Taxation without Principles: A Historical Analysis of the Kenyan Taxation System

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1. INTRODUCTION

Tax law is said to be barely connected with the universe and with universal law as we understand it.¹ However, tax law is founded not only on principles but also on practicality. There is no element of perpetuity about tax law, only the constant clash of the immediate and semi permanent. A State cannot run a democracy well without taxation and a taxation system cannot be run well without democracy. As Oliver Wendell Holmes has said on one occasion, “Taxes are what we pay for civilised society.”²

The importance of tax law must be and is tempered as a result with the capabilities of a state and its constitutional and legislative provisions. First, tax law is of immense importance to society, but considering its lack of consistent principles, the tax lawyer must remember that the ultimate and perfect answers in taxation can never be found. Instead it is a constant system of trial and error which works in a dynamic society.

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Secondly, there has been much discussion internationally about simplifying and elaborating upon the tax law. There is a gradual but steady increase in case law with the five classes of the users of tax law; taxpayers; people such as employers on whom the law places obligations; professional advisers and enforcers.

Thirdly, tax reform today has been moving towards considering new legislation, such as whole new taxes or reliefs, rather than patching of existing taxes by either increasing or decreasing the amount of taxation. This breaks down into the fact that there are ongoing considerations of widening the tax base. Kenya is no exception to this and there are ongoing considerations into taxing the informal or ‘jua kali’ sector including the taxation of the ‘mitumba’, the second hand clothing industry as well as the taxation of all informal tax payers of small amounts.

Fourthly, tax like any other legal issue finds its initial source and authority from the Constitution of the country in which it applies. However unlike other laws that are based on fixed principles, the tax law and its policy objectives for specific countries changes based on the goals or aims of the government of the day based on what it wishes to achieve.

Fifthly, the multidisciplinary nature of taxation is also a factor that must be broken into the legislative, economic and political basis and hence decisions are heavily influenced by a variety of sources. The domain of tax law in Kenya has traditionally been held by accountants but this is being challenged.

Sixthly, Kenya like many ex-colonies and developing countries inherited a system of taxation. The principal factors contributing to poor tax performance, according to the World Bank and evidence provided by revenue authorities in 1994, include, first, poor compliance in the informal sector economy. Secondly, narrow coverage of the existing tax instruments, and finally, poor administration and tax collection efforts.

The failure of a previous system can be brought about by fundamental changes in governance relations because of a shift from one system to another, for example from monarchical rule to parliamentary democracy or from a centralised economy to free market ‘or from colonialism to independence’. It becomes necessary that the reform processes entail negotiating anew the principles and aspirations of citizens. However, present reform processes assume that the legal framework for taxation is not of primary concern.
In its practical context, this paper firstly, must be read with reference to recent statistics that shows that 56% of Kenya’s population lives below the poverty line, distribution of income being unequal, with 20% of the country being responsible for consumption and finally, a high dependency ratio. Secondly, the tax history of Kenya is from its commencement inextricably intertwined with that of its neighbours Uganda and Tanzania. Hence, the paper will refer to parts of their shared East African tax history.

As a result of these and other constraints, there is a need firstly, to look into the failure historically of the colonial authorities to, ab initio, put into place a system of taxation based on the generally recognised principles of taxation. Secondly, and as a result, look into the background of existing tax legislation imposed during colonisation in order to inform present legislation in Kenya.

The purpose of this paper is firstly, to set down an overview of the sub optimum tax system. Secondly, to give an overview of the introduction and development of tax law in Kenya. Thirdly, to contextualise the absence of tax principle and policy considerations that historically were applied and analyse how they may continue to affect Kenya’s present taxation system.

This paper discusses in part II the outline of the optimal tax system, part III gives a historical overview of the introduction and development of taxation in Kenya until independence in 1963 while making a case for a stronger principle based system of taxation in Kenya. Part IV concludes.

2. THE OPTIMUM TAX SYSTEM

Schumpeter stated:

The spirit of the people, its cultural level, its social measure, the deeds its policy may prepare…is written in its fiscal history. He who knows how to listen to its message here discerns the thunder of world history more clearly than anywhere else.

Any tax system is a combination of history, experience of the people, politics, economics and the law. However, over time scholars have attempted to understand the complexity of taxation by creating rules and principles through retrospective analysis of the application of taxation. There are as a result five important considerations in analysing any tax system

Firstly, to consider tax system in isolation from other items of public revenue
or expenditure is an incomplete and unrealistic attempt. Taxation is only one part of the total budget of the government. Other forms of revenue include charges, fees, licences and government business holdings.

Secondly, a tax system has many dimensions. This includes volume, composition, rates, coverage, and timings of collection, mode of collection among other things in order to grasp its effects in their totality.

Thirdly, it is nearly impossible to choose theoretically the best taxation system. Government has to conceptualise the various problems while working out the best possible system and will generally settles for a compromise between conflicting considerations and therefore in the end settles for a sub-optimum tax system.

Fourthly, taxpayer attitude. Normally each taxpayer desires be freed from the tax burden the does not mind if it is borne by the others. It is essential that a good tax system should be equitable to all taxpayers. Attitude is also influenced by other factors like the present political situation, natural calamities and the economic situation.

Finally, changes in the tax system itself can be brought about only slowly and in stages. A sudden disruption is impossible and the effects of a sudden overhaul in a tax system can result in collapse of an economy.

2.1. The Canons of Taxation

The canons of taxation are considered criteria in classifying policy considerations but are not considered complete in themselves. Decisions on taxation involve trade-off and political or value judgements. There is no unique technically correct solution for the optimal tax system only various and diverse sub-optimal tax systems each with their own specific advantages and disadvantages.

The tax system in order to achieve certain objectives chooses and adheres to certain principles, which are, termed its characteristics. A good tax system, therefore, is one designed on the basis of an agreed appropriate set of principles. However, tax objectives conflict with each other and there is usually a need for compromise usually at the political level.

Adam Smith enunciated the first four of these principles. He believed that the private sector was more efficient than the public one, and that the prime responsibility of the economic growth should vest with the private sector.
However, in view of developments in economic philosophy and problems of the modern state, five additional principles were also suggested by latter writers and have also been generally accepted.

Adam Smith’s cannons include, firstly, the cannon of equality or equity. This cannon looks to economic justice. It states that the richer should pay more taxes because state protection and allowed for the earning and enjoying of extra income. Secondly, the cannon of certainty. Taxpayers should not be subjects to the arbitrariness and discretion of the tax officials is that breeds a corrupt tax administration. Thirdly, the cannon of convenience. The mode and timings of tax payment should be, as far as possible, convenient to the ‘taxpayer’. Fourthly, the cannon of economy. This cannon recommends that the cost of collection tax should be the minimum possible both to the government and the taxpayer.

Other scholars have added on, fifthly the cannon of productivity. Also called the cannon of fiscal adequacy, the tax system should be able to gain enough revenue for the Treasury and government is such that there should be no need to resort to deficit financing. Sixthly, the cannon of buoyancy. The tax revenue should have an inherent tendency increased along with the increasing national income even if the rates and coverage taxes are not revised. Seventhly, the cannon of flexibility. It should be possible for authorities without undue delay, to revise the tax structure, both with respect to its coverage and rates, to suit the changing requirements of the economy and of the Treasury. Eighthly, the cannon of simplicity. The tax system should not be too complicated. It should be easy to understand, administer and not breed problems of interpretation and legal disputes. Finally, the cannon of diversity. Tax revenue should not depend upon too few sources of public income.

Despite the fact that there are no specifics on which of these principles are most important, Joseph Stiglitz, summarised the characteristics of a good tax system as consisting mandatorily of a combination of the following principles. First, economic efficiency, the tax should allow for efficient allocation of resources. Secondly, administrative simplicity, the tax should be easy and inexpensive to administer. Thirdly, flexibility, the tax system should respond easily to changes in economic conditions. Fourthly, transparency, the tax burden should be easily ascertainable and be politically tailored to what society considers desirable. Finally, fairness, the tax system should be fair in its treatment of different individuals.
2.2. Basic Policies on Taxation

The cannons of taxation feature of a good tax system and objectives of taxation overlap and interact with each other. However the focus of objectives is upon what is sought to be achieved through it, principles are the rules to be observed in formulated tax structure while features amount to a broad description of the tax system devised in conformity with foregoing principles.

Objectives of the tax system in any economy are connected with the overall government policies. Objectives differ between developed and underdeveloped countries. These objectives can be contradictory and must be best resolved by the tax system. A tax system cannot be expected to achieve all the goals fully. For example, Value Added Tax is considered an ideal form of indirect taxation, but its adoption in developing countries, is not as comprehensive as in European countries.

The main and generally accepted objectives of imposition of tax include: firstly, raising government revenue; secondly, redistribution of income equality; thirdly, to clear market imperfections; fourthly, to stabilise the economy; fifthly, to combat anti-social behaviour; sixthly, to implement government policy; seventhly, to moderate social variances within society to enable the poor to live a life of in material dignity. Eighthly, certain indirect taxes may be emphasized in a portfolio of taxes because they are less visible to the public and hence less subject to political mobilization. Finally, the influence that national traditions and ‘path dependence’ exert on the contemporary choices of tax policy. They tax a particular way because they have always taxed that way but the influence of historical patterns is not considered systematically.14

3. TAXATION WITHOUT PRINCIPLES: THE EPOCHS OF TAXATION IN KENYA

3.1. Kenyan Society before Colonisation15

3.1.1. The Taxes

Kenya before colonisation was divided up into a myriad of tribal based societies all with their own fixed ethnic geographical territory. African society in pre-colonial times can be termed as a communist/socialist society where almost all the properties were communally owned with all members
sharing in community wealth. However, in most if not all tribes generally, whatever production took place required that a part of it be remitted to the house of the chief of the tribe and community. This included parts of any harvest whether it was agricultural produce, trading profits or gifts. Both foreign and local traders, especially in ivory and slaves were all required to pay tithes in order to be allowed passage through the territory of a particular tribe. Thus, there was generally no taxation in the form that we understand it today but there were remittances to the ruler in exchange of which peace was maintained and protection accorded.

3.1.2. The Principles of Taxation

The tithe levied was never more than affordable and often in cases of famine, the chief of the tribe as well as the more successful farmers would give food to the famine-affected members of the tribe. None died of starvation as long as there was food in the tribe and tithes were paid on the basis of a portion of production, thus applying the principle of ‘productivity’. ‘Economy’, was maintained by the levy of a fixed percentage of produce. Hence a ‘simple’ system based mainly on voluntary payment which resulted in a fairly administratively efficient system. The tithe was remitted to the chief after a harvest usually in form of produce making it both ‘convenient’ and ‘flexible’. Since the payment was in the form or perishable goods it ensuring that a ruler would not demand too much as he would only take as much as he himself needed. Thus, in the application of tithes, there was always an element of almost scrupulous fairness and equity. In addition, despite a general concept of voluntary payment of tithe, there was an unwritten system of quotas of production.¹⁶

As far as traders were concerned, this was applied on the basis of the amount of goods being ferried into or out of the tribal territory and was a fixed percentage levied by the warriors of the tribe who took the traders to the king to pay tribute directly. There are no recorded instances of traders being kept waiting for days or of payment being refused and thus the principles of efficiency, simplicity by accepting any form of payment including in the goods being traded. The principle of equity was used in the levy of this form of ‘passage right’ tax, it was usually a fixed amount for passage through land based on the numbers of people or amount of goods. However, inefficiency may have been evidenced by the fact that the entire trading party had to present themselves to the chief or the king and give him his tribute personally. Some scholars have argued that every member of the chiefs family expected presents and thus the cost of movement was relatively higher going through some tribes vis a vis others but there are
no reports of crippingly high tributes that in turn made trade impossible or even curtailed it. The trade despite the tributes levied during this period remained extremely viable and allowed to trade to prosper.

In conclusion, these diverse tribal based tax systems were at best extremely rudimentary, simple and operated at a very small scale. It was suitable for the economy of the time and was fairly successful in its time frame and the state of the economy at that point in time.

3.2. The Arabs

Although there were trading links between East Africa and other seafaring nations, none really managed to obtain a dominating stronghold of rule. The Arabs came first but were not interested in extending rule beyond the coastal area. They came with the intention of trade in ivory and slaves and intermingled but without any apparent clear cut need to conquer. Thus, they remained along the coastline of East Africa for business expediency to facilitate trade between the hinterland and the Arab traders who mainly came from the Sultanate of Oman.

The Sultanate of Oman thus occupied and added the coastline of East Africa into their Governate. This Governate although based in Malindi, allowed each of the islands to run their own affairs and collect taxes for the Sultan. Through the slave and ivory trade, Arabs settled along the East African coastline and their population grew steadily through intermarriage. The people thus formed themselves into Sultanates as city states resulting in the creation of the Sultanates of Zanzibar, Mombasa, Malindi, Pate, Pemba, Mafia, Kilwa and Witu. Each sultanate jealously guarded their territories and constantly fought each other to control the trade with the African hinterland and the outside world while periodically fighting off and loosing to the Sultan of Oman and the Portuguese before taking assistance from the Sultan of Oman to overthrow the Portuguese.

Taxpayers were divided into two separate tax bases, the citizenry within each Sultanate and the traders. Citizenry consisted of a mixture of Arabs, families that resulted from intermarriage and local Africans who had converted to Islam. Traders from other nations were as diverse as India, Europe and Mauritius. These tax bases were treated in an identical manner as there were fixed rates without exception for all subjects of taxation.
3.2.1. The Taxes

The Sultanate applied a system of taxation that was a mixture of Islamic Law as well as taxing trade in order to maintain and assist in their presence on the coast. As a result, citizenry were taxed using the Islamic law based taxes of zakat, jizya, sadaqa and khums in addition to customs levy, capitation tax as well as harbour fees.

*Zakat* is a form of voluntary single capital tax levied only on Muslims that can never be less than 2.5% on all savings and all cash assets idle for the year. It is used specifically to finance among other things, poor relief, and emancipation of slavery, assistance to individuals serving Islam.\(^1\) Despite its voluntary nature, it is considered taboo not to give this tax if one has savings and interestingly in considered a pillar of Islam as a religion.

*Sadaqa* is another form of voluntary tax. It is also given for charitable purposes and is under no control whatsoever, and is a source reliant on the charitable feelings of the Muslim giving it.

*Jizya* was a tax imposed on conquered non-Muslims in a Muslim nation under treaties signed between the two communities as a payment in lieu of compulsory military service. It was because compulsory military could only be imposed on Muslims as conquest was seen as a religious war.\(^2\) There are however, no reports of this tax being applied on Kenya’s coastline.

*Khums* was a tax on assets redeemed by force and was a share of the spoils or war booty. It was considered a state asset at the disposal of the leader or war booty of the commander in chief for his personal disposal.\(^3\)

Traders were taxed by the application of a capitation tax, as well as customs. A capitation is a head tax, tax on each individual. Capitation tax was levied on each slave, on traders taking slaves out of the sultanate. This tax was first applied in 1722 by the then ruler of Oman on every slave exported by the French from his African dominions. Between 1809 and 1814, it is reported that the Sultan derived 75,000 dollars worth of revenue from this tax.\(^4\) By 1820, it is reported that this revenue increased to between 40,000 and 50,000 dollars per annum.

Customs was charged on all goods taken out of the Sultanate and this included cloves, ivory and beads. The Sultans of Zanzibar, Malindi and Mombasa among others also had their own systems of taxation that included
collection of customs duties.\textsuperscript{21}

**3.2.2. The Principles of Taxation**

The personal taxes were predominantly voluntary in nature and thus were not run by and taxation administration. People practicing the Muslim faith were expected to pay the voluntary taxes in the manner they saw fit and in the amount they deemed adequate without any state interference. The Sultanate instead concentrated on maintaining their coffers through the trading levies of capitation tax and customs.

In trade, the different sultanates charged a fixed amount for each ship coming into their respective harbours. In addition, capitation and customs tax were payable in any form applying, the principle of flexibility. Simplicity was introduced by having a harbour master who ensured that all taxes were paid. In this epoch, the amount due was a low percentage of the value of the goods and encouraged trade. Interestingly, there were no tabulated allegations of evasion and avoidance of tax tabulated in the time of Arab occupation of the coast.

**3.3. The Portuguese**

Between the 16\textsuperscript{th} and 18\textsuperscript{th} century, the Portuguese repeatedly tried to take over the coastal area unsuccessfully. Their rule was tumultuous with no real foothold being made in the country and the only memory of their presence in East Africa is said to be the Pillar of Vasco da Gama in Malindi and Fort Jesus in Mombasa on Kenya’s coast.

**3.3.1. The Taxes**

The first recorded treaty that involved a form of taxation in this period was in 1502. The then Sultan Ibrahim of Malindi was held against his wishes and forced to accept defeat. While being held hostage during negotiations on Vasco da Gama’s boat, a treaty of surrender was signed with Portugal for an annual tribute of 1,500 meticals of gold.\textsuperscript{22} The terms included Portuguese rights to erect forts and build garrisons; exercise control over customs duties charged and revenues; introduce settlers and generally exercise full rights of sovereignty.\textsuperscript{23} In return, the Sultan was to receive one third of customs revenue.\textsuperscript{24}

Similar treaties were signed with other sultans including the Sultan of Mombasa, Zanzibar and Kilwa. All of them repeatedly failed to pay
the tribute despite repeated demands including the use of violence by destruction of private property;\textsuperscript{25} this continued to fail to bring any money into the coffers of the Queen of Portugal.\textsuperscript{26} However as was applicable to clergy in Portugal, Christian clergy in East Africa were also exempt from all taxes including customs duty.\textsuperscript{27}

Thus, the only hold the Sultan of Oman maintained over the East Coast of Africa was the imposition from as early as 1722 a capitation tax in respect of every slave exported by the French from his African dominions.\textsuperscript{28}

3.3.2. The Principles of Taxation

The Portuguese were seen as notorious for attempting to violently hold and control the East Coast during the period when it was a crucial port for the spice route to and from India and the Far East. However, their rule was characterised by oppressive rule not only for the native African population but also for the Arabs settled at the coast and resulted in their eventual overthrow by the Arab settlers with the help of the Sultanate of Oman. There was the complete failure to use equity in the creation and levy of taxes and riots were punctuated with civil disobedience and outright tax evasion and avoidance.

By the end of the rule of the Arabs and Portuguese along the East coast of Africa the existing balance of taxation that was inherited by the British included a capitation tax payable per head of slave exported and customs revenue shared equally between the Arabs and Portuguese. The tax base was, however, limited to traders only.

3.4. The British

In Africa in 1884, Bismarck declared German protectorates over Togoland,\textsuperscript{29} Cameroon and Southwest Africa\textsuperscript{30} by claiming that he was protecting the interests of German missionaries and traders. Germans told Africans that German rule meant freedom from taxes and custom duties. British propagandists noted that Germany had military conscription and Britain did not, and they countered that German rule in Africa would lead to conscription for local people.\textsuperscript{31}

In 1886, Britain and Germany settled the boundaries between German East Africa and the British territory to be known as Rhodesia. Germany recognized Britain’s claim to Zanzibar. A German company was in charge of the administration of German East Africa, and its demand for taxes and
labour obligations provoked rebellion among local Arabs and from the Hehe and Yao tribes—the Abushiri revolt. Germans were evicted from the coast except for strongholds at Bagamoyo and Dar es Salaam. The Germans returned with an elite force under the German command General von Wissman, and they captured and hanged the leader of the revolt—the half-Arab half-African trader, Abushiri.\textsuperscript{32}

The British originally ruled all of what is today Kenya and Uganda together forming the East African protectorate and later the East African Colony. However, in 1890 Germany signed a treaty with the British exchanging Heligoland for British recognition of protection of Zanzibar. On December 14\textsuperscript{th} 1895, the Sultan signed over administrative responsibility of the areas formerly under the responsibility of the Imperial British East African Company to the British Government for the continued undertaking that the Sultan would be paid an annuity of £11,000. In 1913 Zanzibar was transferred from the foreign office to the colonial office and the Governor of the East African Protectorate which 7 years later came to be known as the Kenya protectorate.\textsuperscript{33}

In British East Africa, the British East African Company’s hopes for substantial revenue from mining ended when the gold rush in Kakamega was unfruitful. Thus, British colonial tax policy developed in its rule in East Africa on the grounds of the need firstly, to prop up its own economy by creating foreign markets and sources of raw materials for its industries and thus obtain maximum gains with minimum input. This was done by initially through the Chartered company concept. However, later in order to encourage rule from within the territory to make it viable after the accidental discovery of arable land in Kenya. Secondly, to locate and secure the source of the Nile for the purposes of protecting British interests in Egypt from that of the other European powers of the time which meant securing Lake Victoria and its environs. Thirdly, was the Rhodesian philosophy of conquering Africa from the Cape to Cairo as jewel in the crown of the British to show the world their might. Fourthly, to secure the spice route to Asia and maintain the link with the Indian colony in the wake of the Suez Canal crisis towards the end of the colonial period. Fifthly, a deliberate policy to colonise Africa by moving gradually from co-existence to control of the territory. Sixthly, to obtain cheap African labour that had to be forced upon the local Africans by moving them away from subsistence living. Finally, spearhead the abolition of slavery and this was undertaken in the background of the need to evangelise the world.

Other policies that developed during colonisation included, for example,
the need to pay for the costs of wars. Thus, the colonised world responded by providing soldiers like the African Rifles Division of the British Army as well as having its population taxed heavily by the colonial authority. Secondly, post-Second World War tax policies were influenced by demands of reconstruction of the war ravaged European economies. Finally, as the engine of wealth creation and economic prosperity. By the 1960s, most tax systems in the Western countries were on the verge of collapse as corporations had succeeded in perforating the tax system with the resulting shift of tax burdens to the poor.

Problems in existing legislation can arise from different sources new tax policy choices, changes in the economy, improved techniques of tax avoidance and earlier bad choices in policy drafting and administration. To ensure that the tax laws are able to respond to each of these problems, any finance ministry should undertake a continuous review of tax laws. With the attainment of independence in the 1960s, for most African states, this was an era of budget deficits, as governments consistently spent much more that they were able to rise from domestic sources despite their relatively high levels of taxation.

The notion of preservation was however, vague for several reasons. First, all colonial powers after 1918 put forward some sort of idea of a civilising mission which meant at minimum the abolition of customs and practices which were ‘repugnant to civilised standards’ (e.g., execution for witchcraft and forms of trial by ordeal). Some critics even wished to go further to eliminate polygyny, dowry and other practices. Secondly, the idea of trusteeship developed by the United Nations meant introducing such things as western education, medicine etc.; these inevitably eroded traditional culture. Thirdly, the problem of paying for these and other government services meant introducing taxation and revenue enhancement; this was inseparable from economic change, especially in areas where there had been only a subsistence economy. Finally, the policies of economic development also meant economic change and, inevitably, social changes. As a result, the opposite of assimilation was not non-assimilation or an absence of change; rather it was preservation of as much as possible of traditional society and culture. “Development along their own lines” was often the way it was described (Incidentally, this was also the rationale for apartheid—or “separate development”).
3.4.1. The Taxes

British application of tax law in the colonies resulted in high income and low returns back into the colonial economy, Lance E. Davis and Robert A. Huttenback\(^{38}\) state that the colonial Empire provides strong evidence for the belief that government was attuned to the interests of business and willing to divert resources to ends that the business community would have found profitable.

They further found that before 1885 investment in the British empire had a rate of return 25 percent higher than that on domestic investment, though later these two converged.

Andrew Roberts\(^{39}\) writes:

“[from] ... 1930 to 1940 Britain had kept for itself 2,400,000 pounds in taxes from the Copperbelt, while Northern Rhodesia received from Britain only 136,000 pounds in grants for development.”

Similarly, Patrick Manning\(^{40}\) estimates that between 1905 and 1914, 50 percent of Gross Domestic Product (GDP) in Dahomey was extracted by the French, and Crawford Young notes that tax rates in Tunisia were four times as high as in France.\(^{41}\)

British interest in East African began with the drive to abolish slavery. The failure of the Sultan of Oman to agree and enforce the abolition led to a blockade of the Coast and finally in 1824, Captain Owen on behalf of the British government received the full sovereignty of Mombasa, Malindi, Kilifi and Ngomeni. The British Crown Government under the following terms granted British protection to the then Sultan Mazrui. Firstly, that Great Britain would reinstate the chief of Mombasa in his former possessions. Secondly, that the sovereignty of the State would continue to be exercised by the chief of the Mazrui tribe and would be hereditary in his family. Thirdly, that an agent of the Protecting Government should reside with the chief. Fourthly, that the customs revenue should be equally divided between the two contracting parties. Fifthly, that trade with the interior should be permitted to British subjects. Finally, that the slave trade be abolished at Mombasa\(^{42}\)

This was the stepping stone for the commencement of taxation in East Africa by the British. At different times they applied different forms of taxation, all for different purposes.
3.4.1.1. Hut and Poll Tax

The 1901 Hut Tax Regulation imposed a tax of one rupee, payable in kind or through labour, upon every native hut in British East Africa. A subsequent amendment to the law allowed the tax to be levied specifically upon the owner of the hut. By 1910, other special provisions were added to the Native Hut and Poll Tax Ordinance to provide for the distress of property, or three-month imprisonment for non-payment of tax due. However, the direct taxation of land values in Africa has a close nexus with the large-scale alienation of land in the settler economy.43

Steady settler pressure resulted in an increase in the rate of hut tax or poll tax to 5 rupees in 1915 and again in 1920 to 8 Rupees.44 Subsequent African protests and unrest led to a reduction in the basic rate to 12 shillings, which remained unchanged for the remainder of the interwar period.

Collections of £100 or Kenya shillings 75,000 in 1914-5 increased to no less than £658,414 in 1921-22. Thereafter it settled back to an annual average return of £500,000-600,000. In addition, Africans played indirect taxes in the form of customs duty on imports that added another £200,000-250,000 to the tax bill during the 1920s. Raymond L. Buell has estimated that the total value of cash crops marketed by Africans in 1924 fell short of the total African tax bill by some £320,000.

The British Crown deliberately began the application of tax law in Kenya through the Hut and Poll tax by completely ignoring tax principles. One of the reasons for the application of this tax was to pull the African population into a capitalist labour market. The tax continued to play a major role in the labour system as a means of indirect coercion as well as a major source of state revenue. The tax weapon had the desired effect in forcing more Africans into wage employment, the Kikuyu ethnic group in particular responded to its pressure by entering the labour market in large numbers. Though some scholars believe this tax was introduced to induce Africans to work on European farms, in reality the hut and poll taxes were crude wealth taxes that also served as a proxy for property rating to rural areas.

3.4.1.2. Land Tax

The protectorate government in East Africa argued in early 190845 for preserving the means of obtaining some share of any future appreciation in the value of the land, particularly because much of the land acquired by
settlers was not being developed. Thus, when the Crown Land Bill was presented in 1908, it became the first legislation to propose the levying of a graduated land tax on individual holdings as a sound basis for land policy in East Africa.

The 1908 Bill defined important aspects of the new system of land taxation. Any Crown land lease rated at more than Kenya shillings 180 rent would be charged a land tax in addition to such rent at the rate of six cents for every 75 cents of rent. The Bill also provided that whenever any individual or corporation held more than 50,000 acres; the land tax would be increased by four times the amount that would otherwise be payable. Section 137(c) states further if an individual or corporation holding more than 100,000 acres should be compelled under penalty of Kenya shillings 325 per day to divest him of such surplus land.

The Crown Land Bill was rejected in 1908 because of strong opposition from the settlers. A subsequent proposal that eventually became the Crown Lands Ordinance in 1915 conceded to the settlers’ demands by deleting the provisions for land taxation. The 1915 Ordinance helped in shaping current land policy throughout the region: It helped the emergence of a land market by legalizing the free transfer and mortgaging of land. It also allowed land leases to be granted for 99 years, and rent reassessments at one percent and two percent of the unimproved value of the land during the 33rd and 66th year respectively. The Ordinance allowed the colonial government to promote the systematic registration of urban lands and the privatization of land rights throughout East Africa. Furthermore, it promoted commercial agriculture and urbanization that served as the catalyst for defining individual and private family rights to land in terms that are more exclusive.

In spite of its strong legacy, the 1915 Land Ordinance failed in one important respect, although occupiers were required to make improvements to the land within a specified period and to maintain such improvements after that, it did not include any provisions against speculative accumulation of land.

3.4.1.3. Graduated Personal Tax

The Graduated Personal Tax was introduced in 1933. The Act was modelled on the Colonial Income Tax Ordinance which itself was a ‘simplified synthesis’ of the United Kingdom Income Tax Act of 1920. Now graduated taxes on global income would have been considered revolutionary because non-Africans were liable to a flat poll rate and an Educational Tax. This tax
was applied for the first time in 1934 at rates graduated according to the taxpayer’s income with certain amendments. In addition, while this tax was in force, the former non-native poll tax, which was not graduated, was to remain in abeyance. It was assessed on every non-native male or female resident in Kenya.\(^{52}\)

### 3.4.1.4. Income Tax

When Income tax was first introduced in Kenya in 1921, it was severely criticised by the Bowring Committee\(^{53}\) and when a large proportion of taxpayers failed to pay, the Government chose to abolish rather than enforce the law.

This was not surprising considering that the first attempt to apply income tax in 1799 in Great Britain reached a similar end when Prime Minister Pitt established Pitt’s income tax on all of Great Britain (but not Ireland), which was a 10% on a person’s total income above £60 per year. It was to be paid in six equal instalments to finance the war against Napoleon. It established the principle of taxing income rather than expenditure. The reaction of the people was,

> This is a horrible war - the rapacity and greed of the Government go beyond all limits...it is now actually proposed to place A TAX ON INCOMES! It is a vile, Jacobin, jumped up Jack-in-office piece of impertinence - is a true Briton to have no privacy? Are the fruits of his labour and toil to be picked over, farthing by farthing, by the pimply minions of Bureaucracy?\(^{54}\)

This piece of legislation was introduced in the other East African countries of Tanganyika, Uganda and Zanzibar in 1949 with the rates, allowances and taxes being identical for all the countries.\(^{55}\) In 1952, a common legislation was enacted by the High Commission, which applied to the High Commissions Territories of Kenya, Tanganyika and Uganda.\(^{56}\) The duties of the Commission were limited to enacting legislation for administrative and general provisions excluding rates and allowances, which were left to territorial governments to legislate. In practice, however these tended to be uniform.

In 1952 the three Ordinance governing income tax- The Income Tax Ordinance 1940, The War Taxation (Income Tax) Ordinance 1940 and the War Taxation (Income Tax) (amendment) Ordinance 1941 were combined to what become known as The East African Income Tax (Management) Act 1952. In 1953 the Tea Ordinances of all three East African Countries of
Kenya, Uganda, and Tanzania were repealed. However, each government (colonial) reserved the power to fix the rates and allowances in each country. The East African Tax department administered the tax, which was under the East African High Commission formed in 1948. Tanganyika and Uganda joined in 1950, three years later, and the three separate Income Tax Acts for the East African countries were enacted.

In 1954, the rates of personal income tax were set at 20 shillings for anyone earning less than £60, for earnings between £60-120 a charge of 40/- and for earnings over £120 a charge of 60/-. In 1956, a Commission of Enquiry into the Administration of Income was established and was chaired by Sir Erick Coates. Its report was published in 1957. A similar follow-up report from the Select Committee on the Administration of Income which had been formed to look into and set out the nature and operation of the Income Tax Act. The 1958 Act was revised and renumbered to become Chapter 24 of the Laws of the East African Community in 1970.

3.4.1.5. Customs and Excise Duty

It became the chief duty of the British Governor to collect customs revenues and to issue passes to ships sailing from Mombasa. The customs tariff was fixed at 5% ad valorem tax on all items imported or exported by the people of Mombasa and double that amount for all other traders. This scale had been agreed between Captain Owen and Mazrui. In addition, passes were issued for one dollar each.

The world financial crisis of 1921-2 and the abolition of income tax in Kenya led certain experimental adjustments of the duties imposed mainly on luxury articles in order to maintain revenue. However, these adjustments were peculiar to Kenya and consequently interfered with the principle of a uniform tariff operating in the customs union of Kenya and Uganda they were found in practice to be unworkable.

Following the inter-territorial customs conference in 1922 the customs tariff, which survived with minor modifications and the changes made were as follows. Firstly, the extended application of specific rates of duty in place of ad valorem rates. Secondly, the application of heavy ratings to luxuries such as spirits and tobacco and a 30% ad valorem rate for other luxuries such as perfumes. Thirdly, the application of a low rating of 10% ad valorem rate to some industrial commodities and an extension of the list in the interest of industrial and agricultural development. Fourthly, the application of certain protective rates of duty. Finally, subject to the above,
a blanket rate of duty of 20% ad valorem.

As early as 1922, it was already stated that indirect taxation had been one of the most neglected subjects in the study of taxation in Kenya. The unavailability of statistical data on private consumption expenditure and all its ramifications, the unreliability of family budget statistics and the general belief that indirect taxes do less harm to production than direct taxes, might have indeed induced this attitude of indifference.\(^6\)

The introduction of the principle of protective duties followed the recommendations of the Browning Committee of 1922 and was directed to the industries believed to be suited to the colony. Those affected were bacon and ham, butter and cheese, ghee, sugar, timber, wheat and wheat flour. Other indirect taxes imposed by the colonial regime included the Licences, Stamp duties and game licences.

It was only in 1927 that the fiscal barrier between the Kenya, Uganda and Tanganyika was completely broken and a system of free transfer of imported goods was imported. The Excise Duties Agreements Ordinance of 1931, enacted simultaneously in the three countries, provided for the maintenance of identical rates of excise duties in these countries.

The first excise duty to be levied in Kenya and in East Africa was the Beer Ordinance (No. 5 of 1923) was imposed on beer. During the first year of its operation, the tax collected was only £425. The revenue from excise taxation became important only when sugar, tea, cigarettes and tobacco were brought into the tax net in 1931. In 1949 the Customs and Excise Revenues Allocation Act was enacted repealing the Ordinance (Cap 264). The Excise Tariff Ordinance of 1954 consolidated past legislations, as amended by the various Finance Ordinances.

The Customs Tariff Ordinance of 1958 brought about a complete revision of customs rates. It introduced a consistent pattern of rates by removing various anomalies, brought greater administrative simplicity and excluded most producers’ requirements. Most of the items liable to import duty were placed into one of the following categories: a general rate of 22% ad valorem, a general assisted rate of 11% ad valorem (which applied to those goods, which it was felt should pay some duty, but not at the general rate) and a protection rate at 30% ad valorem. In addition to the ad valorem rates were certain specific rates on goods such as spirits, tobacco goods, toilet preparations and piece goods.
In 1961, pools and betting on overseas horseracing was brought into the tax net in Kenya. A system of licensing pool promoters and their agents was instituted and all the pool bets were taxable at the rate of 10% of each bet. The Pools Ordinance (No. 11 of 1961) applied to all pools including fixed and betting pools. The Finance Amendment of the 1963/64 financial year placed a tax impost on the stake money for losing bets, and 5% of the winnings on the winning bets.

3.4.1.6. Reviews of the Tax System

The 1932 Moyne report looked into the call by many urging the replacement of both Hut and Poll Tax by a universal Poll Tax abolishing all payments because of extra huts. To obtain the same yield as from the existing taxes the new tax would have to be at a higher rate. The extra tax was to be spread over the Poll Tax payers so reducing the general average increase while on the other hand a proportion of the Hut Tax payers were women who would be exempt from poll tax.

A variant of this system adapted to Kenyan conditions was that proposed by Lord Moyne, consisting of a uniform adult male Poll Tax of 6 shillings plus a Cultivation and/or Cattle tax. It was seen to involve a great deal of extra work and expense in the collection of two taxes, of different amounts and differently accrued from the same individual. It would involve a double burden on the owner of a hut in a reserve who occupied himself in cultivation as compared with the man who went abroad to work.

Another issue that bedevilled this subject was whether the taxation policy should be used to force the Africans out from their resources to the employment market. The question whether taxation should be utilised in order to stimulate the supply of native labour force at one period formed a prominent issue of local politics. In the case of Kenya however, the administration did not impose the demand for taxation as strongly as did the Government of Tanganyika, and for some years the policy was acted upon by pressure from the Crown government.

In 1936 many official reports on taxation in Kenya despite being critical of the Hut Tax failed to suggest a viable solution. The Commission appointed to investigate the allegations of abuse and distress in the collection of various African and non-African direct taxes noted that the system of Hut and Poll Tax was not an equitable system of taxation owing to the individual payments now required instead of the family payments of the past. Sons did not help their families to pay as they used to and the result was that men
were often unable to pay taxes for their wives despite a very high proportion of exemptions of this account.\textsuperscript{66}

A commission was appointed in 1936 to enquire into and report on the financial position and system of taxation in Kenya.\textsuperscript{67} The report’s recommendations were as follows. Firstly, the system of native taxation required amendment by an extension of the system of grading, the reduction of the payment because of extra huts and the raising of taxable age. Secondly, the graduated non-native Poll Tax and education taxes should be abolished. Thirdly, traders and professional licenses should be modified and the levy on official salaries should be reduced by half. In their place, an income tax should be imposed including a basic minimum tax. Finally, that to guard against uncertainty of the yield from the proposed income tax in its early years, and from Native hut and Poll Tax to allow a gradual introduction of the proposed economies.

Another scheme\textsuperscript{68} under consideration in 1936 included a native taxation that would consist of two main taxes. A universal Poll Tax: payable to government as a contribution towards the general costs of administration including communications, major buildings and scientific research. And a rate to be assessed and levied by local native councils to cover the cost of all social services. The rate would have to be varied to meet local requirements.

As late as 1946, there were still discussions in government on the inequitable nature of the income tax and alternatives such as a land tax and cattle tax was discarded under the argument “too many novelties to the East African native to be acceptable to him”.\textsuperscript{69}

3.4.2. The Principles of Taxation

There are numerous examples of how the Imperial British State avoided and deliberately ignored certain principles of taxation. It has been argued that the principle of divergent economic policies was the reason for this provision and that an income tax structure based on agreed principles and objectives would impose constraints on domestic policy. Modification of substantive provisions of tax legislation would thus be required in order that the benefit and objective of common income tax legislation to reach fruition. British colonial policy rested on the policy of conversion of a territory into a viable economic entity.\textsuperscript{70}
3.4.2.1. The Principle of Equality

First, there was no consideration of the principle of equity in the application of tax law as the African communities were being dragged from a subsistence, communal system to a monetary and capitalistic economy where they were at best miserable and oppressed.

Secondly, in the post-war period, plans for African development were speeded up. When this happened, it was realised that the indigenous population must pay more for the Government expenditure incurred for their ‘benefit’. The problem was not only that of transforming “concealed saving potential” into useful investment but also of taxing the African citizens while considering their ability to pay.\(^{71}\)

Thirdly, from the point of view of equity graduated tax is payable by every adult of or above the apparent age of 18 years with no provision for exemption generally for women except for married women. There is no income qualification and no personal allowances with the result that every adult is liable to pay tax at the minimum prescribed scale. There was no logic or reasoning guiding or explaining the absence of allowances and hence it was inherently inequitable.

Fourthly, inequality in application of property tax. The relative importance of land value taxes as a source of public revenue is difficult to establish in Africa because only rough estimates exist for a few countries on an aggregate, nationwide basis. However, John F. Due’s 1963 observation is still valid: African property taxation, except for the European areas in Kenya, is almost solely urban taxation; nowhere is African-owned farm land subject to significant tax.\(^{72}\)

Finally, British policy. The native African lived in a subsistence economy and thus a progressive form of taxation regarded as an equitable form of taxation was not imposed because it would only affect immigrants with cash incomes. To obtain income it thus imposed the Hut Tax (payable in cash) on all African males who had their own huts, which traditionally included all males who had reached puberty, despite this tax not being equitable. Tax revolts were suppressed with bullets, defaulters had their houses burned down and were imprisoned if caught. Forced labour with low wages were thus viable as the labour force struggled to simply forestall these penalties.

3.4.2.2. The Principle of Certainty

The only certainty in the system was that the taxes would exist be applied at the whims of the colonial government and was liable to rise without reference
to the taxpayer. The payment had to be made in the currency of the British crown and the earlier system allowing payment in kind was wholly rejected, again to force the African into the labour market.

The indigenous African and the Asian settlers had no representation in the Legislative Council until the 1950s. Hence the taxes imposed were created, applied and enforced at the sole behest of the colonial government. Thus, there could never be any certainty on the amount of tax, the types, how they would be applied and for how long.

During the colonial period, social and welfare services for the non-white colonial subjects were almost non-existent. The few that existed and particularly those that we can faintly remember were those intended to safeguard the colonial integrity of the status quo: basic health services and recreational facilities, for instance, were provided in the work camps in order to ensure and maintain a high level of productivity of the labour force. In the same way, education was provided to equip the colonial subjects with basic skills necessary for the public administration of the colonial system and for the smooth running of the colonial extractive economy.

3.4.2.3. The Principle of Flexibility

The tax system applied was never created in response to the needs of the people that existed but instead to forcibly convert a subsistence economy into a capitalist one. In this endeavour, the colonial government was successful. However, the economy and its responsiveness to the taxation and vice versa was not allowed to balance itself, resulting in at best a sluggish economy.

3.4.2.4. The Principle of Economy

The British structural changes from coexistence to control meant that the rewards of collaboration had to be given a civilian context and stabilised, not only to satisfy their African allies but also the British people as well. For Africans had to be given the means to pay a hut tax. The crucial submission to this institution was partially ideological and outward. It was a visible sign that the African population had definitely accepted government control but it also quickly became the single largest component of the protectorate’s domestic revenue (4.5% in 1901-2 at nearly 29 percent in 1904-5). Chiefs had to construct roads with gangs of an unpaid Labour; markets were open for Indian traders whose wares were extolled by officers on tours, and improved seed from marketable crops was issued, paid for generally out
of chief’s tax commission, and sometimes out of official’s pockets. Thus, there was the need for regular sources of patrons and income to stabilise and legitimate colonial domination. This became a basis for rapid expansion of peasant commodity production in the years before the First World War. The legitimacy of the state was thus based on the income with which the ox cart of African tax could be accumulated.\(^{73}\)

In response to settler demands the hut tax was increased and a poll tax imposed to increase the natives cost of living, the taxation turned out to having a neutral effect it prompted a rise in domestic production as much as it stimulated wage employment, a deficiency settlers recognised, hence their periodic calls for tax remission for the employee. What the tax did was to introduce an immediate basis of differentiation among the Africans; the fortunate ones had land on which to expand production while the unfortunate had to provide the actual agricultural labour.\(^{74}\)

### 3.4.2.5. The Principle of Productivity

The most potent imperial metropolitan instrument of control was the superintendents of colonial finances, although this actually proved to be a two-edged sword. Metropolitan oversight of physical and budgetary matched each colony, was careful, continuous, and overall control was substantial although not necessarily exercised by the colonial office. The Secretary of State could not authorize grants to any colony without the permission of treasury. Any colony unable to meet the cost of administration, passed under the supervision of the treasury. It then examined the budget of debtor colonies and mercilessly pruned expenditures until it was satisfied that all possible economies had been made. After this was ascertained, finally, it would authorize a grant in aid, if the need arose.

This supervision continued until the colonial state could pay it and was no longer in charge of the British exchequer. By this practice, including a sanctioned reduction in official salaries, the metropolitan authorities were able to ensure that, without further direct supervision, colonial government had a continuing interest in sustaining a level of commodity production and trade at least sufficient to provide a tax base to meet the recurrent cost of the local state apparatus. By the interwar years, of World War I and II, the containment of a colony within the linkages of the imperialism was further ensured by the operations of the East African Currency Board and its West African equivalent, which regulated colonial money supplies and convertibility with sterling pounds. Furthermore, capital investment by colonial government increasingly had to be raised from private sources.
on the London money market, with the colony debt situation and credit worthiness carefully supervised by the Metropole. Expenditure on supplies and capital equipment were channelled through the Crown agents for the colonies. This made certain that British Finance and industrial capital captured most of the profits available from activities of colonial states.

However, the policy of fiscal self-sufficiency also worked to limit metropolitan control. It forced colonial states to rely on locally generated tax revenue thus increasing their dependence on indigenous production and trade. For the purpose of their own fiscal and production, colonial states had a vested interest in retaining internally as much of the revenue from the locally produced surplus product as possible, rather than having it transferred to the Metropole as trading profits. This involved the colonial state directly in the contradiction between metropolitan and indigenous interest, encouraging a degree of identification with the latter. In Kenya, the result was an intensification of the linkages between the settlers and state and its strong stance turned state economic policy heavily towards the defence of settler interests. The expenditure of substantial metropolitan sources on colonial development after 1945 broke the bounds of fiscal self-sufficiency and gave the Metropole growing control over economic policy in the colonies.75

3.4.2.6. The Principle of Neutrality

Trade was the major reason for the European nations to take over the administration of Africa. Sir Harry Johnston wrote on the commercial possibilities in 1902.76

...If every adult male native in these Protectorates paid 8s a year in taxation, there would be little, if any, need to resort to the Treasury of the United Kingdom for funds to supplement the cost of administration. There would also be no cause for the British taxpayer to complain if coffee or rubber, gold or ivory or all these substances combined, failed to provide a lucrative commerce for the British market. The Protectorate would then be administered purely in the interest of the black man. He at least, in the climate of the country wherein he was born, does not suffer from the diseases which afflict the European who attempts to settle in parts of tropical Africa; he at least is happy and content if he can maintain flocks and herds of cattle, sheep, and goats, and grow food-stuffs suited to his country and his palate... He can only earn money by working, say, for a month, or by collecting and selling rubber, coffee, or some
other saleable substance, which he can acquire without robbing other people; or he may breed cattle for the provision market, or collect oil which is sufficiently valuable to meet the cost of transport to the European markets.

However, this theory was never put into practice and the possibility of finally having a tax applying the principles of taxation that in turn never culminated in application of this system.

3.4.2.7. The Principle of Efficiency

The application of hut and poll tax improved with the growing efficiency of collection especially after local chiefs operating on commission were replaced by administrative officers as collecting agents. This introduced in 1920 an element of the principle of efficiency.

The government attempted to raise African taxes in the 1920s and introduced the Native Authority Amendment Ordinance, which empowered chiefs and headmen to order compulsory Labour of up to 60 days a year at wages below that of voluntary workers for the purpose of the state, especially for head porterage and railway, road and public works projects. This was in addition to the already existing African obligation of 24 days a year of unpaid communal Labour on local projects. The fact that exemption from compulsory Labour could only be obtained on proof of wage employment during three months of the previous 12, indicated that the key intention of the law was to threaten people with this type of work thus increasing the supply of Labour to White Settler farms. Thus the Labour circular, tax increases and the compulsory Labour ordinance constituted a combined effort to obtain Labour for settler Farms.

There are reports of dishonesty of tax collectors as early as 1826, when a tax collector appointed by the British government, was put under house arrest with rice, ghee, water and firewood for failure to pay back the final part of the money he stole. There were also many cases where traders simply refused to produce their accounts and receipts for customs duties paid. The traders were also quite free to request reductions on tariffs, for example there were requests to have tax on food reduced to 2.5% which was done however there were many other requests that were also denied, for example tax on oil seed and anchorage.

To better administer the territories in 1949, the East African High Commission amalgamated the Customs and excise Departments of the three
East African countries. In furtherance of this objective, 1949 also saw the creation of the East African revenue Advisory Board.

Primarily due to lack of money, the system used some African authorities for administration; the Lieutenant-Governor was declared to be ‘supreme chief’ whose powers were exercised by a handful of white officials and magistrates; the latter used ‘traditional chiefs and headmen’ to carry out the law, settle disputes among Africans, collect taxes, and provide labour which was the only form of acceptable payment of tax in kind.

3.4.2.8. The Principle of Simplicity

Lugard’s idea of ‘indirect rule’ was not a static one. He believed in changing and adapting— modernising, and he hoped to do this using traditional chiefs and rulers. First, that the chiefs should be gradually given more responsibility, especially in the handling of public funds. Secondly, that a portion of taxes collected could be retained in local treasuries to pay local officials and bureaucrats, fund local improvements and public works.

There was nothing simple about the introduction of a tax system where one had not existed before. There were constant and repeated refusals for many years by the local population. The taxes joined with the rest of the British policy led to a system where simplicity was not a consideration albeit if stumbled upon. Chiefs were given powers to collect taxes. This confused the people through adulteration of the existing culture and compromising of their leadership. It is frequently said today that the system became more rigid than Lugard had intended.

3.4.2.9. The Principle of Convenience

By requiring tax payments in British currency, the British distorted Kenya’s natural economy. It has been argued that, the taxation “forced upon the people the necessity of finding a regular sum of [British] money each year”. Since Kenya’s colonial economy was based largely on self-sufficient cattle farming and barters, the effect of the tax was severe. A large share of the population was unable to pay the tax out of their subsistence budgets. Many chose not to comply with the tax; others responded by entering the formal labour market.

Following the tax, there was a massive increase in male job search activity, but few jobs were available in Kenya. The result was massive emigration into settler areas like Nairobi and Mombasa. With poor pay for their work
relative to the costly “hut tax,” Kenyan men spent a large portion of the year working for the settlers.\textsuperscript{83}

However, the actual rate of exploitation of African labour in certain agricultural conditions of exploitation and physical oppression were not as much as expected. There is, however much contemporary evidence to show that the effort required in returning cash income was much lower than African agriculture and wage employment, despite the transfer of African regional distribution. The sector via land alienation and taxation took apart from the probably overriding consideration that the domestic production did not carry the same list of brutality, poor food, filthy accommodation, sickness in theirs as employment of certain states. Many Africans in this period were able to move from the sale of the produce to the sale of Labour.\textsuperscript{84}

4. CONCLUSION: TOWARDS A SYSTEM OF PRINCIPLED TAXATION

Tukur concludes that:
“... the taxes imposed by the British, far from being fewer, more rational and lighter than the pre-colonial taxes as was claimed by the British, were in fact more in number and heavier in incidence than the pre-colonial taxes, that many of them were baseless and arbitrary, some of them having as their primary purpose not the provision of revenue to the Colonial Administration and the Native Authorities, but the creation of a colonial economy devoid of an indigenous industrial base and geared towards the production and export of unprocessed raw materials. We have also seen.”

Tukur adds:
“... that throughout our period British Residents and Assistant Residents were very much involved in the assessment and collection of these taxes than people are led to believe by the theoreticians of “Indirect Rule”. \textsuperscript{85}

Economist Joseph Schumpeter has stated that fiscal systems are central to the political and cultural life of a nation:
The spirit of a people, its cultural level, its social structure, the deeds its policy may prepare --all this and more is written in its fiscal history, stripped of all phrases. He who knows how to listen to its message here discerns the thunder of world history more clearly than anywhere else.\textsuperscript{86}
Fiscal history remains at the periphery of mainstream historiography, not only in Kenya but worldwide. This analysis attempts to look into one part of Kenyan tax history that affected the national scope, reflecting Schumpeter’s conviction that taxes inform on nations and their development.

Kenya had developed at this point in time, through British colonisation, an extensive taxation system that maintains a reflection of Colonial policy. Entrenched in Kenya is a capitalistic economy that has almost no basic guidelines, rules or internationally accepted tax principles. This resulted in a tax system, highly dependant on import duties that today is spawning more problems in a globalising world that is looking to open borders and reduce tariffs.

Endnotes

2 http://www.quotegarden.com/taxes.html
4 See KRA website generally <http://www.kra.gov.ke>. There is a current drive to increase tax revenue currently in Kenya by widening the tax base and capture the informal sector within it. There is a study on this ongoing jointly with the Ministry of Finance, Trade and the Treasury.
5 Mitumba clothes in Kenya were raised to 60 shillings per kilo of clothes up from 20 shillings. Mike Mwaniki, ‘Naked Threat to Mitumba Dealers’ The Kenya Nation, 31st January 2005 at 11 There is interestingly no provision in the East African Customs Union Protocol to protect this industry in Kenya where 56% of Kenyans live below the poverty line.
6 www.ingentaconnect.com/content/bpl/ajes/2000/00000059/00000005/art00008 Nations of East Africa Chapter 16 at 1
8 Legal framework for taxation requires that the basis of taxation is clearly provided for under a country’s Constitution, the conditions for imposing taxes should be spelt out. Jurisdictions to levy taxes should be provided for (for example the assignment of tax bases between different levels of government), the rules on tax administration be fully outlined to regulate the relations between taxpayers and tax authorities as well as safeguard taxpayers’ rights (which have to be clearly defined).
9 In Tanzania, the Constitution is silent based on taxation, on assignment of tax jurisdictions, on the conditions to be met in designing and promulgating taxes, on the rights of taxpayers, and on the rules for tax administration. The recommendations in Table 1
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have not been defined to include the reform of the legal framework for taxation to address these specific shortcomings.

Cheesman, supra note 2, page 16.

See Eze O C, The Tanzanian Income Tax Act 1973: An Instrument of Social Change (1975) EALR 37 at 38 who also refers to the need to discuss East Africa when considering taxation matters concerning any one of the East African Countries.

He called these canons of taxation. See Adam Smith, An Inquiry into the Nature and Causes of the Wealth of Nation (Ed Edwin Cannan), New York, the modern library, pp 777-779.


This tends to be a problem specific to ex-colonies especially in the developing world as they obtained independence at times under tumultuous conditions and thus simply adopted in whole all or part of the legislation already existing that had been put into place by the colonizing state. In the case of Kenya the legislation was adopted wholly as the first act of the independence parliament at its first seating with the titles of Ordinances simply amended to read Acts of the Kenyan parliament and despite the last time they were ever amended these were written to have been created as at 1963, the year of Kenya’s independence.

Kenya has been colonised in part by diverse Arab and European nations.

Some form of land taxation was already present in the Kingdom of Buganda before Britain took over effective administration beginning in 1900. The Buganda Kingdom started as a small nation comprising a few counties—namely Kyadondo, Busiro, and Mawokota in the 15th century. The ruling elite, headed by the Kabaka (king) collected rent from all land-holding subjects of the Buganda Kingdom. This levy was an obligatory tax collected from each man who owned a homestead and was married. Thus, when the Uganda hut tax was introduced, it was clear that the concept of taxation was discernible to most Ugandans.


Ahmad 8, Supra note above, Pejovich 75

Gray, Sir John The British in Mombasa 1824-1826 1957 (Macmillan & Company, New York) 23

Supra note above 3.

Strandes, Justus The Portuguese Period in East Africa 1989 (Kenya
Literature Bureau, Nairobi, Kenya) 41
23 See note 9 above.
24 See note 8 above page 3.
25 See above note 10 page 108-110
26 See above note 10 page 96
27 See above note 10 page 269
28 See above note 10 page 23
29 Today’s Togo
30 Namibia
31 See www.fsmitha.com/h2/map02af.htm
32 See note above
33 Ayany, SG A History of Zanzibar 1983 (Kenya Literature Bureau, Nairobi, Kenya) 15
35 Hartle, 1968; Thoming, 1996; Korten, 1999
36 Thuronyi V, Tax Law Design and Drafting IMF 1996 at 3
37 African governments have come to rely more on direct and indirect taxes on production and expenditure and have, in the process, failed to invest in cadastral systems necessary to improve the taxation of land and improvements. See V. Tanzi, “Structural Factors and Tax Revenue in Developing countries: A Decade of Evidence,” in I. Goldin, etc. al. (eds.) Open Economies. Structural Adjustment and Agriculture (Cambridge, England: Cambridge University Press, 1992).
42 Supra note 10 page 39
44 16 shillings under the new currency then be introduced
46 Based on early communication between settlers in the East African region and the British Foreign Office, that dealt with the problem of unproductive accumulation of land.
47 That this Bill may have been influenced by the ideas of Henry George is shown by the following statement in Lord Harcourt’s dispatch to Sir Percy Garboard, the governor: “As to the proposal for a graduated land tax, it has been brought to my notice that of the land in the protectorate
for white settlement some 4,000 square miles has already been sold or leased and that it is estimated that only about 4,000 square miles still remain for disposal. You to be 1,200 state the present white population. It will be seen therefore that the idea of a large white population in the Highlands may be seriously prejudiced unless the government retains some means of restraining undue accumulation of land. The graduated land tax proposed in Lord Elgin’s despatch is, in my opinion, well designed to secure this object.” See Lord Harcourt’s despatch dated 3 February 1911 to Col. Sir Percy Giroward, the Governor, on account of the Rental Bill, Official Gazette of the East African Protectorate, 7th March, 1911.

Based on calculations by W. McGregor-Ross, Sections 137(a) and 137(b) of the Fifth Schedule to the Bill provided the basis for taxation. See Kenya from Within. A Short Political History. (London: Frank Cass, 1968), pp. 72-73. The colonial currency then in use has been translated into its present-day equivalents.

Ibid., p. 75ff.

Based on calculations by W. McGregor-Ross, Sections 137(a) and 137(b) of the Fifth Schedule to the Bill provided the basis for taxation. See Kenya from Within. A Short Political History. (London: Frank Cass, 1968), pp. 72-73. The colonial currency then in use has been translated into its present-day equivalents.

The Non-Native Poll Tax Ordinance, 1933 (No. XL of 1933)


Non-Native Poll Tax (Amendment) Ordinance, 1934 (No I of 1934)

Economic and Financial Committee, Chairman C.C. Bowring First Interim Report Oct 21, 1922


Legal Notice number 31 of 1953

Legal Notice number 30 of 1953. This notice also repealed the Coffee Export Duty Ordinance of 1945, the Cotton Seed Export Ordinance of 1946, and the Cotton Export Duty Ordinance Cap 37.

Legal Notice Number 32 of 1953. This legal notice also repealed the Pyrethrum Industry Ordinance Cap 272.

See above note 10 Page 75

See above note 10 Page 59

Economic and Financial Committee, Chairman C. C. BOWRING Interim Report October 21st 1922 p 236.

This measure produced about £ 18,000, a year in revenue to the Government


This is seemingly the first direct use of Adam Smiths principles of Taxation in creating a tax in Kenya.


page 59-60 and no known to the Thai Lebanon and style

*Supra* note above 78.

The Uganda Protectorate

A cooking fat made traditionally using butter

See above note 10 Page 126-129

See above note 10 Page 129-130


HCN 17 of 1949. See also note above at 523-524


*Supra* note above, page 59
