

1931

Kenya

No. 17189

SUBJECT

CO 533/411

Native Taxation

Previous

Par. 25543 AD.E.A

16/9/30

Subsequent

18153/32

nos 1-3 typed  
for 25543/30 K.A.  
minutes of the H

1 To nos 590 in 25543/30 FB 30 July 50  
(Copy attached)

2 4 nos 622 \_\_\_\_\_ 24 September 50  
submit observations on the subject of hation  
taxation

3 To nos 86 in 25543/30 K.A. 8<sup>th</sup> February 51  
(Copy attached)

4 Extract from minutes in file 5113 KB  
(A.V. Cooke)

5 To Gov Kanya Tel no 158 conc 4 5 51

6 Nos tel 163 \_\_\_\_\_ if they  
wable to recommend immediate remission of tax  
on widows' hits except in case of destitute  
widows; prefers to defr recommendation re removal of  
discrimination between races as to age as related  
taxation is imposed with her assumed position

1. widows' taxes ~~and~~ Not very

satisfactory, but we can but want  
for the dept promise ?

10<sup>th</sup> July if not received

2. age discrimination - One  
can well understand that it would  
be not expedient  
to make an alteration in the  
middle of the year. There can



go on being paid at 16,  
the only solution is to  
lower the age for retirement  
to 16, and accept the fact  
that is really only more  
unreasonable as an  
age for taxation than  
18. Once you push  
up the magic age of  
21, a year or two  
is immaterial.

We have as yet no  
estimate as to loss of  
Revenue if all taxation  
on widows' hats were  
abolished or if the  
age for income taxation  
were raised to 18 -  
that makes it more  
difficult to deal with  
this now. Perhaps the  
promised despatch will  
help.

I have abridged with  
you a soft hat which  
you will need in the course  
this is all expressed for really  
it is your soft hat do  
not mean to deprive you  
of the credit for it!  
acceptance  
22. 5. 31

Draft despatch for cabinet  
18/5/31

Sir S. Lubbock

I should much have preferred to  
see you for the details, but in view of  
20.4 I think the despatch will go.

But in view of the fact that you  
of course, and every other thing  
idea of taxation will have to be  
then made up by additional  
taxation which has to fall on four  
impoverished communities I should  
be happy about passing the Government  
to take off if I had any suggestions  
small as to putting on  
(unimpaired)

On the suggestion of putting down  
the new magic age to 16, I would  
be very glad to see as a feature in  
the case of Europeans and, I think,  
very unobscure with the Indians.

Best  
25. 5. 31

Sec of State (through D. Phillips)

There is no great harm in telegraphing

as in draft but I would have preferred to postpone this as well as the Governor's despatch (in which letter explanation has been at length) is received.

B.H.H.  
21.5.31

I certainly think the telegram should go and I would have been prepared to make it stronger.

What Sir C. Protheroe says about the financial side must be heard in relation to the large subsidies given to what in reality - altho there is no nominal discrimination - are European producers.

What Mr. Parkinson says is true. This old argument of the Government about a property tax which has no counterpart at all on the European side disappoints me very much with the case of whom I had such great hopes. We must either have a purely poll tax or an income tax or property tax for Europeans. I can see no alternative and I could not stand for any continuation of the present system. 21.5.31

P. 215

- 4. To Gov. Tel. (No. 6 answer). 30/5/31 cona.
- 8. To Gov. 104 on 16381/30 9th February - copy attached
- 9. To Gov. 293 on 29816/30 T.P. 6th May 1931 (copy Attached)
- 10. Extract from annual Report of the Governor for the year 1930-31 (copy Attached)
- 11. Report of the Joint Committee on the subject of the proposed changes in the tax system. 10th July 1931

Nos 10 and 11 registered in accordance with minute of 9.8.31 on 17/7/31 (Signed) R. Norris. 19.8.31.

- 11A. Extract from annual Report of the Governor for the year 1930-31
- 12. Report of the Joint Committee on the subject of the proposed changes in the tax system. 10th July 1931

Encloses memoranda on (a) History of Taxation, (b) Position of Widows and (c) Taxation with special reference to non-natives. Comments on system of native taxation; regrets is unable to recommend either remission of tax on widows' huts or raising a rate from 16 to 18, for reasons given. States system for collection of taxes and procedure in defaulting cases.

This despatch has been here some months, but it has been purposely held up until the Report of the Joint Committee was available.

Primarily, it purports to deal with

- (a) the taxation of widows;
- (b) the minimum age for the imposition of tax, but it raises also the whole question of the system of hut and poll tax at present in force.

I attach a memorandum in which the questions are discussed. I fear, at some length. I also attach a note by Mr. Piddian regarding the assessment principles adopted in Southern Nigeria, as to which the Governor makes enquiry.

If the conclusions in my memorandum are accepted, the action would be

(a)

(1) to inform the Governor officially in reply to No. 12 that it is proposed specifically to include enquiry into the present system of hut and poll tax in the terms of reference of the Financial Commissioner recommended in paragraph 105(a) of the Joint Committee's Report, and that pending the result of his enquiry the Secretary of State does not propose to pursue the two minor points about widows, and the minimum age for taxation, and

(2) to write semi-officially for Sir C. Bottomley's signature

(a) on the lines suggested by Mr Fiddian regarding the Southern Nigeria assessment, and

(b) to tell him that in view of the criticism which the taxation of widows raises in this country, and of the fact that exemption has been found possible in Nyasaland, the Secretary of State proposes to suggest privately to the Commissioner that if he recommends no alteration in the system, he should recommend the exemption of widows.

It might also be suggested that Sir W. L. G. should make enquiries of the Sudan regarding the practice there. A good deal of progress in discussion has been made there lately.

Shantini  
8/12/31

*In this may all the members of the committee be a little different since the original proposals were specifically for the levy of a hut tax on owners*

In his telegram of the 14th May Lord Passfield urged on the Governor the remission of the tax on widows, and the removal of the present discrimination between the races in regard to the age at which taxation is imposed (16 native and 18 non-native). The Governor replied to the effect that immediate action in these directions was not possible, and Lord Passfield then sent a private and personal telegram pressing the matter, at the end of which he said that apart from any other action on grounds of equity there is no doubt that in view of prominence given to question of taxation in criticisms of Government of Kenya a definite public statement by you that the Government intends to get rid of these discriminations say from 1st January 1932 would go far to disarm criticism generally and help me materially in my desire to defend your Government against ill-founded charges and suspicions.

It was decided to await the Governor's despatch, and in the meantime a private letter was received from him (No. 10 on the file) in which he pressed very strongly that he should have a little breathing-time, and be allowed to adjust these affairs more gradually as the result of the investigations of the proposed Financial Commissioner. More recently, the Governor said that he did not want the Financial Commissioner at the present time for the purposes originally intended (namely, to fend off a local glutnification), but in the meantime the Joint Committee has recommended an authoritative enquiry into taxation generally. It is also to be remembered that financial difficulties of the Government have progressively increased since these matters first came under discussion.

In all the circumstances, it seemed clear that there could be no question of pressing the Government for immediate action, and that this must await development as to the proposed financial enquiry. Personally, I feel quite certain that for the reasons mentioned above at "A", these discriminations will have to be got rid of, and it is a matter for consideration whether any Financial Commissioner appointed as a result of the recommendation of the Joint Committee should not be asked definitely to include a recommendation for securing their removal.

*Abstract proposed draft  
copy to the Treasurer, also 3/6 6/46  
Which the Secy has read & drafted  
in his own signature*

*W. Allen  
16/1/27/31  
Dear Sir,  
The draft has been marked for  
the next in draft to show that it  
may go with the other developments  
being spoken of by the Joint  
Committee's report.*

*I was especially with regard to  
draft which suggests that we may  
soon compromise on a matter on which  
the late Committee took no strong  
view, but I think it may go, on  
the understanding that the  
question will be further considered  
before*

*before the proposed Commission*

*Government  
to the  
17/2/31*

*Paul H. He...  
Preface  
1/16  
12.17.31*

*1/16  
12.12.31  
alone*

*15 To Govt. 8/11 (w/ Political Administration)  
(12 Annexes) 1918  
C.P. 1918*

*16 1/2/27/31  
W. Allen  
1/2/27/31  
1918*

*These discriminations in the matter  
of widows law (Transfer) have  
of course not much a hindrance  
to personal letters sent to the  
Prime of the Govt. in the 21/2/27  
has drafted a copy of what letters  
(attached) for reference*

<sup>sub</sup>  
I submit a draft on the  
basis that it must be regarded as  
settled policy <sup>here</sup> but discriminations  
must go but that "how" comes within  
the purview of the financial  
Committee.

(I propose to show the  
Committee ~~copy~~ in this file - other than the  
Personal Committee - to show  
logics & sequence of (revised  
letter has copies)

Mr. Allen  
29/1/32

Sir S. Wilson.

No. 15 certainly stated that the  
Secretary of State shared Lord Passfield's  
views as to the need for removing the  
discriminations, but it promised to consider  
these matters further in connection with the  
enquiry which Lord Moyne is now to undertake.  
I see no alternative to Mr. Allen's draft, but  
I am afraid that it cannot be said that the  
further consideration has been exhausted.  
That is inevitable as the question cannot be  
dealt

dealt with fully without going into the question  
how the discriminations are to be removed, and  
that I agree is a matter for Lord Moyne. But I  
am afraid that the Governor may think that the  
trouble which he took over No. 12 has not had  
much recognition. However, under the terms of  
paragraph 6 of this draft letter, Lord Moyne  
<sup>will</sup> have access to the previous despatch and  
will be fully apprised of the difficulties of  
the question.

I have bracketed the passage at the end  
of the draft as I do not think it is desirable  
in a numbered despatch to talk about the Secretary  
of State defending the Colonial Government, and  
in fact, the passage adds nothing to the Secretary  
of State's private letter of the 4th of January.

W.C.H.  
29/1/32

Principal in para 4 is "I think it is  
best to let the Governor (S. 14.07)  
decide whether expenses in the  
recovery of taxation

W.C.H.

Sec of State  
(through Sir K. Hamilton)

I agree that we should write  
as in draft. I am sorry for  
delay. I have marked in red  
as I think this should go if  
possible by the way on



Tuesday

Wednesday

B.H.G.  
8232

Milt

8.2.52

Private friend

I told you that I had left after  
to this, unless I was convinced  
in discussion with those who wish  
to send to draft that it is  
fair & reasonable. On this  
face of it, it seems to me to be  
rather.

(1) No other real answer is given  
to the former's arguments in  
draft of 5 Aug.

(2) It is academic, as the document  
was drafted.

(3) Had George with 60 into the question  
I agree that he should have considered  
particularly directed to the 2 questions  
without a surplus, before he goes.

If it is desired or needs to pass the care  
for a public statement, please to arrange for  
a discussion. P.L.H. 13/2/52

Dr. S. Wilson

I understood that the draft  
was drafted in a way which is a  
desire to keep things in the long run  
& the other that would be these  
circumstances was necessary on  
political grounds, apart from the  
actual merits. In these circumstances  
& in view of the draft made, I do  
not see that I can properly bring to  
them up now. I have had a discussion  
Also, I think any announcement or  
suggestion now to be out of place.

Have recent before that  
the draft is now being to  
the (no in draft recently) that the  
draft is being. Has anyone attended  
to be drawn particularly to these  
matters that I have said a  
copy of the same to be printed  
accordingly.

M.H.G.

13/2/52

Have passed the drafts as the  
draft goes today. B.H.G.  
16/2/52

Shanley's notes  
written to George  
13/2/52. I  
the meeting on 16/2  
between M.H.G.  
M.H.G. and M.H.G.  
and M.H.G. and  
M.H.G.

Original made  
16/2/32

To Cor 136

16 FEB 1932

DESTROYED UNDER STATUTE

delta 18 To Moore 1/0 - 15/10 schedule 16 FEB 1932

19 To Forester 1/0 - 15/10 schedule 18 17 FEB 1932

Seen  
W.H.H.

29.2.32

See Chottanley 10/11

See Mr. Miller 1/11 - 1/11  
1/11 - 1/11  
1/11 - 1/11  
1/11 - 1/11  
1/11 - 1/11

29.2.32

19

Downing Street,

17th February, 1932.

Dear Major F. H. H. Hobbes

I enclose a copy of a despatch to the Governor of Kenya dated the 16th of February, from which you will see that the Secretary of State wishes Lord Mayo's attention to be particularly directed to the discriminations in respect of taxation on widows, and the age at which taxation is imposed.

Copy below  
No 18

I also enclose copies of previous correspondence with the Governor as set out in the somewhat narrow limits I have with me, and will hand over to you when next you call, copies of the documents referred to in paragraph 5 of the Secretary of State's despatch No. 841 of the 28th December 1931.

I understand that the Nigerian memorandum of 1918 is not quite up to date now, but that it is doubtful whether the alterations that have been made are sufficiently readily accessible, at any rate here.

Yours

MAJOR A. E. FOSBERG-HOBBS,

Downing Street.

17th February 1932.

*Miss Mary Fobker Hobbs*

I enclose a copy of a despatch to the Governor of Kenya dated the 16th of February, from which you will see that the Secretary of State wishes Lord Mayne's attention to be particularly directed to the discriminations in respect of taxation on widows, and the age at which taxation is imposed.

Copy below  
No 18

I also enclose copies of previous correspondence with the Governor as set out in the schedule herewith. I have with me, and will hand over to you when next you call, copies of the documents referred to in paragraph 3 of the Secretary of State's despatch No. 841 of the 28th December 1931.

I understand that the Nigerian memorandum of 1918 is not quite up to date now, but that it is doubtful whether the alterations that have been made are sufficiently readily accessible, at any rate here.

MAJOR A. W. FODERIKE-HOBBS,

I also understand that the Government of Nigeria  
has been engaged in revising the procedure in this  
matter, but that when Sir Donald Cameron took  
over the office of Governor, he insisted that the  
proper thing to do was to adopt the Tanganyika  
memorandum until he (Sir Donald) had had time to  
draft a revision which would apply to the Southern  
Provinces. I doubt if I can supply a copy of the  
memorandum referred to, but I will explain about  
this when I see you.

Yours sincerely  
(Signed) H. T. ALLEN

*PN has already have approved C  
refers to a the Governor's draft  
The 4 Aug 53! H.T.A.*

I also understand that the Government of Nigeria  
has been engaged in revising the procedure in this  
matter. But that when Sir Donald Cameron took  
over the office of Governor, he insisted that the  
proper thing to do was to adopt the Tanganyika  
memorandum until he (Sir Donald) had had time to  
draft a revision which would apply to the Southern  
Provinces. I doubt if I can supply a copy of the  
memorandum referred to, but I will explain about  
this when I see you.

Yours sincerely,  
(Signed) H. T. ALLEN

*P.S. We already have abandoned  
reference to the Governor's draft  
the 4 Aug 1951. H.T.A.*

12  
18  
Downing Street

16th February 1932

Dear Moore,

Secretary of State's despatch No. 136 of the 16th of February, which is being sent by this air-mail, draws Lord Moyné's attention in being particularly directed to the question of the discriminations in respect of the taxation of widows and the age at which taxation is imposed.

It may be convenient if I let you know that copies of the despatches etc. noted in the attached schedule have been communicated to Lord Moyné.

Yours sincerely,

(Sgd) HAROLD T. ALLEN

H.M.H. MOORE, ESQ., C.H.G.

SCHEDULE

Secretary of State's despatch	No. 590	30th July 1930
Secretary of State's despatch	No. 86	3rd February 1931
Secretary of State's despatch	No. 293	6th May 1931
Secretary of State's telegram	No. 150	14th May 1931
Governor's telegram	No. 163	19th May 1931
Governor's telegram	No. 241	4th August 1931
Secretary of State's despatch	No. 841	23rd December 1931
Secretary of State's despatch	No. 116	16 February 1932

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14  
16

W.P.H. 'Kilali' copied for signature

C.O.

X.17189/31 Kenya.

Mr. Allen 11/12/31  
16/17

Railway 22 Dec  
for my  
M

R. 135  
D. 135  
16

- Mr. Tomlinson
- Sr. O. Holliday
- Sr. J. Shuckburgh
- Sr. G. Orinda
- Permt. U.S. of B.
- Posty. U.S. of B.

W.P.H.

Downing Street,

29 December, 1931.

Dear Sir Joseph,

**DRAFT** J. Carson

SIR JOSEPH BYRNE, K.C.M.G.,  
K.B.E., C.B.  
(Government House,  
Nairobi,  
Kenya)

They are sending you out an official despatch, I believe, about native taxation in Nigeria. The only thing which I think desirable to add is that Buomanan Smith, Lieutenant-Governor of the Southern Provinces, whom I have consulted, says that the 1918 memorandum is not quite up to date now, though he doubts whether the alterations that have been made are sufficiently readily acceptable at any rate here. I read him, when I saw him, the section in your despatch (paragraph 4) on the subject, and he remarked that he was afraid that in Southern Nigeria the time taken up by the administrative officers in collecting revenue would often be more than three months in the year.

C. O.

Mr. Allen 16/12

X.17189/31 Kenya.

15  
10

As mail 22 Dec - if ready in time  
received C.O. 24th

Mr.

Mr.

Mr. Tomlinson.

Sir O. Bokkeney 17/12

Sir J. Shuckburgh.

Sir G. Grindle.

Permit U.S. of A. 23/12/31

Permit U.S. of A. 23/12/31

Secretary of State.

Downing Street,

C. O.  
24 DEC  
1931

28 December, 1931.

Sir,

I have the honour to refer to your despatch No. 441 of the 4th August on the subject of taxation.

2. While I share my predecessor's views as to the need for removing the discriminations in respect of taxation on widows, and the age at which taxation is imposed,

recognise that the worsening of the financial position has made it more difficult to contemplate action involving

any serious sacrifice of revenue. Further, since your despatch was written, the Joint Committee has recommended an authoritative enquiry into the whole system of taxation,

and I propose to consider these matters further in connection with that recommenda-

tion. I may have your point at co

DRAFTS cars.

1. minutes

KENYA

NO. 874

18/12/31

Patience [unclear] 19/12/31

Respectfully 23/12/31

regards para 5 of your despatch that in  
Nyasaland provision was made in  
Order No 10 of 1929 in the creation  
of all widows from *habittano*  
3. As regards the question in para 4

of your despatch, I enclose a copy of  
"Political Memoranda, 1918", No 5 of which  
shows the principles which were laid  
down by Sir Frederick (now Lord) Lugard  
in 1906, and have remained substantially  
unaltered since then. I also refer you  
to the Nigeria Native Revenue Ordinance  
(Cap. 74, Laws of Nigeria, 1925, Vol. 1),  
as amended by Ordinance No. 17 of 1927.

4. I note with satisfaction that the  
principles referred to in paragraph 13  
of your despatch are observed and applied  
in Kenya. You do not, however, *deal with*  
*refer to*  
(matter referred to in para 13)  
the suggestion in the last paragraph of

Lord Passfield's despatch No. 293 of the

6th May: I shall be glad to  
have your observations with regard to  
them.

*Yours etc*

(Sgd.) P. OUNLIFFE-LISTER

regards para 5 of your despatch that in  
Nyasaland provision was made in  
Ord. No 10 of 1929 in the creation  
of all widows from ~~habitation~~  
3. As regards the question in para. 4

of your despatch, I enclose a copy of  
"Political Memoranda, 1918", No. 5 of which  
shows the principles which were laid  
down by Sir Frederick (now Lord) Lugard  
in 1906, and have remained substantially  
unaltered since then. I also refer you  
to the Nigeria Customs Revenue Ordinance  
(Cap. 74, Laws of Nigeria, 1925, Vol. 1)  
as amended by Ordinance No. 17 of 1927.

I note with satisfaction that the  
principles referred to in paragraph 13  
of your despatch are observed and applied  
in Kenya. You do not, however, <sup>deal with</sup> refer to

(matter referred to)  
the suggestion in the last paragraph of

Lord Passfield's despatch No. 293 of the

6th May: I shall be glad to  
have your views with regard to  
them.

*Yours etc*

(Sgd.) P. CUNLIFFE-LISTER.

(9)

Mr. Compton

14<sup>16</sup>

Please see X in para 4 & 5

The King ~~was~~ a native  
 normally keeps a separate hut for each  
 wife. As wives in primitive communities  
 practically equal property a hut tax  
 was in effect a property tax  
 King have so far things had  
 a hut tax but the Gov. now begins  
 to think the system out of date.

Can you not see the significance  
 of that X in will it be necessary to  
 send a copy?

Edwards

Mr. Edwards

The Flood whom I have consulted  
 has increased his dislike than you and  
 a copy of Political Memorandum 1918  
 Henry No. 5 on which (page 165-166)  
 shows the principle laid down by  
 the ILO Commission (ILO) in 1906  
 is substantially unaltered since then  
 It would be equally also the  
 of the S. of Nigeria to the Nigeria  
 Native Revenue Ordinance of 1914  
 Dec 1923, Vol. I, p. 11 as amended by 1924

(of course  
insert)

Mr. Cooper

14<sup>16</sup>

Please see X in para. 4 of the

Sp. diff. within - no. 12

In things such as nature  
normally keeps a separate but for each  
wife. As wives in primitive communities

practically equal property a hut has  
was in effect a property tax

things have so far changed  
a hut tax but the Gov. is now beginning  
to think of system out of date.

Can you supply the info. ask

for at X or will it be necessary to  
send a Supp.?

Goodman  
12/5/21

Mr. Entwistle

Mr. Flood, whom I have consulted  
the movement is better than send  
a copy of "Political Memoranda, 1918"  
Mem. No. 5, which (page 165-166) is  
shown by the pamphlet, and I am by so  
much from East Africa in 1906.  
I will partially unaltered since

It would be useful also to  
refer to the beginning of the Nigerian  
Native Movement, 1919, (Vol. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100)

(Sp. diff. Mem. No. 5)

Mr. Compton

16<sup>b</sup>

Please see X in para. 4 of the

Constitution - no. 12

The King's... a native  
normally keeps a separate hut for each  
wife. As wives in primitive communities  
practically equal property, a hut tax  
was in effect a property tax.

They have so far always had  
a hut tax but the Gov. is now beginning  
to think of getting rid of it.

Can you suggest the alternative

for at X or will it be necessary to  
omit a Supp.?

Richard  
12.5.24

Mr. Entwistle

The Flood, whom I have consulted  
thinks it is better than send out  
a copy of Political Memoranda, 1918  
Memorandum No. 5 on which (page 115, 116, 117)  
shows the principle laid down by Sir  
Hutchinson (1914) / signed in 1914  
and, practically, unaltered since.

It would be useful also to  
refer to the report by the Nigerian  
Native Revenue Officer (Vol. 7, 1914)  
as an example of...

(of course  
to be sent)

11/17/1947  
 A.F. d.  
 3/2/47

Since writing the foregoing, I have seen Mr. Buchanan-Smith, the Lieutenant Governor of the Southern Provinces of Nigeria, who says that the 1918 memoranda are not quite up to date, though he doubts whether the alterations that have been made would be readily accessible here. I read him the section in Sir J. Byrne's despatch, and he remarked that he was afraid that in Southern Nigeria the time taken up by the administrative officers in collecting revenue would be more than three months in the year. They had been engaged, he said, in revising the procedure in this matter, but when Sir Donald Cameron arrived, he insisted that the proper thing to do was to adopt the Tanganyika memoranda until he (Sir Donald) had had time to draft a revision which would apply to Southern Provinces. On the whole, I am inclined to suggest that it would be better if a private letter were written to Sir J. Byrne on those lines, and if you like I will draft one for the consideration of the department. No doubt Sir C. Bottomley will sign it.

A.F. d.  
 3/2/47

Mr. Bottomley has seen  
 A.F. d.  
 3/2/47

In Tanganyika the rate varies from Shs. 3/- to Shs. 15/- the normal rate being Shs. 10/-

The "taxation of plural wives" is not strictly enforced in Tanganyika. See the most interesting account of what happened when a stupid P.C. tried to enforce it on 29272/28. I think it is enforced in Kenya.

U.N.E.S.C. & E.D.U.H.  
 (a) The present system of Native Taxation in Kenya

as in Tanganyika and Nyaland, (but not Uganda or Northern Rhodesia) is a combination of a hut tax and a poll tax. A tax of Shs. 12/- (in the case of the Masai Shs. 20/-) and of tribes in the Northern Frontier Province Shs. 16/- is due on account of :-

- (i) each hut owned by a native.
- (ii) where a native has more than one wife living in a hut, each additional wife kept by him.
- (iii) each male native over sixteen who is not liable to pay a hut tax.

The yield of these taxes in Kenya was estimated for 1931 at £509,000 from a population estimated at 2,878,000 (or an average of Shs. 1/2<sup>1</sup>/<sub>2</sub> a head). The yield in Tanganyika was estimated at £750,000 from a population of 4,850,000 (or an average of Shs. 5/1d. a head).

Remission may be granted when it is proved to the satisfaction of the Collector (normally an administrative officer) that any person liable to pay one of the taxes is "without sufficient means to pay the whole amount of the tax and is unable to obtain employment by reason of age or infirmity". A certificate is then given specifying the extent of the remission and the length for which it will last.

A native hut corresponds roughly to a room in a civilized house; that is to say that if a native has more than one wife, or any aged relations dependent on him, he would if he could afford it keep them in separate huts. The hut tax is thus a kind of "window tax" or a crude attempt at a tax on property. The poll tax on the other hand is the same, whether for rich or poor.

(b) Criticisms of the present system.

Three main criticisms are made, one against the principle of a hut tax, the other two against

comparatively



comparatively minor points in the application of the tax:

(1) The objection to the principle of a hut tax.

It is argued that the tax leads to overcrowding and insanitary conditions. A further and much more important argument, from the political point of view, is that the hut tax is, in effect, a tax on women, since adult males would pay a poll tax in any case. Dr. Norman Leya's new book contains stringent criticisms of the tax on this ground, and the native witnesses to the Joint Committee made the same point when they were here. The following is an extract from the memorandum submitted by them to the Secretary of State:-

"We object to the principle of a hut tax as distinct from a poll tax, because it means in effect a tax upon women and causes great hardship, very often and because it often means that a native has to pay as much, or more, in direct taxation than a European in Kenya, simply because it happens to be our custom to have each room of our establishments under a separate roof, instead of under one roof as the Europeans. In fact, hut tax amounts to a tax upon rooms and upon women."

(2) The payment of hut tax by widows.

Apart from this objection <sup>to the</sup> principle of the hut tax, it is alleged that in practice it falls especially heavily on widows. When a man dies, it is the normal practice among the natives of Kenya that his heir should be responsible for looking after his widow. Frequently the widow becomes the wife of the

heir.



heir. In some cases, it may be regarded as an asset to the heir to inherit the womenfolk of the dead man, but in other cases, when the women are old, it is definitely a liability. Naturally, he does not want them in his hut, but if he keeps them in other huts he has to pay hut tax on account of them. It has been suggested that the tax should not be paid in respect of huts occupied by widows. The Governor does not recommend that all widows should be exempted from tax, and he sends home a memorandum (prepared in another connection by Archdeacon Owan, one of the chief critics of the Kenya Government) showing how difficult it is to define exactly what is a widow in the Kavirondo Province. It appears that Kavirondo women whose husbands have died fall into four classes:—

- (1) Women who have not had a first pregnancy or child. A woman of this class is normally inherited by the dead man's heir, is reckoned as his wife, and is definitely an asset.
- (2) Women who have had children and are still of an age to bear children. A woman of this class is also normally inherited, but she is not reckoned as the wife of the heir, but as the widow of the dead man, although she may bear children to the heir. She too may be counted an asset to the heir.
- (3) Women past child bearing age and have living children. These are normally looked after by the children or family of the dead husband, who have obligations to them. Although they are more or less independent, they tend to become a liability.

(4) Widows past child bearing age whose children have all died. These are regarded as "awkward responsibilities" on the family of the dead husband. They are definite liabilities.

From this illustration it will be seen that there is no simple definition of "widow".

(3) The age at which the tax is levied.

Another objection to the existing system, this time to the poll tax, is that it is levied on natives reaching the age of 16, whereas non-natives do not pay the non-native poll tax until they are 18 years old. It is urged that the age should be the same for both.

The Governor points out that there is no real comparison between the two systems since the main mode of non-native taxation is indirect, namely, taxes on imports.

"The imposition of a poll tax on school boys would not" in the Governor's opinion "be justified merely for the sake of a specious uniformity in systems of taxation which are essentially divergent". Nor can the Kenya Government afford, in present circumstances, to raise the age of taxation for natives to 18, since this would involve a loss of tax estimated at £40,000.

(c) The Joint Committee's Report.

The Committee urge (paragraph 105(11)) "an early and sympathetic consideration by the Kenya Government of native representations" regarding the hut and poll tax. They do not specify what these representations were but an examination of the evidence given.

Given by the native witness and of the memorandum left by them with the Secretary of State shows that their representations cover the three points dealt with above, namely:

- (1) that the hut tax is in effect a tax on rooms and women;
- (2) that the hut tax falls especially heavily on widows;
- (3) that the poll-tax should be levied at the age of 18, not 15.

In paragraph 105(1) of their Report, the Committee recommend an inquiry by an independent authority without delay into, among other things,

- (a) the contribution made to taxation both direct and indirect by the different racial communities;
- (d) the degree and manner in which financial responsibility should be conferred on native councils.

Although they do not specifically recommend that the hut and poll tax system should be reviewed by the "independent authority", he could hardly avoid an examination of it in the course of his enquiry and the best means of "early and sympathetic consideration" of the native representations on the subject would seem to be specifically to include a review of the system in the terms of reference to the "independent authority".

(2) Alternatives to the present systems of taxation.

Granted that the heavy direct taxation of natives must continue, the most obvious alternative to the present system is a universal poll tax on the adult able-bodied male population, either at a flat rate over the whole country or varying from district to district. To produce the same amount as

the existing hut and poll tax the tax would obviously have to be very much higher than at present. Mr. Leys estimates it at Shs 28/- a head.

At one time Kenya toyed with this idea - see B125/25 - but it never came to anything. (The despatch from Kenya on B125/25 should be read as it puts the arguments against the hut tax very clearly).

Mr. Dobbs, a highly respected and most experienced Provincial Commissioner, who has recently retired, gave evidence on this subject before the Joint Committee. The following is an extract from the minutes (Lord Passfield was the questioner):

"Then we have been told that the native taxation is unfair in its incidence for instance, in taxing widows with regard to the Hut Tax. Do you collect the Hut Tax from widows? - That is a question which is one of the most important questions at the present time in my opinion, and one which I have gone into very very closely in the last year. I used to be in favour of retaining the Hut and Poll Tax, but having gone into this thing very closely, and having thought over it, I am definitely of the opinion that the sooner we can get to a Poll Tax basis, by which I mean an adult male poll tax basis in the whole Colony, the better. I think the same trouble has arisen in other Colonies, because Nyasaland passed an Ordinance in 1920 exempting widows for the first two years of their widowhood and subsequently they exempted widows altogether. I certainly would like to see all widows exempted. Of course the difficulty is that in Africa a pagan widow does not really become a widow, she devolves to the male relative, and it is a question whether

whether she is an asset or a liability.

In any case, you have come to the conclusion that the substitution of an adult male poll tax would be better? I am doubtful of that opinion, you say. It would have to be raised, I think.

The Governor does not agree with this plan.

Another possibility would be a tax on chattle; that, however, presents considerable difficulties.

(c) If it is agreed that the Financial Commissioner should enquire into the question, there is no point in discussing these alternatives at length now. It would, however, seem quite on the cards that he will agree with the Governor that no alteration of principle should be made in the present system. And this being so, it is perhaps worth while considering whether it would not be advisable to suggest to the Commissioner before he goes out that if he does not recommend an alternative system he should ~~not~~ recommend alterations in the existing system to cover

- (i) the complaint about widows' taxes, and
- (ii) the complaint about the minimum age of taxation.

As regards the former, the present position is that the District Commissioner can give exemption only if he is satisfied that any person liable to the tax is without sufficient means to pay it, and is unable to obtain employment by reason of age or infirmity. In the case of a hut occupied by a widow, it is, strictly speaking, not the widow but the "owner"

Henry he hates himself, but

of the hut who is liable to the tax, and if the widow is regarded as a liability rather than an asset naturally the owner of the hut is angry at having to pay tax for her.

clearly. Owing to the difficulty of defining the term "widow" an exemption of all widows might give rise to difficulties, but the difficulty has been raised in Nyasaland, & I don't see why it should be a similar point has or can elsewhere in East Africa, ~~been in Kenya~~ in Malawi except in Nyasaland. In that case, by an Ordinance passed in 1929 "the District Commissioner shall exempt from the payment of other tax all widows, and any person who on account of age, disease, or other disability, is unable to find the means wherewith to pay the same". This provision was introduced as the result of correspondence regarding the Estimates. The Governor simply said that he had been anxious for many years to make this exemption, and proposed to do it. The proposal was accepted here at once. I am not aware that it has caused any difficulties in Nyasaland. It would therefore seem that a similar exemption could, without too much difficulty, be made in Kenya. The details of procedure whether exemption should, or should not, be given would then be transferred from the taxpayer to the tax collector. Perhaps the exemption might be limited to huts occupied by women past the age of child bearing.

As regards the levelling up of the minimum age for taxation for natives and non-natives, I really do not see that the arguments in favour of similarity is any real basis. I do not think any suggestion should be made to the Financial Commissioner on this point.

The Government to be disposed of the community of the arguments as the case

S U M M A R Y

The conclusions are then:-

- (1) That enquiry into the present system of hut and poll tax should be included in the terms of reference to the Financial Commissioner.
- (2) That he should be told privately before he goes out that if he recommends no alteration in the present system, it would be desirable that exemption from tax should be given to widows, or, at any rate, to widows past the age of child bearing.



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KENYA



GOVERNMENT HOUSE,  
NAIROBI.

KENYA

No. 441

RECEIVED  
24 AUG 1951  
COL. OFFICE

14 August 1951

NO. 3 & 9  
NO. 5  
NO. 6

My Lord,

I have the honour to refer to Your Lordship's despatches of 5th February and 6th May, to Your Lordship's telegram of 14th May and to my reply thereto of 19th May on the subject of native taxation, and the incidence of taxation in Kenya.

Appendix "A" is a memorandum prepared by the Acting Chief Native Commissioner detailing the history of native taxation as it exists in Kenya to-day and making certain comments on the practical working of the system and on proposals that have been advanced for its reform.

Conrad (15)

5. While I am fully alive to the fact that the system is not perfect, indeed its inherent defects are patent, I am not by any means convinced of the superior advantages of any of the reforms or alternatives that have been suggested and I am very reluctant to interfere with any part of it unless I have very good reason to believe that I am interfering for the better. The system has now been in operation for a number of years, it is well understood by the natives concerned and is, I believe, in spite of its defects not inequitable in its general results. It represents a genuine attempt to make the rich pay more than the poor, and in a normal year no one is taxed beyond his

"capacity"

THE RIGHT HONOURABLE  
LORD PASSFIELD, P.C.,  
SECRETARY OF STATE FOR THE COLONIES,  
DOWNING STREET, LONDON, S.W.

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"capacity to pay such imposts without hardship and without unsettling his customary mode of life".

I regard this principle as an important one, which should not be lightly abandoned because at the moment a general poll tax might at first sight appear to afford the easiest solution of our present difficulties. Experience elsewhere has proved that the native, as he becomes more sophisticated, agitates for the abolition of poll tax, as being unscientific, unfair in its incidence, and degrading, and demands some form of taxation graduated more in accordance with the individual's capacity to pay. If, as a result of the investigations, to which I refer in the twelfth paragraph of this despatch, some more scientific form of taxation is suggested in substitution of the present non-native poll tax, it would clearly be a premature and retrograde step to abolish hut tax in favour of a general poll tax now. It may be for the reasons given in this despatch that the hut-tax is becoming, with changing conditions in the Reserves a less satisfactory instrument for taxing property than it was, when originally imposed. If so, some other basis for the assessment of property must be sought, and I should welcome any information as to the assessment principles adopted in the Southern Provinces of the Protectorate of Nigeria. Any change of system, which would relieve the Administrative officer of the time he is now compelled to spend in actual tax collection, on an average three months in the year, would not only make for closer and better administration, but also have a most important psychological effect on the native mind in removing the suggestion that tax collection is the most urgent and pressing of an efficient administrative officer's preoccupations.

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Your Lordship has expressed the hope that I may be able immediately to recommend

- (a) remission on huts occupied by widows, and
- (b) the raising of the wage at which tax is payable from 16 to 18. I regret that I can do neither.

Appendix "B"

At Appendix "B" is a copy of a Memorandum written by the Venerable Archdeacon Owen in 1928, on the subject of the position of widows in Kavirondo. From this Memorandum Your Lordship will see how difficult and complicated the question is. I presume that the agitation to exempt widows' huts from taxation arises from a desire to exempt from taxation women who no longer have husbands to support them. As is explained in paragraphs 19 and 20 of Appendix "A" hut tax is not due from the widow but from the "owner" of the hut, and a hut tax being in conception a property tax payment on a widow's hut is no less logical a payment than on a wife's. In effect a widow automatically acquires on widowhood a new husband or at least a new protector; she is still in theory at least someone's property and someone's obligation and responsibility. I do not suppose that the agitation for remission of tax on widows' huts extends to the huts of re-married widows - but in theory at least all widows are re-married. In practice, however, it must often be extremely difficult to decide whether or not a widow has in fact re-married. Your Lordship will note from Archdeacon Owen's memorandum that a widow may belong to one of four categories. One in the first category is "generally reckoned" as the wife of the heir. A widow in the second category is "not regarded as the wife of the heir" so much as the wife of her deceased husband, but she is expected to bear children to the heir (unless she becomes -

- becomes -

becomes a "nuisance" and "gives herself" to another man). A widow in the third category is more or less a free agent from whom no duties are demanded. A widow in the fourth category is an "awkward responsibility" who may "take up" with an old widower or bachelor if she can find one willing. It is probable that the particular class of widow whom it is desired to exempt are those who have not "taken up" with old bachelors or widowers and for whom the deceased's family are reluctant to fulfil the obligations imposed by the "awkward responsibility". In practice huts of such widows are normally exempted from tax. Your Lordship will appreciate the difficulty of a general amendment exempting the huts of all widows. Statutory exemption of Class IV would be invidious, would manifestly present difficulties in application and would achieve no more than is achieved by present practice.

6. The discrimination between races in the age at which taxation is imposed is not so illogical or so unjustifiable as might at first sight appear. It is, I believe, a fact that natives develop physically more rapidly and reach maturity at an earlier age than Europeans. For practical purposes at any rate a native reaches manhood and is capable of doing a man's work and earning a man's pay at the age of 16, at which age the average European boy is still at school. 16 is the age at which a native must provide himself with a registration certificate and such a certificate is generally regarded as entitling the possessor if he is in employment, to an adult's wage. I am therefore of opinion that there is nothing inequitable in the selection of that age for the assumption of liability to tax and there are, I believe, numerous precedents for it both in our African and far-eastern Colonies. If I were not satisfied on this point and if I considered that 18 was

a better age to adopt for taxation I would endeavour to overcome the practical difficulties which such a change would involve. These difficulties would be very real. In the first place few natives know their own age and it would be very difficult to say in most cases whether or not an individual had reached that age. It is of course not a matter of certainty that any one has reached 16, but it is usually not very difficult to determine whether or not the person in question has reached maturity; if he has he is reckoned to be 16, if he has not or appears to be undeveloped he is given the benefit of the doubt. Differences of appearance however between the ages of 16 and 18 are not considerable and a decision as to whether a person had reached the latter age could be only a matter of guesswork. Secondly the raising of the age from 16 to 18 would involve loss of revenue amounting to nearly £40,000 per annum, or 1/15th of the total native direct tax. Your Lordship will agree that in the existing conditions of the Colony's finances it is not possible to contemplate the loss of such a sum and that if taken off some of the present tax-payers it must be recovered from others. Recovery by direct taxation from natives above the age of 18 would necessitate an addition of nearly 10d. to the ordinary existing tax of 12/- . In practice such an addition would have to be 1/- . I am sure that this would be a most unpopular increase and it would moreover fall in some cases on those less able to bear it than able-bodied young men aged between 16 and 18.

The existing discrimination could of course be removed by reducing the age for non-natives from 18 to 16. I feel however, that 18 is quite low enough for Europeans and that the imposition of a poll tax on

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school boys would not be justified merely for the sake of a specious uniformity in systems of taxation which are essentially divergent.

8. The essential divergence of the system arises from the fact that experience seems to have proved that for non-natives in Kenya taxation should be in the main indirect whereas for natives, at least at the present stage of development to which native communities have attained, it should be direct.

Appendix "C"

9. This principle is elaborated in Appendix "C" in a Memorandum prepared by Mr. Sandford, Deputy Treasurer, which details the history of taxation in Kenya with particular reference to the non-native side of the Colony's fiscal policy.

10. With so fundamental a difference in the basis of taxation it seems idle to insist on uniformity in detail. Direct taxation of non-natives is a matter of minor consideration and the fact that 18 is the age adopted for contributing to a comparatively trivial addition to the Revenue resulting from the accepted basis is no valid reason for not adopting 16 as the basic age for natives, for there is no real parallel between native and non-native direct taxation.

11. With Mr. Sandford's argument as stated on the last page of his Memorandum I am in agreement, namely, "Without full enquiry it is impossible to form any conclusion as to whether any comprehensive change is desirable, but it seems clear also that the time for introducing any change in principle is when agricultural conditions in the Colony are prosperous, not when they are depressed and when the community's ability to pay taxes of any kind are diminished".

12. In another connection I have asked for the services of an admitted financial expert to examine the foundations on which the Colony's financial structure is built, and until I have had the benefit of that expert's advice I would most emphatically deprecate any alteration in the existing systems of native and non-native taxation.

15. In Your Lordship's despatch of the 6th May Your Lordship has asked to what extent certain principles are applied in Kenya in the collection of native tax. These principles are:-

- (i) distress on property in cases of default;
- (ii) delay in cases of poverty, and
- (iii) exemption in cases of famine or failure of crops.

I can assure Your Lordship that all these principles are observed and applied. Distress is the normal procedure and it is only when distress fails to produce the money due that imprisonment in default is permissible. In cases of poverty time is given and in many cases tax is not demanded until towards the end of the year, when the main harvest has been reaped. At the present time I have ordered that tax shall not be collected from the Luo of South Kavirondo (who have recently suffered from locusts and food shortage), until September by which time the course of events will have shown their capacity to pay. In cases of famine or general failure of crops exemption is regularly granted, e.g. in 1929 the Suk of Baringo district were exempted entirely, as were the Akamba of Kitui and the Tharaka in 1929. In 1930 the Tharaka were again entirely exempted and the inhabitants of Mumoni to the extent of half the levy due.

I have the honour to be,  
My Lord,  
Your Lordship's most obedient  
humble servant,

BRIGADIER GENERAL

GOVERNOR

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## NATIVE TAXATION.

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### I. HISTORY.

The first enactment by which the native taxation was authorised in Kenya is the Hut Tax Regulations (Regulation No. 18) of 1901 by which His Majesty's Commissioner was empowered to impose a tax of not more than 2 rupees per annum upon all huts used as dwellings.

2. Under these regulations the occupier of the hut was liable for the tax.

3. By the Hut Tax Amendment Regulations, 1902, the limit was raised to 3 rupees within the Provinces of Kisumu and Naivasha. (Regulation No. 8 of 1902).

4. The above mentioned regulations were repealed by the Hut Tax Ordinance, 1903, by which the Commissioner was empowered by proclamation to impose a tax upon all huts within any area etc., and to vary the said tax from time to time provided that it should not exceed three rupees per annum.

5. The tax could be paid in kind or labour in lieu of money and the Commissioner could make arrangements for commutation in money, labour or kind. That Ordinance was repealed by the Native Hut & Poll Tax Ordinance No. 2 of 1910, which is still the principal ordinance.

6. This Ordinance introduced for the first time the principle of a poll tax side by side with a hut tax.

7. Under this Ordinance the tax was fixed at three rupees to be paid by every native in respect of every hut owned by him. (It is noteworthy that whereas under the 1901 Regulations the tax was payable by the occupier under the 1910 Ordinance it is payable by the owner. Reference to the implications of this will be made later).

8. It was further provided that "every adult male native ... who shall not be liable to pay the hut tax hereinbefore provided for shall pay annually ... a tax (hereinafter referred to as the poll tax) of three rupees".

9. There was also a proviso that a native who had not the means to pay the tax could be made to work for Government instead. This provision was deleted by Ordinance 34 of 1921.

10. The Ordinance of 1910 was amended by Ordinance No. 40 of 1915 by which the Governor was empowered to increase both the hut tax and the poll tax to five rupees, and accordingly by Proclamation No. 9 of 1916 the general rate was increased to 5 rupees. There were, however, certain exceptions to this and it is interesting to note that by Government Notice No. 218 of the same year the rate for the Masai was fixed at three rupees.

11. The 1915 Ordinance was amended by Ordinance No. 17 of 1920 by which the maximum was increased from five rupees



rupees to ten, and accordingly by Proclamation No. 60 of that year the general rate was fixed at eight rupees. The following exceptions, however, were made :-

Masai	....	....	....	10	rupees.
The Suk	...	....	....	6	"
Tandland Province		....		7	"
Certain Coastal districts		....		5	"
Jubaland and Northern Frontier Province				6	"

12. This increase was coincident with the introduction of Income Tax among the European population. The general European population, however, refused to pay Income Tax and that Tax after it had been levied for one year, and in some cases two years upon Government officials and certain other persons of fixed income who could not avoid paying the tax, was abandoned. (Vide Ordinance No. 23 of 1920 and No. 9 of 1922). It was found in practice that a tax of 8 rupees was excessive particularly in view of the slump which followed the "sunshine" period, and also by reason of the fluctuation in the value of the rupee. The rupee which had for a long time been worth 1/4d very quickly became worth considerably more than Rs. 2/-. It was eventually stabilised by Government and given a fixed value of Rs. 2/-. A tax of 8 rupees therefore meant a tax equivalent to Rs. 16/-. By Proclamation 86 of 1922 the general rate throughout the Colony was fixed at Rs. 12/- but the Rs. 20/- rate for the Masai was retained and a Rs. 10/- rate was adopted for the sub-district of Taveta. This sub-district, however, was brought into line with the rest of the Colony by Proclamation 78 of 1923.

13. It appears that the argument in 1915 was that the Masai whose wants were few and who had therefore very little use for ready money would experience considerable difficulty in collecting the cash necessary for the payment of a Rs. 10/- tax.

14. By 1920, however, it was realised that the potential wealth of the tribes in stock is very great and it was considered that they could well afford to pay the maximum of Rs. 10/- and that even then their burden of taxation would be far lighter than would be that of the agricultural tribes at Rs. 8/-.

15. This reasoning was accepted as sound when the tax of the agricultural tribes was reduced in 1922 to Rs. 6/- and has been acted upon ever since.

16. It is generally agreed that the Rs. 20/- tax would be a light one if their great numbers of stock could be put to more economic use.

rupees to ten, and accordingly by Proclamation No. 60 of that year the general rate was fixed at eight rupees. The following exceptions, however, were made :-

Masai	....	....	....	10 rupees.
The Suk	...	....	....	6 "
Tanzania Province		....		7 "
Certain Coastal districts		....		5 "
Jubaland and Northern Frontier Province				6 "

12. This increase was coincident with the introduction of Income Tax among the European population. The general European population, however, refused to pay Income Tax and that Tax after it had been levied for one year, and in some cases two years upon Government officials and certain other persons of fixed income who could not avoid paying the tax, was abandoned. (Vide Ordinance No. 23 of 1920 and No. 9 of 1922). It was found in practice that a tax of 8 rupees was excessive particularly in view of the slump, which followed the "sunshine" period, and also by reason of the fluctuation in the value of the rupee. The rupee which had for a long time been worth 1/4d very quickly became worth considerably more than 1/2d. It was eventually stabilised by Government and given a fixed value of 1/2d. A tax of 8 rupees therefore meant a tax equivalent to 1/2d. By Proclamation 88 of 1922 the general rate throughout the Colony was fixed at 1/2d but the 1/2d rate for the Masai was retained and a 1/4d rate was adopted for the sub-district of Taveta. This sub-district, however, was brought into line with the rest of the Colony by Proclamation 78 of 1923.

13. It appears that the argument in 1915 was that the Masai whose wants were few and who had therefore very little use for ready money would experience considerable difficulty in collecting the cash necessary for the payment of a 1/2d tax.

14. By 1920, however, it was realised that the potential wealth of the tribe in stock is very great and it was considered that they could well afford to pay the maximum of 1/2d; and that even then their burden of taxation would be far lighter than would be that of the agricultural tribes at 1/4d.

15. This reasoning was accepted as sound when the tax of the agricultural tribes was reduced in 1922 to 1/4d and has been acted upon ever since.

16. It is generally agreed that the 1/2d tax would be a light one if their great numbers of stock could be put to more economic use.

III. CHARACTER OF THE TAXES.

## II. CHARACTER OF THE TAXES.

17. The Hut Tax is an attempt at a property tax and is probably even now the nearest approach to a property tax that is practicable, although, as the native population tends on the one hand to become progressively monogamous and on the other to appreciate forms of wealth and property other than women and stock, the character of the tax as a property tax becomes less and less apparent. It is, however, still true that a man with 10 wives is richer than a man with one. For a wife is an asset. Women and children by working in the fields and by tending the family stock provide a large part of the family income. Traditionally women were the property in which a prudent man invested his savings: a herd of cattle represented so many potential wives. A hut tax is in effect a wife tax, for it is the general native custom for every wife to have a separate hut, and so long as wives remain a tribe's most valuable property, a wife tax will be a property tax.

18. It is becoming gradually less and less satisfactory. Not only does it cease to fulfil its purport as in the case of the wealthy monogamist but with many polygamists it is unpopular because they say that it is a tax on women and they feel that their women should not be taxed. This objection may be due to a misunderstanding of the fundamental nature of the tax as an attempt to achieve equity of incidence, but the objection is none the less there. The tax also operates against efforts to establish hygienic conditions in village life and to improve standards of domestic decency and morality. So long as a man, his wife, his children and his guests all sleep in one hut the man pays one tax only. If he builds a separate hut for his children and another for his guests he is liable for three taxes.

19. The tax has also been fruitful of difficulty in the matter of huts occupied by widows. The tax on such huts must be paid by the owner and the owner is the male head of the family. (In some cases this is liable to be disputed because derelict widows, in whom there is no near male relative to take an interest, appear for practical purposes to be the owners of the huts that they occupy. It is, however, generally true to say that a native woman being herself property can own no property). Although women in general are property and, so long as they are capable of working and of bearing children, are assets, women who are past the age of childbearing and who can no longer do effective physical work are liabilities. Instead of providing the family's food they merely consume it. The ordinary head of a native family is perfectly willing to accept the responsibility of maintaining his widowed mother, aunt by marriage, or sister-in-law, but objects to the added liability of an annual tax to Government, which, in cases where he inherits no property with the widow, becomes not a tax on property but a tax on unavoidable expenditure.

20. It has become the custom to exempt to an increasing extent huts occupied by such widows. These exemptions are often of doubtful legality and the expenditure of an immense amount of time and labour by District Officers is necessitated in deciding claims for exemption. The power of exemption given to a District Officer by s.10 of the Ordinance is limited to exempting persons who have not sufficient means to pay and who by

-reason-

reason of age or infirmity cannot obtain employment. If the tax were due from the widows it would be easy under this section to exempt them all, but it is not. It is due from the owners of the widows who may be very rich men.

### Poll Tax

21. The Poll Tax was introduced, as stated in paragraph 6, as an addition to the Hut Tax in 1910. This addition was made with the deliberate intention of encouraging the young unmarried men of the tribes to find employment of some kind, and from the proceeds of that employment to contribute to the country's revenue. Before the days of the British Government the time of the unmarried males was spent mainly in Military training or in raiding. Fighting was their natural occupation, the protection of their tribe and the increase of its possessions their duty and their ambition. With the establishment of the Pax Britannica their natural occupation was prohibited, there was no longer occasion for the performance of their duty or scope for the pursuit of their ambition. It was necessary to divert their energies to some other direction and the obvious direction was along the road to profitable manual labour. The obligation to find money implied the obligation to work. They were untouched by the hut tax therefore they must have a poll tax.

22. It is doubtful if this reasoning was as sound as it might appear and it is doubtful if it was wise to complicate native taxation by introducing a poll tax as an elaboration of the property tax. In the first place the belief that the young men were untouched by the hut tax was unfounded, at least in the vast majority of cases. Among native tribes the hut tax ownership is not the individual but the family, and the family consists not only of the living but also of its past and future members. Every member of the family is interested in the payment of the family debt and in the security of the family assets. It follows that the unmarried son is no less interested than his father in the payment of the father's hut tax, and the imposition of the obligation to pay poll tax has no more and no less effect in driving the young man to work than would have had a corresponding increase in the amount of hut tax. If the amount due were not forthcoming by labour it would have to be found by sale of the family property. The son is affected equally with his father by the sale of one of the family goats.

23. As it is, a family frequently neither knows nor cares which of the taxes for which it is liable are hut taxes and which are poll taxes. A common example is that of a man, his wife, and two unmarried sons. Three taxes are due: the elder son remains at home to help his father with the management of the family estate and the younger one goes out to work. It may be arranged that the latter will contribute half the amount due, say one month's wages 3s. 18/- and the former will collect the other half by sale of maize. Whatever the arrangement is it is immaterial to the family whether the amount that they have to collect between them is for huts or polls. If the hut tax had been increased to an extent calculated to realise throughout the colony the amount of hut tax and poll tax combined the general effect would have been very much the same, the principle of a property tax would have been retained unpoluted, and collection would have been very greatly simplified. Reference to the difficulties of collection of the present taxes will be made in a subsequent part of this memorandum.

III. ABILITY TO PAY

24. The amount of hut tax or poll tax has usually been slightly less than the average monthly rate of pay for unskilled labour. When the tax was Rs 3/- the monthly wage was Rs 5/- and food for Rs 4/- although this rate rapidly increased. Now the tax is Rs 12/- and the average wage is in the neighbourhood of Rs 15/- A young man therefore can earn his poll tax by one month's work (or, if as frequently happens, he is responsible for three taxes, (e.g.) his own poll tax and taxes for his father's two wives) he can collect the necessary money by working for an employer for a quarter of the year. Or if he prefers if he can earn the Rs 36/- by cultivating two acres of maize (from an acre of maize he should get five bags and a bag should be worth even in a bad season at least Rs 5/-) or by selling a calf.

25. During 1960 there were on an average 150,000 natives at work at any one time. The average wage, including the value of food supplied, earned by domestic servants, skilled and unskilled labourers, could hardly be less than £1 per month so that the native population in employment earned £150,000 per month or £1,800,000 per annum. These figures should provide sufficient refutation to those who maintain that the native is driven to work by pressure of taxation and goes to work for no other reason. The native taxation during the same year amounted to £600,000. If the natives earned by labour three times the amount necessary to pay their taxes it follows that they responded to some inducement other than the necessity to pay tax. The obligation to pay taxes does of course provide one inducement to collect money but money may be collected by other means than by service to an employer. The value of native produce exported from Kenya during 1929-1930 is estimated (vide Agricultural Census Report, January 1951) at £450,000. In addition to the amount of native produce exported from Kenya there is the unascertained value of the amount exported from the Native Reserves to feed the labourers on European farms and in factories. This amount can hardly have been less than £180,000 and was probably much more. It might therefore be said that the entire native direct tax for 1960 was earned by the surplus native produce over and above the requirements of the native population.

IV. COLLECTION OF TAX.

26. Collection of Hut Tax, though laborious, presents no difficulty. It is usually done by District Officers in person who tour the Native Reserves and collect the money in camp from individual payers in the vicinity. The names of the payers are entered in the District Registers by locations, each location being under the jurisdiction of an official headman appointed under the Native Authority Ordinance, whose duty it is to see that his people present themselves in camp with their money ready. Every payer or payer's is given a separate receipt for every tax. Thus a woman who brings 6 hut taxes and 2 poll taxes is given eight receipts, each marked with the number of the Location Register of the person from whom the payment was due. The work is laborious merely by reason of the numbers involved. The system is perfectly simple and does not lend itself to abuse. Evasions are almost impossible. Huts are stationary, are visible and easily counted; and counts and payments can be readily checked.

27. Experiments have been made in collection by Official Headmen. These attempts have not been attended by any great measure of success. The Headmen are not always conspicuous for integrity or efficiency and their assistants are less so. The average native prefers to pay his tax direct to his District Officer.

28. The collection and checking of Poll Tax is a very different matter. The Polls, so far from being stationary are very mobile. They are entered in their Location Registers but they may pay in their locations or wherever they are working, or they may not pay at all. The father in the Reserve says that his son has gone to Mombasa and has paid there and the son in Mombasa says that his father has paid for him in the Reserve. On the other hand the tax may be paid twice, the father paying in the Reserve and the son in Mombasa, each without the other's knowledge. Checks by means of registration numbers and otherwise are of course possible but the numbers are too great to allow of protracted enquiries into each individual case, and enquiries are complicated by the custom which ordains in many cases that a man must have one name by which he is known in his village and another by which he is known at his work.

29. Evasion of Poll Tax is much easier in any case than evasion of Hut Tax. A hut cannot disappear, a poll can. A poll can hide itself whenever a District Officer comes round for tax collection or inspection, and the poll's father can say that it went to Nairobi 3 months ago and has not been heard of since. There are probably never less than about 10,000 up-country natives working in Mombasa and the District Commissioner there has no practical means of knowing how many of them have paid tax. Many of them are married men who have left their homes in the Reserves temporarily and have left their hut tax receipts in their huts at home. Others are polls who have done the same. Others have paid nowhere. Others have lost their receipts. It might be argued that every poll tax payer should be made to carry his receipt with him wherever he goes. This might help but it would still leave his District Commissioner at home wondering if he has paid or not, and moreover receipt tickets are easily lost if they are not put away in some safe place in a hut. The ordinary native dress is not designed to facilitate the carrying of valuable documents with any degree of security.

*What about the Hut tax?*

V. PROPOSED ALTERNATIVES TO THE PRESENT SYSTEM.

30. Of the alternatives to the present system which have been advanced from time to time universal flat rate poll tax in place of hut and poll tax is the one that has received most support. It has been discussed on many occasions by Provincial Commissioners and has always found some advocates among them. A number of missionaries also are strongly in favour of such a change and many educated natives. The obvious objections, however, to a poll tax, namely that it makes no attempt whatever at equity of incidence and is therefore the least scientific form of tax that can possibly be devised, have so far prevailed over its supposed advantages. Difficulties in the way of collecting and checking poll tax have been referred to in paragraph 29 above. They might perhaps to some extent be overcome if it were made compulsory for every native to carry his receipt on his person at all times (or perhaps only

only when outside his Reserve) and if power were given by law to police revenue inspectors and other officers of Government to demand the production of receipts. It seems, however, that such regulations might be extremely irksome. An elaboration of the proposal for universal poll tax is that it should be combined with hut tax, that is to say, every hut should pay a tax and also every poll, the hut tax receipt being left in the hut and the poll tax receipts being carried on the person.

51. Suggestions have been made for a cattle tax. There is much to be said in favour of such a tax for most native tribes in Kenya insist on accumulating vast herds of cattle in many cases far beyond the proper carrying capacity of their land - of which they make little or no economic use. There would, however, be great difficulties in the way of assessing, collecting and checking such a tax, and these difficulties would be increased by the common superstition which regards it as unlucky for a man to count his possessions, or at least to inform a stranger of the amount of them.

52. A tax on land has also been mooted. Under existing systems of land tenure an individual land tax would be quite impossible. It might however be possible among agricultural tribes to assess the value of clan lands or family holdings (e.g. the Kikuyu "githaka") and to exact a clan or family tax accordingly from the head of the clan or family who would apportion the amount due among the occupiers of the estate.

53. In view of the above the following extract from the Hilton-Young Report (pp. 56 - 57) is of particular interest:-

" Apart from the question of the application of  
 " taxation, methods of taxation require constant  
 " critical examination and review. These ought to  
 " be studied for Eastern and Central Africa as a  
 " whole, taking advantage of the combined  
 " experience which is available. The present  
 " standard method of native taxation which takes the  
 " form of a poll or hut tax is obviously a  
 " primitive tax suitable only for communities in  
 " the early stages of civilisation.  
 " We do not wish to go so far as to recommend any  
 " definite substitute, for the time for introducing  
 " a substitute has not arrived, but we do suggest  
 " that it is a matter to which study ought even  
 " now to be directed and that it might well be  
 " considered concurrently with the question of the  
 " gradual development of a system of individual  
 " land tenure among natives. There can be little  
 " doubt that in the course of time there will  
 " be an advance towards such a system and in that  
 " case taxation might very well be based on the  
 " value of the land occupied by each native.  
 " Such a form of taxation, with its natural  
 " adjustment according to capacity to pay,  
 " and with the incentive which it would give  
 " to maximum production, might well be suitable  
 " for African communities. We mention it in this  
 " connection as an instance of a subject for co-  
 " ordinated inquiry.

"As regards -

"As regards the existing practice in this matter,  
"there are wide variations in the rates of direct  
"native taxation throughout the territories of  
"Eastern and Central Africa, but on the whole the  
"amounts paid appear to be roughly adjusted to  
"capacity to pay."

(sgd) A. de V. WADE

ACTING CHIEF NATIVE COMMISSIONER.

23rd May, 1951.



MEMORANDUM ON POSITION OF WIDOWS GENERALLY  
AND CHRISTIAN WIDOWS IN PARTICULAR.

NILOTIC AND BANTU.

Widows in Kavirondo, whether of Bantu or Nilotic Tribes, fall broadly into four classes:

1. Young widows who have not had a first pregnancy or child or children.
2. Widows who have had a first pregnancy or child, and who are still of an age to bear children.
3. Widows past childbearing age, who have living children.
4. Widows past childbearing age, whose children have all died.

Tribal custom accommodates itself to the varying conditions associated with these four classes of widows, but all are, in theory, the property of the family of the deceased husband, and are heritable. But the demand to inherit is only pressed with stringency in the case of the two first classes.

Class I.

Widows in this class are heritable, but a widow in this class is generally reckoned the wife of the heir, particularly if the dowry was not fully laid up at the time of the husband's death, and the heir pays the balance. She can only free herself by persuading her people to return the dowry paid for her, either at once or on her re-marriage. Great difficulty is met with in inducing her people to free her by returning the cattle. She can force a consent by going off with another man, and this is occasionally done.

Class II.

These widows are also heritable, and a widow is doubly bound to the late husband's family by the fact that she has born children into the family. Theoretically, she can also free herself from the duty to accept bequeathal by persuading her people to return that portion of the dowry which is not considered to have been liquidated by children born to her husband, and she can also, if she is a woman of strong character, give herself to another man, deserting in that case her children. I have known a few cases where the widow has given herself to another man in defiance of the claims of her husband's heir, and even, in one or two cases, where she has not resigned her child to the heir. But this last type of case always leads to lawsuits, claiming the child. In those cases which I have had to do with, the woman's right to refuse bequeathal, if strongly asserted, is not denied. She is regarded as nuisance by her family, for they must refund the cattle in whole or in part, but she can disregard their protests and force them to accept the situation.

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A widow in this class, who accepts bequeathal IS NOT REGARDED AS THE WIFE OF THE HEIR, but she is always spoken of as the widow of her late husband, and any children born after bequeathal are called the children of the deceased.

### Class III

These widows are generally free from the duty of accepting sexual relationships with the heir. Their interests revolve round their children, the males of whom take her under their care. There are many details of variance in their position but, broadly speaking, these widows occupy a position of privilege and importance in the family, and the family of her late husband owes her duties, more than she owes to them. Practically this class of women has attained a status of majority.

### Class IV

This class of widow is generally regarded as an awkward responsibility by the family of her late husband, and if she is of a quarrelsome or cantankerous disposition is turned adrift to rely on her own resources. She may take up with an old widower or bachelor without let or hindrance, if she can find any such to have her.

## RIGHTS OF WIDOWS TO PROPERTY.

The widow has rights with respect to property, which depend very largely on the continuance of her relationship with the family of her husband. She has a right to the use of the land of her late husband, which she, or the heir, holds in trust for her children. The same applies to cattle. Law suits are NOT uncommon in tribal barazas where widows resist successfully attempts to deprive them of the use of their land. But a widow has an interest in the property only in trust for her children, and has a good deal of discretion allowed her in the administration of the trust. If she accepts marital relationships with the heir, she is practically co-trustee with him for her children's interests.

Every woman has a right to the property, whether personal tinkets, clothing, or even stock, which she has acquired by her own efforts. Of the cattle given for a daughter one cow belongs to the mother. The personal property of daughters dying unmarried goes to their mother, not to the father. Many women trade in fish, earthenware pots, mats, and in these days articles of clothing, and the proceeds are theirs to do what they like with.

Just how much she manages to keep in her own absolute possession when left a widow depends entirely on the strength of character of the widow as against the rapacity or unscrupulousness of the heir. If she holds out for her rights she can maintain them, if necessary by an appeal to the elders.

as The right to the hut remains with the widow, but huts are temporary buildings, requiring repair and renewal, the value of the hut as a hut depends entirely on its

3.

its condition at the time of her widowhood. The widow has the right to decide, a right not often exercised, whether she shall consent to the *ekisuli* (the stick which protrudes from the topmost point of the roof) being removed or not. Until she consents to its removal, ill-luck is supposed to dog the steps of any who try to force themselves upon her. A refusal to have the stick removed carries with it a refusal to accept the guardianship of the heir. But sooner or later the necessity to have the hut repaired or rebuilt or replaced forces the widow to accept the relationship she at first refused, that is if she has no children to do this for her.

DIFFICULTIES OF CHRISTIAN WIDOWS.

The widows who are most adversely affected by tribal custom are those with children, i.e. Class II. Those in Class I are affected to a much less degree. Almost, not entirely, invariably the Christian widow is required to accept the guardianship with sexual relationships, of a pagan, who may already have one wife or more. Male Christians do not accept the duties of guardian to a brother's widow. Guardianship is forced upon the widow by separating her from the land, stock and even from her own property and her children, if she refuses. And even if these measures be not taken, the widow would find no man to repair or to rebuild her hut, if she refused to accept guardianship, with marital intercourse.

On the other hand, it is certainly the case that many widows are very willing to accept tribal custom, and I have come across hardly any males (Christians) who want to see the customs abolished, even though they would not carry them out in their own persons. It is very deeply rooted in social life, and it undoubtedly saves the widow from isolation when the husband dies.

The hardship to the children occurs when the mother is separated from them. Also the Christian community resists the guardianship of Christian children by a pagan.

RECOMMENDATIONS.

1. Public opinion is not ready yet for legislation which would inflict penalties on those who maintained the customs when the widows concerned willingly accept the guardianship. But legislation is needed providing that a Christian widow, so long as she remains a widow shall remain undisturbed with the custody of her children, and in possession of the land in trust for her children, without any obligation to remove the *ekisuli* and accept marital relationships. Possibly equity would require that the receivers of the dowry should be required to return a portion of the cattle paid, in such a case, for formerly both those who gave and those who received the dowry accepted the validity of the demands to exercise guardianship in the event of widowhood. Therefore, any rejection of the established customs which diminishes the value of the dowry to the family which she enters on marriage, should

should be accompanied by a return of some portion of the cattle. This portion should be decidedly less than is required by custom in the case of a widow who wishes to remarry outside of her late husband's relations. But it is most difficult to say what proportion of the original should be returned, for in actual practice this depends on many factors i.e. the number of living children, the age of the widow, and the circumstances of her family's exchequer. It would probably have to be a matter of arbitration or settlement in each individual case.

2. In the case of a widow who insists on being allowed to remarry outside of her late husband's relations, the return of the cattle is comparatively simple, for those paid by the second husband liquidate the claim of the first husband's heir. But the case of the widow who wishes to remain a widow and to reject the customary rights of the heir to endeavour to increase her family, is beset with difficulties. I can only suggest that the Local Native Councils be consulted in the matter, for it touches the foundations of the structure of tribal society, and unwise action may have altogether disastrous results. But this is not a reason for refusal to seek a solution. It is a strong reason for caution.

Probably the solution will lie in a form of contract designed to let all concerned know that in the event of a divorce, the wife could herself free to repudiate the right to inheritance. This would, I think, mean that with her return to her husband's family as property, thus restricted, she would not be able to demand a husband's cattle would be demanded in the case of those who repudiate the right of bequeathal. It does not seem to me equitable that the girl's people should demand cattle for her, as would be demanded in the case of one who did not intend to repudiate bequeathal.

The intention to repudiate ought to be notified early before the contract is completed, for it is much more easy to settle how much cattle should be paid under these circumstances, than it is to get the proportion of cattle back from the widow's family in the event of her refusing tribal custom. A column could easily be provided in the barns book for recording acceptance or non-acceptance of the right of inheritance.

But, as I said above, the whole matter ought to be worked out in consultation with the Local Native Councils.

(sgd) W. E. OWEN.

C.M.S.,  
Maseno.

TAXATION IN KENYA

Customs Duties

Hut Tax:

Customs duties on both imports and exports were levied from the earliest days of the East Africa Protectorate. In 1901 a hut tax was imposed "upon all native huts or other huts used as dwellings and built of mud or wattle and daub or such other materials as natives are in the habit of employing for the purpose of constructing huts or dwelling places". The tax was limited to two rupees per annum for each hut. In 1902 the limit of hut tax in the Provinces of Kisumu and Naivasha was raised to three rupees per hut.

Native Hut & Poll Tax.

3. In 1905 a general limit of three rupees was imposed and the Commissioner took power to direct that "in the event of more adults than are comprised in one family living in a hut each such additional adult or adults shall pay the amount of hut tax in force on the time being". This new provision was applied in the Coastal Provinces in 1905 and in 1909 was extended to the Ukamba and Kenya (now Kikuyu) Provinces. In 1910 the principle of a poll tax was introduced payable in proclaimed areas by adult male natives not liable to pay the Hut Tax.

Revenues  
in  
1911 -  
1912.

5. Revenue from these Native taxes rose steadily. In 1901-2 the amount collected was £5,528; in 1906-7 it was £61,336. In 1911-12 it was £146,215, representing 87 per cent of the total revenue of the Protectorate, excluding revenue from Government railways. In 1911-12, revenue from Customs duties totalled £101,088, or 26 per cent of the Protectorate revenue. The other main items of revenue in that year included Post Office and Telegraphs revenue (£26,594), Reimbursements by other Governments (£13,713), Rent and Sales of Land (£27,060) and Game Licences (£7,941). A Grant-in-Aid totalling £180,000 was received from Imperial funds.

Abolishing the Grant-in-Aid.

4. For some years past, the desirability of abolishing the grant-in-aid had been engaging attention and with this object in view a variety of forms of taxation had been examined. By the Berlin and Brussels acts and by the Zanzibar Treaties, the Protectorate was debarred from framing a higher Customs Import Tariff and was therefore prohibited from increasing duties on luxuries. The expense of imposing and effectively controlling and collecting an Income Tax was regarded as too high, apart from other considerations, to justify the introduction of this form of tax. The question of a Land Tax was thoroughly discussed, but it was decided that the country would not be ripe for such a tax, at any rate for some years to come.

Non-native  
Poll tax.

5. Direct taxation was first applied to non-natives in the East Africa Protectorate in 1912. In introducing the Non-native Poll Tax Bill, the Chief Secretary referred at some length to the difficulties with which the Government had been faced in attempting to extend the principles of direct taxation. He stated that the Government had, after careful consideration, dismissed the idea of adopting a property and income tax owing to the almost insuperable difficulties and great expense attending its collection, and that the suggestion to introduce an inhabited house tax had been abandoned as being even less suitable in its incidence than a Poll Tax. The Non-native Poll Tax Ordinance was brought into effect as from the beginning of 1913, the rate imposed on non-native adult males being Rs.15/- per head as compared with the Native Hut and Poll Tax rate of Rs.3/- per hut or poll. Revenue derived from this new tax amounted to £9,927 in 1912-13 and £11,251 in the following year.

Railway  
Revenue.

6. The grant-in-aid ceased in 1912 and for the next few years revenue from existing sources was sufficient, on balance, to meet expenditure in spite of the large sums required annually to meet the Protectorate share of War expenses. The Native Hut and Poll Tax rate was raised in some areas to Rs.75/- in 1916-17, receipts from this source totalling £264,516 in 1916-17 as compared with £182,699 in the preceding year. In other respects, taxation remained substantially unchanged and the principal source of revenue was the Uganda Railway, which was at that time a branch of the East Africa Protectorate Government. On the 1st April, 1913, the Protectorate's surplus balances amounted to £308,581. Five years later they had increased by £147,714, but during that period the Railway had contributed to Protectorate revenue an excess of Railway revenue over Railway expenditure aggregating £1,178,991.

Railway  
Surcharge.

7. The cost of Government services was also increasing and in preparing the Budget for 1918-19 new sources of revenue had to be considered. Restrictions imposed by Imperial Treaties still prevented an increase in Customs duties and the imposition of additional direct taxation also presented difficulties. The principal new measure for raising revenue was the Railway Surcharge, from which £89,137 was realized. This was admitted to be an unsatisfactory tax, but it had the advantage of being simple and inexpensive to collect. The collection was made in the form of a terminal charge at the time of booking, the rates varying according to the class of goods carried but not being affected by the distance travelled. Other new sources of revenue were introduced in the form of Stock Traders Licences and registration fees for coffee plantations, coffee dealers and business names, and an Estate Duty Ordinance was passed to provide proper machinery to supervise the collection of death duties and to increase such duties for the purpose of raising additional revenue.

Proposals  
For raising  
additional  
revenue.

8. During 1918, a Committee was appointed to consider the best means of raising additional revenue. The report covered a wide field and referred, inter alia, to:-

(1) Income tax -

(1) Income Tax. It was agreed that a form of income tax was the fairest in its incidence and was perhaps the one tax that could not readily be transmitted to other shoulders, but in view of the fact that its collection would need an expensive trained staff and of the Committee's opinion that the country was not sufficiently developed to justify an income tax, especially because of the difficulty of assessment on a community mostly engaged in laying the foundation of various agricultural industries, the Committee recommended that the imposition of an income tax should be delayed.

(2) Tax on Unearned Increment on Land Sales. The Committee felt that there was much to recommend a tax on unearned increment in regard to land values, but considered that any such taxation must be based on a valuation requiring a costly professional staff to carry into effect. The Committee suggested that the stamp duty payable on land transfers should be increased.

(3) Customs duties. The Committee regarded Customs duties as the obvious method of increasing the revenue by means which would roughly spread the increase of taxation over the whole community and expressed the opinion that every effort should be made to obtain for the Protectorate early freedom from the restrictions imposed by the Berlin and Brussels Acts. It was convinced that the levying of Customs duties was the simplest, most elastic and best method of improving the revenue and suggested that the tariff should be directed to imposing the heaviest duties on articles which might be classed as luxuries and the minimum duties on necessities.

(4) Tax on Undeveloped land. The Committee was inclined to think that many difficulties would arise over the classification of land into developed and undeveloped land and in any case considerable staff would be required.

(5) Land Tax. A ready and inexpensive means of raising revenue was suggested in the form of a flat tax placed on land at a rate not exceeding 20 cents per acre with a minimum of Rs.5/-, such a tax being considered reasonable to enable money to be found for the improvement of communications in the Protectorate.

(6) Trading Licences were recommended.

(7) Postal Rates. The Committee proposed certain increases in postal rates, which would bring in additional revenue without extra expense.

(8) Native Taxation. The Committee considered the time inopportune to raise the hut and poll tax beyond Rs.5/- owing to recent famine conditions, but added that when the reserves had resumed their normal conditions, the increase of direct taxation on natives should receive attention. It was, however, pointed out that a number of the suggestions contained in the report would, if carried into operation, have a direct effect on the native population.



(9) Cattle Tax. The Committee agreed that a cattle tax on all sections of the community was desirable, a fixed sum being levied per head, assessed in relation to the average annual increase. The Committee observed that this tax would afford a means of deriving revenue from pastoral native tribes which contributed very little by way of direct taxation, but pointed out that extra staff would be needed and that markets must be obtained for stock which would be paid in kind by native tribes.

(10) Other means of raising revenue suggested by the Committee included a tax on commercial travellers, increasing stamp duty on cheques, a wheel tax, increased motor licences, taxes on the cco and on the sale of playing cards, and an increase in the gift tax and in the duty on Bills of Exchange, hundis and promissory notes.

Not taxation in 1919-20.

9. Several recommendations of the Committee were brought into operation in 1919-20. Traders' Licences came into force from the 1st July, 1920; commercial travellers' licences were introduced; postal charges were raised from a flat rate of six cents to ten cents a Rupee; stamp duties on bills of exchange, cheques and large bills were doubled; fees for motor licences were doubled; and Brokers' Licences and Goldsmiths' and Jewellers' Licences were doubled and trebled respectively. The increased revenue resulting was in the neighbourhood of 244,000

Curry

10. The revenue for the year 1919-20 amounted to £1,726,435 or £177,752 more than the revenue for the previous year, which had itself been the highest previously recorded, but expenditure had increased rapidly, largely as a result of war bonuses paid to the staff to meet the enhanced prices of post-war conditions that the necessity for finding further sources of revenue remained most urgent. In addition to this, however, the position was still further complicated by the change in currency which was brought into effect in 1920 under which conversions between sterling and local currency, which, in the accounts of previous years, had been made at the rate of 1s.4d. to the Rupee, came in 1920-21 to be made at the rate of 2s. to the Rupee or Florin. When converted to sterling at the new rate, many items of expenditure increased by fifty per cent. So did some items of revenue such as the direct taxes and licences, land rents and other charges expressed in terms of local currency. This currency inflated had, however, clearly no relation to the value of local produce exported. It increased wages and the cost of production generally but had no influence on the return received on exports as expressed in terms of sterling.

Income tax  
Land Tax  
and Land  
Transfer  
Tax.

11. The Budget for 1920-21 was framed to balance at a figure of £1,731,222, almost double the previous year's total. Two new sources of revenue were explored, an Income Tax and a Land Tax, but neither of them came to fruition. The scheme of taxation put forward by the Government with the Budget combined with those a Land Transfer Tax, the Land Tax was intended to take the form of a percentage on the unimproved value

of the land, and this was to be a minimum Income Tax for Land-holders who would be permitted to deduct the amount paid in Land Tax from the amount paid in Income Tax on income derived from the same land. The Land Transfer Tax was based on a percentage of the difference between the purchase price and the subsequent selling price of the land, and would have assisted in securing correct assessment of the value of land for the purpose of the Land Tax. In the Legislative Council the Bill was amended and the proposed tax was altered to a tax on undeveloped land only. With the result that its character was so far changed that His Majesty was unable to assent to it. Legislation enforcing an Income Tax was not passed, and the Staff to collect it did not arrive in the country until so late in the year that it was found necessary to abandon collection of the 1920 tax. In May, 1920, the duty on distilled liquors was raised from ten to thirty shillings a gallon and in the same month the limit to which the Governor might raise the Native Hut and Poll Tax was increased from ten to twenty shillings. The maximum rate was applied in the Masai Province. In Nyanza and parts of Kikuyu and Ukamba Provinces the rate was raised from ten to sixteen shillings; in Tanaland to fourteen shillings; and in certain northern areas to twelve shillings. Nine districts retained the ten shilling rate. In December, 1920, an Entertainment Tax was introduced, which brought in £570 in the remaining three months of the financial year; and in February, 1921, the rate of Estate Duty was amended to coincide with the British rate.

Railway rates.

12. Another feature of the 1920-21 Budget was a proposal that Railway rates should be increased and the Railway surcharge withdrawn. Neither of these proposals was carried out. Owing to the opposition of Uganda and the impossibility of increasing rates for Kenya alone to the extent necessary to preserve the revenue without causing a complete dislocation of trade, the Railway rates could not be increased; the surcharge was retained as the only alternative.

Working of the year 1920-21.

13. The revenue for the year fell short of the estimates by £215,542, of which nearly half was due to the non-collection of the Land Tax and the Income Tax. Expenditure, however, fell short of the estimate by £215,567 and the result of the year's working was a surplus of £1,825. The fact that a surplus was shown was, however, due to abnormally high revenue being received in the form of Land Sales, which totalled £60,939 during the year.

Separation of Railway from Colony finances.

14. The Budget for 1921 presented a peculiar difficulty owing to the fact that, in order to carry into effect a decision that the Government's financial year should synchronise with the calendar year as from 1922, it was necessary to budget for a financial period of nine months, from 1st April to 31st December, 1921, and the bulk of certain revenues was ordinarily collected during January, February and March. A further complication resulted out of a decision that after the 31st March, 1921, the Colony must meet its financial obligations.

6.

obligations without having recourse to the Uganda Railway for general revenue. This meant the loss of Railway Surcharge revenue, which had totalled £168,724 in 1920-21, and the loss of nett revenue derived from the Railway, though this had been of diminishing amount, totalling £36,249 only in 1920-21. No new taxation was proposed for 1921. It was, however, anticipated, at the time the Budget was prepared that the 1920 Income Tax would be collected in 1921 and the nine-months Budget balanced at £1,828,844. Actual revenue fell short of the estimate by £536,985. This shortfall was attributable to the prevailing world-wide financial depression, aggravated in Kenya by a failure of rains and crops, the effects of the currency conversion and the decision already referred to, to remit the 1920 Income Tax. Expenditure fell £861,859 within the estimate but there would have been a very substantial loss on the year's working if it had not been for the fact that a sum of £600,000 was appropriated out of the £5,000,000 loan floated in 1921, as a reimbursement to revenue in respect of capital and war expenditure which had been defrayed from revenue. This sum was taken to revenue over 1921 and resulted in an excess of revenue over expenditure during the nine-months period of £224,894, the Colony's surplus balances as at 1st January, 1922 standing at £450,521.

Income Tax.

15. The Income Tax Ordinance was in full force during 1921 and a sum of £58,714 was collected during the last nine months of this year. Considerable difficulty was experienced in collecting it and a large amount remained unpaid at the close of the year. A sum of £80,875 was collected in 1922 in respect of the 1921 tax and outstanding amounts continued to trickle in for some five years after the Income Tax Ordinance had been repealed. It is of interest, however, to note that the imposition of an Income Tax, which was, in its operation, applied solely to collections for the year 1921, resulted in the receipt of £95,073 to revenue and entailed an expenditure in collection of approximately £8,516; and that payments in respect of that assessment were spread over seven years.

Colony's Financial Difficulties.

16. It will be evident from what has been written above that during the three years following the War, the Colony was confronted by financial problems of magnitude and that, although the day of reckoning had been postponed, existing resources were inadequate to meet expenditure or the scale passed in annual estimates. The main factors in the situation were these :-

- (1) The currency fixation had inflated all local costs. Salaries and wages had risen by fifty per cent in terms of sterling and the expenditure side of the Budget reflected this increase. Sources of taxation, in so far as they represented taxes expressed in terms of local currency, had also increased by fifty per cent but the prices obtainable for local produce on the world's markets were not affected by this factor and the increased costs of production reduced profits.

- (2) Following the war, there had been an expansion of Government's activities and the cost of material had increased.
- (3) Railway finance had been removed from the Colony's Budget. The Colony was thrown on its own resources with a reduced "turnover".
- (4) The Estimates for 1921 had been framed on the assumption that the years 1919-20 and 1920-21 could be regarded as normal years, whereas they had proved to be "boom" years, and 1921 found the Colony merged in the world-wide depression.
- (5) With reduced prices obtainable for produce exported, a further drop in revenue was inevitable. New taxation appeared to offer no prospect of relief. Economy in expenditure provided the only remedy.
- (6) By treaty, the Colony was still prohibited from raising additional revenue by means of Customs duties.

Treaty  
Restrictions.

17. The crisis came with the presentation to Council of the Draft Estimates for 1922, which showed a deficit of £412,617, but concurrently with that crisis came the removal of Treaty restrictions regarding Customs duties. In August 1921, a Customs Amendment Ordinance was passed which raised the general ad valorem rate from 10 per cent to 20 per cent. Duty on ale, beer, wines, tobacco, cigars, cigarettes, gramophones and records and silk goods was raised to 30 per cent; and duty on rice, wheat, flour and sugar was placed at 15 per cent. This new measure was calculated to bring in £240,000 per annum and to reduce the Budgetted deficit for 1922 to £172,617. This estimated deficit was removed during consideration of the Budget in Legislative Council, largely by a reduction in the rate of "local allowance" which had been made to officials on duty to compensate for the increased cost of living due to the currency conversion. The Budget as passed balanced at £1,925,876. Revenue items included a sum of £141,442 anticipated from the Income Tax and additional Customs revenue totalling £240,000 expected from the introduction of the new tariff. It was, however, contended by unofficial members of the Council that the country could not stand the new Customs duties in addition to the other new taxation which had been introduced and their fears were justified by the event. Customs collections for 1922 fell £189,442 short of the estimate of £516,978. The shortfall would have been greater but for the fact that the tariff rates were increased during the course of the year to make good the loss of revenue following the repeal, for reasons which will be subsequently examined, of the Income Tax Ordinance.

Economic and Financial Committee

18. In 1922, but as generally estimated on 1st January 1922, but as that revenue would have been short of the estimate, and that unless considerable savings were effected on the estimates of expenditure, the Colony would be faced, not only with a considerable loss on the workings of the year 1922, but also with an exceptionally difficult problem in the preparation of the Budget for 1923. In March, 1922, a Committee known as the Economic and Financial Committee was appointed with wide terms of reference, one of which was to examine the present amount and incidence of taxation.

Native Hut & Poll Tax reduced.

19. In April, 1922, a general rate of twelve shillings was established for the Native Hut and Poll Tax. Owing to the fall in the price of commodities produced by natives, the decrease in their rate of wages, and the diminished purchasing power of money, trade in native areas had been brought to a standstill and the natives had been unable to pay a sixteen shilling tax. The result was that collections and numerous exemptions, which had remained in force since 1912 and are in certain instances where total or partial exemption is granted, as a result of the conditions, the difficulty has been experienced in increasing the rate. This rate has been increased both by non-native development, which has offered opportunities to native wage earners, and by the development of native agriculture within the Reserves.

Peel of Income Tax

20. The attention of the Economic and Financial Committee was directed at an early stage in its proceedings to the Income Tax and a recommendation for the repeal of this tax was made in April, 1922. A motion in the Legislative Council urging the repeal of the income tax had been defeated by 16 votes to 7 six months earlier largely because revenue from this source was required to balance the Budget and no alternative means of raising good this item in the revenue estimates was readily apparent. The Economic and Financial Committee was faced with the same difficulty but pointed out that the principal reason which had led to the imposition of the tax, namely, Treaty restrictions which prevented higher Customs tariffs, had been removed and, as the native tax had been decreased, neither of the immediate causes of the introduction of an income tax remained as valid arguments in favour of its continuance.

21. In urging the repeal of the Ordinance, the Committee advanced facts given in evidence and reasons as follows:-  
Assessments of income tax for the year 1921 showed:-

- (1) The total income assessed was £2,633,019;
- (2) The number of taxpayers was 2,514 Europeans and 5,246 non-Europeans;
- (3) The number of male adults in Kenya was 4,736 Europeans and 16,158 non-Europeans;
- (4) The percentage of tax actually assessed was:-

Civil servants	51.7
Farmers and Planters	3.0
Professional men	4.9
Commercial men	28.8
Employees	15.4
Other Persons, including Banks, Shipping Companies, etc.,	16.2

- (5) Most of the Farmers and Planters assessed were farm managers who received a salary.
- (6) Of receipts from income tax 65 per cent came from employed persons; in England 1 per cent only came from employed persons, the majority coming from large commercial concerns;
- (7) Only 55 per cent of the European and 55 per cent of the non-European male adult population in Kenya were assessed for income tax;
- (8) Banks and many commercial houses paid the income tax on behalf of the members of their staff. In such cases the tax did not fall on the individual, but on the firm; whether the firm happened to have made a profit or not, and this defect was also apparent in the case of farm managers, whose liability for income tax was not affected by a loss on the working of the farm.

22. The Committee deduced that the tax was unfair in its incidence, that it left untouched a large proportion of the non-native population, and that a very large portion of it was actually paid out of capital imported into Kenya which should properly be used in development. The Committee maintained that the tax was not suited to farmers whose farms were in a state of development, that the method of assessment was open to serious danger of abuse which could not be checked without a considerable increase in staff and in the expense of collection, that it placed a much resented burden on employed persons whose income was easily assessed, that it penalized the employer who had to contribute to the general revenue even when he was working at a loss, and that it restricted the importation of capital which was abundantly necessary in Kenya.

23. The Committee considered that the imposition of an income tax in the existing stage of the Colony's development was premature, that it was prejudicial to the Colony's welfare, and that its removal would not only be an asset to, but would mean a flow of capital into the country; and held that an income tax should not be imposed except in countries where there is an abundance of capital available for industrial and commercial enterprise and where in consequence, the incidence of such a tax can be arranged so as not to retard the production of wealth.

Additional  
Customs duties  
imposed

24. The loss on the estimate of revenue for 1922 which would follow the repeal of the Income Tax Ordinance amounted to £105,000 and the abolition of the tax could only be considered provided that a equivalent revenue could be obtained by increasing indirect taxation mainly falling on non-natives. Though opposed in principle to increasing the already high customs duties for revenue purposes, the Committee was so convinced that the economic state of the Colony

Colony rendered it immediately necessary to remove a tax which was hampering expansion and development that it put forward recommendations for doubling duties on wines and spirits, tripling duties on tobacco, cigars and cigarettes, and raising to 50 per cent ad valorem the duties on motor cars and bicycles and accessories. Additional revenue totalling £108,000 in 1922 being anticipated from these new duties, the Income Tax Ordinance was repealed in May, 1922, and the collection of the 1922 tax was cancelled.

New Customs Tariff

25. The abolition of the Income Tax in Kenya, though removing a standing menace to progress, did not have the effect of improving the 1922 Budget position and it was found also that the new duties did not work satisfactorily in practice. Though they remained in force for too short a time to enable their effect to be accurately gauged, there is no doubt that their immediate effect on the revenue was bad, largely, perhaps, owing to the belief generally held that the tariff, which applied to Kenya only, would shortly be varied. Later in the year a uniform tariff was introduced for Kenya and Uganda in most respects maintaining duties at the higher rates imposed for Kenya in May. Export duties were at the same time abolished. At the end of 1923, a further revision took place, the only important reductions, apart from the amplification of the free list, being those in respect of motor cars and cycles and certain building materials. This new tariff came into force on the 1st January, 1924, and remained substantially unchanged until 1930.

Reduction in Expenditure

26. Expenditure in 1922 exceeded revenue by £523,180. In 1923 expenditure exceeded revenue by £258,185 but this was due to the settlement of certain war debts totalling over £300,000 and to payments made to the Railway in respect of past transactions totalling approximately £75,000. The estimates for the year provided for a surplus which would have been more than realised if it had not been for those non-recurrent payments. Revenue estimates for 1923 were framed on a conservative basis which, apart from reimbursements, fell £400,000 short of the revenue estimates for 1922; and expenditure estimates had been reduced by a policy of rigorous economy to a figure nearly £200,000 below the estimates of expenditure for 1922 after making new provision for debt charges on the 1921 loan totalling £300,000. In other words, the estimates for 1923 were framed to bring expenditure within the total of a conservative estimate of revenue on the basis of existing taxation. In practice it was found that, for the first time for four years, revenue in 1923 exceeded the estimate, and a conservative system of estimating the Colonial revenue was established, which stood the Colony in good stead in later years and was a principal factor in the accumulation of surplus balances.

Entertainment Tax

27. The Entertainment Tax, which had brought in £1,740 to revenue in 1922, was abolished at the close of the year. It was regarded as an annoying tax and one which was difficult to administer; it threw additional work both on the Treasury and on entertainers and in view of the small amount of revenue received, it was considered preferable to repeal the Ordinance.

Cotton Tax and Beer Excise duty.

28. Towards the end of 1923 a cotton tax was imposed to conform with the practice in Uganda and an excise duty was placed on beer brewed in the Colony from the beginning of 1924.

Present system of taxation.

29. During the years 1924 to 1926 sources of revenue remained stable and, apart from certain new revenue proposals which were introduced in 1926 for European and Indian education purposes no change was made until 1930 when a new Customs Tariff Ordinance was passed which modernized the tariff without materially affecting the general tariff rates. Apart therefore from the new Education taxes introduced in 1928 and from certain alterations which were made from time to time in the incidence of motor taxation - one variation leading to the introduction of a tax on petrol - the revenue system adopted in 1923 still persists. Generally speaking, it provides that the main contribution to tax revenues paid by non-natives should take the form of customs duties on imports and that in the case of natives, whose consumption of imported goods is relatively small per head, direct taxes should be paid on the hut and poll.

Progress of the Colony.

30. This system has operated remarkably well in practice. The steady and rapid growth of the Colony's revenue from 1925 to 1929 not only gives evidence of the great development which has been taking place but indicates the existence of a system of taxation which has responded well to the calls made upon it. At the end of 1923 the Colony's Balance Sheet showed a deficit of £190,844. At the end of 1928, before any expenditure was incurred against surplus balances, there was a surplus of £879,806, and this in spite of the fact that the Colony's gross expenditure had risen during that period from £1,861,511 in 1924 to £2,834,647 in 1928. This result is all the more remarkable when it is remembered that for the decade following the cessation of the grant-in-aid the principal source of revenue was the Uganda Railway, and that the currency conversion inflated all local costs at a critical period in the Colony's history.

Education Taxes.

31. It must, however, be admitted that the present revenue system offers no ready means of adding substantial sums at short notice to the Colony's income derived from non-native sources. The system is not readily adjustable to meet increased demands. This was apparent in 1926 when it was desired to give effect to the principle, which had been accepted by unofficial members of the Legislative Council, that the cost of non-native education should be met from new taxation. The sum to be found by new revenue was £51,200, this being equal to the estimated net cost of European and Indian education in 1927, exclusive of headquarters expenses and of interest and sinking fund charges on educational buildings, after taking into account direct revenue obtained from tuition and boarding fees. The revenue required from Europeans was £51,000, and from Indians £20,200. It was not found practicable to devise direct taxes which would bring in the required amounts from each community separately and the legislation eventually passed a proposal that Europeans should pay a domestic servants tax being abandoned in favour of a poll cess - provided for



were not readily adjustable to meet the annually varying cost of the services. So small a proportion of the money required for European education was derived from the poll cess that any increase in expenditure would rapidly increase the poll cess rate with an equally rapid increase in the unfairness of its incidence, and in the difficulties of collection; and periodical alterations in the rates of consumption taxes would have all the ill effects which inevitably follow frequent changes in customs tariffs.

Conclusion.

56. The above analysis of the taxation problems in Kenya indicates that the present system has been evolved out of a diversity of circumstances and as a result of much trial and error. It has responded well in periods of prosperity but it is not readily adjustable. Customs duties on articles of non-native consumption are already high except in the case of imports required for development and it is by no means clear that an increase in duties would bring in a greater return. On the other hand, it is open to doubt whether any comprehensive change in the principles governing taxation of non-natives would produce results any more satisfactory than those obtained by present methods, and it is more than probable that the cost of collection would be greater. Even if, for instance, it were decided to discard the ruling motive that in a country of primary production, such as Kenya, taxation should fall, not upon production, and the means of production, but upon consumption, is there any justification for assuming that, on balance, more revenue would be made to accrue to the State? The Colony's revenue is already high in relation to output. Agriculture is the only industry and the lessons of past years and of the present world-wide depression and low prices clearly show that fluctuations in prosperity must be reckoned with. Is there any known means by which State revenue can be maintained at a comparatively high level in times of prosperity without falling off in times of depression, low prices, and profits from agriculture dwindling to or below vanishing point? Without full enquiry it is impossible to form any conclusion as to whether the existing system, after being in operation for nine years, remains best suited to the Colony's needs or whether any comprehensive change is desirable, but it seems clear also that the time for introducing any change in principle is when agricultural conditions in the Colony are prosperous, not when they are depressed and when the community's ability to pay taxes of any kind has been diminished. In such circumstances, new imposts in one direction may readily result in lower returns in another direction and the liability to over-estimate revenue anticipated from new sources, which is amply illustrated by the Budget of ten years ago, gives a sense of false security based not on fact but on hope.

(sgd) G. R. SANDFORD

Deputy Treasurer.

14th July, 1931.

Extract from Memorandum submitted to the Secretary of State  
by the Native Witnesses before Joint Committee.

1158

Original on 17165/31 Kenya.

X

X

X

We ask that native males should not have to pay tax on reaching the age of 16 years, but only at 18 years of age, as for the Europeans.

We object to the principle of a hut tax as distinct from a poll tax, because it means, in effect, a tax upon women and causes great hardship very often, and because it often means that a native has to pay as much, or more, in direct taxation than a European in Kenya, simply because it happens to be our custom to have each room of our establishments under a separate roof, instead of under one roof, as the Europeans. In fact hut tax amounts to a tax upon rooms and upon women.

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EXTRACT from a semi-official letter from Sir C. Bottomley  
to Sir J. Byrne, dated 10.7.31.  
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X X X X X

As regards taxation, we shall wait for your despatch  
but, entirely on my own authority, I suggest that as regards  
the age limit, the obvious solution, until we can raise the  
native age to 18, is to lower the non-native  
would dispose of the differentiation point  
unduly the burden of taxation on non-natives

X X X X

Extract from a semi-official letter from Sir J. Byrne  
to Sir C. Bottomley, dated 12.6.31.

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X X X X

I am really very worried over two matters which the Secretary of State wants me to push <sup>through</sup> without delay. One is the Hut and Poll Tax question (Widows, and raising the age to 18), and the other is the suggestion to send out a Commissioner to enquire into the condition of the country about which a reasoned opinion is being formed. You know my feelings about natives and my anxiety to see that they get justice. But any such change, during the present time, of a system which has been in force for many years will completely disorganise our administration and anticipate that an attempt to administer the apparent line of native will result in a loss of £40,000. How on earth am I to balance such a loss at the present time? Why not give us a little breathing time and let us adjust our affairs more gradually as the result of the report of the Special Commissioner who will, no doubt, review the whole revenue position?

X X X X

copy  
208/13

4/61

K. H. Y. A.  
No. 295

DOWNING STREET.

6 May, 1931.

Sir,

I have the honour to inform you that I have recently had under consideration the question of the penalties provided for the non-payment of native hut and poll tax.

2. My general view is that in the case of a man who, having the means, neglects to pay his tax or fails to take adequate measures to secure the wherewithal to pay his tax, distress on his goods is the proper remedy. I assume that in cases of poverty, time is given (e.g. until harvesting of the crops) for the payment of tax before proceedings are taken, and that, in cases where a native has no property and is incapacitated from obtaining the money to pay his tax, no action is taken in regard to the failure to pay tax. Presumably, in times of famine or general failure of crops, exemption from tax is granted.

3. I also desire to refer in particular to the power in Section 8(2) of the Native Hut and Poll Tax Ordinance, and Sections 6 and 7 of the Northern Frontier Province Poll Tax Ordinance, to order in cases of non-payment and in default of recovery by distress, imprisonment for any period not exceeding three months.

GOVERNOR  
BRIGADIER GENERAL  
SIR JOSEPH A. BYRNE, K.C.M.G., K.B.E., O.B.  
etc., etc., etc.

4.

4. I have already asked in my despatch No. 86 of the 3rd February that a full examination of the incidence and yield of taxation should be undertaken, and I should be glad if you will, when reporting on that matter, also inform me how far the principles referred to in paragraph 2 above are already applied in Kenya. I do not know whether it will be possible to adopt for tax defaulters some form of deterrent alternative to those provided in section 8 of the Native Hut and Poll Tax Ordinance and in Sections 6 and 7 of the Northern Frontier Province Poll Tax Ordinance, but I shall, of course, be prepared to consider any recommendations which you may wish to make to this end. In particular, I should be glad if you would consider whether a maximum sentence of six months (in default of distress) would not be sufficient, if imprisonment has to be retained as a penalty.

I have the honour to be

Sir,

Your most obedient

humble servant,

W. D. FIELD.



The Archdeacon's contention is that the native reserves do not obtain a fair share of revenue for roads, and that in practice the Government of Kenya relies primarily upon the "traditional" unpaid forced labour for communal purposes in the reserves in order to carry out such road work as is done in those areas.

3. Sir Joseph Byrno will be going carefully into all these matters, with others affecting native administration, and he will no doubt report in due course upon the various questions raised, with special reference to the general lines of native policy laid down in the memorandum issued last year as Command Paper 3573.

I have the honour to be,

Sir,

Your most obedient,  
humble servant,

(Signed) FASSFIELD.



C. O.

C. O. D. 30 MAY

17189/31 Kenya.

Mr. Allen

Mr. Linn

Mr.

Mr. Tomlinson

Mr. C. Bottomley 25.0

Sir J. Shuckburgh

Sir G. Grindale

Permt. U.S. of S

Permt. U.S. of S

Secretary of State

*1 June*  
*275*

*JR*

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**DRAFT TELEGRAM**

GOVERNOR  
NAIROBI

*Condon v. me...*

conson. 4 minutes.

*and I do not know  
whether...  
in hand...  
...  
substantial*

Private and Personal.

Your telegram 163 I must of course await your despatch but I am very anxious that decisions in regard to these two cases of marked discrimination in treatment of natives and non-natives should if at all possible be taken in time to enable them to be reflected in 1932 draft estimates even if as I understand you propose to take estimates very early this year. I trust therefore that your despatch as to widows huts will be sent very shortly and that you will expedite your recommendations as to the tax on I realise that financial considerations make it very difficult to contemplate

sacrifice. reductions of revenues. But there can be

no question that even if widows hut tax  
be regarded as property tax there is  
discrimination seeing that there is no  
corresponding non-native taxation, and apart  
from need for action on grounds of equity  
there is no doubt that in view of prominence  
given to question of taxation in criticisms of  
Govt. of Kenya a definite public statement by  
you that the Government intends to get rid  
of these discriminations say from 1 January  
1932 would go far to allay criticism generally  
and help the Government to carry out its policy to defend  
your Government against all unfair charges  
and suspicions.

~~particularly at  
the meetings of the  
Joint East African  
Office~~

? T.S.P.  
Benjamin  
P



C. O.

Mr.

Mr.

Mr.

Mr. Tolmie

Sir C. Bottomley

Sir J. Smuckburgh

Sir G. Grinnell

Perms. U.S. of S.

Parly. U.S. of S.

Secretary of State.

RECEIVED  
15 JAN 1931  
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80 P.M.  
4.5.31  
G.H.

X 17189/31

Ans. No. 6  
No. 158

my resp. of

[9]

3 Feb. No. 158

DRAFT

Code tel. ~~to~~

Governor  
Yorubi

I appreciate that  
your examination  
of the position in  
regard to taxation  
must take time  
but it is a matter  
~~of~~<sup>to</sup> which I attach  
very great importance  
and I hope that  
you will be able  
to report at an

early sale & having  
assent I trust that  
you will be able to  
commence without  
waiting for examination  
of the whole of the  
provision remission of  
tax of widows (see para 2  
of my report) and  
removal of present  
discrimination between  
sexes in regard to  
age at which taxation  
is imposed which was  
one of the points brought  
before us, before  
you left England.

I am



4. So far as concerns the Northern Frontier Province, special considerations arise. Taxation is now being introduced for the first time for the province generally, and the position is therefore not quite the same as in the areas in which taxation has become established. I do not think that, for the sake of uniformity, the general rate need, in the circumstances, be reduced from Rs. 18/- to Rs. 10/-, nor should I wish to contemplate yet any change in the rate so recently approved for the tribes in the Northern Frontier.

5. As regards the usual, I appreciate that the Rs. 10/- rate does not conflict with the governing principle laid down in the memorandum on Native Policy that direct taxation of natives should be limited by their capacity to pay without hardship and without upsetting their customary mode of life. So long, however, as there is simply a flat rate for non-natives while there are variations in the rate for natives, it cannot be said that there is no discrimination as between natives and non-natives in the principle on which direct taxation is imposed. If, therefore, as the result of the examination referred to in paragraph 3 of this despatch, Sir Joseph Byrne reaches the conclusion that the present system of taxation as applied to non-natives cannot satisfactorily be varied, it will be necessary to consider further the question of lowering the rate for the usual to Rs. 12/-.

6. In any case, if a flat rate is the general rule, a specially high rate of tax on any particular tribe could only be justified if in return there was special expenditure by the Government on development works in that tribe's reserves, up to approximately the amount of the difference between the yield of tax at the special rate and the yield of tax at the normal flat rate. If therefore a special high rate for the Masai were to be continued in the future, I should wish this principle to be applied so far as may be practicable.

I have the honour to be,

Sir,

Your most obedient  
humble servant,

(Signed) PASSFIELD



despatch No. 688 of the 27th May, 1933, for the reduction of the rate of Shs. 20/- paid by the Masai still apply and I do not consider any reduction desirable or necessary at the present time. So far as the Northern Frontier Province is concerned, however, this Government would have no objection to raising the tax from Shs. 10/- to Shs. 12/- if Your Lordship concurs. If this were done the result would be that with the exception of the Masai Province a uniform rate of Shs. 12/- would be levied throughout the Colony and Protectorate which would result in a very close approximation to the flat rate which Your Lordship desires.

8. In the light of the above I trust Your Lordship will agree that with the possible modification of the Northern Frontier Province tax no further action is called for at the present time.

I have the honour to be,

My Lord,

Your Lordship's most obedient, humble servant,

H. M. MOORE

FOR GOVERNOR.

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Draft on 25543/30 L.H. BOWLING STREET.  
30 July, 1930.

Sir,

I have the honour to invite your attention to paragraph 14 of the memorandum recently presented to Parliament on the subject of Native Policy in East Africa (Cmd.3579), which deals with the question of native taxation.

2. In that paragraph, while His Majesty's Government in the United Kingdom lay down as the principle which should govern the imposition of direct taxation in East Africa, that such taxation ought to be assessed in proportion to the ability to pay of each family or household, they state that the levy of direct taxation on the native should be definitely limited by his capacity to pay such imposts without hardship, and without upsetting his customary method of life.

3. As you are aware, instructions were given by the Secretary of State for the Colonies in 1920 that proposals for the increase of native taxation should not be introduced without prior reference to

the

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SIR S.H.M. DAIDA, K.C.M.G., I.C.S., D.S.O., M.C.,  
etc., etc., etc.

the Secretary of State in each case, with a full statement of the reasons for the increase. But these instructions were sent only to the Governors of Kenya and Uganda, and I am now issuing similar instructions to the Officers Administering the Governments of the other East African Dependencies in which there is direct native taxation, since it is of great importance to ensure that any new measure of native taxation is in conformity with the declaration of policy referred to above.

4. As regards the native races, the principle enunciated in the memorandum, that direct taxation should be assessed in proportion to ability to pay, is to some extent already observed in a collective sense, in the different rates of hut tax and poll tax which, within the maximum of 20/- a year prescribed by Ordinance, have been levied upon various tribes. But as regards direct taxation of non-natives, a flat rate has hitherto been levied irrespective of the ability of particular individuals or classes to pay; and in this sense, therefore, it may be held that a measure of discrimination exists between the direct taxation of natives and that of non-natives. Such discrimination is difficult to justify, particularly in the light of the declaration of general policy which has now been made, and I am anxious that this aspect of the matter should be carefully borne in mind. Until such time as it becomes feasible to introduce for non-natives an effective system of income tax, or some other means of assessing direct non-native tax

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