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THE COLONIAL TAXATION STRUCTURE AND ITS IMPACT ON THE LUHYA WOMEN OF BUSIA DISTRICT UPTO 1963

[1*] **Maureen Ajiambo Muleka & [2] Pontian Godfrey Okoth**

[1]**Masinde Muliro University of Science and Technology**

maureen.muleka@gmail.com

[2]**Masinde Muliro University of Science and Technology**

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ABSTRACT

Purpose of the Study: This paper sought to examine the colonial tax structure in Kenya up to 1963 and while only the men paid taxes, the consequences of taxation spared no one including the women. Therefore, this paper narrowed down to the effects of taxation on women using a case study of the Luhya community of Western Kenya specifically Busia District.

Problem Statement: A tax may be referred to as a compulsory contribution to the state revenue, levied by the government on income, business profits or added to cost of some goods and services and transactions. Taxation is one of the aspects that both the traditional and modern societies share although the modes of payment and methods of collection may differ quite much. A shift from traditional to the modern modes of tax collection in Africa and thus Kenya was facilitated by the coming of colonialism. Colonial governments across Africa levied various levels of taxes which impacted the indigenous people in various ways. This article was supported by Lesley Ogundipe's African Feminist theory which holds that women had an important role in the pre-colonial African society but the coming of colonialism affected their roles and generally deteriorated their status.

Methodology: Data for this study was collected using primary and secondary sources. Primary sources involved archival sources and oral interviews while secondary sources focused on an analysis of existing literature on the topic under study.

Result: The study found that, the colonial government in Kenya introduced various levels of taxes and that the introduction of taxation affected women despite the fact that it is the men that were the taxpayers. By studying these effects on the Luhya women of Busia District, the study found that women responded swiftly to the effects of taxation by quickly adjusting in various ways for the sake of their survival.

Conclusion: The study therefore concluded that introduction of taxes in Kenya affected the lives of women by changing their roles and generally deteriorating their status.

Keywords*: Women, men, colonialism, colonial government, status, tax, tax policy, Kenya, British*

INTRODUCTION

Pre-colonial African society can loosely be described as a communist/socialist society, with practically all properties were communally owned and all members partook in collective wealth (Kwatemba, 2015:3). However, in most, if not all ethnic groups, a portion of whatever output occurred was needed to be paid to the house of the ethnic's and community's leader. Parts of any harvest, whether agricultural produce, trading earnings or gifts, were included (Nyakwaka, 2013:47). Foreign and local traders, particularly those dealing in ivory and slaves, were all expected to pay tithes in order to pass through the territory of a given community (Kwatemba, 2015:3). Thus, there was often no taxation in the sense that it is known now, but there were remittances to the ruler in exchange for peace and security.

Warris (2007:5) notes that, the tithe was never more than affordable, and at times of famine, the chief of the community and the more successful farmers would distribute food to the community's famine-afflicted members. As long as there was food in the community, no one died of starvation, and tithes were paid on the basis of a share of production, using the notion of 'productivity.' The levy of a specific proportion of produce was used to support the economy. As a result, a 'simple' system based mostly on voluntary payment produced an administratively efficient and fair system.

The tithe was paid to the chief after a harvest, usually in the form of produce, making it both convenient and flexible (Kwatemba, 2015:4). A king would not demand too much because the payment was in the form of perishable things, and he would only take as much as he required. In the case of traders, this was based on the number of commodities being transported into or out of the community territory and was a fixed proportion levied by the warriors of the tribe who took the traders to the monarch to pay tribute directly. Warris (2007:6) further argues that there are no documented cases of traders being kept waiting for days or payment being refused, and so the ideals of efficiency and simplicity by accepting any form of payment, including in the items being exchanged, were followed. The notion of equity was utilized in the imposition of this type of 'passing right' tax; it was usually a fixed fee for passage across land based on the number of persons or the amount of commodities. However, inefficiency may have been demonstrated by the fact that the entire trading group was required to personally present themselves to the chief or king and pay his tribute. Finally, these various communal-based tax systems were, at best, exceedingly crude, unsophisticated, and operated on a limited scale (Kwatemba, 2015:4).

The interaction between Arabs and indigenous peoples along the coast is significant in terms of taxation in Kenya. Waris (2007:7) notes that the Sultanate applied a system of taxation that was a mixture of Islamic law as well as trade tax in order to maintain their presence at the coast. The locals were taxed using the Islamic law in the form of *zakat* (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), *jizya* (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), *sadaqa* (given for charitable purposes and is under no control whatsoever, is a source reliant on the charitable feelings of the Muslim giving it) and *khums* (a tax on assets redeemed by force and was a share of the spoils or war booty). These taxes were in addition to customs levy, capitation tax (a capitation is a head tax, tax on each individual) as well as harbour fees (Waris, 2007. p.9). Customs was charged on all goods taken out of the Sultanate and these included cloves, ivory and beads.

It is imperative to know that the taxpayers were divided in two separate tax bases, the citizenry within each Sultanate and the traders (Kwatemba, 2015:6). People practicing the Muslim faith were expected to pay the voluntary taxes in a manner deemed fit and the amount they felt adequate without state interference. The Sultanate concentrated on maintaining their coffers by trading levies of capitation tax and customs (Kwatemba, 2015:6).

The principle of simplicity in taxation was later introduced by having a harbour master who ensured that all taxes were paid. In this era, the amount due was a lower percentage of the value of the goods traded. Interestingly there were no allegations of tax evasion and avoidance tabulated in the time of Arab occupation of the coast (Waris, 2007:8). But with the coming of Portuguese occupation that was notoriously violent and wanted to hold and control the East African Coast as it was an important port enroute to and from India and the Far East. Their rule was characterized by oppression not only to the native African population but also for the Arabs settlers. There was failure to use equity in the creation and levying of taxes that witnessed riots punctuated with civil disobedience and outright tax evasion and avoidance (Waris, 2007:10).

By the end of the rule of the Arabs and Portuguese the existing balance of taxation inherited by the British was 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. British colonial tax policy developed mostly on the grounds that Britain needed to support its own economy by creating foreign markets and sources of raw materials for its industries, thus obtaining maximum gains with minimum input (Kwatemba, 2015:10). It is important to know that the tax history of Kenya from its commencement is inextricably intertwined with that of its neighbors Uganda and Tanzania due to a common colonial history.

According to Waris (2007:12), the British colonial tax policy developed during its rule in East Africa on grounds of, first, to prop up its own economy by creating foreign markets and sources of raw materials for its industries. Second, to locate and secure the source of the Nile for protecting British interests in Egypt from that of other European powers of the time which meant securing Lake Victoria and its environs. Third, 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? Fourth, 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. Fifth, it was a deliberate policy to colonize Africa by moving gradually from co-existence to control of territory. Sixth, to obtain cheap African labour that had to be forced upon the local Africans by moving them away from subsistence living (Waris, 2007:6). Restating the essence of colonial policy between 1912 and 1919 the Governor Sir Henry Belfeild expressed the prevailing attitude by saying in 1913 that he considered taxation as the only possible method of compelling the native to leave his reserve for the purpose of work as it was the only way of increasing the cost of living for the native (Aseka, 1989:302).

Other tax policies that developed during colonization included the need to pay for the costs of wars. The colonized world responded by providing soldiers like the African Rifles Division of the British Army as well as having its population taxed. The post-Second World War tax policies were influenced by demands of reconstruction of the war-ravaged European economies. Finally, taxation was used as the engine of wealth creation and economic prosperity (Kwatemba, 2015:3).

THE TAX STRUCTURE IN COLONIAL KENYA

Following the afore discussed reasons for the introduction of taxes, there were various types of taxes in colonial Kenya. These were; Hut and poll tax, land tax, graduated personal tax, income tax, custom and excise duties, Local Native Council Levies, war tax (Kwatemba, 2015:8). While not all of them applied to most Africans due to their economic status, the colonial government ensured that all males paid at least one or two of the above-mentioned taxes. In most places, the males were the ones who paid taxes but the tax system had effects on the women considering the fact that women were the bearers of the economy in the African traditional system. Although there were various types of taxes as earlier mentioned, women were mainly directly or indirectly affected by the hut and poll taxes.

Hut, Poll and Labour Tax

The British Crown deliberately began the application of tax law in Kenya through the hut and poll tax. Tax paid in money was imposed on males alone as women were not considered as productive people by the colonial government standards. According to Asiyo (OI, Karachuonyo 12/12/2021), women were grouped together with the children. In her experience as a social worker in the colonial period, she was not allowed to report on women as they were not considered as people. A good example is when she visited an African village in Kariokor, Nairobi to assess the state of health and the men had gone to work leaving behind only women. Her report was considered null and void as she didn't find 'people' in the village. It would take the colonial government years to separate women from children and consider them productive and taxable citizens.

The hut tax was imposed on African males in 1901 where they were to pay a fee for the number of houses in their homesteads (Nyakwaka, 2013:47). It was more or less like a 'wife tax', a 'property tax' imposed on men as women were considered to be owned by the men. On realizing that this exempted many males from tax payment, a poll tax was introduced in 1910. This type would ensure that all males above the age of sixteen paid a fee to the government (Nyakwaka, 2013:49). The colonial government through this tax, for obvious reasons, made a deliberate effort to create need for money among males who had previously not needed money to pay for the hut tax. Between 1910 and 1920, the amount of poll tax required had increased from 6 rupees to 16 rupees per person (Aseka, 1989:301).

In addition to the two taxes which were to be paid in cash, there was introduction of a symbolic taxation in form of communal labour. This type directly affected the women as it was compulsory to everybody including older men past the working age, women and children (Nyakwaka, 2013:49). Indirect taxes such as customs and excise duties as well as Local Native Council Levies were also paid by Africans. However, all these taxes would completely ignore tax principles.

The taxes were a double-edged sword. While the application of taxes was to pull the African population into a capitalist labour market it would also act as a response to the European mentality that Africans were lazy and idle. Imposition of taxes would therefore pull Africans from their farms in order to seek employment in European plantations and other public works, consequently earning money for taxes (Nyakwaka, 2013:48).

Tax continued to play a major role in the labour system as a means of indirect coercion and while it became a major source of state revenue. The state introduced a number of cash crops in the rural areas (Nyakwaka, 2013:48). In Busia District, cotton, coffee, simsim, groundnuts, wattle and millet which led to the commoditization of the African household economies in order for Africans to meet their tax obligations. The colonial taxation policy rested on the policy of conversion of a territory into a viable economic entity.

The introduction of hut and poll taxes in Busia District came in an unconventional way as explained by Oseno (OI, Samia, 10/09/2021). In order to deal with the problems (mainly plague) that were brought by the rats' menace in many parts of Kavirondo, the colonial government prompted all heads of households to bring 20 dead rats per house – some form of hut tax in form of rats. The males were faithful in bringing this requirement to the colonial officials which made the officials realize that Africans could easily be compelled into bringing something else such as taxes regularly. They tricked the chiefs into a census where they were able to get the number of all married males and registered them. Once the registration was done, they began to demand a hut tax from all the registered males. On realizing that they weren't maximizing on tax collection since many males were unmarried, they then registered all males of age 16 and above to pay taxes. This was the beginning of poll tax in Busia District (Oseno, OI, Samia, 10/09/2021).

The Colonial state legitimized its tax system in all parts including Busia District thorough the appointment of territorial chiefs who would be in charge of locations while head-men would take charge of villages. They took over the tax collection exercise from Swahili collectors who were banned from collecting after two government huts were burnt down at Bukusu as African response to the brutality with which the Swahili collected taxes (KNA, DC/NN/3/1, 17).

These chiefs were men who were 'nobodies' in their communities, yet the colonial state gave them both executive and judicial powers hitherto unknown in the communities (Nyakwaka, 2013:50). These new heads would be the ones to collect tax on behalf of the colonial government. The village was the unit of collection after which the tax would be taken to the district head, a European (Nyakwaka, 2013:50). Unsurprisingly, there were no colonial women chiefs or village heads. All tax policy makers would therefore be men and had little consideration for the impact of taxes on women. This situation cut across in all districts including Busia District.

The state vested the chiefs and the headmen with a lot of power over tax collection so much so that they misused it. They often collected more than the official amount and kept the difference to themselves. Women and men who could not pay taxes were whipped in public and their cattle confiscated, huts burnt, homes looted and women raped. Due to their crude ways of tax collection, the chiefs and head-men became very unpopular among their people leading to anti-tax protests witnessed throughout the colonial period.

It has to be bone in mind that the hut and poll taxes were crude wealth taxes that only served as a proxy for property rating to rural areas. For instance, the wealthier you were the more you paid. This kind of taxation was devoid of well-known taxation principles and key drivers since the motive was colonization and the ill-intended "civilization" drives (Mutemi, 2015:25). At a glance, one may argue that the key drive was to change African social set-up and economic models from communal/socialist to a more capitalist economy (Mutemi, 2015:25) which is why criticism of this tax arose early on.

In 1922, Sir Humphrey Legget, chairman of the East African section of Commerce, wrote to the colonial office in London criticizing the tax policy in Kenya (Nyakwaka, 2013:49). As he pointed out, the system was destroying the Africans' industry and setting them back every day as the tax system delimited African peasant accumulation. Taking an example of the Abaluhya, between 1916 and 1917 the hut tax was raised from 3 rupees to 5 rupees and a separate poll was made in Luhyia-land from 1918. This was being extorted against an average monthly wage of 5/99 rupees (KNA, DC/NN/1/1, NKD Annual Report, 1917, 12). At the close of the interwar period large sums of money were being collected from Luyia peasants in form of tax. A total of Ksh. 1,187,368/00, Ksh. 1,165,362/00, and 1,122,972/00 were collected as hut tax in the then North Kavirondo District in the years 1936, 1937 and 1938 respectively. A further Ksh. 20,000/00, Ksh. 24,553/00 and Ksh. 21,918/00 were collected as poll-tax during the same years respectively (KNA, PC/NZA/4/5/5, NORTH KAVIRONDO DISTRICT INTELLIGENCE

REPORTS 1936-1938). Therefore, it is not surprising that by 1932, Africans were paying more in taxes than they were receiving from colonial revenue. Indeed, the policy of direct taxation and other indirect forms of taxation removed adult males from production in their home areas (Aseka, 1989:302).

Sir Humphrey Legget advocated for a change of the colonial fiscal policies that would reduce African tax burden and stimulate production by spending money on the reserves. This protest partly led to the reduction of tax rates in 1922 from sixteen to twelve shillings (Nyakwaka, 2013:49). By 1936 many official reports on taxation in Kenya despite being critical of the hut tax failed to suggest a viable solution to tax woes in Kenya. The Commission appointed in 1936 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 (Waris, 2007:29). The recommendations from the Commission were; first, that 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. Second, the graduated non-native poll tax and education taxes should be abolished. Third, traders and professional licenses should be modified and 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 (Waris, 2007:29).

Some changes that came in 1952. 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 (Kwatemba, 2015:12). 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 (Waris, 2007:35). Three years later the three separate Income Tax Acts for the East African countries were enacted.

The indigenous African and the Asian settlers had no representation in the Legislative Council until the 1940s hence, the taxes imposed were created, applied and enforced at the sole behest of the colonial government (Nyakwaka, 2013:49). Thus, there could never be any certainty on the amount of tax, the types, how they would be applied and for how long. This attracted tax wars and rebellions among Africans and Asians as a way of showing resentment towards the yoke of new form of domination on the grounds of which they were expected to pay tributes to alien overlords (Nyakwaka, 2013:49).

It is however imperative to note that, although Africans were collapsing under the heavy tax burden, social and welfare services for the natives were almost non-existent. The few that existed and particularly those that one 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. 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.

Instead of creating a balanced economic and social state which could accommodate all, the tax system introduced an immediate differentiation among the Africans; the fortunate ones had land on which to expand production while the unfortunate had to provide the actual agricultural labour. The 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 (Waris, 2007:60).

IMPACTS OF COLONIAL TAXATION ON WOMEN OF BUSIA DISTRICT

The colonial taxation policies had various impacts on women in Kenya and the Luhya women of Busia were not exempted. Due to the pressure to earn money for taxes, immigrant labour became rampant. Most Luhya men went to seek better paying jobs in towns such as Kisumu, Mumias, Kakamega and Nairobi. Some men in Busia went across the border to Ugandan towns such as Jinja and Tororo to seek jobs (Kunguru,OI, Mundika, 9/10/21).

The concept of immigrant labour had various implications on the women. One main impact was that women in Busia whose husbands ventured into migrant labour were separated from their spouses and sons, who joined wage-labour to earn more money for taxes (FGD, Buyofu, 20/08/21). During the first twenty years of colonial rule, the separation from families, as men went out to work, was only for a few months, but this later became years. Colonial wages were so low that men could not sustain their families in the towns (Bujra, 1986:80). This implied that the men could not tag their wives and children along to live with them in the towns. At the same time the housing facilities in most of the colonial towns were in the slums where there was no water or sanitation facilities making them unsustainable for families. Mrs. Nasirumbi's husband had to leave for Mombasa to work in a cloth company leaving her and the children behind (Nasirumbi, OI, Mundika, 11/10/21).

Because men could not take their spouses to towns, a number of them engaged in personal liaisons with prostitutes. Prostitution was common in colonial towns because of the acute demographic imbalance of the sexes and the lack of wage opportunities for women (Nyakwaka, 2013:51). The colonial government had tried to control the practice by restricting the movement of women into towns. The price for these liaisons with the prostitutes was the spread of venereal diseases, reported in Nairobi and Mombasa in 1913-1914 (White, 1988:50). Women's health was jeopardized every time their husbands went home after a work contract in towns. This danger continued throughout the colonial period as men stayed away sometimes for up to ten years. Mrs. Otwani, a nurse in Busia District hospital testifies to this fact. Although she joined the hospital just after independence, she notes that this was a trend that had been around for a while (Otwani, OI, Nambale, 15/07/21).

A shift in social roles was another notable impact. The fact that men left home for wage-labour meant that women were left at home to take care of their families and put in more labour time in the farms, fulfilling men's roles such as clearing fields and breaking the ground before hoeing (Nasirumbi, OI, Mundika, 11/10/21) thus increasing the work burden. Women became de facto heads of the families. This, however, did not guarantee their freedom to make decisions as the men remain the 'legitimate' heads of homes even though the women did all the work. Although Nasirumbi's role shifted to that of the head of the family, she would still receive all instructions from the husband whom she would have to wait for sometimes up to three months. She was a de facto head with no power to make independent decisions.

In places where the men had reduced the number of houses in order to pay less hut tax, women would be bundled in one hut. This basically meant that the women had no privacy since two or three other women were forced to live in one hut in order to reduce the tax burden (FGD, Buyofu, 20/08/21).

When Lord Moyne called for taxation of women who held property in trust for their families such as widows even if they had passed the child-bearing age as they were in charge of the huts. This forced some women to directly start paying tax to the government a move that was opposed by Archdeacon Owen of the Young Kavirondo Tax Payers Association in the 1920s (Nyakwaka, 2013:52). He had called for the exemption of widows and old women but this was strongly opposed by the colonial state administrators, who argued that women owned most of the huts and to exempt them meant leaving a whole household from the payment of taxes. This therefore compelled groups of women such as widows to pay tax. This was observed more in Luo areas than Luhya areas of Busia District. The tax system therefore, generally deteriorated the status of women as Ogundipe's African Feminism Theory suggests that colonial systems were unfriendly to African women.

CONCLUSION

In conclusion, the colonial government in Kenya levied various taxes for various purposes. The males were the taxpayers since women were grouped together with the children. The impacts of the introduction of a new system were dire to all but the women were more affected as their roles had to shift. This shift generally lowered the status of the women. They therefore came up with coping mechanisms in response to the effects of taxation.

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