

1932

Kenya

No. 18153

SUBJECT

CO 533/425

Income Taxation

Previous

171189/31

Subsequent

23040/34 (Income that
see tax)

1 for Kenya 167 12/4/32 2

Refers to the legislation in force for dealing with tax defaulters. And states the advisability of the retention of the maximum term of imprisonment (3 months) as a deterrent.

The question of the reduction of the maximum period of imprisonment for tax defaulters from 3 months to 1 month arose out of Lord Macaulay's minute of 12/1/31 on 29816/30 T.T.

Kenya considers that the ^{maximum} period should not be reduced but points out that they have as an alternative detention under the Detention Camps Ordinance, which is freely used.

The opinion of the local authorities may be accepted as regards the maximum period of impt. desirable in the case of local defaulters.

Now await Lord Macaulay's recommendations on the question of exemptions etc.

H. P. Mishra
31/5/32

(Taken over 6/6)
Both points as to the period of imprisonment has put to all the Dept. & not mentioning the P.P. position as to what is best to be done
4/1/32

2 ~~for~~ memo on Native Taxation - Defaulters & Forced Labour

Consideration of this despatch was held up pending consideration of the latest proposals of Tanganyika for exacting forced labour from tax defaulters, and it has been decided to accept the Tanganyika proposals in principle (90089/8/32 General). As, however, no question of the exaction of forced labour from tax defaulters arises in Kenya, I do not appear to be concerned with the Kenya proposals. In this connection, however, it may not be out of place to mention that in the draft Ordinance submitted by Tanganyika failure to pay the tax or to render labour in lieu is an offence and penalties are prescribed. You may therefore, perhaps, still prefer to suspend action on this Kenya file until the Tanganyika Ordinance has been examined by Mr. Duncan on his return from leave at the end of next month.

* other than formal labour...
 exempted from the provisions of the Convention, by article 2(c).

21/6/52
 TT

J. J. Cassin
 20/7.

Be with the papers when the case has been dealt with

Attorney
 27/7/52

to Director

T.D. for Kenia with 3/6/52
 a despatch issued on 5/7/52.
 R. 197 7/10/52

Mr. Allen

3

Uganda and T.T. have been told that temporary continuance of the exaction of labour, as an alternative to cash, in payment of tax is not inconsistent with the Convention; they have been reminded, however, that the Convention (Art 10) stipulates that ~~the~~ forced labour exacted as a tax shall be progressively abolished

See 14 + 19
 on 90089/5

* I do not read the despatch...
 containing the note. 1/11/52
 26/10

1 hour

In these circumstances it is clearly out of the question to suggest or permit re-introduction of the system into Kenya, and para 5 of the Govt's despatch may be disregarded.

The only remaining question is whether S.G.S. should accept the view of Govt. reinforced by his P.C.'s, that it would be unwise to reduce the maximum term of imprisonment or detention from 3 months to 1 month

? Act. 1; note Governor's view, and say that S.G.S. is prepared to acquiesce in the present maximum penalty.
 28/7/52 16/10

I have been looking at the...
 and had been...
 1/11/52

x. Not

I asked the freshmen to
put a note so to what Uganda
P.O. are doing: & as he was
off duty as the pleasant section
I the proposed P.O. order I consulted
the 5000 who has kindly furnished
his views in No 3

Whether I think must be
discuss P.O. has definitely about
allows this legislation to remain
separate subventions in the Kenya
position.

Bring up a common one
and legislation arising at the
the Uganda session I see Co -
& nothing is passed then I think to
be made to ask the hold of
the 5/10/32

10/12/32
at once

Noted

x note for
to also

Action now reqd. as in last part
of Mr. Allen's minutes above. The
Uganda legislation has not yet been
dec. see No. 4 on 20/9/32 Uga New
20/9/32

Allen

4
I think we might await the result
of the former's compliance at which
Native Taxation is to be discussed
before reminding on 31 20/9/32
Uganda.

J.F. P. O. M. S. M. C.
6/1/33

Dr. P. O. M. S. M. C.

I am not quite sure what the Kenya
point is: but, as regards Uganda, the question is
whether we should remind the Gov. as to the above the
proposals for amending the Poll Tax Ordinance
framed under No 3 on 20/9/32. I have an idea
that the Government has been further dealt with on
the subject separately on General P.O. Report
Can you say if this is so?

27/2

Mr. Acheson.

In a conf. rep. dated 14/11 (No 23 on
90089/3/32 ^{Uganda}), the Gov. explained that
his proposal for the present to retain the
administration instruction that "tax. labour"
under the Poll Tax Ord. is not to be
employed; but that the Gov. will be
further considered in the event of
representations being received that the
collection of Poll Tax in cash was impracticable,
that a temporary return to the use of
Poll Tax labour would be advisable. (You
will recollect that we have explained this

(+ enc.)

in the report to the I.C.O. on the operation
of the Inland Lubana Convention
(Uganda).

The Ev. added that the
contemplated amendment of the
Convention will be deferred until he
had had an opportunity of considering
the amendments made in the T.T.
Act. It is therefore necessary
to revisit Uganda.

J.J. Pascoe
3/3.

Mr. Pascoe
Dunbarton

Then we can continue to "acquiesce sub
silentio in the Kenya position".

J.J. Pascoe

5/3

as indicated in my minute
of 24/7, I do not appear to be
directly concerned with the post
in Kenya.

J.J. Pascoe
4/3

Dunbarton unless we have to

replied

8.3 done

5. Native Affairs Dept. Enc. No. 5 of 1932

Re: bare for mind

? Part 4

115 Pmsse

11/3/35

11/3/35

6. Extract from "Factsheet Summary" of 20 Sept 1932

I had this reported in view
of the probability that P.Q.'s will
emerge. The answer is in para.

13 of Cont. 400 4093 (Daguer
Report), which Archdeacon Owen
characteristically ignores.

Part 4

J.J. Pascoe
26/9 at



Mr Freeston

6

W. E. Owen

TAXATION OF BOYS IN KENYA

An Abuse of Trusteeship

To the Editor of the Manchester Guardian.

Sir, Copies of Kenya papers for August contain a report of the discussion in the Legislative Council during the passage of a bill to amend and consolidate the Native Hut and Poll Tax Ordinance.

In South Africa natives begin to pay direct taxation at 18 years; all other races at 21. In Uganda all races begin at 18, without discrimination, but in Kenya natives are taxable at 16; all other races, European and Asian, at 18. The two members representing native interests in the Council endeavoured to persuade the Council to make the taxable age the same for all races, as in Uganda, by raising the age for natives to 18. They were not successful.

The member representing Europeans in Nyanza, in resisting the proposal of the two members representing native interests, defended the imposition of taxation at 16 years as it caused the boys to leave the reserves to work for wages on farms, in Government departments, and in commercial undertakings. The age was originally put at 18 for Africans in order to force them on to the labour market, and employers of labour as represented by the member for Nyanza, desire its retention for the same purpose.

Canon Burns, representing native interests, referred to the complex problem created by the influx of young boys to the towns to get work to raise money for their taxes. Juvenile crime is on the increase and is causing anxiety.

There would be an immediate outcry were it proposed to impose taxation on European and Asian boys of 16. As the vast majority of the native families handle only about £3 to £5 a year, and find it terribly difficult to procure even these small sums, the imposition at 16 means that boys have to leave home and go far, afield from the reserves from 14 years onwards.

In my opinion, we as a nation, for those in England must share the responsibility, are using our power to impose burdens on African boys which we would never allow to be imposed on our own sons. It is an abuse of trusteeship.—Yours, &c.

W. E. OWEN, Archdeacon of
Kavirondo, Kenya,
Stocks Green, Hildenborough,
Tonbridge, September 18.

Am. News 7/11/20

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L. & O. 2/2/4/1.

NATIVE AFFAIRS DEPARTMENT
NAIROBI.

9. 8. 1932.

Circular No. 43.

To all Provincial Commissioners
(with copies for District Commissioners).

NATIVE HUI AND POLL TAX.

His Honour the Chief Justice in referring to certain sentences of imprisonment in default of payment of hut tax has invited my attention to Criminal Revision Case No. 99/1924, reported on page 7 of Volume X. of the Law Reports of Kenya (1924 - 1926).

2. His Honour says further " The procedure laid down by the Ordinance is cumbersome and not well adapted to the circumstances of the administration of a great part of the country, but while it is the law it should be strictly construed. I have reason to believe that the procedure used by the trial magistrate in the cases referred to is common. In practice I am informed that the native who has been found guilty of non-payment of the tax is, in default of payment, imprisoned either on remand pending the issue and return of the levy or on commitment in default of distress, distress having not been levied or the warrant not having been returned. The object is to avoid losing sight of the defaulter who may be alien to the district in which he is tried. In my opinion such procedure has no authority. In the case of a remand the native's home may be days away from the place of trial and he is kept in custody pending the return of the distress warrant for a considerable period. The difficulties of the present system were brought to the notice of Government in 1925.

" The -

" The Supreme Court does not legislate but has to
 " administer the law as enacted. I agree with the late
 " Chief Native Commissioner that if non-payment of tax be,
 " as it now is, an offence, then the penalty should be
 " fine or imprisonment without the intervening process of
 " distress which in very many cases is a farce. But the
 " present practice of illegal imprisonment should cease.
 " So far as hut or poll tax receipts are concerned I
 " believe in Southern Rhodesia the receipt is entered, or
 " was in 1915, on the native's registration certificate".

3. I shall be grateful for a report indicating to what extent the practice referred to by the Chief Justice obtains in your Province.

4. I shall also be grateful for your advice as to whether or not the law should be amended. It seems to me that there are two possible ways of amending it, viz.-

(a) by continuing to regard non-payment of tax as a criminal offence and providing for fine or imprisonment as the penalty without any intervening process of distress; or

(b) by regarding non-payment as a Civil debt and providing for recovery by Civil process only.

5. If in your opinion Chapter 51 requires amendment in either of these directions I shall be glad to know which of the two you prefer, or whether you have any other proposal to remedy the situation.

A. de V. WADE

CHIEF NATIVE COMMISSIONER.

9
C

Position as regards imprisonment in default of payment of native Hut and Poll tax.

Kenya.

Under section 51 of Cap. 51 imprisonment of either description for any period not exceeding three months may be awarded. In practice Detention is freely used under the Detention Camps Ordinance in lieu of this imprisonment.

Enc. to No. 4 of 31063.

Tanganyika Territory.

Draft legislation is under consideration which provides for the discharge of the tax in labour in lieu of cash payment. If any person so ordered to discharge payment in labour fails or neglects to do so he is guilty of an offence.

A. An offence (not otherwise provided for) renders the offender liable to imprisonment not exceeding 2 months (Clause 2).

Uganda

See note of 21/9/31 Uganda
proposes to reduce the maximum period of imprisonment to one month in respect of each year of default.

H.E. Priestman.

A. But see also clause 21(1), with a maximum penalty of six weeks. I am not clear as to the distinction between clauses 21(1) and 25 or as to which is really relevant to the present issue.

H.T. Allen.
23/11

Now see attached the minutes in which Mr. Doorly has kindly explained the position. *If officer that 075 is the relevant clause of the minutes the relevant penalty.*
H.T. Allen.
7/12.

Mr. Allen

Tampabay Draft Native Tax Bill
Enc. to No. 4 of 31063.

I think the difficulty arises
 through a mistyping in the last
 line of clause 16(5).
 In my opinion the word "Ordinance"
 in that line is a mistyping for
 "order".
 On the other hand, the mistake
 is that "such Ordinance" has
 been typed for "the Ordinance",
 different considerations apply;
 but I think it is pretty obvious
 that "order" should be read for
 "Ordinance". Nothing else will
 on that assumption, the "order"
~~reference to~~ ~~is that~~ ~~Ordinance~~
~~the persons specified shall~~
~~appear before~~ ~~the~~ ~~order~~
 referred to in para. 3. of cl.
 16. viz. an order to appear
 & carry out the work specified
 therein, to present himself or
 to do the specified work.
 The officer created by cl. 16(5)
 I do not think that the persons
 of clause 21 apply to clause
 16.
 Cl. 21 deals with tax payers
 summoned under cl. 18 &
 has not to do with tax payers who

to tax default

have received an order under cl

16.

1. In the order, reference to the
reference to the Police creates

(b) cl. 16(1) in the law book

in clause 25 ~~is not~~

down in cl. 25.

Mr. Dooly

20/11/32

Mr. Allen

My response was as follows

(a) cl. 25 provides for a fine
person who is neglecting his
to any offence under the Ordinance
the Ordinance provides for

(b) cl. 16(1) in it stands, unless that
any person named in an order to
work in lieu of payment of tax
the etc. shall be liable for any of
the provisions of the Ordinance
with reference to the Ordinance
with reference to (c)

(c) Failure to pay tax is a failure to
comply with the provisions of the
Ordinance (8, 6 + 7)

any person named in an order
to work in lieu of tax is guilty of
an offence punishable under 25.

I have shown above, however, that there
is a mistake in the word "order"

is a mistake for the word "order"

The important clause is cl. 12.

This requires any person from whom
tax is due to tender it at the
proper place + provide that any
person who without lawful excuse

neglects or refuses to tender his
tax at a tax office or to appear +
show cause why he has not tendered
it is guilty of an offence.

This offence is punishable under
cl. 25 - with fine or 2 months' im-
prisonment.

But there may be lawful excuse
e.g. in child to pay through
poverty.

Cl. 14 b 16 provide no course
which is open to Collector viz
to require the tax to be
discharged in instalments (if I
read cl. 16(1) correctly) failure
or neglect to comply with such
order (without lawful excuse) is
also punishable under cl. 25.
Cl. 17 + 18 deal with bonded
servants.

Cl. 15 to 21 as respect to the pro-
visions of sections 14, 17 + 18.
This subsection is not very clear,
but possibly it means that the
sections provide
course, provided - 8, 14, 15 + 18

What was intended
with regard to
the clause 25
with the default
of the person
named in the
order to work
in lieu of tax

Mr. Dooly

should be followed (this point) in reference
to the law in Ch. 15 to 21

In example an all-bodied man
dies & death is under Ch. 14
to 16, a job servant under
Ch. 17 & 18 in preference to the
purchaser law in Ch. 15 to 21

Under Ch. 15 to 21 the collector may
summon the defaulters to the cause
by the law, it is not to pay
The collector may ^{also} examine the
defaulter as to his health &
ability to pay ^{any} arrears
in whole or ⁱⁿ installments

Failure to attend court to cause
to comply with the law,
or to pay ^{or} arrears ^{or} reasonable amount
proportion to default will
abscond or default & pay
next as ordered under the
default law the law like to
give a ^{proportionate} notice court
to a ^{defaulter} court to
to pay the 6 weeks or until
payment

Once summons appear the under
elaborate & the description of the
in person to 2 months to
to be ⁱⁿ arrears ^{of} 6
weeks or may well be ordered
to understand the law

(1) In out-and-out defaulters, one who could
have paid & wouldn't, is punishable
under 12(2) & 25. (2 months)

(2) A person who cannot pay he can
work, or being ordered to work under
14 to 16, who fails to carry out such
order is punishable under 16(5) &
25. (2 months).

(3) A person summoned to the cause ^{or}
being ordered to pay who
(a) does not attend
(b) is taking to avoid court
complying or paying
(c) fails to pay
is liable under 21 (1). (6 weeks)
Prodon

7/12/32.

MEMORANDUM.

NATIVE TAXATION - ~~THE~~ TAX DEFAULTERS, FORCED LABOUR

In August, 1930, a circular despatch was addressed to all the Colonies and Protectorates, etc., forwarding the report of the Colonial Office delegates to the 14th Session of the International Labour Conference at Geneva, together with the provisional text of the International Forced Labour Convention, and requesting that Governments should take such administrative and legislative measures as would enable the Convention to be applied without modification.

At about the same time a separate despatch was sent to Tanganyika (referring to an Ordinance amending the Hut and Poll Tax legislation which had previously been received), pointing out that Section 9 of the Tanganyika Hut and Poll Tax Ordinance was contrary to the provisions of the International Convention, in that tax defaulters could be required to work for Government on the order of an administrative officer; suggesting that it should be repealed; and that an alternative method of dealing with tax defaulters should be considered.

In his reply the Governor of Tanganyika referred to the Kenya law under which the penalty for tax default is imprisonment, and in certain conditions, forfeiture of hut, and gave it as his opinion that the Tanganyika method was much to be preferred. He proposed therefore that the existing provisions and safeguards in the Tanganyika legislation should be retained, and enquired whether there would be any objection to non-payment of tax being declared an offence punishable on conviction



conviction by a court, not by imprisonment, but by requiring the native to undertake work for Government, thus bringing the matter within exceptions allowed under Article 2 of the International Convention. (It has been decided that this cannot be accepted as it would be contrary to the spirit, if not the letter, of the International Convention).

The reference to the Kenya legislation drew attention to the fact that the position with regard to "penalties" imposed under the various Hut and Poll Tax legislation in East Africa was not altogether satisfactory, and it was decided to send despatches to Northern Rhodesia, Kenya and Nyasaland calling attention to the desirability of adopting means other than imprisonment in cases of non-payment of tax, or alternatively, of reducing the term of imprisonment for default to a minimum. At the same time enquiry was made whether in cases where extenuating circumstances existed, e.g., poverty, famine, or failure of crops, etc. the full penalty of the law was exacted.

In the cases of Tanganyika and Uganda where labour could be exacted as, or in lieu of, tax it was necessary to suggest some alternative method. Separate despatches were accordingly addressed to those territories suggesting that in the first place it would be more suitable that distress should be levied where a native had the requisite means but neglected to pay or failed to take adequate measures to secure the wherewithal to pay the tax, and enquiring as in the cases of other dependencies, whether the

full

full penalty of the law is enacted in cases of poverty, famine, etc.

The present position may be summarised as follows:-

Northern Rhodesia

Under the Northern Rhodesia Tax Ordinance Cap.65 (i.e. Poll Tax) the amount of tax recoverable on conviction by distress, or in default of sufficient distress the offender may be imprisoned with or without hard labour for not longer than 2 months at a time or 6 months in a year. If tax is paid in the meantime the native is discharged immediately. A District Officer may exempt any native on grounds of age, disease, accident or other sufficient cause.

In reply to our suggestion that some form of deterrent alternative to imprisonment in default should be adopted, the Governor has stated that the matter is to be considered at a conference of Provincial Commissioners. This was held in October last, but we have not yet had a further report.

The Governor states however that instructions have been issued to Administrative Officers that prosecutions for failure to pay native tax are to be regarded as exceptional measures, and imprisonment for such failure only to be resorted to in flagrant cases, and that since the law is very leniently applied no restriction in the penalties is necessary. We have suggested however

that the law shall be amended to provide for a limit of one month's imprisonment for each year of default where the native is able to pay but refuses to do so and is not imprisoned for flagrant offenders

Nyasaland

The relevant Regulation is the Hut and Poll Tax Ordinance No.21 of 1926, as amended by Nos.16 of 1927, 12 of 1928, 10 of 1929 and 16 of 1931. A

native

native becomes liable for tax on 1st January of 6/- to which a fine of 3/- is added if unpaid within 6 months. A further month's grace is allowed when the native becomes liable on conviction, to imprisonment up to 6 months. If tax is still unpaid after a year has elapsed he may have to forfeit his hut.

The Governor points out that the severity of the penalties in Nyasaland is not so great as would at first sight appear. Under the law, (Section 11 (a) of the Native Hut and Poll Tax Ordinance 1926), if an offender's tax is paid while he is in prison, he may be released after one month. A District Commissioner may exempt widows or any persons who are unable to find means to pay on account of age, disease or other disability, and Magistrates may remit the tax of any native who in their opinion is definitely without the means to pay. Under Section 2 of the 1926 Ordinance Magistrates may postpone sentence if the offender has entered into a labour contract with anyone, by which means he can obtain cash to pay tax. Apparently if there is any Government work in the neighbourhood which requires labour, the Magistrates make a practice of sending off tax defaulters to sign on for such work. It follows therefore that no native is sent to prison unless he has deliberately evaded payment, and imprisonment is not inflicted as a punishment for mere neglect to pay. The real efficacy of this arrangement

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is arrangement is that it enables action to be taken against habitual offenders and those who actively evade payment of tax. With regard to the liability of hut forfeiture, the Governor has issued instructions that the provision under the law should remain in abeyance, as he agrees that in present circumstances it really serves no useful purpose. The Governor seems to have overlooked the suggestion that distress should be levied in the first instance.

Kenya.

Under the Hut and Poll Tax Legislation (Chapter 51 of the Kenya Laws) the amount due from a native in respect of hut and poll tax is recoverable at any time, on conviction, by distress, and in default of distress, the court may order imprisonment not exceeding 3 months. Distress is the normal procedure, and it is only when distress fails to produce the cash due that imprisonment in default is permissible. The Governor states that in cases of poverty time is allowed, and that exemption is granted in cases of old age, infirmity, famine or failure of crops. Remission of tax may be allowed in cases of destitution or extreme poverty if the offender is unable to work by reason of age or infirmity.

The Governor considers that the power of sentence to imprisonment should be retained to

Magistrates

Magistrates to enable them to deal adequately with opdurate cases, and he points out that imprisonment is actually only detention, during which the offenders are concentrated in camps where they are required to work for Government. Wages are paid for the work. At the same time he admits that it is at least arguable whether provision to work off tax by labour, which existed in Kenya prior to 1921, is not really the most suitable form of penalty for natives living in a comparatively primitive state of society. Since, however, it has been abolished in accordance with general policy, the Governor feels that it would be unwise both on local grounds and in the interests of uniformity to reduce the ultimate penalty any further.

Uganda.

Under Sections 7 & 8 of the Poll Tax legislation (Cap.63) natives may be required to work for Government in lieu of payment of tax in cash, but the Governor has recognised that this is contrary to the International Forced Labour Convention and it is proposed to repeal these sections when, as is proposed, a new Poll Tax Ordinance is promulgated. Under Section 12 of the Poll Tax Ordinance natives may be sued in the civil courts, but in actual fact the Governor points out that this is not at present a remedy in practical use, as defaulters in Uganda are invariably persons without goods or other property subject to distress or attachment. Usually, therefore, natives, if found guilty, are sentenced to pay

pay a fine or to a term of imprisonment not exceeding two months in respect of each year of default, or not more than a total term of six months altogether. (Sections 9 and 10 of Ordinance). It seems that only in the last resort, and when every other hope has failed, are legal proceedings instituted against tax defaulters.

In time of famine or general failure of crops, the Governor states that he would have no hesitation in ordering exemption to be granted to natives living in the area affected who were unable to pay, and he points out that, under certain Sections of the Poll Tax Ordinance, District Commissioners have power to exempt either wholly or partially natives who owing to age, disease or poverty or other cause, fail to pay the amount due from them. In all the circumstances however the Governor has agreed that the maximum term of imprisonment in respect of each year of default should be reduced to one month, and he proposes therefore to incorporate in the new legislation a definite provision by which action in default of payment is in the first instance to take the form of distress, and, failing that, imprisonment, not exceeding one month, when it is impossible to recover in any way the amount due.

Tanganika Territory.

See paragraphs 2 and 5 above. The Governor has not taken up any of our suggestions

but

but a despatch was received early this year stating that, in view of the financial situation, the whole question of native taxation had been reviewed, and that it was proposed to introduce new legislation. He explained that large numbers of the rural population had not adopted the regular use of currency and that whenever prices fell there was a general reversion to the barter system. It had therefore become evident that labour in lieu of tax must be regarded in many parts of the territory as an alternative to payment of tax in cash rather than ^{as} a deterrent of a penal nature. In this connection it was considered necessary to call the Governor's attention once more to the Forced Labour Convention, pointing out that since a system of exacting labour in lieu of tax had not apparently been in force in Tanganyika in the past, it could not be introduced now.

In a despatch which arrived early this month the Governor explains that the system does in fact exist and has existed in Tanganyika since the British occupation, and that there is no intention of introducing any new principle. The despatch encloses the draft of the proposed new legislation which provides, in substitution for the offending clause 9 of the present legislation, as follows:-

"14. Subject to the general or special instructions of the Commissioner, an Assistant Commissioner may direct that any tax in arrear

may

may be discharged in labour in lieu of cash if in his opinion the person from whom such tax in arrear is due has not taken reasonable steps to obtain cash for the payment of tax, or is unable to obtain cash without undue interference with his customary mode of life.

15. (1) If an Assistant Commissioner directs that any tax in arrear may be discharged in labour, the number of days labour which may be demanded shall be such number as is equivalent at local rates of pay to the amount of the tax in arrear together with the cost of such rations, if any, as may be prescribed.

(2) Such labour shall be performed only upon Government undertakings or essential public works and services, and subject to such conditions as may be prescribed by the Governor.

16. (1) When an Assistant Commissioner has directed that tax in arrear shall be discharged in labour as aforesaid he shall make an order directing that all persons within an area or place to be specified in the order from whom such tax in arrear is due shall appear before a Collector being an Administrative Officer, Financial Assistant, or Tax Officer, or being specially empowered in this behalf by a Commissioner, at such date and place as may be prescribed in the order, and specify the nature of the work, number of days, etc. and shall cause such order to be made known to the persons concerned in the manner customary in the District.

(2) When any persons appear before a Collector as aforesaid he shall prepare a list of their names and inform them of the number of days' work, the date and place of employment, and the rations which may be prescribed, and shall enquire into any representations which any persons concerned may make, and may remove the name of any person from the list.

(3) The Collector shall then read aloud the names in the list in the presence of the persons named therein and make an order in writing after the last name in the list as aforesaid directing the persons named therein to present themselves at such time and place as may be prescribed and there to render such service or engage in such work (not being incompatible with this Ordinance or any Rules made under this Ordinance) as may be required of them, and shall satisfy himself that the terms of such order are explained to, and understood by, the persons concerned. The Collector shall then sign and date the order,

which



which shall thereupon be conclusive evidence that the persons named therein have been required to render the prescribed service.

(4) Upon the completion of the work or service required in such order as aforesaid a Collector shall deliver to each of the persons named therein a certificate in the prescribed form that he has fulfilled the conditions of such order and discharged the arrears of tax in respect of which such order was made.

(5) Any person named in any such order who without lawful excuse fails or neglects to carry out the provisions of such Ordinance shall be guilty of an offence."

This in effect becomes a system of levying labour in lieu of tax, but I am minuting the Tanganyika papers separately, and presumably action as regards Tanganyika will depend upon what is decided generally.



Asst. Secy

KENYA.

No. 167

123

GOVERNMENT HOUSE.

NAIROBI.

KENYA

12⁷ April, 1952.

Sir,

*No 15 m
17189/K.K.*

*No 9 m
17189/K.K.*

I have the honour to refer to paragraph 4 of your despatch No. 841 of the 28th December, 1951, and paragraph 4 of Lord Passfield's despatch No. 293 of the 6th May, 1951, in which His Lordship enquired whether it will be possible to adopt for tax defaulters some form of deterrent alternative to those provided by section 8 of the Native Hut and Poll Tax Ordinance and in sections 6 and 7 of the Northern Frontier Province Poll Tax Ordinance.

Further His Lordship asked me to consider whether a maximum sentence of one month imprisonment would not be sufficient if imprisonment has to be retained as a penalty.

2. The Detention Camps' Ordinance, 1925, as amended by Ordinance No. 18 of 1930, provides that

"(1) When a native is convicted of any offence and the Court, after taking into consideration the apparent age, antecedents, character and state of health of the person accused and all the circumstances of the case, is of opinion that the offence would be adequately punished by a fine or a sentence of imprisonment not exceeding six months, the Court may instead of awarding a sentence of a fine or imprisonment award a sentence of detention in a detention camp, and the prisoner shall thereupon be detained in a detention camp.

(2) A sentence of detention shall in no case exceed the period of imprisonment to which the prisoner could have been sentenced if this Ordinance had not been passed.

(3) Where any Ordinance provides that an offence is punishable by fine only or by fine and imprisonment in default of payment of such fine, the Court may order that in default of payment the prisoner undergo a sentence of detention in lieu of imprisonment."

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THE RIGHT HONOURABLE
MAJOR SIR PHILIP CUNLIFFE-LISTER, P.C., G.B.E., M.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W. 1.

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3. Detention is thus provided by Law as an alternative to imprisonment and this alternative is freely resorted to by magistrates. I am of opinion that the power to sentence to imprisonment should be retained to magistrates to enable them to deal adequately with obdurate cases and I do not consider that any alteration in the existing systems is desirable.

4. I have seriously considered the proposed reduction of the maximum term of imprisonment (or detention) from three months to one and I referred the matter to Provincial Commissioners at their recent Conference. The majority of the Provincial Commissioners felt that it would be wise to retain the present maximum as a deterrent.

5. It will be observed that in Tanganyika the penalty is

- (a) forced labour in default;
- (b) imprisonment up to three months in default of such forced labour.

A similar provision for working off tax by compulsory labour existed in Kenya, but it was abolished in 1921. It is at least arguable whether such a provision is not really the most suitable form of penalty for natives living in a comparatively primitive state of society, but since it has been abolished in Kenya, a step which is in accordance with the general policy of reducing compulsory labour to a minimum, I feel that it would be unwise both on local grounds and in the interests of uniformity to reduce the ultimate

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End

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penalty any further.

I have the honour to be,

Sir,

Your most obedient humble servant,

Wm. A. Moore

GOVERNOR'S DEPUTY.