords had fights amongst themselves and death ensued'. In his view, rather than using the ordinary rule of law in such cases – which had ended here in executions – they could better be dealt with in a more summary way by 'the Governor in Council being authorized to deport or incarcerate the promoters of such raids'. Secretary of State Knutsford's scribbled response was: 'Certainly it would be more summary but ? more expedient or fair.'[138]

While the Colonial Office insisted that the ordinary course of the law had to be followed in the case of the three convicted men, the others did not get the benefit of their acquittal. They were not released, ostensibly because there were other charges still outstanding against them. However, further legal proceedings against them were abandoned, and instead an ordinance was drafted to provide for their detention and deportation. The Queen's Advocate justified this on the grounds that there was sufficient evidence adduced at the trial to implicate them in the raids. By the time it passed, the men had been detained without charge for a further four months, and so the ordinance also indemnified officials for their detention.[139] Four men were deported to Gambia under the ordinance, though three others, who were considered to have no influence, were released.[140] Not all the leaders of the Shaingay raids had been captured, however. Mormoh Darwah, described by Halkett as the chief warrior,[141] had remained at large at the time of the trial. He was captured only in March 1890, and an ordinance was subsequently passed to deport him. Given the volume of evidence against him, Hemming 'thought the better plan would have been to try this ruffian for what he did in 1887, & hang him'; but, as Wingfield replied, 'The Colonial Govt probably dreaded a repetition of the Caulker trial.'[142]

[138] Chief Justice to Rowe, 30 May 1888, CO 267/371/15336.

[139] Maltby to Knutsford, 19 October 1888, CO 267/371/22034.

[140] The four were Momodou Canoobah, Richard Canraybah Caulker, Beah-Hai and Morannah. Maltby to Knutsford, 19 October 1888, CO 267/371/22037.

[141] Halkett to Private Secretary, 8 July 1887, PP 1887 (c. 5236), enc. in No. 107, p. 144. He stated (at p. 143) that 'Darwah and Lahai ordered one captive after another for execution.'

[142] According to the report of the Queen's Advocate, James A. McCarthy, 23 May 1891, 'Had he been caught then [in 1887] and placed on his trial, I have no doubt but that he would have been convicted of wilful murder and hanged.' CO 267/389/11791.

By 1890, the authorities in Sierra Leone had fallen into the routine of passing ordinances for the detention and deportation of political prisoners. However, it could still take time for detentions to be regularised. In May 1888, Bangang – described as 'a Mendi freelance' engaged in slave hunting expeditions 'far beyond the recognised limits of our jurisdiction' – was captured and lodged in prison in Freetown.[143] However, the authorities forgot to take any steps to regularise his detention, and it was only in May 1890, when preparing Pa Mahung's ordinance, that this oversight was noticed, and the detention regularised.[144] Moreover, ordinances could be passed to imprison those who posed no real threat. One such was Santiggy Karay, who was accused of plotting to attack Macama, an area within British protection. He had collected a war party and had been ready to disturb the peace, but had been prevented from so doing.[145] Preparing the 1891 ordinance under which he was detained, the Queen's Advocate, James A. McCarthy, admitted that the evidence against him was 'not very serious' but that 'the moral effect of his detention and imprisonment on Native Chiefs and headmen will be most salutary'. The proposed ordinance troubled London. Meade noted: 'The system of locking up people as political prisoners is convenient but may easily be most oppressive and should be reserved for exceptional cases.'[146] It was allowed only on the understanding that he would be released 'in a month or so'.[147]

Political Detentions in the Gold Coast

Whereas detentions in Sierra Leone were primarily used to maintain peace in the hinterland, in the Gold Coast and Lagos, they were related for the most part to the defence of British interests in areas over which they sought to exert their influence.[148] In a number of cases, the British

[143] CO 879/25/4, No. 23, p. 20; CO 879/27/6, No. 30, p. 47.

[144] Bangang was detained in Freetown gaol until January 1893, when he was moved to the Isles de Los. He was finally released in September 1894: Cardew to Ripon, 14 September 1894, CO 267/412/17457.

[145] Legislative Council Minute, 21 May 1891: CO 267/389/12396. [146] CO 267/389/12396.

[147] He was released in September: Crooks to Knutsford, 7 September 1891, CO 367/390/19190.

[148] Some were also detained for peacekeeping purposes, such as Quacoe Mensah detained under Ordinance 15 of 1884 (for whom see CO 96/161/56, Minute

were concerned about possible attempts by Africans to switch their allegiance to another European power. It was this fear which lay behind the 1883 Katanu Political Prisoners Detention Order, which related to events in an area which would ultimately fall under French rule during the scramble for Africa, but which had signed a treaty of protection with the British in 1879.[149] In 1883, a deputation from Katanu visited Lieutenant Governor W. Brandford Griffith at Lagos, asking for the British to show that the area was still under their protection. They were concerned that King Tofa of Porto Novo (which was under French influence) was attempting to appoint a king at Ekpe (whose appointment was in the king of Katanu's hands). They also revealed that he was being assisted by plotters within Katanu.[150] Griffith duly went to Katanu with sixty Houssas, to make a very public demonstration of British power and support for the local king. Although the king felt that the conspirators should be punished for their treasonable practices, he had done nothing about it himself, and it was the British who arrested eleven men. In the investigation which followed on Griffith's ship, one of them, Savi Brah, was found to have been the main intermediary with Porto Novo, and to have enlisted people to support that king.[151] Griffith concluded that strong measures were necessary: 'I considered that the best way to terrorise the men who had not been caught, and to teach a lesson to the people there generally, was to deport ten of the men I had in custody to the Gold Coast.'[152] He detained these men and moved them to Elmina without consulting London. On learning of it, the Colonial Office reminded him that an ordinance was needed, which should be time-limited to two years to allow their case to be reconsidered in due course.[153] In this case, the colonial authorities acted in response to a local request, but intervened largely in order to protect their position in an area where tensions with the French were mounting.

Another detainee who threatened British interests and flirted with another European power was Geraldo de Lima.[154] Born Adzoviehlo

2 January 1885) and Chief Kwabina Okyere of Wankyi detained under Ordinance 18 of 1888 (for whom see the enclosures in CO 879/28/1, No. 10, pp. 66ff.).

[149] Treaty of 24 September 1879, CO 879/35/1, No. 23, p. 327.

[150] CO 879/21/11, enc. 1 in No. 2, p. 2. [151] CO 879/21/11, enc. in No. 6 at p. 13.

[152] CO 879/21/11, enc. in No. 6 at p. 8. [153] CO 879/21/11, No. 19, p. 19.

[154] See D. E. K. Amenumey, 'Geraldo de Lima: A Reappraisal', *Transactions of the Historical Society of Ghana*, vol. 9 (1968), pp. 65–78.

Atiogbe, he had been the domestic slave of a Brazilian slave dealer, Cosar Cerquira Geraldo de Lima, whose name and business he took over on the latter's death. Over the next twenty years, he sought to secure his position as a middle-man in the palm-oil trade on the Ewe coast, east of the Volta, and to frustrate British attempts to expand into this trade. This led to a number of conflicts. His first clash with the British came in 1865, when, having been driven out of Ada, he joined with the rival Anlo in a retaliatory war, in which the British supported the Ada. Although the Anlo were defeated, Geraldo evaded capture. In 1871, when he was suspected of encouraging Asante attacks and fomenting disorder along the Volta, another attempt was made to capture him.[155] However, Geraldo remained out of reach, across the lagoon, from where he was able to continue his trade, and to evade the customs duties imposed by the British after they extended their jurisdiction into Anlo in 1874. Matters came to a head in 1884, when a conflict broke out between Chief Tenge of Anyako (where Geraldo resided) and the Keta chiefs who had come to an agreement with the king of Anlo to open up the route to Krepi. Geraldo, who was keen to protect his own economic interests, was only too happy to come to Tenge's support. Convinced that Geraldo was behind the blockade of Keta, the British now once more offered a reward for his capture. He was finally arrested in January 1885 and sent to Accra to stand trial for inciting the Anlo to rebel.[156]

However, it soon became clear that it would be difficult to secure a conviction, since witnesses could not be found who would be willing to testify against him.[157] 'I fear that as far as criminal prosecution is concerned, it is hopeless to obtain further evidence', Governor Young noted in March, 'but there is an abundance of evidence, I think, to warrant his detention as a political prisoner; and I think that we had better pass an enabling Ordinance without further delay.'[158] In fact, the evidence he referred to related mainly to his activities over a twenty-year

[155] See the stipulation in the peace treaty brokered between the Ado and Anlo: CO 879/35/1, No. 15, p. 320 at p. 321.
[156] An unsuccessful attempt was made to rescue him en route, in which two Houssas were killed: CO 879/21/9, No. 82, p. 191.
[157] CO 879/22/15, No. 55, p. 102. [158] Minute dated 12 March 1885, CO 96/166/12306.

period as a thorn in the British side.[159] Unlike previous Gold Coast ordinances, this one was not intended to legalise an existing illegal detention, but to authorise the continued detention and deportation of a prisoner whose trial had been abandoned. Accepting that Geraldo was a dangerous intriguer, officials in London concurred with Griffith's view that he should be sent to St Helena. The Colonial Office thought the case to be analogous to that of Abdullah of Perak, and held that, although the Gold Coast had no jurisdiction over Geraldo outside the Colony, the Secretary of State could order his removal as an act of state.[160] In the event, St Helena was unable to accommodate the request and Geraldo remained in detention at Elmina.[161]

The British also used detention ordinances repeatedly as a tool of policy relating to Asante affairs. The fact that this was a matter of *Realpolitik* can be seen from the detention of Yaw Awua in 1884. An Asante who had settled at Cape Coast, he was, along with the elder John Owusu Ansa, a supporter of the restoration of the deposed Asantehene Kofi Kakari.[162] The colonial authorities in Accra opposed his restoration, fearing that Kakari would seek to reconquer the territories whose secession had weakened the Asante kingdom. When it was discovered that Yaw Awua had delivered a message from Ansa to the Asante king of Bekwai claiming British support for Kakari, the decision was taken to detain him. Although all of Yaw Awua's activities had taken place outside the protectorate, and hence beyond any British jurisdiction, the Executive Council thought that he should be punished for conveying the false message.[163] The Colonial Office confirmed the ordinance, but wondered why action had not been taken against Ansa, rather than Yaw Awua, 'who appears to have acted merely as his tool'.[164] It was

[159] Enclosure in Quayle Jones to Griffith, 6 June 1885, CO 96/166/12306. Of the recent activities, what caused most concern was his plotting 'to hand over the mainland behind the lagoon to the Germans'. There were also claims that he had killed a Houssa engaged in an anti-smuggling operation in 1880 or 1881.

[160] Despatch of 28 July 1885, CO 96/166/12306.

[161] A request to be released was refused in 1891, since Griffith still suspected him of intriguing; and he was released only in 1893. Griffith to Knutsford, 15 April 1891: CO 96/216/10014.

[162] Wilks, *Asante in the Nineteenth Century*, pp. 631, 713–715.

[163] CO 879/21/9, No. 22, p. 80.

[164] London also made it clear that this kind of legislation was to be used 'sparingly', and that there should be a time limit on it, so that the detainee would not be forgotten. CO 879/21/9, No. 26, p. 82.

only then that the Executive Council proceeded to investigate Ansa's complicity, summoning Yaw Awua out of detention for an examination as to the exact nature of the message conveyed to Bekwai, and Ansa's role in it. On the basis of this examination, the Council concluded that the best way to prevent any further intrigues from the coast unsettling Asante was for both men to be deported, to St Helena if possible.[165] However, before any decision was taken, both Kofi Kakari and the incumbent king of Asante (Kwaku Dua) died. This made the colonial government rethink its approach entirely. While Ansa was still regarded as an inveterate intriguer, it was now thought wise to wait and see what view he would now take of affairs in Asante. As the Governor put it, 'He might possibly prove useful to the Government.'[166] In fact, Ansa himself died at Cape Coast in November, and, with his death, the need to keep Yaw Awua in detention appeared to have evaporated. He was duly released in December 1884, but asked to give his word of honour that he would engage in no further intrigue.[167] His detention in 1884 was an act of pure political expediency, as part of an effort to influence politics in Asante.

Yaw Awua was detained once more in 1888, this time at the request of Prempeh, who had become the king of Asante in March 1888, and who wanted the British to drive away all Asante living on the coast who were meddling in his polity.[168] He was arrested on 10 June. An ordinance was hurriedly passed after his arrest and removal to Elmina Castle, whereupon a messenger was sent to Asante with the news, which Griffith was confident would 'do much towards strengthening the hands of the newly elected King of that country at the outset of his reign'.[169] Recommending the confirmation of the ordinance, Hemming at the Colonial Office observed that Yaw Awua had broken his promise to intrigue no more '& deserves his fate'.[170] The ordinance authorised his detention for a year, but Yaw Awua was not released when it expired. Indeed, it was only in the following year, when the Governor asked for a return of political prisoners, that the

[165] CO 879/21/9, No. 64, p. 160.
[166] CO 879/21/9, No. 66, p. 175.
[167] CO 879/21/9, No. 77, p. 186.
[168] CO 879/28/1, No. 29, p. 223.
[169] Griffith to Knutsford, 11 June 1888, CO 96/192/14004. In 1894 (when addressing the younger John Owusu Ansa), Griffith observed 'Do you remember a man by the name of Yow Awuah? He was as happy as possible at Cape Coast one morning, and two hours later I had had him locked up in Elmina Gaol as a political prisoner.' PP 1896 (c. 7918) LVIII. 707, No. 19 at p. 31.
[170] Minute 17 July 1888, CO 96/192/14004.

authorities noticed that he was still being detained, without any legal authority. An ordinance was now passed to regularise his detention, without any time limit being imposed, in order to give the government more leeway to decide when he should be released. Yaw Awua remained in custody until 1893, when British relations with Prempeh turned sour, and he returned to Kumasi in 1896 after the British occupation. The man who had once been a pariah to the British now found them much friendlier: after assisting them in the war against Queen Yaa Asantewaa, he was given the stool of one of the rebel kings deported in 1901.[171]

Officials sometimes struggled with the legal basis of their actions when dealing with exiled Asantes. This can be seen from the 1887 case of Bo Amponsam, king of the Adansis. The Adansis were refugee dissidents from Asante, who had settled in Denkera (within the protectorate) and were now using it as a base to conduct very violent raids into Asante. Bo Amponsam was arrested after complaints about the raids were received from the king of Bekwai, and after evidence had been gathered that he had incited to murder and accepted bribes.[172] As a consequence, he and two others were charged under the Foreign Enlistment Act 1870. On 20 July, Justice Smith – the brother-in-law of the men's lawyer – ordered that they be released from Elmina Castle on bail.[173] They were immediately re-arrested as political prisoners, whereupon their lawyer announced his intention to apply for a writ of habeas corpus. In order to forestall this application, an ordinance was hurriedly passed to legalise their detention.[174] This way of proceeding raised eyebrows in London. Pointing out the Colonial Office's dislike of such special legislation 'unless absolutely necessary', R. H. Meade questioned why men who were to be tried on criminal charges had been detained in this way: 'Surely it is a queer proceeding to lock up in their political capacity prisoners

[171] Wilks, *Asante in the Nineteenth Century*, p. 714; PP 1902 (Cd. 938) LXVI. 753, enc. in No. 12, p. 29.

[172] For the background, see CO 879/25/6, No. 33, p. 42; enc. in No. 34 at p. 45; enc. 1 in No. 69, p. 102; enc. 2 in No. 69 at p. 106; enc. 3 in No. 69, p. 107; enc. 1 in No. 71, p. 121.

[173] While frustrated at this turn of events, the authorities admitted (after some scrutiny) that the judge had the power to bail them: Acting Advocate General to Colonial Secretary, 7 October 1887: CO 96/183/22495.

[174] Ordinance No. 8 of 1887; White to Holland, 7 October 1887, CO 96/183/22495.

admitted to bail on a criminal charge?'[175] By the autumn, the Gold Coast government had abandoned its attempt to prosecute these men, for legal reasons: they were not convinced that the defendants were British subjects and that the offences were committed within British territory. In the view of Acting Advocate-General Griffith, it was unwise to risk a failed prosecution, particularly where the offences were 'really of a political nature and may be most appropriately punished by a special Ordinance', such as the one under which they were already being detained.[176] London agreed with this legal analysis. Since it was now no longer a question of a special ordinance being used to deprive prisoners of a right to bail given by a judge – given the apparent absence of jurisdiction – Edward Fairfield noted that the 'proceedings against them must be regarded as at an end, and their detention is to be judged by the same class of considerations, as other cases of political detention in West Africa'.[177]

Having been deprived of his stool, Bo Amponsam was released in the following spring. However, when the government discovered that he was attempting to resume his authority, he was re-arrested and taken back to Elmina Castle. Considering him a man not to be trusted, Griffith decided to keep him as a political prisoner until such time as another king of Denkera had been elected, at which point his political base would evaporate.[178] A further detention order was prepared, which London approved as 'inevitable'. Although this ordinance authorised his detention for just one year, he remained in Elmira Castle, like Yaw Awua, without any legal basis for his incarceration. This came to Governor Griffith's notice in July 1890 – more than a year after he should have been released – but he decided not to call the Legislative Council together until its next planned meeting in September, when it passed another ordinance to legalize the detention. Although London was unimpressed by Griffith's

[175] Minute, 14 September 1887, CO 96/182/18290.
[176] Acting Advocate General's Report, 24 August 1887, CO 96/183/22574.
[177] CO 96/183/22574: regarding the question of jurisdiction, he noted that a 'similar difficulty to that which has been experienced in this case arose in Cyprus in 1881, and it was met by passing an Order in Council containing a brief code of neutrality law'.
[178] Griffith to Knutsford, 27 June 1888, CO 96/192/15257.

cavalier 'method of dealing with inconvenient politicians',[179] the ordinance was approved. Bo Amponsam remained in Elmina Castle, where he died in November 1890.

Another group of Asante exiles who were detained after using the protectorate as a base from which to launch attacks in Asante were the followers of Kwasi Mensa, from Inkwanta, who were captured in February 1890. After the passing of an ordinance in April 1890 to authorise the detention of some of them,[180] a second one had to be hurriedly passed in July to allow the detention of others, whose intended prosecution had stalled (when the witnesses disappeared), and whose supporters had applied for a habeas corpus.[181] These prisoners remained incarcerated until 1891, when they were released, in part in response to pressure exerted by the Aborigines Protection Society, which had learned that the ordinance had been passed to frustrate a habeas corpus application. Although London felt the conduct of the local officials was 'very unsatisfactory',[182] Hemming thought it best 'to let the matter drop unless the Society again refers to it'.[183]

Besides dealing with raids on Asante, the British also used detention ordinances to maintain order within the protectorate when the ordinary forms of law failed. This can be seen from British intervention in the war between the king of Krepi and the rebellious Taviefe people, who had defied Krepi rule since 1870. After the king of Krepi reported an attack in April 1888, Assistant Inspector Dalrymple was sent (with a detachment of fifty Houssas) to make the Taviefes obey their king and to arrest the Taviefe ringleaders responsible for the deaths in an earlier attack they had made on Chavi, with a view to putting them on trial.[184] On 30 April, Dalrymple met the Taviefe chief, Bella Kwabla (also known as Bella Kwabina), who appeared ready to co-operate. However, after the arrests had been made, Dalrymple was

[179] Griffith to Knutsford, 24 October 1890, and note by R. H. Meade, CO 96/212/23462.
[180] Griffith to Knutsford, 24 October 1890, CO 96/212/22737, relating to Ordinance No 4: Srahah Political Prisoners' Detention Ordinance.
[181] Hodgson to Knutsford, 15 July 1891, CO 96/217/16758.
[182] CO 96/212/22738: Ordinance No. 5 of 1890: Denkera Political Prisoners Detention Order.
[183] Minute, 23 August 1891, CO 96/217/16758.
[184] CO 879/28/1, encs. 13 and 14 in No. 18, p. 153; enc. 15 in No. 18, p. 154.

shot dead in an ambush thought to have been orchestrated by Bella Kwabla.[185] The British now sought those responsible for Dalrymple's death, as well as the Chavi killings. Another force under Assistant Inspector Akers was sent out, which defeated the Taviefe in June, after a campaign which took a great toll on them.[186] At the end of August, Bella Kwabla and two others were sent for trial in Accra on charges relating to the death of Dalrymple and the Chavi killings. However, the jury acquitted the defendants in the first trial, which related to the murder of Dalrymple, when they concluded (against the judge's instructions) that Taviefe was beyond the court's jurisdiction. The Queen's Advocate then dropped the second case, since it was evident that there would be another acquittal, even though he felt that there was both the evidence and jurisdiction for a conviction.[187] With the colonial authorities determined that the chief should not return, an ordinance was passed for the men's indefinite detention.[188] Only when calm had been restored to Taviefe were they released, in August 1890.[189]

In many of the cases involving chiefs and kings from the protectorate, the possibility of proceedings under the ordinary law was contemplated.[190] Detention as a political prisoner was used as an alternative, which avoided the risk of acquittals and allowed the option of discretionary removal. Governor Griffith was also content to detain prisoners without lawful authority, while pondering how to proceed. For instance, no ordinance was passed to authorise the detention in Elmina Castle of Essal Cudjoe and Quabina Insiaku in October 1889, after they had been arrested, on the authority of a letter from a District Commissioner, for attempting to create disturbances in Eastern Wassa (in a dispute over a stool). Griffith was not prepared to

[185] CO 879/28/1, enc. 17 in No. 18 at p. 157. On the background, see CO 879/28/1, No. 11, p. 80.

[186] CO 879/28/1, No. 28, p. 222. Not only did the Taviefe lose 167 fighting men, but a great many of their people had also died from starvation and exposure. 'This is terrible retribution', Griffith wrote to Knutsford, 'but there was no avoiding the struggle for supremacy': CO 879/28/1, No. 32 at p. 246.

[187] CO 879/28/1, No. 55, p. 345.

[188] Tawiewe Political Prisoners Detention Ordinance, No. 22 of 1888: CO 96/194/20203.

[189] CO 879/31/11, No. 94, p. 90.

[190] For instance, Brennan recommended that Kwabina Okyere be arrested in Accra for taking up arms against the government: CO 879/28/1, enc. 22 in No. 24, p. 204.

let them go until they had entered into sureties for very large sums.[191] His officials assumed that they would be able in due course to rely on a Political Offenders Ordinance intended to confer a general power of detention, which was then passing through the legislature. In the meantime, Griffith did not want to treat them as political prisoners, and told London that it was not necessary to pass an ordinance, since it was unlikely that the proceedings would be 'challenged in any manner'.[192] Griffith's cavalier attitude to detentions troubled officials in London. They were especially troubled by the Political Offenders Ordinance, which was designed to 'afford a much more convenient and regular form of exercising the paramount power of the Crown'. Officials here doubted the wisdom of granting a general power to detain. As Meade put it, 'The more trouble it gives passing in each case the special ordinance, the better. No Colonial Govt & least perhaps of all the Gold Coast colonies are fit to be trusted with general Powers to this tremendous effect.'[193] The ordinance was duly disallowed.

In July 1890, the Deputy Sheriff was instructed to draw up a list of political prisoners then being detained in Elmina Castle. He returned a list of twenty-six prisoners, which included men deported from Sierra Leone as well as Gold Coast detainees.[194] When the list reached the Colonial Office in December, Meade felt that the number being held was 'not creditable', and argued that at least some should be released after a review. Authorising the continued detention both of Yaw Awua and of Bo Amponsam, the Colonial Office began to insist on regular reports.[195] In response, Governor Griffith acknowledged that detaining people as political prisoners was 'in itself objectionable' and should be used only 'in rare instances', but argued that 'the good of the greatest number may necessitate such treatment on occasion arising when dealing with natives over whom from their position in the interior the Government cannot continually exercise other than the

[191] Griffith to Knutsford, 24 October 1890, CO 96/212/23462. As officials in London noted, this was of doubtful legality, since they had been detained only on the basis of a confidential letter.
[192] Griffith to Knutsford, 3 February 1891, CO 96/215/4624.
[193] Minute dated 25 January 1890, CO 96/205/1270.
[194] CO 96/212/23462. The list omitted Geraldo de Lima.
[195] Wingfield minute, 1 December 1890, CO 96/212/22740.

control of moral force'.[196] He now began to make periodic visits to Elmina Castle, and, by May 1891, the number of political prisoners detained had been reduced to thirteen. However, the policy of detaining troublesome Africans continued.[197]

Conclusion

In West Africa, the use of *ad hominem* legislation to authorise detention became the standard way to deal with 'political prisoners' after 1880. If, in this context, the due process expected by a substantive vision of the rule of law was routinely replaced by a regime of exceptional measures, it was nonetheless significant that the Colonial Office insisted in 1881 that detentions be put on a legal basis, after more than a decade in which the British authorities in West Africa had routinely detained political prisoners without trial. The need for such legislation was in part a response to pressure from parliamentarians such as Charles Hopwood, who were raising awkward questions about detentions in West Africa at a time when British policy towards detention without trial in Ireland was proving controversial.[198] The imperial solution to this problem – *ad hominem* laws taking away the power to seek a writ of habeas corpus – gave legal cover to the authorities, rather than protection to the detainees. At the same time, the need to put detentions on some kind of legal footing was also motivated by the discomfort of officials in London at the widespread use of detention of political prisoners in West Africa without any apparent kind of control. Under the new system, colonial officials had to provide some justification for detention ordinances before the Colonial Office was prepared to approve them; and officials in London also began to call for regular returns of detainees, so that they would not be lost in the system, as had been the case all too often hitherto. These may have been very thin forms of protection for the detainees, but they might act as some form of restraint of local officials.

In this area, the resort to detention without trial was often the result of jurisdictional uncertainty or ambiguity. In many cases, it was

[196] Griffith to Knutsford, 3 February 1891, CO 96/215/4624.
[197] See the Yow Donko Detention Ordinance No. 1 of 1891, CO 96/216/11523.
[198] See Stephen Gwynn and Gertrude M. Tuckwell, *The Life of the Rt. Hon. Sir Charles W. Dilke*, vol. 1 (New York, MacMillan, 1917), p. 370.

a perception that the British lacked a formal jurisdiction over areas considered within their political sphere of influence, and over which they felt compelled to keep the peace, that led them to use ordinances which would cut through the complexity by an assertion of sovereign power over the troublemaker. At the same time, both the colonial authorities and their imperial masters often found such instruments to be convenient, to deal with people who were within British jurisdiction. Such ordinances could be used when the authorities lost confidence in the ordinary processes of law – or found that they could not achieve their aims by using them – and also when they simply wished to detain political opponents against whom no charges could be formulated. Such ordinances were also used for a variety of purposes – from peacekeeping and the punishment of crimes, to political brokering and the suppression of dissent.

Far away from London, and largely out of the public eye, the imperial authorities were far less constrained in their use of exceptional powers in this part of Africa than they would be elsewhere. If the Colonial Office gave itself the power to scrutinise detention, in practice the degree of scrutiny given to these detentions was minimal. Furthermore, Africans detained here had few opportunities to mount legal challenges to their detention, so that the validity of the ordinances was never called in question. Nor did they enjoy significant support from opinion-formers or people of influence in the metropolis. There were occasional efforts to bring cases to the attention of bodies such as the Aborigines Protection Society and friendly MPs,[199] but it was not easy to translate this into effective action. For instance, when the members of the jury who had acquitted Bella Kwabla read in the minutes of the Legislative Council that their decision had been against the evidence, they wrote a long memorial in protest to the Secretary of State – copied to the Aborigines Protection Society – explaining that the men had been 'justly acquitted … *in accordance with the evidence given in the case*'.[200] They followed this with a protest at the Governor's 'trampling' upon their right to acquit by assuming 'the uncontrolled and dangerous

[199] In June 1886, the Aborigines Protection Society received a petition from the chiefs of Elmina sent to the Secretary of State: Bodleian Library, MSS Brit. Emp. s 22/G17, f. 9.

[200] Bodleian Library MSS Brit. Emp. s 22/G17, f. 12, p. 50.

power of deporting and imprisoning the said prisoners for the same charge for which they had been tried'.[201] The matter was subsequently raised by James Picton in parliament in May 1889, but the undersecretary of state, Baron De Worms, batted it away by saying that their detention was 'in the interest of the public peace, and because a renewal of disturbance is apprehended were they to be sent back at the present time'.[202] With public opinion scandalised by the violent death of Dalrymple, it was not easy to protest against the detention of Africans suspected of plotting it.

[201] Memorial dated 21 August 1889, CO 96/204/19567.
[202] *Parl. Debs.*, 3rd ser., vol. 335, col. 1126, 1136 (3 May 1889).