THE EVOLUTION OF LOCAL GOVERNMENT IN UGANDA: A LEGAL AND HISTORICAL STUDY, 1900-1962.

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ABSTRACT

This thesis is a study of the transformation of "Native Authorities" into local government bodies in a British Protectorate. The setting is "the Pearl of Africa", popularly known as Uganda. The study is concerned with British "Indirect Local Rule" and Administration from 1900-1962. Its prime interest is to detail Britain's colonial record and its legacy. It sets out the legal framework within which the indigenous political institutions were recognised and employed by the Protecting Power as "mouth organs" and agencies through which British Officers carried out their administrative, judicial and legislative powers; examines the transformation of some of the indigenous procedures and ideas about justice, taxation and local administration generally, and highlights the success or otherwise, as the case may be, of these reform efforts. To this end, attention is focussed on the evolution of local government units - the District Councils, the Chiefly system of justice, the local revenue system, and the central-local relations. The idea is, firstly, to present a lucid portrait of each of these institutions, and secondly, to appraise the Protectorate's Devolution policy and its ramifications vis-a-vis the development of "an efficient and democratic system of local government" before and after Independence.

It is found that the move towards democratic decentralisation was always, Government policy not withstanding, viewed with suspicion and occasionally impeded and blocked by officers whose main concern was the "a massing of revenue" and administrative efficiency. It is, indeed, arguable that the post-war emphasis on the Devolution of Power was, to some extent, incompatible with the general tenets of Imperialism and Colonial overrule.

It is interesting to note, however, that, since 1962, the Nationalists-led Administrations have, without exception, tended to view local autonomy in much the same way, and virtually, through similar spectacles as their British counterparts before them. They, too, have adopted a paternalistic attitude towards autonomous local institutions,and, as a corollary they have, so far, underdeveloped them. Yet, the absence of a viable system of local government has been, in the eyes of some discerning observers, the main stumbling block to many statecraft oriented programmes. It is argued that local government is the strongest link between the centre and the periphery and, that the failure to involve it in the processes of economic and political development is a flagrant waste of the nation's scarce resources. The belief that this is the case is rapidly gaining ground and, there are many positive signs, in the attitude of some government circles, that the era of the negative approach to local government is at an end. It is believed that the key to future policy is to be found in the development of "free and independent" local government institutions.

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CHAPTER ONE

1.1.1. THE BRITISH COLONIAL LEGACY

In the late 1950s, towards the beginning of the end of British colonial rule in Africa, the pro-empire lobby was concerned that "Britain's colonial record was too little known and too little understood", both at home and abroad. [1] It was felt that the anti-colonial lobby's propaganda was well publicised, but, that the Colonial Governments' good work was not, and were, therefore, most anxious "to clear away the clouds of misunderstanding and prejudice that [had] gathered round the very idea of colonial government", [2] and many were not unwilling to re-write the colonial record. To that end, the "Corona Library book series", the aim of which was"to present a contemporary portrait, at once reliable and attractive, of each territory" [3] was conceived and the first tome published in 1960, with a Forward by Sir Winston S.Churchill, the relevant part of which forms the basis of this introduction and reads as follows:

> "There has been no lack of critics, at home and abroad, to belittle Britain's colonial achievement and to impugn her motives. But the record confounds them.
>
> Look where you will, you will find that the British have ended wars, put a stop to savage customs, opened churches, schools and hospitals, built railways, roads and harbours and developed the natural resources of the Countries so as to mitigate the almost universal, desperate poverty. They have given freely in money and materials and in the services of a devoted band of civil servants; yet no tax is imposed upon any of the Colonial peoples that is not spent by their own governments on projects for their own good.
>
> I write "their own government" advisedly, for however much diverse conditions may necessitate different approaches, the British have for long had one goal in view for their overseas territories; their ultimate development into nations freely associated with the Commonwealth framework. The present state of the Commonwealth is the proof of the sincerity of this policy." 4

1. Churchill, Sir Winston, Spencer, Forward, Ingrams, H., Uganda, London H.M.S.O. 1960.
2. Ibid., p.1.
3. Ibid., p.1.
4. Ibid., p.1.

It is ironic that these platitudes were written by "the leader of the diehards of the 1930s" - the geralissimo of the most illiberal colonial policies of the interwar years - and one reputed to have said that he did not become "His Majesty's first minister to preside over the dismemberment of the British Empire".[5] Churchill's reactionary colonial policies and his unflinching loyalty to the minority white community in Eastern Africa are well documented and well known.[6] And so, too is his influence over British Colonial policy, over a long period of time.[7] By 1960 however, Churchill's tune and tone were rather different, and only his bitterest critics, with long memories would have doubted his sincerity. "For a more constructive phase in Colonial development"[8] was well under way: and a new

5. Emerey, Julian, interview on "Channel Four". End of Empire, 3.6.85. Indeed on his return to Downing Street, in 1951, Churchill was incensed by Labour's Colonial policy that he sought, unsuccessfully, to block the Gold Coast's progress towards independence. He believed that the Colony's achievement of independence would set a bad example, in West Africa and the rest of Africa. Despite this setback, however, Churchill remained unyielding. He thus, obstinately refused to accept that the British Empire was on its last legs, so much so that he secured the services of an architect to plan a more grand Colonial office and "took particular interest in the design, stressing the need for an imposing audience chamber in which the Secretary of State for the Colonies could receive the prime ministers and chiefs, princes and emirs of The Empire, together with their usually considerable retinues". Vide Brian Lapping, End of Empire, Granada Publishing, London,1985, p.16. This too, however, failed. The anti-imperialist forces were irresistible; the imperial brakes could no longer hold.
6. See for example, Bennett,G., Settlers and Politics in Kenya, in History of East Africa, Harlow,V., and Chilver,E.M., (Eds.) O.U.P. 1976, Vol II p.295; Wrigly,C.C., Kenya: The Patterns of Economic Life, 1902-45, in Harlow, Supra.
7. Winston Churchill's Parliamentary career spanned 65 years. He was a minister for over 25 years, holding most of the principal offices of state, including Admiralty, Air, Colonies and the Treasury. He served in the Cabinet of every leading statesman of his time and was Prime Minister for eight years and eight months - three months less than Asquith, the longest-serving Prime Minister in war and peace in this century. Vide, Sir Harold Wilson, A Prime Minister on Prime Ministers. Book Club Associates, London, 1977, pp 239-276. Thus Churchill's influence over matters colonial, can hardly be overemphasised.
8. Creech-Jones, A., The Labour Party and Colonial Policy, 1945 - 51, in New Fabian Colonial Essays, Creech-Jones,A., (ed.) The Hogarth Press, London, 1959, p.19.

African millennium was in sight. This - 1960 - was, after all, the year of Africa. The preceding decades had seen a bewildering succession of momentous events, including the rise of the Osagyefo - the Redeemer, (the African Napoleon), and the demise of the British Raj; some sixteen states became independent, sovereign states in 1960, and many more were soon to follow. The future of the Colonial peoples looked bright. Indeed, leaving aside Churchill's rhetoric flourishes, Britain's colonial record, particularly the decolonization programme was, at the time, more than remarkable.

The anti-colonial lobby had successfully challenged

> "the older notions of colonial possessions,had exposed, what abuses and exploitation it found in many territories, had analysed and spotlighted the squalid waste and human wretchedness in many colonies and had unsettled the public mind. The war cry of the Allies had been 'freedom' and 'democracy' authoritarianism and political domination had been denounced. The propaganda had been infectious and had spurred on the Colonial peoples to forego many of their immediate wants." 9

Moreover, "a Labour Government had been widely acclaimed as offering to the Colonies the prospect of a hopeful period of political advance, economic improvement and social welfare."[10] The wind of change was utterly irresistable; the evolution of the new Commonwealth was slowly, but surely, unfolding: some

9. Creech-Jones, op.cit. p. 19

10. That the Labour Party was critical of Britain's colonial record is well-known; that it was less expansionist is equally well-known, yet, some of its leaders were not always so disposed. Thus Malcolm MacDonald, the Labour Colonial Secretary in the British National Government of 1938, reassured the House of Commons in the following pro-empire terms:-
"It may take generations, or even centuries for the peoples in some parts of the Colonial Empire to achieve self-government. But it is a major part of our policy, even among the most backward peoples in Africa to teach them always to be able to stand a little more on their feet." Hansard, 7 December,1938, quoted by Michael Crowder,(Ed.) The Cambridge History of Africa,C.U.P. 1984,Vol.8.p.4. Worse, a decade later, Herbert Morrison, Labour's Deputy Leader, was of the view that to give African Colonies independence would be "like giving a child of ten a latch-key, a bank account and shotgun". Quoted by Brian Lapping in his, End of Empire, op.cit. p.15. Thus the rhetoric of some Labour Leaders has to be read with caution.

colonies, most notably, India, Ceylon and Ghana, strove for, and, as already mentioned, achieved 'Uhuru' in 1947 and 1957 respectively. "A few irreconcilables remained," [11] however. The old guard were still rehearsing and extolling the virtues of the British Empire and asserting, somewhat emphatically, that Britain was handing over power to "men of straw of whom in a few years, no trace will remain." [12]

Such arguments were, however, no longer tenable. It was the turn of the critics of the Empire to call the tune. They were, to vary the metaphor, on a winning wicket. The British Empire was slowly but inexorably coming to a glorious end, and its demise seemd to herald a new age.

Today, barely a generation on, and incidentally, one hundred years on since the Conference of Berlin in 1885, the promised millennium ushered in by the epoch making decolonization processes of the 1960s has not materialised. The cheering and the celebrations which greeted the nascent nationalist "redeemers" have long since ceased. The former have been replaced by sulkiness, sullenness and tears; the latter have, almost everywhere, been deposed and succeeded by the men in Khaki uniforms; and once again, the omens for the most of Africa are full of foreboding. And Churchill's critics can, mutatis mutandis, and with tongue in cheek, quote his celebrated, but ill-fated words, noted earlier, with approval.

> "Look where you will, you will find [the terrible trinity: disease, hunger and ignorance prevalent everywhere; you will find that most Independence Constitutions have been abrogated and replaced by home spun military decrees; that the hastily assembled political institutions have been jetisoned and the pre-independence fragile democracies dismantled; that the ballot box has been replaced by the barrel of the gun and, that the corridors of power are now thronged by the gens de guerre; the sergeants, majors, colonels and generals]. The present state of the [new] Commonwealth is the proof of the lack of that policy alluded to in Churchill's statement mentioned above." 12a

11. McIntyre, W.D., Colonies into Commonwealth, Blandford Press, London 1968, p.206.

12. Ibid. 206.

12a This is a rearrangement of Churchill's Forward quoted earlier.

The new regimes, like their colonial predecessors are largely undemocratic, extremely autocratic, repressive, paternalistic and are mostly based on brute force. So, what has gone wrong? Or rather more pertinently, why did sucessive British Governments, in Churchill's ardentia verba, "grant power to men of straw of whom in a few years no trace [would] remain."? Some of the answers are easy and suggest themselves, but others are not. The latter are hard to grasp, they are controversial and need unravelling, and that is the main task of this short introduction.

1.1.2. THE CONCEPT OF READINESS FOR INDEPENDENCE

That there is a direct correlation between British tutelage, or rather the lack of it, and the post colonial state of affairs in Africa is generally acknowledged. That, that state of affairs is a corollary andanecessary concomitant, however, is not always, rather astonishingly, appreciated, nor, indeed, generally accepted. The problem, in a nutshell, is purely semantic: it revolves around the colonial peoples "lack of preparedness" or readiness for independence.[13] The latest restatement of this problem runs as follows:-

13. See Dudley, B.J., Decolonization and the Problems of Independence, in The Cambridge History of East Africa Vol.8, Crowder,M., (ed). C.U.P. Cambridge, 1984, p.93.
Shaffer, B.B., The concept of preparation - some questions about the transfer of Systems of Government, World Politics, 1965, p.18.
Mazrui,A., Edmund Burke and reflections on the revolution in the Congo, in Mazrui, On heroes and Uhuru-worship : Essays on independent Africa. London,1967,p.3-18.
Cooper, H., Political Preparedness for Self Government, The Annals of the American Academy, July, 1956, Vol. CCCVI p. 71 - 77.
Cuning, E.B.B., Fitness to Govern - Letters to the Editor, The Economist, December 24. 1960 p.1306.

> "The global changes which followed the end of the Second World War made independence for the various African States inevitable. It might be argued, however, that though independence was inevitable, these States were little prepared to cope with the numerous problems which went with the granting of a Sovereign status. But such argument could be misleading, because of the ambiguity inherent in the notion of "preparedness". On the other [SIC] hand, the argument about lack of preparedness could be taken to mean that the colonial authorities, by their various policies, failed to create the conditions necessary for the assumption of Sovereign ty. On the other hand, the argument about lack of preparedness could be taken to mean that the African people were themselves unprepared for independence, implying that they were, in some sense, incapable of self-government." 14

Of course, "the notion of lack of preparedness could", in accordance with the humpty-dumpty principle, "be taken to mean" all that and, even worse. That is beside the point, however. The important question is whether the concept of preparedness can withstand such a construction and retain its original and true meaning? In other words: Does the concept of preparedness have a fixed meaning, or does its meaning vary according to the height, or, for that matter, the weight of individuals who, at any given time, are in the business of interpreting and applying it? That is the question.

Most of the argument shorn of its inference, is, of course, unquestionable. There is ample evidence to sustain it. That the "African peoples were not prepared for independence" in the light of the available evidence, few would deny: it is worth remembering that the indigenous "agitators" were excluded from Colonial Governments; many were kept in prisons or banished into exile; and few had ministerial experience on the eve of independence. That to date, their post colonial record has had no redeeming features is equally undeniable. That, pari passu, that means that they are "incapable of governing" is, however, untenable, partly because such an inference is a non-sequitur, and partly because it equates "lack of preparedness" with lack of ability to govern, and such reasoning would, if extended elsewhere lead to some absurdities. Thus, for example, Britain's failure to create the necessary conditions for the assumption of

14. Dudley, op. cit., p. 93.

Sovereignty, according to this thinking, would be attributable to Britain's incapacity so to do. Yet, nothing could be farther from the truth.

Worse, the inference at issue, can be criticised on other grounds. It is too personal and idiosyncratic. Furthermore, it begs the question as to why the Colonial peoples were "unprepared" for independence; and it is reminiscent of the 19th Century European table talk about the "Dark Continent" and all that; it dwells on the symptoms rather than the causes, and indeed, the whole argument is tautologous and circular. It also erroneously assumes that the existence of some sort of "preparation" policy, and that, the rhetoric to the contrary not withstanding, is far from clear.[15]

Did the Colonial office have a policy on the preparation of its charges for independence? Such a policy, if it existed was, until the eve of independence, a well guarded secret; one would need a micro-electronic microscope to find such a policy in the interwar years for example. True the idea of trusteeship envisaged, at some unspecific future date, some kind of self-government - dominion status - within the British Empire, of course, but that is a different matter altogether. Even here, however, the colonial policy makers were, until the early 1940s, rather reticent, indeed, even at this late hour, they needed some prompting from the "Allies", particularly the Americans.[16]

Be that as it may, some indication that the British Government intended to honour its trusteeship obligations was given by the Secretary of State for the Colonies in the House of Commons in July 1942. "We are pledged", he said, "to guide Colonial people along the road to self-government within the framework of the British Empire."[17] Some years later, the Colonial Office uncharacteristically, went public and made the same point in the following terms:-

15. Yet another ground for criticising Dudley's inference is that it is arbitrary, and as such may be said to be based on personal feelings, or even on whims, caprice or prejudice.
16. Louis, R., Imperialism at Bay, Oxford Press. 1977.
17. Cmd. 7167 (1947) The Colonial Empire,1938-1947 HMSO London,p.15.

> "The central purpose of British policy is simple. It is to guide the Colonial territories to responsible self-government within the Commonwealth in conditions that ensure to the people concerned both a fair standard of living and freedom from oppression from any quarter. But though the policy is clear enough, the problems to be overcome in carrying it out are numerous and complex. [18]

That, at any rate, was the theory; the practice as this study clearly demonstrates, was another matter, indeed, that much is to be gathered from the "policy statement" itself. And, assuming that that was the "agreed" policy - the man on the spot, not infrequently, had the last word on these matters - its execution would, for the reasons noted below, have required the skills of a tight-rope walker.

Furthermore, it would appear that these policy pronouncements were actually aimed at Asia, Ceylon and India, in particular, rather than British Tropical Africa. Thus Malcolm MacDonald, the Secretary of State for the Colonies, informed the House of Commons on December 7, 1938, that:

> "It may take generations, or even, centuries, for the peoples in some parts of the colonial empire to achieve self-government. But it is a major part of our policy, even among the most backward peoples of Africa, to teach them always to be able to stand a little more on their own feet." 19.

So far, so worse, what is worst, is that this statement was actually made to placate the minister's critics, and not as a statement of policy for immediate implementation. It sets out the Government's long term policy objectives. Indeed, it envisages, in the case of Africa, an almost illimitable period of continued trusteeship. Self-government was reckoned in terms of centuries; independence, not at all. This sheltered calm, however, did not emerge from the 1939-1945 European barbarous war unscathed. The war's impact on the political and constitutional developments in the colonies can hardly be over emphasised.

18. Cmd. 7433 (1948) The Colonial Empire 1948 HMSO London p.1.
19. See, Hansard, December 7, 1938.

It "awakened new hopes, released new influences of "freedom" and "adventure", "new adjustments in tempo, relations, and purpose", ushered in "a more constructive trusteeship", and thus brought "new conceptions of the responsibilities and functions of government" in the forefront of British Colonial policy. As a Colonial Office chronicler put it, "the war had a profound effect on political growth in the colonies", the Colonial Office and the empire generally. It brought in a "flood of adverse criticism"[20] which, in turn, begot a plethora of counter arguments and so was born the so-called "preparation" theory of which the following excerpt will serve as an example.

> "Reference has already been made to advances in local government in certain of the African Territories. The encouragement of local political interest and the building up of a system of efficient and democratic local government is a cardinal feature of British policy in Africa. It is now recognised that the political progress of these territories is dependent on the development of responsibility in local government, that without sound local government a democratic political system at the Centre is not possible, and that, if social services are to be built and expanded, there must be efficient organs of local government directly representative of the people to operate and control them. Everywhere, local government bodies are assuming larger financial responsibility and playing an increasing part in the control of local services such as primary schools, road construction and maintenance, sanitation etc. Local civil services are being organised and trained, and in these and on the native administrations themselves younger and better educated men are increasingly making their presence felt. Indirect rule has become more elastic, with the people exercising greater responsibility and the System adjusted to carry new duties and strains. In all the African Territories this evolution is proceeding under the guidance of the district staffs .... The basis of sound local government is being laid and the African people are slowly manning the positions of trust in local services and in Government itself." 21.

In fact, much of this was no more that a regugitation of Creech-Jones' despatch on local government much of which had yet to be implemented in almost all of the African Territories. Besides, it is one thing to formulate a policy, it is another to carry it out.

20. Cmd. 7167 (1948) London. H.M.S.O. p.15.
21. Cmd. 7167 (1948) ibid., p. 37.

It is also important to remember that the "Colonies [were] not governed from Whitehall". [22] The Colonial Secretary, in spite of his enormous constitutional powers, could not impose his wishes on the unwilling nabobs of Colonial governments in Africa. Creech-Jones, the Colonial Secretary in the 1945-1951 Labour Government justified his failure to implement the Labour Party's Colonial policies in the following terms:

> "Before we discuss the work of the Labour Government we should be clear as to what is meant by 'Colonial Policy' and whether, in the light of British Colonial practice, Socialism can be applied in the Colonies by London. In theory, the Secretary of State ... can exercise full authority over a dependency .... In practice, though little used, powers of delay, reservation and disallowance are preserved in the Governor... The Governor is the Servant of the Secretary of State, however, much he may serve his Executive and legislature: normally he exercises great influence in the territory. But the British Government is reluctant to impose its will or policy on the local inhabitants and therefore the Secretary of State generally proceeds in a territory by persuasion and consent.
>
> Thus in practice, a Socialist Secretary of State is limited in his exercise of authority. His powers to export "socialism" to a colony are very limited." 23

Additionally, it should not be overlooked that British colonies were of "infinite variety and that ministers in London [could] not readily ignore their characteristic features", [24] nor indeed, the advice of colonial governments. Thus, the working out and application of policy [depended] indisputably on "the man on the spot". [25] It follows, therefore, that whereas London could propose, the Governor, and for that matter the district officer, some three hundred miles away from the Colony's capital, could dispose. And, invariably did. This of course, does not discount the existence of some sort of "preparation" theory, it merely goes to show that that policy, if such existed, was not easy to execute; and partly explains why such broad policy statements were rare in the interwar years.

22. Cmd. 7433.ibid. p. 3.
23. Creech-Jones, A., The Labour Party and Colonial Policy, 1945-51, in New Fabian Colonial Essays. A.Creech-Jones (ed). The Hogarth Press, London, 1959 20-21.
24. Ibid. p. 21
25. Ibid. p.24.

Moving from the general to the particular, the devolution of power in Uganda, the first clear intimation appeared in 1954, barely six years before the arrival of self-government, does not tally with the existence of the "preparation" theory. Uganda's count-down to independence is instructive. The plan for the Protectorate's move towards self-government was announced on the 23rd February, 1954. The Colonial Secretary told the House of Commons that "the long-term aim of H.M.Government [was] to build the Protectorate into a self-governing State", and rather ominously added that "when the time for self-government eventually comes, H.M.Government will wish to be satisfied that the rights of minority communities .... are properly safe-guarded in the Constitution." [26]

Shortly afterwards, in accordance with this clear statement of policy, the Governor announced that he was "anxious that members of the public should be more associated than they are at present in the formulation and execution of policy", [27] and proceeded to make some changes regarding the Executive and Legislative Councils of the Central Protectorate Government "as an immediate step forward to implement H.M.Government's policy of constitutional development" for the Protectorate as a whole. [28]

Subject to the approval of the Secretary of State, the Governor proposed the introduction of a ministerial system of government. The Executive Council was to consist of 14 members: nine officials, six or seven of them with Ministerial status: seven members of the public of whom five would be Africans, were to be invited to join the Government and to sit on the Government side of the Legislative Council: of these five Ministers, two - one African and one other - would have full executive responsibility under the Governor for groups of departments.

26. Cmd. 9320 (1954) Uganda Protectorate: Buganda. p.17.
27. Ibid., p. 17.
28. Ibid., p. 3.

Additionally, there were to be two African Parliamentary-Secretaries. The Legislative Council was to be slightly enlarged, to permit increased African representation for Buganda, Busoga and one other district yet un-named.[29] These changes, the Governor hoped would lead to "a responsible Government answerable to an elected Legislature of the whole Protectorate," [30] he also expected them to remain un-changed for the next eight years. He thus wrote:

> "In order that a period of stability may be secured for the country, I would propose that no major changes in the above Constitutional arrangements should be made for six years from the date of the introduction of these arrangements, if approved by H.M.Government, and that; assuming these arrangements are introduced in 1955, the position should be reviewed early in 1961, with a view to introducing any changes that are then agreed at the beginning of the life of the new Legislative Council which will come into being early in 1962." 31

The Governor's "preparation" plan thus envisaged a long period of political education, a period long enough to enable the new peoples' leaders to learn the rudiments of "Self-goverment" within the British Empire. This, as it happened, however, was not to be; fate ordained otherwise. Unfortunately, or fortunately, depending on your point of view, the Governor's proposed training programme was sabotaged, and mortally wounded by external forces and his disengagement plan telescoped and squeezed into a few years rather than centuries as originally conceived. The controlling power, in the face of internal and external pressures and criticism, cut and ran, leaving the uninitiated raw probationers to complete their political education without their colonial masters. The "guidance" began and ended with the first lesson: 1957 saw the first general elections, 1961 ushered in "self-government", 1962 brought political independence and thus brought both British tutelage and British Colonial rule to an abrupt end. That these changes at the Centre do not entirely support the "preparation" theorists, is self-evident; that they were too little and too late is equally trite, and can hardly be over emphasised. Such, however, was the preparation for

29. Cmd. 9320 (1954) Appendix B: Statement by the Governor.
30. Ibid., p.17.
31. Ibid., p.19.

independence. The action taken in the realm of "local government", the development of which was "a cardinal feature of British policy in Africa", [32] and which provides much of the substance of this thesis, is equally revealing.

The record tells of attempts to transform "Native Authorities" into "Local Governments", on the Westminster model, of course, the development of "Native Councils" and the maintenance of law and order, the financing of British local and central administrations and clearly shows, despite the official rhetoric to the contrary, that there was no co-ordinated "preparation" policy, that that policy, if one existed, was unstructured and unenthusiastically implemented; if anything it was sacrificed at the altar of "efficiency" which though understandable, was, in many ways, diametrically opposed to the policy under consideration. It effectively denied the people to have "a hands on" experience of "self-government"; public participation in local government was, as in the case of central government, introduced in the last few years of colonial rule; and even then, district councillors had no policy making powers, they were simply central government policy executioners. In sum, Native Administration, or Indirect Rule as it was sometimes called had nothing to do with the colonial peoples' advancement towards political independence, let alone "self-government"; at any rate, not in the 19th Century.

> "Ask different officials", wrote one shrewd observer, "what is [Native] Administration? And you will get different answers .... The general idea will be that it is to hear cases and to get revenue for the Government". 33

The colonial authorities thus did not "prepare" their charges for independence. The most revealing testimony of this, however, lies barely hidden in the non-existence of an education policy in the interwar years; unless, of course, that ipso facto, was the policy itself!

32. Cmd. 7167 (1948) p.37.

33. Stiand, C.H., Administration in Tropical Africa Up to 1914, London, 1914, p.60. quoted by Shaffer, op.cit. at pp.59-60.

1.1.3. SOME COLONIAL DILEMMAS

The importance of "Native education" vis-a-vis the "preparation" theory is undisputed, indeed, it was a pre requisite and, by all accounts, should have been its core and its essential ingredient, but, alas! it was neither - it did not form part of it. In fact, "Native education" was, for the most part of colonial rule, the exclusive preserve of the Mission Societies [34] - the Colonial authorities were otherwise engaged. The reasons for this are not far to seek; a cursory glance at the origins of British Colonial rule in Africa is illuminating; the motives were selfish rather than altruistic in nature. It is of vital importance that this background is properly understood, by all the parties engaged in this debate, for herein lies the criterion against which the policy under consideration should be tested; the basic assumptions behind some of the main arguments for and against the policy are based and derived from this background. The vexed question is: Why did the British venture into tropical Africa? The simple answer, to this singularly enormous question and, one which is usually de-emphasised, is that the British went to Africa in search of raw materials and, markets for their wares and manufacturers and nothing else. In turn, this led to slave trading and the "Scramble for Africa" and the Conference of Berlin, in 1885, a little over a century ago, and so began the British Tropical African Empire. Again, it is pertinent to enquire what caused the Scramble for Africa? [35] Again, interestingly enough, the reasons for "scrambling" had nothing to do with Africa's interests - the scramblers were solely actuated by national interests,

34. Cmd. 2374 (1928) Education Policy in British Africa: Memorandum submitted to the Secretary of State for the Colonies by the Advisory Committee on Native Education in the British Tropical African Dependencies, p.3. In part, the Memo randum states: "As a result on the one hand of the economic development of the African dependencies, which has placed larger revenues at the disposal of the Administrations, and on the other hand of the fuller recognition of the principle that the controlling power is responsible as trustee for the moral advancement of the native population, the Governments of these territories are taking an increasing interest and participation in native education, which up to recent years, has been largely left to the Mission Societies".

35. See, for example, McIntyre op.cit, passim.

viz, prestige, commercial and strategic considerations. Yet the advancement of commerce, christianity and civilization was given as the raison detre for scrambling. And such has been the propaganda that to suggest otherwise is, in certain quarters, tantamount to sacrilege. A close examination of the relevant literature however, suggests, that the motive for "Scrambling was European and not African centred - Africa was merely a stage on which European rivalry and power games were played out. The dramatis personae, to continue the metaphor, of scene one were commercial companies in the pursuit of "a quick buck" for their shareholders: Carl Peter's Society for German Colonization, 1884; Sir George Goldie's Royal Niger Company, 1886; Sir William Mackinnon's Imperial East Africa Company, 1888; and Cecil Rhodes' British South Africa Company, 1889, are examples of such pioneering companies; and all had one feature in common, the paramount importance of the company promoters' interests. The "private commercialism" [36] of the Congo International Association and the exploitation of the "Congo Free State", now the Republic of Zaire, vividly illustrate the companies' modus operandi.

It is often alleged, however, that one of Britain's motives in granting charters to private entrepreneurs was the advancement of civilization including christianity; and that her subsequent entanglement in tropical Africa is the proof of that policy objective.[37] It would appear, however, that, that too, is a post facto rationalization, for the old empire building heroes were, at times, at a loss to find their way in the African jungle.

Thus in 1890, Lord Salisbury, "who was responsible for adding more colouring to the map of Africa than any one", told the House of Lords that:-

> "We have had a fierce conflict over the possession of a lake whose name I am afraid I cannot pronounce correctly ..... There are indeed great doubts as to whether it is a lake at all or only a bed of rushes." [38]

36. Hobson, J., Imperialism, London 1902, quoted by McIntyre op.cit.p.253
37. McIntyre, op.cit p. 146
38. Quoted by McIntyre, op.cit. p. 252.

Here, the main interest was to raise the Union Jack on one of the "rushes", or the nearest molehill, declare the area British territory and, at once and for all, exclude the other European rivals. In this scheme of things, the interests of the indigenous people were, more often than not, of secondary importance, and it is against this background that British tutelage, and per force, Britain's colonial education policy or rather the lack of it, must be discussed. Clearly, if the spread of civilization was the prime mover of British imperialism in Africa, a liberal "native" educational programme would have been, most naturally, its handmaiden; if not, its pith. Yet, as noted above, and as the following material shows, the colonial governments in "British Tropical Africa, did not, for a long time, have "an interest in native education" which up to the 1930s was in the hands of missionary bodies. [39] Indeed, the Colonial Governments had no policy on "native education". The first tentative steps towards a common colonial educational policy were made in November 1923 when, the Duke of Devonshire, the Colonial Secretary, established and detailed an Advisory Committee:

> "To advise the Secretary of State on any matters of Native Education in the British Colonies and Protectorates in Tropical Africa and to assist him in advancing the progress of education in those Colonies and Protectorates." 40

The Advisory Committee spent the next 18 months, "engaged upon the examination of educational activities in all the Colonies", particularly Ghana, Nigeria and Uganda and submitted its findings to the Secretary of State, in March 1925; and, having come to the conclusion that the time was long overdue for "some public statement of principles and policy" for the guidance, inter alia, of the "missionary bodies who are playing such a large part in educational activities", [41] the Committee recommended the establishment, in each Dependency, of "Advisory Boards of Education, Educational Committees, a System of grants-in-aid, a thorough System of inspection and supervision; Elementary, Secondary ; Technical and Vocational Schools and Institutions" of higher learning, and advised the Colonial Secretary accordingly [42] and urged him to publicize these suggestions" forthwith as a Parliamentary Paper ... as there

39. Cmd. 2374 (1925) op.cit., p.3.
40. Ibid., p.2. (Terms of Reference)
41. Ibid., p.12.
42. Ibid., p.3-7.

is growing interest in the problems with which it deals in Parliament and in educational circles in this Country as well as in Africa." [43] So, "Native education", which under normal circumstances would have been the key to the "moral advancement of the native population", [44] and arguably a pre requisite of the so-called "preparation" theory, was still in an embryonic state in almost all of the British Colonies in Africa in 1925. The position in Uganda, described below, was not un typical.

> "Education in this country is carried out by the various missionary societies who receive a small Government grant for this purpose. There is little or no co-ordination between the various Societies and the standard of education is low. There is no doubt that the time has come when there must be formulated for Uganda, a definite educational policy. There is nothing of the sort at present, and except in regard to technical training at the Government College of Makerere, we have cast the whole burden of responsibility on the shoulders of the missionary bodies in consideration of some moderate financial grants. It is an economical method, of course, but I am not sure whether it is justified. The missionary bodies, without any co-ordination between the various denominations are turning out vast numbers of children all over the Country with only the most rudimentary knowledge which can be of no practical advantage to them after life." [sic.] 45

The excerpt speaks for itself; it needs no explanation, save to say that it enlisted a favourable response from the Government of which the following extract deserves mention:

> "While splendid work has been done in the past, and is now being done by the missionary societies ... the arrangement as it stands, is by no manner of means adequate to the educational requirements of the Country. Too long, indeed, has government, owing to financial limitations shelved its responsibilities in the matter of native education. It is the opinion, unanimously held that Government must enter the educational field and set up without further delay an educational department. Fortunately, the present finances of the Country permit of such action: the money can be found from the £50,000 which was hypothecated as an annual charge from

43. Cmd. 2374 op.cit. p.3.
44. Ibid., p.2.
45. C.O. 536/134/27292 Report on Native Education.7.6.1924

> which to meet war liabilities - an obligation from which we are now temporarily released." 46

Indeed, the provision of education by the missionary societies, left much to be desired and can be criticised on several grounds. Not unnaturally, it was too catechetic, too liberal, and for reasons beyond their control - too under financed - and was, therefore too pre-occupied with literal skills so that the catechumen could imbibe the lessons of the Bible and the Songs of Praise; incidentally, the bulk of indigenous Roman Catholics were not allowed to read the Bible; in those days, the Bible was one of the books on the index liborum prohibitum! Some of these converts went on to become colonial government clerks interpreters and territorial chiefs and with that, the Colonial Governments were well satisfied - that was all they needed.

> "No large demand for technical skills was envisaged, owing to the conception of the colonies as purveyors of raw materials and food stuffs produced by uneducated peasants. Adapted to the purposes of forming clerks, ministers of religion and letter officials, the educational institutions in Colonial Africa laid stress on literacy studies, and neglected industrial and commercial training, not to speak of the agricultural, shunned by everybody and stigmatised by the notion that anything to do with the cultivation of the soil is fit only for a poor and illiterate rustic." 47

These strictures were confounded by the official attitude towards "an educated African", a euphemism for a "westernised" non-European. Such a "native" was not infrequently looked upon with some suspicion and was invariably regarded as a "nuisance" and a potential trouble-maker. Thus, for example, Dr. Akiiki Nyabongo's academic reference, from his tutor at Queens College, Oxford contains the following passage:

46. C.O. 536/134/27292. op.cit. Governor to Secretary of State.
47. Andreski, S., The African Predicament, Michael Joseph, London, 1968, p.204.

> "There is no doubt that he is an intelligent and pleasant person. Some idea of what goes on in his brain beneath his black woolly hair can be had from his books. The one which I have read : "Africa Answers Back" is a curious defence of polygamy. He is probably clever enough to be useful as a friend and a nuisance as an enemy, and I hope that, your advisers will consider his request for employment carefully." 48

In similar vein, is the following extract from The Report on the Committee on Police Terms of Service, 1942, quoted by Mugo Gatheru, in his "Child of Two Worlds" ; it reads:-

> "The evidence submitted to us indicates that, in general, the illiterate African makes a better policeman than a literate African. The latter is less amenable to discipline and is reluctant to undertake the menial tasks which sometimes fall to the lot of the ordinary constables. That being so, it seems to us that the policy of recruiting literates should be pursued with great caution, and that no special inducements by way of salary are necessary. In fact, we venture to go so far as to recommend the abolition of literacy allowance for new entrants." 49

The legacy of this policy, to the post-colonial law and order agencies, particularly the police and the armed forces, is too well-known to be rehearsed here. Suffice it to say that it is yet another nail in the coffin of the so-called "preparation" theory. The effect of all this, of course, was that the Colonial Governments could not, even if they wanted to, "prepare the illiterate natives" to operate the semi-English political and economic institutions without an English operators' manual in hand - an English education, which, as noted above, was at a premium. Even those who could afford to send their sons abroad in search of that illusive commodity, were not always successful, however. Their aspirations and good intentions were, through sheer prejudice and bigotry, not always understood and were occasionally deliberately misconstrued.

48. C.O. 536 / 214 / 40005/38. Rev.John Wilson to Secretary of State.
49. Mugo Gatheru, Child of Two Worlds, Heinemann Educational Books, London 1973, p.94.

> "There can be no doubt that, in their present state of development, it is very undesirable for natives to come to this or other countries for education. On the other hand, as the Governor points out, it is difficult, in view of the absence of educational facilities in Uganda, to refuse permission - altogether." 50

Why, it may be asked, was it "undesirable for natives to come to this or other countries for education"? There were, in fact, many reasons for this; firstly, many officials felt that "the granting of such an honour to young men [was] likely to render them less amenable to advice and instruction on their return", [51] secondly, others were "anxious to limit to this Country the exodus of these youths"; [52] thirdly, it was thought by some, that "in many cases", the desire for foreign travel was actually, actuated by some base non-academic considerations. Thus Gowers told the Secretary of State for the Colonies that:-

> "A second point, which must be clearly understood at the outset, is that the motive which stimulates young men from this Protectorate of the age of 18 - 30 years to visit countries outside Eastern Africa is, in many cases, not the desire for a high education and improvement of the mind and character by study, which is usually alleged.
>
> Mr. Cannon Weatherhead judged George, the son of Mukama of Toro and Omulagira Suna who stayed with him for one year in a report to the Governement thus :
> "In my own mind there is no shadow of doubt that those two young men's thoughts in coming to England were set first of all on new sexual experiences with English girls." 53

Accordingly, the Secretary of State was, owing to the absence of local institutions of higher education and in view of the fact that it was difficult to refuse to issue passports to these youths, advised that:-

50. C.O. 536/119/3310. Conf. of 30.5.1922. Natives Proceeding Abroad for Education: Bartterbee's Minute 13.7.22.
51. C.O. 536/139/3287. Education of Native Youths Outside E.A. Gowers to Secretary of State. Conf. of 8.3.1926.
52. C.O. 536/119/3310. loc. cit. Bottomley's minute of 9.8.1922.
53. C.O. 536/139/3278. op.cit.

> "After the fullest consideration I would support the view held by Sr Geoffrey Archer that educational institutions of Ceylon afford the least objectionable solution to the difficulty." 54

Fourthly, it was feared, contrary to conventional wisdom, that foreign travel would "do the native youth more harm than good," presumably, because, as Croyndon put it: "It will generally be the case that the position of the individual on his return will be very difficult, that he will find it impossible to maintain in his tribal environment the level of thought and style of living he has acquired, and that all his education will not, in practice, help him to lead his backward fellow tribesmen along sound and wholesome lines of development." 55

In fact, all this, including the preceding reasons, was official gobbledygook for "political" expediency, which was the real reason for the proposed embargo on foreign travel and was spelt out by Croyndon himself in his dispatch to the Colonial Secretary, the relevant part of which was as follows:-

> "The arguments for and against the advanced education of individuals among the native tribes have been so frequently rehearsed that I should not dwell on them here. I need only say that I regard anything in the nature of a university course for isolated individuals drawn from the tribes of this Protectorate with grave misgivings. I regard with special anxiety a desire which has become more marked of late, on the part of certain chiefs ... to send their sons to America and notably to the great institution at Tuskegee, for education. Although it may perhaps be considered that such bodies as the Universal Negro Improvement Association, and the African Countries League are scarcely at present formidable political organisations, I consider it advisable to avoid as far as possible anything that may facilitate communication between the leaders of such movements and young natives of this Protectorate. There is no doubt that leaders of Negro Political aspirations in the Southern States would eagerly seize an opportunity for influencing and helping to educate sons of chiefs of this Protectorate." 56

54. C.O. 536/139/3287. op.cit. Gowers to Secretary of State.
55. C.O. 536/119/3310. op.cit. Croyndon to Secretary of State.
56. C.O. 536/119/33310.

Thus, "the absence of educational facilities" the details of which are examined above, was not, as is usually alleged, due to lack of financial resources - of course, it "would [have] been an expensive matter"; [57] but, it could, as Reed reminded his colleagues at the Colonial Office, "be done," [58] nor indeed, was it, as the preceding official reasoning vividly shows, due to lack of policy on "Native education". On the contrary, it was Government policy, to leave "the burden of [native education] on the shoulders of the missionary bodies in consideration of some moderate financial grants." [59]

This, of course, is a simple overview of a very complex situation; it is offered here as an example, the moral of which is that the simultaneous building and dismantling of an empire was a herculean task; and not, as a definite explanation of the un-preparedness of the two sides - the Colonial authorities and the Colonial peoples - to grant and to take independence respectively.

57. C.O. 536/119/33310 op.cit.

58. Ibid., vide, Reed's minute of 20.7.22.

59. C.O.536/134/27292 Hussey's Report on Native Education, 1924. The sums given to the missionary bodies to provide education facilities were not only meagre but erratic; a random sample in the early years of the Protectorate reads as follows:-

    In 1909, the Church Missionary Society received £300; the White Fathers, £300, and the Mill Hill Mission, £100 (C.O. 536/30/33163). In 1912 the sums were £100; £750 and £100. (C.O. 536/53/33217 and in 1916 the figures were £850, £300 and £100 respectively.

    In 1936 the amount of money spent by the Government on native education per head of school children was, a mere 6 shillings. Vide, Hinden, Rita, Plan for Africa, George Allen & Unwin, London 1941, p. 107.

The "native education" issue is one of those dilemmas conjured up by the Colonial authorities - "to which ambiguities, as well as conflicts of purpose and the limits of manoeuvre, condemned the makers of Colonial policy during the interwar years." [60] Sometimes the right hand did not know what the left hand was doing. As Professor McIntyre poignantly points out:

> "Both the British Empire and the Commonwealth got lost in Africa. The great continent turned out to be a maze into which adventurers and idealists, private enterprize and government, white supremacists and Pan-Negrists entered, mingled and lost their direction." [61]

"Thus", he adds, "in Africa the empire and the commonwealth met their greatest crises and produced their most puzzling paradoxes." [62] The question of "native education", alluded to above was one of those catch 22 situations; the others - the economic, social and political have been most ably dealt with elsewhere and need not be rehearsed here. [63] Suffice it to note that all told, they make grim reading. The portrait that emerges, though unattractive, shows that the processes of empire building and decolonization were inherently incompatible, relegates the preparation theory to the lumber room and, confounds its advocates, puts Britain's Colonial record in its proper perspective, and shows that there were no heroics. Nearly all the colonial dilemmas, despite the rhetoric to the contrary, were invariably resolved in favour of the colonial power and always at the colonial peoples' expense. Thus, though some "statesmen were unusually frank in their admissions that they were lost in Africa, the empire-builders themselves usually resorted to official cliches about advancing "Commercial, Christianity and Civilization." [64] In fact,"the policy appears to have been to amass revenue at any cost, and to cut down expenses to breaking point." [65]

60. Robinson,K., The Dilemmas of Trusteeship, OUP. 1965 p.75.
61. McIntyre,W.D., Colonies into Commonwealth, Blandford Press, London, 1968, p. 251.
62. McIntyre, Colonies into Commonwealth, loc.cit., p.251
63. Vide, Robinson, The Dilemmas of Trusteeship, loc.cit.
64. McIntyre, loc.cit., p. 253.
65. C.O. 536/4/11, Private and Confidential, Sir Frederick Jackson to the Secretary of State, 19.7.1911.

Such was the policy and, to be sure, it had a long pedigree. In fact, in the case of Uganda, such a policy way first advocated as early as 1893, by Sir Gerald Portal. It was subsequently reaffirmed by the Colonial Office, in July 1899, and from the British point of view, was the centre-piece of the Anglo-Buganda Agreement of 1900. And, though it, at a stroke, solved the basic issue of financing the Protectorate, it had, it is argued, a deleterious effect on the future of local government finance. It meant that the central Colonial authorities were the sole beneficiaries of all the tax revenues gathered within the Protectorate and that the "Native Authorities", the precursors of local government, were for their sustenance dependent on Central Government hand outs.

Briefly stated, the question was, how was the Empire to be financed, and who was to pick up the bill - the British, or the "Native" taxpayer? Given the three intentions, set out above, there could only be one answer, of course! The Colonial authorities had other ideas, however; they decided that the "natives" should carry the "Whitemans' burden" and proceeded to impose murderous tax rates, with, as we shall see, some unfortunate results, and it is against this background that the establishment of British rule and the concomitant apparatus is to be considered.

1.2.1. THE FOUNDATION OF THE UGANDA PROTECTORATE

Although British interest in Uganda, particularly the Kingdom of Buganda, has been traced back to 1863, [66] it was not until 1900 that the first steps for the introduction of a civil administration, as opposed to military occupation, may be said to have commenced. For it was in that year that Sir Harry H.Johnston, [67] on behalf of the British Government, concluded a treaty, the "Uganda Agreement", 1900, with the people of Buganda, that inaugurated sixty two years of British over rule and administration. [68]

Under the Agreement, the traditional chiefs were recognised as the de jure "Local Authorities" through whom the Protectorate Agents were to exercise their jurisdiction. Thus the Kabaka was to exercise 'direct rule' over his people "through the Lukiko or native council, and through others of his officers in the manner approved by Her Majesty's Government". [69] The Commissioner, and subsequently the Governor, was vested with "a benign authority" [70] to advise the chiefs in the administration of their districts and to impose taxation for the maintenance of his staff and its attendant machinery. [71] Johnston's settlement thus envisaged a two-tier system of Government, the Protectorate Administration and the Kabaka's Government. The latter, which was subordinate to the former, was based on Buganda's autochthonous institutions, the essential features of which have been summarised as follows:-

> In the old days the Kabaka of Buganda was the Supreme Ruler of his people, assisted by his various chiefs from the Katikiro (or Prime Minister), down to the lowest "Mutongole" chief. The Kabaka alone had the inherent right to sit on the throne of the Kingdom of Buganda and to appoint his chiefs from the biggest to the lowest, over whom, along with the rest of his subjects, he had the power of life and death. The administration of the Country, although not based on civilised principles, was carried out by these

66. Thomas,H.B., and Scott, R., Uganda.OUP 1935 p.3.
67. F.O. 2/200, Salisbury to Johnston. 1.7.1899.
68. Uganda Agreement, 1900, (was signed on 10.3.1900)
69. Ibid., Article 6.
70. Uganda National Archives, SMP 119/09, Minute dated 8.7.07.
71. Ibid., Vide, Deputy Commissioner's minute.

> chiefs in a most efficient manner. Each chief had to obey his immediate superior from the lowest of the rank up to the Katikiro. The Kabaka's wishes which were always considered as commands, were communicated to his subjects through these properly organised channels of his chiefs and in this way a recognised form of Government was carried out by these chiefs. It is not surprising therefore that in drawing up the Uganda Agreement, after the first five formal clauses, Sir Harry Johnston should give prominence to the Constitution of the Native Government of Buganda Kingdom. 72

Thus, Buganda's political system was, according to the Kabaka, "highly developed" and though the Kabaka may have overstated his case, there is little doubt that the British were mesmerised by Buganda's traditional institutions. More importantly, however, they found Buganda's institutions tailor-made for their immediate needs and wasted no time in exploiting them. In particular, the Foreign Office was anxious to relieve the British taxpayer of the Uganda expense and their strategy was, in the first instance, to rely on local staff and to raise revenue through native taxation. Johnston was thus enjoined to pay special regard to questions of "Native taxation and the establishment of a self supporting administration". 73

Indeed, the very idea to establish a Protectorate over the Country was solely dictated by monetary and fiscal consideration. 74 And it was this pre-occupation with these issues that gave rise to many of the questions with which this study is concerned.

Johnston's Agreement with Buganda was followed three months' later by one with Toro and a year later, by one with Ankole. With minor modifications, the provisions of the latter Agreements, which were in similar terms [illegible] were based on the Buganda model, and were afterwards applied to the non-treaty districts, and till the 1955 Cohen Reforms, provided the general framework within which the Colonial power exercised its influence in these areas.

72. C.O. 536/211/4008/1 Daudichwa's Memo on the Constitution of Buganda.
73. F.O. 2/200, Hill to Johnston. 1.7.1900
74. C.7303 Africa No.2. (1894) Portal to Rosebery 1.11.1893.

In this introductory note, an attempt is made, albeit in outline, to sketch out the arena and for this purpose, the year 1890 will serve as our point of departure. That year saw the signing of two important treaties: the Anglo-German Agreement and the Uganda Agreement between the Imperial British East Africa Company and the illustrious Mwanga, the Kabaka of Buganda. The former placed Buganda within the British sphere of influence, whilst the latter, despite its onerous terms, was the foundation of Buganda's autonomy, including its much coveted special relationship with the British Government.

1.2.2. LUGARD'S PRELIMINARY ARRANGEMENTS

The events and circumstances which impelled the IBEA Company to appoint Captain Lugard, a relatively young army officer, to head an ill-equipped expedition to Buganda, are sufficiently clear and need not be rehearsed here. Of immediate interest are the consequences of Lugard's intervention, and in particular, his treaties with the chiefs. The terms of which are detailed below. Lugard arrived in Buganda in late December 1890. He was accompanied by Messrs. Fenwick de Winton and William Grant, a handful of troops and an old maxim gun. His instructions were according to a contemporary observer, of the simplest kind, "to guarantee peace" in Buganda.[75] Before Lugard could do so, however, he had to secure a peace treaty with Buganda's leaders, and that, as he soon discovered, was no mean task.[76] As Lugard put it, Mwanga, "still feared that sooner or later, he would have to pay for the murder of Bishop Hannington"; and not unnaturally, he was suspicious "and most unwilling to sign any treaty" or have any direct dealing with the "Wazungu".[77] Mwanga thus held out till he was literally "forced to sign" on the dotted line. Even then, he, apparently, refused to "agree

75. Jackson, Sir Frederick, Early Days in East Africa, 1930 p.262.
76. "It is the most difficult task that I have undertaken in my life, and no one can say yet whether it will end in peace or war. I have some 300 natives all told, and two white men, and very little ammunition." Lugard to Lt.Edward Lugard - Lugard's Papers, Rhodes House, MSS. Brit.Emp. S.40.
77. Jackson. op.cit., p. 262.

in writing that it was absolute."[78] Indeed Mwanga did not formally adopt the treaty until he was satisfied that Lugard was genuine and as he represented himself, H.M.Representative; and though, the latter was a fraudulent misrepresentation, it had the desired effect. Lugard's credentials were accordingly accepted and his treaty duly confirmed on 31st March 1891. [79]

Lugard's treaty which was said to be for two years did not , uncharacteristically, involve any transfer of land or executive powers to the Company or their chief representative. It merely defined the rights and duties of the parties. Thus, for example, Mwanga was required to acknowledge the suzerainty of the Company in return for their protection.[80] To this end, the Company undertook to promote Buganda's civilisation and commerce; to introduce a civil system of government and adminsitration,[81] and to secure to it the blessings of peace and prosperity.[82]

With the Company's status thus confirmed and its position regularised, Lugard turned his attention to the second, and, undoubtedly, the most important part of his mission, namely, the establishment of "industrial missions" and the "prosecution of lucrative trade". [83] His searching inquiries, however, soon disclosed that Buganda's potential as a commercial centre had been greatly overstated. It was, for the first time, discovered for example, that Buganda's natural resources were very limited indeed. To his surprise, Lugard found that there were hardly any suitable articles for export, and that, "with transport at £200 a ton to the coast,there was no incentive to grow and gather articles for export."[84] And as Lugard put it, "without exports there would be no import trade."[85] Still, Lugard believed that Buganda was invaluable to the Company, and had no hesitation in recommending its retention. He thus told the Company's directors that:

78. Lugard, F., Rhodes House, Oxford; Lugard to Brayne, n.d.
79. C.6555 (1892) Lugard's Report. p.110.
80 Clause 1
81. Clause 2
82. Ibid
83. Lugard's Diaries, op.cit. p.170.
84. Lugard's Report, p.101
85. Ibid., pp. 101-102.

> "As regards the value of [Buganda] to the Company I hold the opinion, which seems to me to be shared alike by the English and French missionaries, the Germans and Messrs. Jackson and Gedge, that [Buganda] per se, has been much overrated. At present there appears to be few or no products suitable for exportation except ivory, and that almost entirely comes from the tributary states. Nor can the Country I understand, supply much labour for the construction of public works. The recent wars have decimated the population, and at present, and for a long time hence, the labour must remain a monopoly of the King and Chiefs.
>
> Uganda however, as a road to the territories lying towards Albert Nyanza, must always remain an important acquisition, and if the Country can repay part of the money expended on it, the outlay will not be wasted." 86

In the meantime, emphasis was to be laid on retail trading and income taxation, in furtherance of which the Company was urged to dispatch "one or two Indian traders, notably a Pursee; and a considerable amount of specie", including rupees, anna and pice," [87] thus facilitating the early introduction of a civilised system of shop-keeping, trading, coinage and personal taxation. This, Lugard hoped would turn Kampala into a major industrial centre. From here, the Company"s Agent would direct his commercial activities in the surrounding territories such as Ankole, Bunyoro, Busoga, Toro and the Southern Sudan. Having thus outlined the company's future prospects in Buganda, Lugard proceeded to prepare for his treck to the west, the object of which was to bring the Katwe Salt Works under the company's control and management, and needless-to say, exploitation for their own benefit.

86. Lugard's Report, op.cit., p. 101

87 Ibid., p. 101.

1.2.3. LUGARD'S TREK TO THE FOOT OF MT. RWENZORI

It cannot be too strongly emphasised that Lugard's march to the Western frontier was enterprising and venturesome. Of course Lugard was fully aware of the enormity of the task before him, save that he does not appear to have appreciated the consequences of his proposed action. He was preoccupied with the acquisition of the Katwe Salt Lake, "the gold field of this part of Africa", the possession of which was, in Lugard's own words, "of the very greatest importance to the Company". [88] Indeed, that was the star prize. Of immediate importance, however, was to enlist "Major" Selim Bey and his troops, thus securing some most valuable recruits to the Company's service in Buganda and the adjoining territories that Lugard hoped to bring under the protection of the Company. [89] Here Lugard would establish trade centres, forts, garrisons and stockades, the primary object being "to divert the trade of those countries from passing into the German Protectorate"; to prevent the importation "of firearms and powder from the south into Buganda, and the "opening up of a connection between the two lakes Victoria and Albert." [90] Moreover, the annexation of this whole region would form and provide "a valuable base of operations against Unyoro and that hostile country." [91] Having formed this plan, Lugard's intention was now "to proceed to Ankole in the endeavour to meet and make a Treaty with Ntali, the independent King of that Country, and bring those territories under the Company's protection." [92] As it happened, however, King Ntare was averse to Lusgard's advances and his "amiable farce of treaty-making". [93] Hence, on arrival in Ankole, Lugard's efforts to contact Ntare were "met with delay and excuses." [94]

It is difficult to know what lay behind Ntare's reluctance to receive Lugard at his Court, since it is reported that he "sent presents and the strongest professions of friendship", that he "preferred the British to any other Europeans", and that "he was delighted to have come under their rule and not the Germans." [95]

88. Lugard's Report op.cit.p.120
89. Ibid., p. 120
90. Ibid., p.114
91. Ibid., p.114
92. Ibid., p.114
93. Thruston, A.B., Africa Incidents, London 1910, p.170.
94. Loc.cit. p.119.
95. Ibid., p.119.

Yet, he declined to meet their accredited representative! Lugard thought that Ntare was either "in mortal fear of seeing a white man" or that "he feared the strength of the expedition",[96] and that Ntare was "too fat to walk" - his Capital lay some 40 miles away from Lugard's temporary camp at Nyabushozi.[97] Whether in fact, this was the case has yet to be proved. Lugard's rationalisation lacks colloborative evidence and is to be read subject to Portal's critical remarks vis-a-vis the former's reports to the Company's directors set out below. Indeed, it would appear that Ntare's stance was not dictated by his "mortal fear of a white man".[98] On the contrary, his conduct, cunning protestations of friendship and contemptuous presents of sheep rather than the traditional hamitic cows suggest otherwise. Ntare seems to have been an independent minded traditional ruler in the real sense of the word. He acknowledged no higher power, his position, unlike that of his counterparts, such as Mwanga, for example, was fairly secure, and arguably, was in no hurry to enter into an alliance with any foreign power, including the mighty IBEA Company. Ntare had no good reason to leave his Capital for Nyabushozi to meet some unknown self-styled "protector", and so it was that he detailed a small delegation, headed by "a small boy of the most prepossessing appearance"[99] to meet the hapless traveller, render him assistance and, if need be, escort him to the borderland.[100] On arrival, Ntare's emissaries were well received by the unsuspecting Lugard "and much pleased them by going through the full native ceremony of blood-brotherhood."[101]

96. Lugard's Reports op.cit. p.119
97. Ibid., p.119
98. Ibid. p.119.
99. Lugard's Report, p.119.
100. Alternatively, Ntare might have been a more resourceful diplomat than his critics have been prepared to admit. It is possible, for example, that he was not unwilling to see Lugard do much of the running before being entertained at Ntare's court.
101. Lugard's Report. loc.cit., p.119

With blood brotherhood and treaty making behind him, and unaware that young Birere was, in fact, not Ntare's son, Lugard resumed his trek westwards and reached Lake Katwe on July 15. Here, he built a huge fort, Fort George, and made it 'impregnable to savages'.[102] This, Lugard hoped would make it extremely difficult for the Barasura, Kabarega's warriors to recapture this much valued salt mine" [103] the possession of which was essential to the future success of the Company. Lugard had no doubt that it would "bring in substantial returns,"[104] for salt was interchangeable for all the Country's products including ivory, cattle and food stuffs. Lake Katwe, he maintained, was with the exception of "the most fabulously rich quartz, of more value than would be a gold mine in the same locality."[105] Whilst Lugard might have overstated the case, there is little doubt that the possession of the Katwe Salt works, was invaluable to the Company. And before embarking on his march, therefore, Lugard had to ensure that the whole of this area was impregnable and in the hands of a loyal and dependable agent. Accordingly, he decided to reinstate Kasagama as King of Toro in return for the following undertakings.[106]

(i) that Toro and all its dependencies, including Busongora and Bukonjo were entirely under the suzerainty of the British Company;

(ii) that he would obey the orders and instructions of the Resident in all matters whatsoever.

(iii) that he would do all in his power to prevent the importation of arms and powder into his Country or through it into other countries in the British Sphere of influence.

(iv) that no Europeans would be allowed to settle in his territories without the consent and approval of the Company.

102. Lugard's Diaries, op.cit., p.239
103. Ibid., p. 252
104. Lugard's Report. p. 120-121.
105. Lugard's Diaries Vol.II, p.253.
106. Lugard's Diaries, Vol. II p. 287.

(v) that all arms in Toro would be brought to the Company's Agent for registration and license, and that no arms should be held by anyone without his knowledge and sanction.

(vi) that he would recognise the Company's exclusive right to kill the Country's elephants, that he would pay, at the direction of the Company's Agent, the expenses for the building of forts, garrisons and stockades, and that the expenses for the Country's development, and improvements should be defrayed out of the finances and resources of the Country.

(vii) that he would outlaw slave trading and raiding and endeavour to prevent his subjects from slave raiding in other countries and importing them into his Country.

With "the occupation of Toro un fait accompli", Lugard resumed his trek to Kavalli. Here, he made contact with Selim Bey and his troops, and without much difficulty, enlisted them in the service of the Company and hurried back to Kampala, where he arrived on 31 December 1891, only to find the Country on the verge, yet again, of an internecine civil war. Worse, however, he was informed by the Company, that, for reasons beyond their control, he was "to withdraw from Uganda and the lake districts and return to Mombasa" at once. [107]

This, as Lugard put it, "was a thunderbolt indeed." [108] "It is the second time," he angrily retorted, "that a long spell of hard work in Africa has been ended by a reverse so complete that all my toil has seeemed to be merely waste - and worse. This collapse will be terrible in its results." [109] Lugard was in a quandary: He was

107. MacKenzie to Lugard 10.8.91. See also McDermott to Lugard 10.8.91.

108. The Diaries, Vol.II p.475.

109. The results Lugard had in mind may be summarised as follows:

(i) There would be a complete annihilation of the Uganda mission.
(ii) The Mohammedans would "swoop down and mop up the R.Cs."
(iii) Lugard's solemn pledges to "Yafeti and Kasagama" and others that the British would never retire, would be contraverted.
(iv) The Company's withdrawal would deal a severe blow to British prestige, from which it would never recover.

greatly worried about the proposed evacuation, and "terribly concerned what to do; and how to obey [his] orders and yet save the people whose lives [would] be sacrificed for their trust in [us] if we [were] to leave them in the lurch."[110] "The whole matter," he concluded, was "a terrible pity".[111] As it happened, however, the calamity was averted, albeit temporarily. Unknown to Lugard, the Board's instructions "to retrench and retire" had already been countermanded and superceded by fresh orders under which the Company was to maintain its position until 31 December 1892.[112]

In the event, however, Lugard decided to return home and campaign against the proposed evacuation. He arrived in London in October 1892 and immediately joined forces with the Church Missionary Society "in agitating the question of Government and public support for the Company to enable them to carry out" their charter and treaty obligations and commitments in Eastern Africa.[113] Consequently, "another tardy move forward was made by a strangely apathetic Government",[114] and Sir Gerald Portal, H.M. Counsul-General at Zanzibar, was appointed Special Commissioner for Uganda, and detailed to inquire into the best means of dealing with the Country.[115]

110. The Diaries,op.cit, p.476
111. Ibid., p. 476
112. Bentley's telegram, dated 11.11.1891.
113. MacKenzie to Lugard 10.8.1891.
114. Cook, Sir Albert R., Uganda Memories, The Uganda Society 1945. p. 17.
115. Rosebery to Portal - 10.12.1892. In the meantime the Company was to receive a substantial subvention to enable them to prolong the occupation till 31 March 1893.

1.2.4. PORTAL'S MISSION TO UGANDA

With an adequate staff and escort, Portal's caravan left Zanzibar in January and reached Kampala in March, and on 1st April, 1893, having reviewed "the Company's so-called administration", of the Country, Portal hauled down the Company's flag, hoisted the Union Jack and declared Uganda a British Protectorate.[116] Shortly, stated, Portal's contention was that the Company "after five years' fair trial have failed to fulfil the conditions of their Royal Charter and have forfeited their right to retain it, and the Charter should therefore be cancelled."[117]

Portal's investigations, on the spot, revealed " a most hideous state of complications with discontent and war barely hidden under the surface."[118] In his view, the company's administration, of which so much was made in Lugard's reports, hardly existed, and evidently the same was true of the company's establishments, stations, forts and stores. Thus, according to Sir Gerald, the Company's "stations" and "posts" of which much is made in the Director's letters or in their reports to shareholders", were "a mere farce". [119] The whole of the Company's system of administration was categorised as "a scandal"; and Lugard's reports as "works of fiction".[120]

> "I find Williams, Eric Smith, Macdonald and the missionaries, all sitting in open-mouthed astonishment at Lugard's reports which, I fear must be read only as vivid works of fiction. I also fear that Macdonald's long and very careful report will be read with something approaching to consternation by the public who have been so enthusiastically chanting Lugard's praises. The general impression here is that the man is off his head, and I should not wonder if this were the case." 121

116. Portal, Sir Gerald.H. The Mission to Uganda, Edward Arnold, London (1894) pp.5, 148 and 216.
117. MSS. AFR.S.109.(Rhodes House, Oxford) . Portal Papers Portal to J.R.Rodd. 31.3.1893.
118. MSS.AFR.S.109 Portal Papers (Rhodes House,Oxford). Portal to Rodd. 31.3.93.
119. Portal to Rosebery. 25.6.1893
120. Portal to Rodd. 31.3.1893.
121. Portal to Rodd. 31.3.1893.

Portal's solution was simple and straightforward: the revocation of the Royal Charter and the establishment of a protectorate over Buganda and its dependencies.[122] Direct British rule was considered but ruled out for purely financial reasons.

Portal's settlement envisioned the appointment of an "English Commissioner"[123] to advise the Kabaka and his chiefs; to ensure the safety of Europeans, to prevent and suppress civil war or rebellion; whether religious or otherwise, to collect taxes, and above all, to encourage Commerce and European enterprise.[124] However, neither the Commissioner or any of his staff were to engage in any trade of any kind, either on their own account or in the name of the Protectorate Government,[125] and all were not to interfere in Buganda's internal affairs save where Europeans or other foreign subjects were concerned, or in cases of "gross cruelty", injustice, or slave-trading brought to their attention.[126] For it was felt that it would be impossible to "combine administration and trade in the same hands without loss of dignity."[127] He, however, insisted that the Commissioner and his staff should encourage independent and private trade indirectly but positively through generous tax allowances and exemptions.[128] This, Portal believed, would facilitate the prosecution of "profitable commerce" and "lucrative trade."[129]

122. Portal's Report. C. 7303 (Africa No.2. 1894) p.35.
123. Ibid.p.36.
124. Ibid., p.36.
125. Ibid., p.36.
126. Ibid., p.36.
127. Ibid., p.36
128. Ibid., p.36
129. Ibid., p.36.

> "There can be no doubt [he concluded] that, with a prospect of security and of equality of treatment, a very considerable trade with Uganda, Usoga, and the neighbouring countries may be rapidly developed. The ordinary customs revenue which may be derived from such trade will go some way, even at first, towards the expenses of the commissioner and his staff, while no one with any personal acquaintance with these people would hesitate to admit that with a less restricted trade, the native demand for European commodities, already considerable, will rapidly increase." 130

These measures were embodied into the Portal-Mwanga Provisional Agreement of 29 May 1893 by which Great Britain promised to send "An English Commissioner for Uganda and its Dependencies", while Mwanga, "with the object of securing British protection, assistance and guidance, gave the following undertakings."[131]

(i) that Her Majesty's Representative should have the sole jurisdiction over Europeans, or other foreigners resident in Buganda;

(ii) that no warlike operations or serious matters of State including the appointment of chiefs, or other officials should be made without Her Majesty's Representative's consent and approval;

(iii) that he should be bound by all and every act and obligation to which Great Britain was a party;

(iv) that the assessment and collection of taxes and the disposal of all the receipts should be under the control of Her Majesty's Representative;

(v) that H.M.Government should be responsible for the levying, for their own use, of export and import duties on all goods, the property of H.M.Government and its officers excepted, entering and leaving the Country;

(vi) that the conduct of Buganda's foreign affairs should be in the hands of the Commissioner, and that no treaties or agreements with Europeans should be entered into without his knowledge and concurrence;

(vii) that slave trading and slave-raiding should be abolished and outlawed.

130. Ibid., p. 36
131. Enclosure No.1. in Portal's Despatch of 29.5.1893

In 1895, having been adopted by his immediate successor,[132] Portal's treaty was confirmed by the Secretary of State for the Colonies, and, until its repeal, five years' later, was the basis of British rule in Buganda and its dependencies.[133] In the early years of the Protectorate, however, British administration was limited to Buganda, and in particular Kampala and its environs. Indeed, the Foreign Office, conscious of the "Uganda expense", was strongly averse to any extension of British rule beyond Buganda's boundaries.

This, as it happened, however, soon proved inexpedient, and in consequence, on 3 July, 1896, the Protectorate was, by means of a notice in the London Gazette, extended over all the Countries within the British sphere of influence.[134] It was not until 1920, however, that the limits of the Uganda Protectorate were finally determined, even then, there were large chunks of areas where, for a variety of reasons, the Commissioner's writ did not run. Be that as it may, for the purposes of this study, the rudiments of British administration, particularly the establishment of local government institutions, the main concern of this thesis, may be said to have commenced in 1900. It was in that year that Sir Harry Johnston, H.M.Special Commissioner for the Uganda Protectorate,[135] effected the "Uganda Agreement" [136] which, though specifically tailormade for the Kingdom of Buganda, was subsequently used as a model instrument in fashioning local government bodies elsewhere in the Protectorate, with, as this study shows, some distastrous results, not least of which was the underdevelopment of a modern system of local government and per force, the political institutions at the local and national levels, the pre-requisites of an efficient and democratic government.

132. Portal, Sir Gerald, The British Mission to Uganda, 1894.
133. F.O.C.P. 7620 Johnston to Salisbury, 12.3.1900.
134. London Gazette, 3.7.1896.
135. F.O. 2/200 Salisbury to Johnston 1.7.1899.
136. Revised Laws, 1951 Vol.VI p.12.

CHAPTER TWO

THE "NATIVE AUTHORITIES" AND THEIR STATUS

2.1.1. THE ANGLO-BUGANDA SPECIAL RELATIONS

The period between 1900 and 1955 is of special importance in the evolution of local government institutions in Uganda. It was during this period that the British, albeit unwittingly, laid the foundations upon which the pre-Independence local government reforms were built. The new scheme, though somewhat different, retained much of its pre-European hue and characteristics. It is pertinent therefore, before examining the former, to allude to the constitutional arrangements which evolved that structure. Of interest here are the Agreements with the hereditary rulers of Ankole, Buganda and Toro, and the Uganda Order in Council, 1902. [1]

As regards the "Native Agreements", the "Uganda Agreement, 1900", an agreement between Johnston and the Kabaka of Buganda was, in Constitutional terms, of more significance than the others. It set out in detail, the status of the Kabaka, his recognition by H.M.Government "as the Native Ruler of his people" (Under Her Majesty's protection and overrule), over whom he was to exercise "direct rule through the Lukiko and through others of his officers in the manner approved by the Protectorate Government. [2]

Similar arrangements were shortly afterwards incorporated into the Toro and Ankole Agreements of 1900 and 1901 [3] respectively and though based on the Buganda Agreement, and in the eyes of the law at par with it, [4] the latter were nevertheless of less stature and were more often than not disregarded by their condescending authors with some interesting and sometimes unexpected results, [5] not least of which was the emergence of three distinct forms of "local government authorities"; viz, the semi-autonomous government of Buganda, the "Native Governments" of Ankole, Bunyoro and Toro,

1. London Gazette, 15,8.1902. Buganda Agreement 1900, Revised Laws (1951) Vol.VI p.12. Toro Agreement, 1900,Revised Laws (1951) Vol.VI pp.2-66, Ankole Agreement 1901.
2. Uganda Agreement, 1900, Article 6.
3. Uganda Laws, Revised Edition (1951) Vol.VI p.2.
4. All "Native Agreements" were in fact,unenforceable at law.
5. Some examples will be cited below.

and the "District Administrations" in the Eastern and Northern Districts where according to the "pioneers', there were no hereditary chiefs, and per force no "Native Agreements". Here, British rule was based on the Uganda Order in Council, 1902, [6] but was, in practice, modelled on Buganda's traditional system, the main features of which were set out in the "Uganda Agreement, 1900, [7] of which the main terms are set out below.

The terms of "this discussive and inelegantly worded document" [8] were the product of several years of Anglo-Buganda Co-operation in the establishment of British hegemony over Buganda and her adjacent rivals, Ankole, Bunyoro and Toro, and not surprisingly was mutually beneficial to both parties. It thus, on the one hand, left"into the hands of the British Government the right of taxation, the control over the land and the power of life and death", [9] and on the other hand, set out in some detail, the status of the Kabaka, as the "Native Ruler over his people", gave him the honorific title of His Highness", [10] granted him 350 square miles of private estates, guaranteed him a civil list of £1,500 per annum[11], and so set him above his counterparts in the Protectorate. His Kingdom was, at the expense of Ankole and Bunyoro, in particular, vastly enlarged and its boundaries redrawn accordingly. In return, albeit not as a quid pro quo, the new Kingdom was subordinated to the Protectorate Government; ranked as one of the six provinces into which the British Protectorate was divided; and its tax revenue merged with that of the British Government and its future administrative organisation, including the Anglo-Buganda relations, set out in detail and definitively settled.

The Kabaka's Government, as the Government of Buganda was sometimes called, was mutatis mutandis allowed to retain most of its traditional features save that there was a shift of power from the Kabaka to the three Ministers of State[12] particularly the Katikiro or the

6. Cd. 910 (1902) The Uganda Order in Council, 1900.
7. Uganda Laws, Revised Edition (1951) op.cit., p.12.
8. De Smith,S.A., Constitutional Monarchy in Buganda, Political Quarterly, London, 1955, Vol.26. p.5.
9. F.O. 2/200 Johnston to Salisbury 12.3.1900.
10. Ibid.
11. Uganda Agreement, 1900, Article 6.
12. Ibid., Article 10.

Prime Minister, who henceforth, were to transact most of the Kabaka's Government. He was, in addition to his executive and judicial powers to be the Senior Regent and ex-Officio President of the Great Lukiko, or Native Assembly. The latter, which, in the old days, was no more than an occasional gathering of Buganda's notables and dignitaries, under the chairmanship of the Kabaka, was though, still an amorphous body, regularised and its powers cut to size. [13]

13. These changes relate to the purely Native Lukiko as opposed to the Baraza, an Official Council, set up by Wilson in 1895, and over which the "Chief Administrative Officer presided in conjunction with the Kabaka"; where the administration transacted all its public business with the Kabaka's Government and where affairs of moment dealt with by the Native Council were reviewed "in the presence and guidance of a Government Representative" (CO 536/1/7456, Wilson to S/S Despatch No. 26 of 6.2.1906). So, until this system was allowed to fall into desuetude, there were in Buganda two Councils to carry on the work of local government, the purely Native Council (in which "all native questions were dealt with, and the official Baraza", the functions of which as indicated above, were supplementary to the legislative and judicial functions of the Lukiko, the need for which was stated as follows:

> In 1894, I was struck by the possibilities of the National Lukiko..... It possessed both legislative and judicial functions. Its effective power, however, was totally vitiated by party feeling and the Kabaka lacked strong authority essential to overrule the discordant elements. In 1895, circumstances led me to consider what scheme would provide the necessary controlling power over the Council without creating jealous apprehension that we were aiming at relieving the chiefs of their legitimate responsibilities. I decided to supplement the purely Native Lukiko by an official council which was known as the Baraza, adopting a Swahili title to distinguish it from the other Native Council (Wilson to S/S C.O. 536/1/7456).

Thus the Agreement provided that:

> "In addition to the three native ministers, who shall be ex officio senior members of the Council, each chief of a county (twenty in all) shall be ex officio members of the Council. In addition, the Kabaka shall select from each County three notables whom he shall appoint during his pleasure, to be members of the Lukiko, or Native Council. The Kabaka may also, in addition to the foregoing, appoint six other persons of importance in the Country to be members of the Native Council." 18

Besides being the "Supreme Native Court of Justice", the Lukiko's main functions were to discuss all matters concerning Buganda's internal affairs and to forward its resolutions to the Kabaka for further consideration and decision before giving them effect. The Kabaka could not, however, implement such resolutions until he had further consulted with the Commissioner whose decision was final and conclusive. In this matter, the Kabaka was obliged to "explicitly follow the advice of Her Majesty's representative," 19 and failure to do so was, as is indicated below, a very serious matter indeed.

Further, Buganda's land was divided into two main categories. Nearly all the arable land was granted to the royal family, the three Regents and the leading chiefs, whilst the remainder called, "waste land" was duly appropriated for "the Crown on behalf of and in trust for the Administration of the Protectorate of Uganda." 20 The protecting power, however, reserved "to itself the right to carry through or construct roads, railways, canals, telegraphs, or other useful public works, or to build military forts or works of defence on any property, public or private", save that no more than 10 per cent of the property in question would be sequestrated without adequate compensation and that compensation would, in any event, be paid "for the disturbance of growing crops or of buildings." 21 Despite these safeguards, however, Johnston's land settlement raised a number of

18. Article 11
19. Ibid
20. Cd. 256 (1900) Africa No.6. p.14.
21 Article 11.

thorny issues, not least of which was the introduction of the idea of private property, the concept of which was alien to the Baganda. Secondly, Johnston's land deal may be criticised for allowing the chiefs to "feather their own nests" at the expense of the Bakopi." [22] In future, the Bakopi, the bulk of the indigenous population, were in Johnston's words, to become "unprotected tenants of the British Government instead of serfs." [23]

> "But a far more important result ensued. Land was no longer held direct from the Kabaka, or by old Butaka claim, but became private property. The change was complete. Presented with these huge areas of land, some chiefs started to sell part of their holdings to non-natives, chiefly European. The practice became a serious menace to the Country for whenever a chief wanted ready money for a bicycle (motor cars had not been introduced in those days), a typewriter, or a suit of English clothes, it was easy to sell a part of his land. Had this been permitted to continue unchecked, a large proportion of the land would have been alienated away from its native inhabitants, so the Lukiko passed the Land Law of 1908, which, while it authorised the sale of land to natives within the Protectorate provided that the owner of a mailo could not hand over his land to a non-native, except with the consent of the Governor and the Lukiko." 24

From the constitutional view point, however, the Agreement's most important provision was Article 6, which vividly stated that the Kabaka was to be the Supreme ruler of his people, albeit subject to British Overrule and protection. It stipulated that:-

22. Cook, A.R., Uganda Memories. Entebbe, 1944, p.129. Some have criticised Johnston for bribing the chiefs into signing the 1900 Agreement. In particular, reference should be made to his memo of 13.2. 1900.
23. FOCP 7620, Johnston to Salisbury, 12.3.1900.
24. Cook. op.cit. p.129

> "So long as the Kabaka, chiefs and people of Uganda shall .... co-operate loyally with Her Majesty's Government in the organisation and administration of the said Kingdom, Her Majesty's Government agrees to recognise the Kabaka ..... as the native ruler of the province of Uganda under Her Majesty's protection and overrule .... and shall exercise direct rule over the natives to whom he shall administer justice through the Lukiko, and through others of his office in the manner approved by Her Majesty's Government." 25

The significance of this provision can hardly be over-emphasised and its vagueness not withstanding, was always looked upon by many a Muganda "with almost superstitious reverence." [26] Indeed, the whole Agreement was regarded as "a charter of rights", almost a constitution reference to which could justify or condemn "any Government action or proposed policy."[27] The Agreement, in the eyes of the Baganda was in fact a treaty covering the relations of the parties to it, and like a Statute subject to strict verbal interpretation. Its textual weaknesses and imprecision were turned to good advantage and, in due course, the "text gradually became dogma."[28] Yet, ironically, the Agreement was not legally binding, it was in the nature of a gentleman's agreement, binding in honour only. In any case, Article 20 provided for its unilateral annulment, albeit on certain conditions, by the protecting power. Article 20 stated that:

> "Should the Kabaka, chiefs and people of [Buganda], pursue at anytime, a policy which is distinctly disloyal to the British Protectorate Her Majesty's Government will no longer consider themselves bound by the terms of this Agreement." 29

Inter alia. This meant that the Governor could, with impunity, suspend or terminate the Agreement and substitute for it alternative arrangements as he saw fit. Witness the Suspension, in 1905, of the Ankole

25. Article 6 of the Uganda Agreement, 1900.
26. C.O.536/195/40199, J.E.W.Flood's minute of 26.10.1937.
27. Sir Frederick Mutesa II, The Discretion of My Kingdom, Constable, 1967, p.62
28. Ibid., p.62
29. Article 20, The Uganda Agreement, 1900.

Agreement, 1901.[30] Be that as it may, the British like the Baganda, had very good reasons for upholding the terms of the Agreement: among other things,"it solved the questions of "native taxation"; the control of the land; the maintenance of the army and"placed into the hands of the Commissioner the power of life and death over the people."[31] And, although held to be tantamount to submission to British rule, the Agreement was respected and held in high esteem by many a British Officer:

> "The existence of the Agreement is the Central fact of the Protectorate, and I am unable to think that it could be relegated to its proper place, presumably the background, even if it were desirable so to do." 32

Indeed, the Agreement was always regarded as "the bedrock of British Administration" in Buganda, and in, consequence, all officers newly posted to Buganda, particularly in the early days of the Protectorate, were always urged to observe the terms of the Agreement, and subject to the powers of guidance, advice and supervision, to remember that "all executive work" lay in the hands of the Kabaka's Government. It was "settled policy" that effect should be given to the Agreement in spirit and in letter;[33] and until the decision of the Privy Council in the Swaziland case,[34] it was generally held that any governmental policy or action was subject to the "Native Agreements" in force. The official view was that "what we have put our name to must be inviolable if native peoples are ever to trust our word."[35] Nevertheless, it was widely accepted that the 1900 Agreement was not a good document by which to regulate the high contracting parties' relations, and in due course, even its most ardent admirers were forced to concede that the Agreement was inimical to good, efficient and proper administration. Postlethwaite's account of his experience in Buganda is illuminating; it reads:

30. For details see Morris, H.F., "The Murder of H.St.Galt" Uganda Journal 24 (1960) p.1.
31. F.O. 2/200 Johnston to Salisbury 12.3.1900.
32. C.O. 536/63/1909 Confidential Memo by Stanley Tomkins
33. C.O. 536/40080/1 Sir Philip Mitchell to S/S
34. Sobhuza v Millar and others [1926] A.C. 518.
35. Postlethwaite, J.R. I Look Back, London, 1947, p.91.

> "In the autumn of 1911, I returned to Uganda from leave and was stationed as Assistant District Commissioner, at Kampala. I felt at the time, rightly or wrongly, that we had no definite policy there. At every corner we run up against the Uganda Agreement and the powers of self-determination which that treaty had conferred upon the Baganda. We seemed neither to have the will to break the Agreement in the interests of Baganda, nor the willingness to accept loyally the position as it was and develop on slower lines. We appeared to be eternally giving orders which were obeyed or not, at the sweet will of the Buganda Native Government, the entire virtual authority of which was vested in the Katikiro, Sir Apolo Kagwa." 36

In fact, Sir Apolo and his fellow Regents were more amenable and less obdurate than Postlethwaite's rhetoric would seem to suggest. The enthusiasm with which the Hut Tax Regulations were implemented and the thoroughness with which countless government measures, many of which were ultra vires the Agreement were, at the instance of the Regents, effectively and efficiently, carried out by the divisional chiefs, speak for themselves - they tell a different story. Indeed, it was the Regent's willingness and ability to work with the Protectorate Officers that shaped the latters' attitude and implementation of the Agreement. In short, they had no cause for repudiating it, for the mere mention of the Agreement, as Postlethwaite himself noted was usually enough to spur the chiefs into action, with some success, but, as he soon discovered, such success was occasionally tinged with some surprises, too.

> "Finally, I found myself one day with my District Commissioner and my Provincial Commissioner away on safari, faced with the position that an order for labour had been given to the native government and only about half the number required had arrived on the given date .... I informed the Katikiro that I considered that failure to meet our requirement constituted a breach of the Section of the Agreement which insisted on loyal co-operation and that unless the full number were forthcoming within twenty four hours, I required the Lukiko to be suspended until the matter had been referred to the Governor. The porters were immediately produced, but on my senior's return I found myself a very unpopular young man for this action." 37

36. Postlethwaite, op.cit., p.41
37. Ibid. p.42

Such was the flexibility and effectiveness of the Agreement. Nonetheless, its invocation or rather exploitation along the lines indicated above was fraught with difficulties, and in practice was always reserved for major issues of policy or principle. For routine matters, persuasion as opposed to confrontation, was the key word, and as noted above the use of the "ultimate weapon" was always discouraged and indeed, frowned upon by senior officers including the Governor. Instead, diverse procedures and practices were, with the consent and approval, of the Regents, actively developed that sought to avoid the difficulties which strict adherence to the terms of the Agreement appeared to present. This meant, among other things, that Buganda's internal affairs were, throughout the Regency period - 1897 - 1914 - superficially supervised. It also meant, however, that Buganda's autonomy was dealt a mortal blow. The authority and jurisdiction of the Provincial Administration were greatly enhanced whilst that of the Buganda government, and the young Kabaka in particular, was seriously eroded and, for the next two decades the Anglo-Buganda relations were, as the following discussion shows, anything but cordial. The young and fledgeling Kabaka was, on the one hand, struggling to maintain his prestige and authority, and on the other, the Provincial Administration was vigorously seeking to extend its influence over Buganda's internal affairs and administration which hitherto, as noted above, had been lightly, if at all, supervised by the Protectorate authorities. One of such matters over which Buganda had exclusive jurisdiction and over which the Protectorate Government sought to extend its influence, was tax administration; and though, by no means the cause celebre of the many Anglo-Buganda battles, was from 1925 - 1932, the raison detre of the "badblood." [38] between the reigning Governor, Sir William Gowers and the Kabaka, Sir Daudi Chwa, and will serve as an example of the manner in which the Agreement was during this period, interpreted and implemented by the Protectorate authorities.

38. C.O. 536/145/14089 Sir Geoffrey Archer to S/S

2.1.2. THE VIOLATION OF THE NATIVE TREASURY : INDIRECT VERSUS DIRECT RULE

Since time immemorial, the Kabaka's revenues were always administered by his "Treasury" over which one of the Country's most influential and wisest chiefs presided. This official was known as the "Omuwanika" or Treasurer, and, in the first twenty years of British overrule, his powers and duties were unchallenged, undefined, unregulated and virtually unsupervised: the Omuwanika was largely left to his own devices. In 1922, however, the Governor for the first time, learnt that the "Native Treasury" was in serious need of British control and supervision.[39] Accordingly, the Buganda Government were, "with considerable difficulty persuaded to agree to inspection and audit of their accounts", but due to lack of suitable British personnel, it was not possible to exercise the necessary sustained control and supervision or influence.[40] In 1925, however, further efforts were made and the services of an accountant secured to carry out a thorough inspection and examination of the Lukiko funds, and, "though of much value in straightening out confusions and laying down an improved system of accounting", the work of this officer highlighted, as a by product, the need "for the exercise of a continuous control and supervision by the Protectorate Government."[41] There was, apparently, "no proper machinery for detecting wastage, leakages, peculation and malversation of public funds", instances of which were, evidently, of frequent occurrence.[42]

"It cannot, I am afraid be doubted that there is at present a considerable wastage of these funds and that sums are occasionally expended in a manner which must be considered questionable if not definitely improper. [43]

It was desirable, the despatch continues, that the Buganda Government should be "taught to frame annual estimates of expenditure, to adhere rigidly to these estimates in their disbursements and to adopt and consistently apply a system of vouchers and other safeguards essential to the handling of public funds." [44]

39. C.O. 536/137/55416 Gowers to S/S. 9.11.1925
40. C.O. 536/137/55416. Gowers to S/S 9.11.1925.
41. Ibid.,
42. Ibid.,
43. Ibid.,
44. Ibid.,

To this end, the Headquarters of the Buganda Government organisation, the "Native Treasury" in particular, was to be placed under the control and supervision of "a specially selected officer" of the Buganda Provincial Administration, that is to say, one directly under the Provincial Commissioner.[45] In the exercise of his duties however, this officer though answerable to the District Commissioner, was to "receive expert advice and assistance" from the Central Government Auditor and, for the purposes of his office, was to "have a room in the Buganda Government office block" at Mengo.[46] This arrangement, it was hoped, would enable him to instruct the Kabaka's government in departmental organisation and co-ordination and to give the continuous supervision required to ensure that his instructions were followed and put into effective operation.

Gowers' quandary was, however, whether the Kabaka's Government would raise objections to his proposed scheme or whether they would "loyally co-operate" as envisaged by the terms of the 1900 Aggreement.[47] Whilst Gowers' proposals would, in the eyes of the British "meet with the warm approval of the more intelligent Baganda[48] and would be "acceptable to at least a strong minority of the Lukiko",[49] there was little doubt about the Kabaka's stance: It was believed that the Kabaka, who "was beginning to feel his feet and assert himself as the real ruler of his people,"[50] would view the posting of a British Officer at Mengo with some considerable reserve.[51] Thus Gowers confided in the Secretary of State for the Colonies that his proposals were likely to meet stiff resistance and warned him as follows:

45. C.O. 536/137/55416 Gowers to S/S 9.11.1925
46. Ibid., Gowers to S/S. 9.11.1925
47. Ibid., Gowers to S/S. 9.11.25
48. Ibid., Gowers to S/S. 9.11.25
49. Ibid., Gowers to S/S. 9.11.25
50. Ibid., Postlethwaite. op.cit. p.81.
51. C.O. 536/137/55416. Gowers to S/S. 9.11.1925.

> "It is possible that the Native Government of Buganda, who are of course very sensitive in the matter of their independence and special privileges, and a section of whom have very naturally formed an opinion of their administrative capabilities, not justified in fact, will raise objections to the posting of the officer referred to above and to the continuous financial supervision which I now propose to introduce. Every effort will be made to induce the Native Government voluntarily to accept the proposals. Should, however, an adverse majority opinion prevail, I would ask for your authority as a final resort to inform the Kabaka and his advisers that you have carefully considered the proposals, that you have decided that they are essential to the efficient internal administration of Buganda for the conduct of which their loyal co-operation with the Protectorate Government is expressly required by paragraph 6 of the 1900 Agreement, and that I am directed by you to insist that the proposals be accepted and brought into operation." 52

The Governor's dispatch was sympathetically received and read with great interest, but Gower's proposed use of the "ultimate weapon" was however, roundly rejected, and he was accordingly advised: "that all possible efforts should be made to induce the Buganda Government to agree to the proposed arrangement voluntarily, that no threats of compulsion should be held out to them", and that should persuasion fail, the whole question should be referred to the Secretary of State for further consideration and determination." 53

As it happened, however, the Buganda Government agreed, albeit reluctantly, to accept the proposed measures and duly instructed the relevant officials to "loyally co-operate" with the new financial adviser. That, however, was not the end of the matter. The Kabaka was very apprehensive and fearful that Gowers' proposed scheme was a veiled threat to Buganda's autonomy and a harbinger of worse to come. He thus wrote to Sir Geoffrey Archer, an old friend and counsellor, (and a former Governor of Uganda 1922-1924), that:

> "After careful consideration, I have decided to approach you on a matter which has been causing me a great deal of anxiety and unrest in my mind as well as in the minds of the chiefs. There has been some changes of importance in the policy of Native Administration of the Protectorate since

52. C.O. 536/137/55416 Gowers to S/S 9.11.1925
53. C.O. 536/145/14089 S/S to Sir William Gowers 6.1.1926

> your departure from this country, and I fear these changes are not calculated to be beneficial to the welfare of the Baganda.....
>
> Naturally these changes .... have provoked my feelings of fear and anxiety, which have been accelerated lately by unfavourable rumours .... that it is the intention of Sir William Gowers to take this opportunity, while he is on leave in England to request the Secretary of State for the Colonies to entrust him with full powers to introduce more and drastic changes in the Native Policy of the administration of the Protectorate, which will necessarily prove detrimental to the welfare of the Baganda, who have enjoyed from time immemorial a settled form of government under their 'Kabaka and his Council of Chiefs', although not on civilised lines but based upon the time honoured native customs and traditions." 54

The effect of all these changes, many of which were manifestly contrary to the Agreement, was, in the Kabaka's eyes, "seriously to weaken his position as Kabaka and to undermine the authority of the chiefs". [55] Hence, his "earnest and urgent" appeal to Sir Geoffrey Archer, "to represent the matter properly to the proper authorities," [56] that is to say, the Secretary of State for the Colonies. To this end, Sir Geoffrey discussed the Kabaka's memorandum with his uncle, Sir Frederick Jackson - himself a former Governor of Uganda (1911 - 1917) and both agreed that the Kabaka's case should be referred to the Colonial Office.

However, believing that he was in "a delicate position,. Sir.Geoffrey's intercession, as it happened, was war-weary, tentative and somewhat too diplomatic and in consequence, did not have the desired effect. Archer's comments and observations on his successor's interpretation and implementation on the Agreement are, however, illuminating. He was of the view that Gowers' interpretation and carrying our of the Agreement was both incorrect and inconsistent with accepted British policy and practice. He too, felt, that his successor's "direct" as opposed to "indirect" rule was in direct conflict with the terms and provisions of the Uganda Agreement, 1900, and indeed detrimental to the true interests of His Majesty's Government in Buganda." [57] He found the trend of events, since his departure from Entebbe, rather disturbing and had little doubt that the Kabaka had a good case under the Agreement. Archer's dilemma was, in view of his position, how

54.C.O.536/145/14089 Sir Dandi Chwa to Sir Geoffrey Archer. 27.9.1926
55.C.O.536/145/14089 Bishop to Ormsby-Gore 29.12.1927
56.C.O.536/137/55416 Daudi Chwa to Sir Geoffrey Archer. 27.9.1926
57.C.O.536/137/55416 Archer to Sir S.Wilson 5.1.1927.

to broach the Kabaka's allegations to the Colonial Office without breaking ranks or indeed, incurring the wrath of his former colleagues. It is against this background that Archer's"private and confidential" letter to a friend at the Colonial Office , the relevant part of which is set out below, must be assessed.

> "I am placed in a position of some difficulty by a letter (with enclosures) which I received some time back from the Kabaka of Buganda, asking my intervention on his behalf and that of his chiefs in a matter which is causing him grave concern. I know as an ex-Governor of Uganda that I am entirely out of court, and I could properly say, as others no doubt will, that it has nothing to do with me. But I cannot but regard the matter as having a significance wider than any personal considerations, and I feel I should be failing in my duty were I to disregard the letter and the symptoms of anxiety it reveals. I am sure too, that you at the Colonial Office would wish to know what is passing in the native mind and all sides of a difficult question; and I feel therefore, my proper course is to pass the letter on to you as a privileged communication, and in strict confidence for personal information. I do not think that you will regard it as necessary or well advised in the circumstances, to refer the papers back to Uganda, which could only make bad blood. Thus the fewer my own observations, in a delicate position, the better." 58

Having said that, however, Archer, proceded to recount Buganda's historical retrospect, thus reminding them of the Kabaka's "special position" in relation to the Protectorate Government and, went on:

> "It is a historic fact that before we came into the Country, before the arrival of any foreigner, the Kabakas of Buganda exercised traditional and hereditary authority over their peoples through chiefs appointed by them; and the perpetration of this system was expressly provided for and safeguarded in the formal Agreement entered into with the Baganda by Sir Harry Johnston on behalf of Her Majesty' Government. We did not create the feudal position: we merely recognised and strengthened what we found. The Agreement recognised, in fact, a Native Government exercising full control over its own internal affairs under general British supervision only. Whether it was a good arrangement or a bad one may be, as most things are, a matter of opinion. But nothing can alter the material fact that there has been set up in Africa under our administration by a formal document what amounts practically to a Native State. We are now face to face with the issue - direct action versus indirect rule." 59

58. C.O. 536/145/14089 Archer to Wilson 5.1.1927.
59. Ibid.

Appended to this material was Sir Frederick Jackson's note in which he roundly castigated Gowers' "practice and procedure in carrying out" the Agreement of which he was, incidentally, the co-author, and the terms of which he subsequently explained, clause by clause, to the three Regents before it was finally signed. Jackson's opinion, described by his nephew as "very authoritative and very conclusive", was that Gowers' approach was "a flagrant breach" of the Agreement. He wrote:-

> "I have read the [Kabaka's] memorandum with interest and very great concern, as I cannot help but regard the attitude of the Government, in their interpretation and carrying out of clauses 6 and 9, as very distinct breaches of the Agreement of 1900, and I am not surprised at the Kabaka and the Lukiko being very much alarmed." 60

Besides Archer's oblique approach, the Kabaka's cause was cogently and more directly espoused by the Bishop of Uganda, then on leave in England, who, it would appear presented "the matter properly to the proper authorities" [61] with some salutary effect. Thus Ormsby-Gore told Sir William Gowers that:-

> "The Bishop of Uganda came to see me the other day and raised a number of points. I was frankly a little disturbed by the Bishop's tone, and I am just a little concerned as to our future relations with the missionaries especially the C.M.S." 62

A resume of what transpired atthat encounter was subsequently reduced to writing and reads as follows:-

60. C.0.536/145/14089 Note by Sir Frederick Jackson. 31.12.1926
61. C.0.536/145/14089 Sir Daudi Chwa to Sir Geoffrey Archer,27.9.1926
62. C.0.536/145/14089 Ormsby-Gore to Gowers - Private & Confidential of 1.3. 1927

The Kabaka complains -

"1. of the way in which appointments to chieftainships are now made. Under the Agreement, the Kabaka in consultation with the Lukiko, nominates subject to the approval of the Government. In practice strong pressure is often brought to bear to secure the appointment of the Government's nominees, appointments being often made in virtual independence of the Kabaka's Government.

2. of the tendency to direct rule on the part of certain administrative officers. The Agreement provides for all internal administration to be left to the Kabaka's Government, subject to certain conditions. In many cases he complains, chiefs are instructed to report direct to the District Officers without reference to the Lukiko.

3. that whereas under the Agreement the Kabaka deals directly with Her Majesty's chief representative in Buganda, he now finds himself directly approached by other administrative officers, while he himself, can only approach the Governor through the Provincial Commissioner of Buganda Province." 63

Gowers' response to these allegations was equally forthright and pointed. He thus scoffed at the Kabaka for "using the Bishop as a medium of direct communication between himself and the Colonial Office", he was somewhat uncharitable at the Bishop's interference in political matters, and he summarily dismissed the Bishop's scathing attack on his interpretation of the Agreement in no uncertain terms and continued:

"I think that when the Bishop speaks of "native interests" what he has in mind is not the interests of the native population at large, but the interests of Protestant chiefs. I am afraid that I must agree that our relations with the C.M.S. are certainly likely to be difficult especially if the leaders of the C.M.S. intend to pose as the protectors of the native, and to be the direct channel of communication between the Native Government and the Secretary of State.

I have no desire to be anything but tactful with this organisation, but their tendancy to interfere in political matters will, if it continues unchecked, render the position of the Governor here extremely difficult." 64

63. C.O.536/145/14089 Ormsby-Gore's Summary of his private conversation with the Bishop of Uganda, and the latter's presentation of the Kabaka's case.
64. C.O.536/140/14089 Gowers to Ormsby-Gore.

In the meantime, the Protectorate Government would continue to exercise its powers as it saw fit, and would not flinch from carrying out its responsibilities, including the execution of much needed, but unpopular, measures. It was strongly believed that a reversal of Government policies along the lines urged by the Kabaka and his advisers would do irreparable harm to British prestige and interests in Buganda. It was, for example contended that, it would be misconstrued, place the Governor in an invidious position, and increase the influence and power of the Buganda Government at the expense of the Protectorate Government. Emphasis was placed on British overrule and the necessity for teaching the Buganda Government"to frame annual estimates of expenditure and other safeguards essential for the handling of public funds." [65]

> "I feel [Gowers insisted],I need hardly emphasize the importance of the inculcation of these principles and insistence on their application at these stages in the administrative education of the Buganda Native Government."65

And so, it was done, and that, in broad terms, became Government policy and indeed remained Gowers' posture for the next seven years. Buganda's internal administration was, throughout this period, the 1900 Agreement not withstanding, in the hands of the Provincial Commissioners rather than the Kabaka and his ministers, and the effect of this was subsequently summarised by the Kabaka in the following terms:-

> "While in clause 6 of the Agreement the Kabaka's position is recognised by H.M.Government, yet in actual practice the Kabaka has no longer any control over his chiefs. All the Native chiefs in Buganda are responsible to the Administrative Officers of the Protectorate Government for their various duties.
>
> At present, in matters of the native administration of Buganda Kingdom, the Provincial Commissioner in charge of Buganda Province appears to occupy the position

65. C.O. 536/137/55416 Gowers to S/S 9.11.1925

> which was intended for the Kabaka in the Agreement. The Provincial Commissioner is now the direct ruler of the Native Chiefs of Buganda through his District Officers. Any order issued to the Chiefs by the Kabaka or his Government has to be countersigned and approved by the Provincial Commissioner before it can be transmitted to the Chiefs concerned with the natural result that the chiefs now are beginning to lose their sense of loyalty towards their Kabaka, since he has now become to be looked upon by these chiefs as merely the headman or Superior Chief of the natives of Buganda on more or less the same level and receiving an annual salary from the Protectorate Government in the same way as they themselves. The chiefs have now become mere agents of the Provincial Commissioner while the Lukiko is in reality a subordinate section of the Provincial Administration under the direct control of the Provincial Commissioner in charge of Buganda, and being the principal representative of His Excellency the Governor in the Province as the Supreme Ruler of the people of Buganda. At present, not even His Highness the Kabaka has direct access to His Excellency the Governor except through this officer." 66.

Gowers' policies were however, maintained and in several important respects intensified by his immediate successor Sir Bernard Bourdillon Indeed, it was not until the Dundas Reforms of 1944 that British administration in Buganda was actually carried out in accordance with the terms and provisions of the 1900 Agreement. Already, however, the Agreement had in many ways been amended and as is indicated below, Dundas readjustment of Gowers' policies was shortly afterwards reversed by his successor, Sir John Hathorn Hall, the change of policy came too late to weather the gathering storm and was thus quickly reversed without much ado and the pre-1944 Central Government crippling controls reimposed and, indeed, ruthlessly supervised.

66. C.0.536/145/14089 Sir Daudi Chwa's memorandum on the Uganda Agreement, 1900.

2.1.3. THE 1944 DUNDAS REFORMS : THE REVERSION TO INDIRECT RULE

Charles Cecil Farquaherson Dundas entered the colonial service in 1908 and served in various parts of the West Indies and Eastern Africa before proceeding to Uganda in 1940 in succession to his old friend and colleague Sir Phillip Euen Mitchell. Like his predecessor, Dundas had served in the Tanganyika Territory under Sir Donald Cameron and was an ardent advocate of the doctrine of indirect rule; yet he too, like Mitchell, did not, rather surprisingly, put into practice the tenets of his creed until as it happened, towards the end of his governorship.

Dundas' explanation for this otherwise anomolous situation was that the Provincial Administration though mot positively averse to any changes, were most reluctant to relax their grip on their charges. It would also appear, however, that Dundas was unaware "of the late Kabaka's strong criticism of the effects of the District Administration." 67

The District Officers, not unreasonably, were "apprehensive of a falling off of efficiency immediately following the relaxation of close administration on the spot."[68] They strongly believed that the chiefs were in need of "constant stimulation and controlling", and, in their view, the "Native authorities" were not sufficiently advanced and the time they argued, was not yet ripe for these reforms.[69] However, Dundas was not convinced.

> "I take the view [he informed the Secretary of State] and my officers do not disagree, that if the time is now not ripe one can foresee no time when it will be so; on the contrary it is my fear that indefinite continuance of the existing position will but tend to retard progress in administrative development. Indeed, the argument adduced for the retention of the present practice only confirms me in the belief that the activities of the District Commissioners do too greatly tend to displace the Native Government and particularly so outside the vicinity of its headquarters." 70

67. C.O.536/211/40080/1. Dundas to Secretary of State. 8.2.1944
68. Ibid.
69. Ibid.,
70 Ibid.

As noted earlier, Dundas was a staunch advocate of indirect rule, and was somewhat shocked to observe that many of his predecessors had largely ignored the terms and provisions of the Uganda Agreement of 1900.

> "The form of administration in the Native State of Buganda, [Dundas noted], seems not to have changed perceptibly since it was first established under the Agreement of 1900, and the question one may ask [he went on] is whether in the first place this form is entirely in conformity with the spirit of that Agreement, secondly whether after a lapse of fifty-three years a more forward, move in the direction of less dependent administration by the Native Government is not due." 71

"Fundamental in the Agreement" Dundas argued, "were the two stipulations that the Kabaka should be recognised as the native ruler, and that he should exercise direct rule over his people, subject only to the condition that he conform to the laws instituted by His Majesty's Government; that he should co-operate loyally with that government and rule in the manner approved by His Majesty's Government under the protection and overrule of His Majesty." 72 Thus, the framers of the Agreement, as Dundas robustly put it, "contemplated that the Baganda should be ruled by their Kabaka and that our role was to be essentially advisory and supervisory, and that the protecting power's role should merely be "advisory and supervisory"; and failure to observe this dichotomy was, in Dundas' view fraught with appalling difficulties. He firmly believed that there were two possible effects of failure to move forward in the desired direction. "On the one hand, that we would be regarded by the Native Government and people as retarding their advance, on the other hand, that by keeping them in leading strings more than is absolutely necessary, we would destroy their initiative and make them wholly dependent on ourselves in effective management of their affairs." 73

> "It is my fear [Dundas maintained] that the latter state has been brought about. It is, for instance", he noted, "difficult to conceive of the present Buganda Government acting with the independence and sagacity of Mutesa, and his ministers when they accepted British protection and entered into the Uganda Agreement of 1900." 74

71. C.0.536/211/40080/1 Dundas' memo, op.cit.
72. Ibid.
73. C.0.536/40080/1 Reorganisation of Administration in Buganda Inclosure to Dispatch of 8.2.44.
74. Ibid.

This, according to Dundas, was partly due to the responsibility the officers felt for the efficient administration of Buganda, and partly due to the nature and character of British representation in Buganda, which too nearly resembled that of Privincial Administration in the rest of the Protectorate: the officers were the same, had had similar training and bore the same designations.[75] It was, he believed, a recognition of this mistake that induced the change of style from Provincial Commissioner to Resident. The District Commissioners, however, remained and the Kingdom which was supposed to be ruled by a Central Native Government from a central seat of Government was divided into Districts in which the District Officer inevitably displaced to some extent the superior central ethnic authority. In addition, the District Commissioner and the Resident too, occupied positions of superior power and influence in as much as they exercised authority over the non-native population and performed functions outside the scope of the Buganda Government. "In such a situation", Dundas argued, "the Native Government could hardly count for very much, nor could it be expected to rely on its own authority and exercise initiative, least of all because our district boundaries created a certain barrier between the sphere of the central native government and that of the District Commissioner."[76]

As Sir Philip Mitchell pointedly observed:

> "There is indeed a certain fundamental incompatibility between an organisation under a Provincial Commissioner and District Commissioner on the one hand and the Constitutional status of the Kabaka and his Government on the other....." 76a

75. C.O. 536/211/40080/1.
76. Ibid.
76a. C.O.536/211/40080/1 Sir Philip Mitchell, Relations of the Protectorate Government in Uganda with the Native Government of Buganda. Government Printer, Entebbe, 1939.

Mitchell went on to remark that detailed intervention and control would become "an increasingly difficult, and in time, politically dangerous, method of discharging the responsibilities of the British Government."[77]

Mitchell's solution involved "a readjustment of the British Administration on a functional in place of a geographical basis,"[78] and a first step "indicative of the new orientation of Policy" was the alteration of the title of Provincial Commissioner to that of Resident, and the appointment of a judicial adviser on the Residency Staff. However, District Commissioners were, somewhat surprisingly, not restyled Assistant Residents. The second step was to be the institution of a group of British officers at the centre - presumably at Mengo, under the Resident. As Mitchell explained, "the effect of this readjustment [would] be to substitute for the detailed supervision through District Commissioners and their Assistants a less detailed but eventually more powerful and effective influence by means of a group of advisers at the centre under the Resident, through whom the Native Government [would] be guided and assisted in the pursuit of the objectives common to it and the British Government." [79]

Mitchell's scheme did not, however, make provision for the handling of non-native and township affairs with which the Buganda Government were not concerned.

Indeed, Mitchell, did not indicate how "a group of advisers at the Centre" were to carry out their administrative functions vis-a-vis the Buganda Government. Thus Cox, the then Buganda Provincial Commissioner,

77. C.O. 536/211/40080/1 Mitchell's secret memo. op.cit.
78. C.O. 536/40080/1 Secret memo :Relations of the Protectorate Government in Uganda with the Native Government of Buganda.
79. Ibid.

saw Mitchell's planned reorganisation "mainly as a scheme for bringing his District Commissioners to Kampala, from which place they would carry out their accustomed administrative duties."[80] While Cox might have incorrectly interpreted Mitchell's intentions, his interpretation nevertheless disclosed a serious hiatus in the new scheme. It clearly highlighted, as Dundas put it, " a complication presented by the dual functions of the British Administration in Buganda."[81]

It was to meet this situation that Dundas, Mitchell's successor, proposed to maintain "a District Commissioner in each of the townships of Kampala and Masaka for the concerns of the Protectorate Government; and a Resident with Assistant Residents for the sole purpose of advising the Kabaka and his Government.

Dundas' plan thus envisioned "separate administrative staff for the Native Government and Protectorate Government Affairs." He held the view that those appointed to advise the Kabaka's Government should be wholly devoted to the affairs of that government, and unencumbered with alien affairs. He firmly believed that such Advisers should be so placed as to "give undivided attention to the business of the Buganda Government and free from other distractions."[82] They should, he maintained be in the position of officers attached to a Government, for the purposes served by that Government and not involved in matters outside the purview of that Government. The establishment of such a position, Dundas hoped, would "clarify the true purpose" of the Protecting power's role in Buganda and would enable British officers to "see themselves as advisers to an authoritative Native Government and State, and not as the responsible administrators for a geographical area."[83]

80. C.O.536/211/40080/1. Dundas' memo. op.cit.
81. Ibid.
82. Ibid.
83. Ibid.

Under these arrangements, the primary functions of the Resident and his staffs would be to exercise "surveillance over the subordinate native authorities, to represent the Protectorate Government, to advise the Native Government, to report to the Protectorate Government and advise the Governor in the exercise of his over-riding powers."[84] In other words, the role of British Officers in Buganda would "be the supervision, guidance and liaison rather than inspection and executive control."[85] The Resident would rank as the Senior Administrative Officer and would take precedence as such throughout Buganda. He would preside over the Provincial council and would be the co-ordinating authority for British activities and interests. And in matters affecting or requiring action by both administration, the Resident was to be regarded as the Senior and responsible Officer.

Protectorate matters at Kampala, Masaka and Mubende were to devolve on a small group of "Protectorate Agents", who though ranking as District Commissioners, were to function under the direction of the Chief Secretary to the Government and independently of the Resident; they were to correspond directly with Protectorate Departments on their respective business, and only rarely with the Resident, the object being as Dundas put it "to relieve the latter of all pre-occupation extraneous to his particular sphere."[86] Their main duties were defined and set out in the Chief Secretary's Circular memorandum dated October 11,194 the relevant portion of which reads as follows:-

84. SMP. No.0.37/2 J.E.S.Merrick, Chief Secretary to the Government, to Heads of Departments, Heads of Provinces etc.
85. Ibid.
86. Ibid.

> "On them will devolve so much of the business of the Protectorate Government as does not come within the purview of the Native Government, that is to say chiefly Protectorate revenue and licencing. Townships and Trade Centre matters and non-Native affairs so far as these do not involve Native Government activities and interests. This does not preclude Protectorate Agents from bringing to attention any matters coming to their notice which belong to the province of the Resident (for that matter the same applies to any officer in the public service) but unless instant action is called for they will not do more than report to the Resident; and they will not have official communication with chiefs nor intervene in matters; between them and natives under the jurisdiction of the Native Authority." 87

Dundas' proposals thus envisaged "a clear distinction between administrative functions in connection with Protectorate Government business and Native Government affairs."[88] This, Dundas hoped, would bring British administration in Buganda within the four corners of the 1900 Agreement and, although, the new system's effects and broad practice were not fully and clearly developed, it was expected to run along the following lines.

(i) "An Asian acquires a plot from a European. Here the Buganda Government is not concerned and no reference to the Resident is needed.

(ii) If Crown land outside a Township or Trading Centre is to be acquired, the matter is one for reference to the Resident only if such acquisition involves disturbance of Natives.

87. SMP. No.0.37/2 op.cit.
88. Ibid.

(iii) The Labour situation on a Sugar Plantation necessitates administrative action. If the matter is outside the jurisdiction of the Native Government it is one to be dealt with by the Protectorate Agent in collaboration with the Labour Commissioner. But if the affair concerns immigrant labour residing outside the plantation and among the indigenous inhabitants it may be one wholly within the province of the Resident or for joint action and in either event the Resident will assume responsibility.

(iv) A Chief collects taxes which he will pay in at the Protectorate Agent's office. The method of collection is not the concern of the Protectorate Agent but if the amount of collection reveals marked deficit on previous collections, he will notify this to the Resident.

(v) A native makes a complaint or petition to a Protectorate Agent against some action on the part of the Chief. The Protectorate Agent will advise him to go to the Resident or Assistant.

(vi) The Veterinary Department wishes to undertake innoculation of native cattle and requires administrative assistance. In Townships he will go to the Protectorate Agents, elsewhere to the Resident." [89]

Such, briefly was Dundas' plan for the readjustment of British Administration in Buganda, which, with the concurrence of the Secretary of State and the Kabaka, came into operation on October 1,1944. [90]

89. SMP. No.037/2. op.cit.
90. SMP.No.0/37/2 of 11.10.1944. J.E.S. Merrick, Chief Secretary to the Government to Heads of Departments, District Commissioners, Protectorate Agents, and all Government officers in Buganda

and marked a major step in the Anglo-Buganda relations. As noted, earlier, however, the Mitchell-Dundas reforms were shortly afterwards reversed by the latter's successor, Sir John H Hall.

2.1.4. THE 1945 HALL REFORMS : THE RETURN TO DIRECT RULE

Like Mitchell, Dundas, as it happened, embarked on the foregoing changes virtually in the last months of his Governorship. Evidently, he was for several years, unaware that British policies and practices pursued by British officers in Buganda were inconsistent with the terms and intention of the Uganda Agreement of 1900, on which the Anglo-Buganda relations were based. He thus told the Secretary of State that:-

> "I regard it as vital that the Native State should no longer be split into districts since the inevitable consequence of such a division is that the District Commissioner displaces the Native Government in authority and responsibility. In this connection certain reflections recorded by the late Kabaka Sir Dandi Chwa, which I have not seen in original but have been very recently quoted to me, are illuminating. Had I been earlier aware of the late Kabaka's strong criticisms of the effects of the District Administration, I would have been inclined to close Mubende Station but I was led to believe that such would be unwelcome to the Buganda Government." 91

It would also appear, however, that the Mitchell-Dundas reforms did not have the blessing of the Provincial Administration.

> "Understanding, [wrote Dundas] that the changes projected by my predecessor were agreed upon before my arrival in Uganda, the question I had to consider was when and how they could be effected. As to the timing, it has seemed that the accession of the young Kabaka, was opportune and since then the change in holder of the office of Resident occasioned by the retirement of Mr. A.H.Cox, C.M.G., affords another appropriate moment to proceed further with the projected readjustment." 92

91. C.O. 536/211/40080 // Dundas to Secretary of State, 8.2.44
92. C.O. 536/211/40080/1 Ibid.

Thus Dundas' plan had to wait for a more propitious moment : that moment, however, came, rather regretably, towards the end of his governorship. He left Uganda in the latter half of 1944 and a few months later, his successor Sir John H.Hall, watered down and in some respects reversed his predecessor's administrative changes, and the pre-1944 system of detailed control and supervision which Dundas had began to relax reimposed. Hall's reasons for reversing the Mitchell-Dundas reforms were communicated to the Secretary of State by cable, the full text of which was as follows:-

> "In the light of experience since reorganisation I have reached the conclusion that all Administrative officers posted in Buganda should be given powers as both Assistant Residents and Protectorate Agents under the Resident's control so that they can carry out either function as required. . It is evident that the concentration of Assistant Residents in Kampala and the circumscribed functions of Protectorate Agents have militated against adequate touring and inspection and resulted in lack of contact with the local people and affairs, and in depriving (a) Protectorate Government of reliable information of the manner in which the Buganda Government is discharging their responsibility; and (b) Buganda of the official advice and assistance of which they still stand in need." 93

Hall's telegram seems to have been prompted by the "political riots" which occurred in and around Kampala in January - February, 1945, which he erroneously believed to have been caused by "the relaxation of control hitherto exercised by the British Administration." [93a] In fact as the Commissioner found, the "real origins of the disturbances were political" : some of the political influences at work were (a) certain chiefs were dissatisfied with the work of the Katikiro; (b) during 1943 and 1944 the Protectorate Government were desirous of acquiring land at

93. C.O. 536/211/40080/1 Hall's telegram to the Secretary of State 7.3.1945.

93a See Report of the Commission of Inquiry into the Disturbances which occurred in Uganda during January, Entebbe,1945,pp.2-5.

Makerere for the purpose of the College; they also proposed to acquire land for an Empire Cotton Growing Research Station; there was the question of "the big Indian Sugar Estate at Lugazi; and there was a proposal for the amendment of the "Sacred" "Uganda Agreement", 1900. All these issues were vehemently opposed by the land owners who were the instigators of the 1945 riots. These grievances were given expression in a booklet: Buganda Nyafe (Buganda Our Mother), described by the Commissioner, "as most subversive publication". It was "bitterly anti-British" and gave a "garbled and distorted history of the proposals to acquire land at Makerere and elsewhere and refers to "English skill and fraud" and bribing of Chiefs by the Protectorate Government".[93b]

Clearly, the Dundas reforms had very little, if any, bearing on the disturbances, yet as Hall's telegram indicates, they were the main casualty.

Hall's readjustment of British Administrative organisation was thus a negation of the policy evolved by Sir Philip Mitchell and loyally executed by his successor, Sir Charles Dundas; and quite clearly was contrary to the intentions of the framers of the 1900 Agreement. Yet, rather surprisingly, the Secretary of State for the Colonies had no difficulty in sanctioning the reversal of the Mitchell-Dundas reforms endorsed by him a few months earlier. The Secretary of State's reply cable in deference to "the man on the spot" simply stated: "I agree".[94] A clear case of "the man on the spot knows best" and indeed, no better example could be contrived. In the meantime, however, the young Kabaka had already began "to show himself independent of British Control,"[95] and, although he had acquiesced, and

93b. See Report of Inquiry, op.cit.
94. C.O.536/211/40080/1. Secretary of State's Telegram to Hall.
95. C.O.536/211/40080/1. Hall to Secretary of State. 26.6.1945.

indeed, "expressed his concurrence" in Hall's changes, he nevertheless continued "to rule his people" without reference to the Resident as he was obliged to do under the new regime.[96] Not unnaturally, Hall was up in arms at this outrage.

> "My advisers and I have been seriously exercised of late by the increasing tendency on his part [that is the Kabaka] to take action without consulting the Resident and myself." 97

Such action, Hall maintained, was "in almost every case such as to encourage the disloyal and anti-British elements in Buganda and to discourage the loyal elements",[98] so much so that the "inexperienced and bewildered young Kabaka" was ignoring his ministers and seeking advice from "persons of undesirable antecedents who were in greater or less degree involved in the January disturbances in the Country."[99] In particular, the Kabaka was reliably reported to be consulting, as regards the day to day business of government, a rich land owner named Kisingiri, believed to be "violently anti-British" and not surprisingly the Kabaka-Kisingiri alliance was viewed with the utmost suspicion.[100] It was believed that "Kisingiri who [had] succeeded in debauching the Kabaka's father [was] pursuing the same course with his son."[101] Besides, Kisingiri, Mutesa's other associates included several ex-Budo masters who, in 1942, were dismissed or forced to resign for participating in the so-called "Budo incident", one of the main features of which, was the outbreak of indiscipline at the school in that year.[102]

96. C.O. 536/211/40080/1 Hall to Secretary of State. 26.6.1945
97. C.O. 536/211 /40080/1 Hall to Secretary of State. 26.6.1945
98. C.O. 536/211 /40080/1 Hall to Secretary of State. 26.6.1945
99. C.O. 536/211/40080/1 Hall to Secretary of State. 26.6.1945
100. Ibid.,
101. Ibid.
102. Ibid. The "Budo incident" refers to allegations of homosexuality at the school.

"In native circles [Hall noted] the unsavoury reputation of these men is beginning to attach itself to the Kabaka himself."[103] It was also noted, however, that the Kabaka, the foregoing notwithstanding, was "fundamentally a very nice youth, with a genuine liking for and admiration of the British."[104] But his was an unenviable position. For, despite, his pro-British tendencies, the "young Kabaka was equally most anxious to appease the extremists and thus to show himself independent of British control." [105] He was, as Hall put it, "attempting the impossible course of at once keeping in with the Protectorate Government and with his own anti-British elements."[106] Accordingly, the political situation owing to the absence of any firm Native Government , the Kabaka's vacillation, was rapidly deteriorating. The disloyal elements had virtually "recovered from the shock administered to them by the Protectorate Government's unexpectedly firm and speedy suppression of the disturbances and were once again busy with plot and intrigue."[107] The Chiefs, many of whom were "actively disloyal" were "grossly neglecting their work, whilst the people who suffered from this neglect, were sullen and discontented. The Residency Staff, when on tour found themselves generally "ignored and sidetracked by chiefs who believed that by so doing would find favour in the eyes of a Native Government believed to be anti-British in sentiment."[108] Consequently, the loyalists, the vast majority of people, were becoming more and more "discouraged and puzzled".[108a] Buganda's political and administrative apparatus was, according to Hall, in "a serious state of disrepair, in serious danger of breaking down;" and clearly in urgent need of corrective action.[108b]

103. C.O. 536/211 /400801/ Hall to Secretary of State. 26.6.1945.
104. Ibid.
105. Ibid.
106. Ibid.
107. Ibid.
108. Ibid.
108a. Ibid
108b. Ibid.

Two main measures were, in Hall's view :

> "urgently needed: firstly to weed out of the administration those Bagandas who are really incurably evil and disloyal; and secondly, to give both the educated classes and to the common people, fresh hope of a more enlightened, a more progressive and a more representative system of Government." 109

However, Hall believed that neither of these measures could be successfully"carried through so long as the present weak and inexperienced Kabaka is nominally holding the reigns of power." [110] His enemies ,it was contended ,were "far too strong and cunning for him and he" [as Hall put it] "a mere school-boy and believed by many to be a bastard - a belief sedulously fostered by his ill-wishers" [had] neither the prestige not the character to establish his traditional authority." [111] Hall's elixir thus lay in "the early removal of the Kabaka from Uganda and the introduction into office of able loyal chiefs to act as Regents during the Kabaka's absence abroad; and the Secretary of State was advised accordingly.

> ".... as you will see from the accompanying record, my advisers and I are convinced that in the interests of the Kabaka himself, who, apart from these considerations, will quite probably be murdered if he remains here, and in the interests of Buganda and thus of the Protectorate at large, it is essential that he should leave the Country for a space of time, and should entrust the Government of Buganda to a loyal, firm and efficient Regency, who acting, as I am assured that they will, in full co-operation with the Protectorate Government, during his absence, uproot disloyalty and carry through these political, administrative and fiscal reforms that the Country so badly needs in preparation for the return of our demobilised soldiers." 112

109. C.O. 536/211/40080/1. op.cit.
110. Ibid.
111. Ibid.
112. Ibid.

It was felt that "a selected period of study in England, accompanied by the right social contacts and associations, would do much to remedy the Kabaka's defects of character," and would give him the confidence and the prestige in the eyes of his own people, that was sadly lacking. [113] To this end, the Kabaka, preliminary to attending the newly proposed special course for Administrative Officers, was to undergo a course of study in which he would be specially coached in certain subjects, such as "littlego" in which he was relatively weak. This period of coaching was, if necessary, to extend to six months. Hall's strategem, was, on the 4th July 1945, duly sanctioned by the Secretary of State for the Colonies, and two months' later the unsuspecting Kabaka and his party, consisting of Earnest Haddon, a retired Provincial Commissioner, and Yosiya Kyaze, a former Finance Minister in the Kabaka's Government, left Port Bell for Cairo, enroute to London, where they arrived on 28th September, in some flourishing circumstances. Both Hall and the Secretary of State were most anxious that the Kabaka should receive the treatment befitting his rank and position; and so it was done.[114]

As regards clothing, for example, the Colonial Office was particularly concerned that the Kabaka should, rationing not withstanding, be adequately provided with clothing coupons.

> "The Secretary of State attaches much importance to the visit of the Kabaka and he is anxious for political and other reasons that everything possible should be done to make things easy for him. We should accordingly be most grategul if you could see your way to furnishing us with a supply of coupons for the Kabaka and Chief [Kyaze] which will enable them to obtain a satisfactory wardrobe to start them off in this Country." 115

113. C.O.536/211/40080/1 Hall to Secretary of State, 26.6.1944
114. Ibid.
115. Ibid.

Indeed, as the following letter to Messrs. Harrods Ltd., graphically indicates, no expense was spared.

> "The Secretary of State desires that the Kabaka and [his party] should obtain their wardrobe and other purchases with the least possible difficulty. The Secretary of State would be grateful if an account could be opened to cover all the transactions between yourselves and the Kabaka, and it is suggested that this account should be in the name of the Colonial Office." 116

Clearly the Colonial Office was determined that the Kabaka should complete his education, cum exile, under the best possible circumstances. To this end, in addition to the above arrangements the Kabaka was to spend two years at Magdalene College, Cambridge, under Francis Turner, the brother of George Turner, the Principal of Makerere College, Uganda.

> "Quite apart [minuted Cohen] from the advantage of the Kabaka passing from George Turner's care to his brother's, Magdalene College seems to us to be just the right College, not too big, with a friendly atmosphere and a moderate interest in games. I do not think [Cohen concluded] that a better place for the Kabaka to go to could have been chosen." 117.

116. C.O. 356/211/40080/1. J.L.Keith to Messrs Harrods Ltd, 14.9.1945. Almost similar letters went out to (1) Dr.W.W.Grave, The Registrar of Cambridge University, requesting the Senate to allow the Kabaka to matriculate; (2) Messrs. Few & Kester, Haddon's Solicitors, regarding the re-letting of 3 Crammer Road, Cambridge; (3) The Board of Trade, Industries and Manufacturers, Dept. E, in connection with the International Refrigerator Company's licence for the supply of a refrigerator to the local dealers, for installation at 3 Crammer Road, for the use of the Kabaka; (4) The Ministry of Fuel and Power, requesting the supply of extra coal; and (5) Messrs. Mackintosh & Sons Ltd., and the local Gas Company, regarding the restoration of central heating facilities at 3 Crammer Road, Cambridge.

117. C.O. 536/211/40080/1 A.B.Cohen to Dr.W.W.Grave, Registrar, Cambridge University, 30.7. 1945.

As has already been mentioned, the Kabaka and his party reached London towards the end of September and shortly afterwards, the unsuspecting Kabaka proceeded to Cambridge to commence his studies, and as might be expected, the young Kabaka was grateful and, indeed, was "most appreciative" of the foregoing arrangements for his reception and placing at Cambridge. He was, of course, unaware of Hall's policy considerations behind these elaborate measures, and not surprisingly his own account of these events, inevitably differs from the one given above, and, in part reads as follows:

> "The news that I was to break off my studies at Makerere and go to Cambridge came as a surprise to me, but a pleasant surprise. I was eager to go to England and had no views on the real merits of British Universities. Cambridge was as good as any, Just how this decision was taken by the Oxford men that surrounded me - the Governor, Sir John Hall, and George Turner, the Principal of Makerere College, I do not know, but it is one I have certainly never regretted. Ernest Haddon, a friend of my father's and life-long friend of mine, was returning to Cambridge (118) and George Turner had a brother who was also at Magdalene and subsequently my tutor. These were, I think .... the deciding factors." 119.

In view of the preceeding discussion, it is interesting to note that less than two months earlier, Hall, had telephoned the Secretary of State that the Kabaka had approved the introduction of unofficial members of the Official dominated "Native Assembly" otherwise known as the Lukiko. Hall's telegram was in these terms:

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118. In fact Ernest Haddon was specifically released from his censorship duties in Uganda in order to accompany "the Kabaka and Chief Kyaze to Cambridge and there take charge of Yosiya" for which he was to be suitably remunerated.

119. Mutesa, Sir Edward, The Desecration of My Kingdom. op.cit., pp 9 - 11.

> "At its last session on the 2nd March the Buganda Authorities agreed to a resolution put forward by the Kabaka for an alteration in the Constitution of the Lukiko to permit 31 seats out of the total of 89 to be filled by unofficial representatives by local miluka assemblies." 120

Yet it is to be recalled that one of Hall's two main reform proposals "urgently required" but which could not be successfully carried through, "so long as the weak and inexperienced Kabaka nominally held the reigns of power" was said to be the reorganisation of the Lukiko: a measure that had already been embarked upon with the approval of the supposedly "unreforming Kabaka". 121

What is even more startling is that Hall, as is now known, was vehemently opposed to direct elections to the Lukiko, which ironically would have given the people "a more enlightened and more progressive and a more representative system of Government", 12a of which he was the chief advocate.

It is also noteworthy that on certain issues of national and constitutional importance, the "young and inexperienced" Kabaka was, in fact, more progressive than many of his more experienced ministers and advisers, and his people generally. Thus, for example, on the question of African representation on the Legislative Council, the Kabaka was more forward looking than his Government: all his ministers were opposed to the idea, whilst the Kabaka, in Hall's words, "was strongly in favour of it." 122 Furthermore, it is ironic that Hall did not, "the appointment of a loyal, firm and efficient Regency" not withstanding uproot disloyalty, replace the old and less

120. C.0.536/211/40080/1 Hall to Secretary of State. 26.6.1944.
121. Ibid.
121a. Ibid
122. Ibid.

educated chiefs by young and better educated men, increase the representative character of the Lukiko", nor indeed, did he endeavour to effect his projected "political, administrative and fiscal reforms" while the Kabaka was at Cambridge.[123] These were the measures it will be recalled, which the Country, "so urgently needed", and the introduction of which was given as the raison detre for the Kabaka's banishment.[124] To this catalogue of broken promises must be added Hall's cool response to Creech-Jones' 1947 despatch on Local Government in the Colonies, and his subsequent and much criticised African Governments Ordinance, 1949, which incidentally, he did not extend to Buganda.[125] Be that as it may, Hall was, in 1951 succeeded by Sir Andrew B Cohen, and the latter's arrival afforded an opportunity for the re-appraisal of the Anglo-Buganda relations, and, in particular, the reconsideration of the 1944 Mitchell-Dundas reforms that were rudely reversed by Hall before they could take root. For a while, the prospects for reform looked bright and by March 1953 Cohen's planned administrative and political reforms were beginning to emerge. In this connection, Cohen's Memorandum on the Constitutional Development and Reform in Buganda, is particularly noteworthy.[126] Cohen's proposed changes, the most important of which were the reform of the Lukiko and the making of ministerial appointments by the Kabaka, were, shortly afterwards, however, marred by the declaration of a state of emergency and the withdrawal of recognition from the Kabaka by the Protectorate Government, and his deportation to England towards the end of 1953.[127] The events

123. C.O. 536/211/40080/1. op.cit.
124. Ibid
125 See pp.178-186supra
126 His previous record at the Colonial Office is recounted by Ronald Robinson: "Andrew Cohen and the Transfer of Power in Tropical Africa" in Decolonization and After, Morris-Jones,W.H. & Georges Fischer,(Ed.) Cass & Co.Ltd,1980 pp50-72)
127. Legal Notice No.190 of 1955.

leading to this crisis are outlined below, and need not be rehearsed here, save to say that the causa belli, the Secretary of State's after dinner speech to the African Dinner Club on June 30, 1953, had nothing to do with Buganda's internal affairs.[128] Yet its aftermath had far reaching constitutional and political consequences for both Buganda and the Protectorate generally: for the former, the most important sequel was the promulgation of the Buganda Agreement, 1955,[129] under which Buganda's autonomy was considerably enhanced and for the latter, the scramble for tribal autonomy and the destabilization of the Protectorate.

128. See p.78 infra.

129. See p.77 infra.

2.1.5. THE BUGANDA AGREEMENT, 1955

Cohen's local government reforms in the eastern, northern and western provinces were matched by similar changes in Buganda. Here the changes were foreshadowed by a Memorandum on Constitutional Development and Reform in Buganda issued by the Governor, with the consent of the Kabaka, in March 1953. It was agreed that responsibility for running certain social services would be transferred to the Buganda Government; that the number of elected members of the Lukiko would be increased from 40 to 60 and that a Committee system would be developed; that a system of local government would be recommended to the Lukiko; and that the Buganda Government would introduce the Personal Graduated Taxation for the financing of the devolved services.

It was also announced that the Governor, with the consent of the Secretary of State, had agreed to effect some changes in the composition of the Legislative Council that would entail an increase in non-official representation, including three members from Buganda. The latter were to be selected by the Lukiko, or the Kabaka, if the former failed to do so. As expected, the Lukiko, for the second time, refused to elect Buganda's representatives; and somewhat unexpectedly, the Kabaka, too, at the instance of the Lukiko, declined to nominate them. The reasons for this are many, but difficult to disentangle, suffice it to note, however, that Buganda's attitude towards the Legislative Council was always negative. It was believed, for some strange reason, that the Protectorate Legislative Council had nothing to do with Buganda; that Buganda's active participation in its proceedings would diminish the importance of the Lukiko; and that it was incompatible with the 1900 Agreement. In any case, many felt that Buganda was under-represented whilst the Asian and European non-officials were over-represented.

Worse, they wrongly suspected that the Protectorate Government was still hell-bent on an East African Federation, and that the projected changes were designed to smooth the path towards that goal. These fears were shortly afterwards exacerbated by the Secretary of State's after dinner remarks that the unification of East Africa was an open issue and that the federation of the whole of East African territories was H.M.Government's ultimate aim. Undertakings were immediately sought and given that there was no intention of imposing an East African Federation upon the people, against their wishes, these assurances, however, were viewed with suspicion, and further guarantees sought. In particular, the Kabaka demanded that Buganda should be placed under the supervision of the Foreign instead of the Colonial Office, and that Buganda's constitutional status, vis-a-vis, Her Majesty's Government should be reviewed and a timetable for independence drawn up, as soon as possible.

These demands were, not surprisingly, unacceptable to the British Government and the Kabaka was advised accordingly, and urged to refrain from making ridiculous demands. This, the Kabaka refused to do, and was promptly deported to England.[130]

On 23rd February, 1954, the Secretary of State told the House of Commons that the long-term aim of Her Majesty's Government was to build the Uganda Protectorate into a self-governing state; that the Country's future government would be mainly in the hands of Africans; and that the Anglo-Buganda relations called for immediate examination. Three months later, the Government invited Sir Keith Hancock, Director of the Institute of Commonwealth Studies, University of London, to

130. Uganda Protectorate: Withdraw of Recognition from Kabaka Mutesa II of Buganda. (1954) Cmd. 9028.

consult with the interested parties and to make proposals for reform. The Lukiko thereupon appointed a thirteen-man Constitutional Committee to hold talks with Sir Keith on the Anglo-Buganda relations. The Buganda Constitutional Committee, subsequently called the Namirembe Conference, published its findings on the 15th September 1954. The Conferences "Agreed Recommendations" were set out in 49 Articles, the first of which specifically declared that:-

> "The Kingdom of Buganda under the Kabaka's Government shall continue as heretofore to be an integral part of the Protectorate of Uganda." 131

Significantly, however, the "Recommendations", in describing the future relations between Buganda and the Protectorate Government, eschewed the words "province" and "unitary state" respectively. Such nuances, though virtually meaningless, were of special importance to the Baganda, and crucial to the Conferences' success.

Next, Articles 2 - 29 set out, in some considerable detail, the future relations between the Kabakaship, the Buganda Ministry, the Lukiko and the Protectorate Government.

The conduct of Buganda's affairs was placed in the hands of six (formerly three) ministers, namely, the Katikiro, the Omulamuzi, the Omuwanika, the Minister of Health, The Minister of Education and the Minister of Natural Resources. The idea was to bring Buganda's ancient political institutions and democracy into harmony, thereby placing the Kabaka above the storm-centre of local and national politics. Inter alia, the Kabaka was to be a Constitutional monarch and above criticism for his government's policy blunders or failures. He was to exercise his rule through the Lukiko and the six ministers so that they and not the Kabaka would be responsible for policy making and its implementation.

131. The Agreed Recommendations of the Namirembe Conference. Article 1.

Of immediate interest here, however, were the proposed provisions for the transfer of certain services, as laid down in paragraph two of the Memorandum on Constitutional Development and Reform of March 1953. Provision was made for the establishment of joint Consultative Committees on education, health, natural resources, local government and community development. The main functions of these Committees were, the co-ordination of policy, the consideration of matters of mutual interest, the minimization of conflict between the two governments, and most importantly, to give the Kabaka's Government ample opportunities for commenting on proposed Protectorate policies. It was suggested for example, that the programme for the development of local government bodies proposed by the reforms of March 1953 should be reviewed by the Katikiro and the Buganda Resident, in consultation with the local Government Consultative Committee.

Additionally, provision was made, for the first time, for the progressive development of local government services in the Kibuga (Buganda's Commercial Centre) trading centres and townships, excluding Kampala, Entebbe, Masaka and Mubende. The new local authorities, in the former areas, their large Asian communities not withstanding, were to be placed under the Buganda Government and provision made for the representation of all sections of the community on the proposed councils. Again, a committee comprising local residents and representatives of the Buganda Government, would study and oversee the implementation of these proposals.

The "Agreed Recommendations" were accepted by both sides: the Governor, having buttressed his assurances on the East African Federation agreed to recommend them to the British Government, and

the Buganda Constitutional Committee, having agreed to Buganda's participation in the Legislative Council, undertook to recommend them to the Great Lukiko. In the meantime, Councillor Mukwaba had instituted legal proceedings in the High Court, the effect of which was to test the Constitutionality of Cohen's decision to deport the Kabaka.[133] In reply, the Crown argued that the Governor's decision was, in this case, non-justiciable, and that contention was upheld by the High Court. It was noted, however, that the Kabaka's deportation was, under the circumstances, unlawfully made; the Governor had erroneously invoked Article 6 instead of Article 20 of the 1900 Agreement.

Consequently, when the "Agreed Recommendations" were presented to the Lukiko, it was announced that the Secretary of State had, in view of the High Court's decision, in the so-called Kabaka Case, decided to reconsider his decision regarding the Kabakaship and that providing the Lukiko accepted the "Agreed Recommendations", in toto, they would be given an opportunity to select a new Kabaka. The "Agreed Recommendations" were, in the light of the Secretary of State's concession, accepted by the Lukiko and incorporated into a new Anglo-Buganda Agreement. Two months later the Kabaka was released and on 18 October, 1955, having made a solemn declaration of loyalty to the British Crown, signed the new Agreement,and,so pledged to abide by its provisions. The 1955 Agreement which, with minor modifications, incorporated the "Agreed Recommendations", had, as its principal effect the establishment of a Constitutional Monarchy in a Colonial setting. It placed Buganda in a special devolutionary relationship with the Protectorate Government, at the latter's expense.

133. Mukwaba v Mukubira (1954) 7 U.L.R.74.

Hence forward, the Resident's functions were limited

(i) to advising the Kabaka's Government;

(ii) to keeping it informed of Central Government's policies;

(iii) to keeping the Protectorate Government informed of important developments in Buganda. [134]

The Agreement thus provided a more precise definition of the Resident's powers and placed the Anglo-Buganda relations, more or less, along the lines advanced by Mitchell and Dundas in 1939 and 1944 respectively. The Resident lost his influence over the appointment and dismissal of chiefs, and his advisory powers were to be exercised "in the full spirit of the Agreement". [135] True, the Governor retained certain specific powers over Buganda's internal affairs, but his former wide and discretionary powers were a thing of the past. [136] Under the Agreement, the terms of which were "legally binding" and subject to literal interpretation, Buganda's autonomy was confirmed, and so too was the Anglo-Buganda special relationship.[137]

Cohen's grand scheme for a unitary state was the first casualty, but the Agreement's most serious unforeseen consequence was the revival of the "African Local Government" idea and the weakening of the case for the development of an efficient and democratic system of local government. For henceforth, all District Councils pressed for "Home Rule" on the Buganda pattern, and though, none were immediately successful, their efforts were not wasted: their ambitions were largely realised a few years later and given expression in the Independence Constitution, with as we shall see, some serious consequences for national and political unity.

134. The Buganda Agreement, 1955, Article 35.
135. Agreed Recommendations, op.cit.
136. Vide, Articles 12, 26, 27.
137. Article 2(7) & Legal Notice No.188 of 1955.

CHAPTER THREE

3.1.1. THE STRUCTURE OF LOCAL GOVERNMENT IN THE WESTERN KINGDOMS

The evolution of local government outside Buganda was characterised by two main factors: the British obsession with tribal considerations, and the extensive utilization of Baganda Agents "as Tax Collectors and general intermediaries". [1] Even in the Western Kingdoms of Ankole, Bunyoro and Toro, Baganda Agents were employed to instruct the local chiefs "in the ways of native administration". [2] In the case of Ankole and Toro, Lugard's earlier treaty arrangements were confirmed and subsequently re-arranged on the Buganda pattern. In the case of Bunyoro, however, no formal Agreement was made. Instead, the Country was treated "as one immediately under the Protectorate Administration." [3] But, in view of the Country's cultural and political affinity with her neighbours with which Agreements were made, it was administered as if it were in treaty relations with the British Government. Her traditional leaders were, however, always reminded that their Country had been "acquired by force of arms." [4]

It would appear that Bunyoro was a victim of adverse publicity in the years immediately preceding the establishment of Colonial rule over the area. Bunyoro's heinous crime was that her rulers were strongly opposed to British overlordship. [5] Indeed, efforts were made to resist

1. C.O.536/21/37925 Boyle to Bell. 4.11.1908
2. C.O.536/21/27825 Bell to Secretary of State 11.9.08.
3. F.O. 2/858 Sadler to Secretary of State 4.8.04.
4. Ibid.
5. F.O.2/202/ Ternan to Salisbury 31.6.1899: Bunyoro's adverse publicity abroad was spread by Samuel Baker, as he was then, following his quarrel with Kabarega in 1872, when the latter refused to acknowledge the Khedive Ismail's suzerainty which Baker had offered, on behalf of his employers, the Egyptian Government, in return for Baker's acceptance to move against Kabarega's rival Ruyonga. Much of this hostility is to be found in Baker's Ismailia, London, 1874.

Bunyoro's incorporation into the Protectorate and the subordination of her rulers to British overrule and protection. And, as a result Bunyoro was always deemed "a hostile country."[6] and in due course, "its ruler's name became a synonym for treachery and guile",[7] and it was decided that Kabarega, that "inhuman fiend""should be driven out".[8] And, so, in April 1899, the indefatigable Kabarega was, having been "most effectively betrayed by the Wakedi",[9] captured and banished into exile, and his Kingdom placed "under the superintendency of British officials".[10]

However, Bunyoro's ancient system of government, through a hierarchy of chiefs, was retained and Kabarega's ten year old son was put on the throne and placed under a regency; but as his appointment was "a Concession" the Regents were called "Guardians" and were to exercise their powers under the watchful eye of the British Officer in civil charge of the district.

As in Buganda, so in Bunyoro, a chiefly council was constituted, but unlike the Lukiko, the new council, otherwise known as the Rukurato, had no judicial, executive or legislative powers. It was purely an advisory body.[11] Shortly afterwards, however, a civilian, George Wilson was poste to Bunyoro and asked to introduce a system of civil administration into the Country.[12] He reorganised the divisional chiefs and with

6. See Lugard's Report, op.cit. p.114.
7. Low.D.A. The British and Uganda, 1862-1900, D.Phil, Oxford 1957.
8. F.O.2/200 Evatt to Ternan. 15.4.1899.
9. Ibid.
10. Johnston to Evatt. 6.2.1900. UNA/EA 5/9.
    It is interesting to note that Buganda was never considered "a conquered country", though Mwanga's antics like Kabarega's had given rise "to a great deal of expense in men and money" the raison detre for placing Bunyoro "under the superintendency of the European officials" and thus denying them the privilege of concluding an Agreement with the British Government.
11. F.O.2/202 Ternan to Secretary of State. 31.6.1899.
12. F.O.2/858 Wilson to Sadler. 10.3.04.

their consent, selected a Muganda Chief "to guide or influence the others in gradually introducing the Uganda system of local government."[13] Subsequently, "an open Baraza, for the transaction of public business, was established, and the effect upon the Country at large was promising so much so that in 1901 a list of chieftainships were compiled and submitted to head office for confirmation."[14] This Wilson hoped would, in two years' time, if the new regime proved its "capacity for rule",[15] be incorporated into a treaty with the British Government on the lines of the Ankole Agreement.[16] In the event, however, Wilson's "Provisional Agreement" was largely ignored by successive subcommissioners, and it soon fell into disuse.[17] Nevertheless, the divisional chiefs continued to exercise certain concessionary powers, "somewhat on the system obtaining in Ankole and Toro", albeit, under the close supervision of the District Collector.[18] Such jurisdiction, however, though tacitly allowed, had never been statutorily defined, and it was to regularise this informal accord, the need for which was triggered by the Chiefs' "excessive and inhumane punishments" that the "Unyoro Native Courts ordinance" was passed and brought into force in 1905.[19]

13. Ibid. The reason for this was stated by Wilson thus: "That system, I suppose, is universally admitted to be the only one effective with this class of native."
14. Ibid. The structure of the traditional chiefs was streamlined and for the first time, their powers defined. The Country was divided into 10 administrative areas called Sazas or Counties, and each placed under the hierarchy of chiefs on the Buganda pattern. In the exercise of his powers, each chief was answerable to the regents and the Rukurato over which Wilson himself presided. Other changes included the reconstitution of the Rukurato and the imposition of taxation to wit, the hut and gun taxes.
15. F.O.2/858 Wilson to Sadler. 10.3.04.
16. Ibid.
17. Ibid. Towards the end of 1901 Wilson was succeeded by Bagge who in June 1892 was relieved by Tompkins. The latter's first administrative act was to depose the young Kitahimbwa, and instal his elder brother Duhaga as King of Bunyoro. In 1903 Tompkins was replaced by Prendergast, who until he was invalided home in 1904 had championed the rights of the "down-trodden" peasantry at the expense of the chiefs. The difficulties brought about by these changes were compounded by the 'unfortunate tendency to over look records", and not surprisingly Wilson's proposal for concluding an Agreement with Bunyoro was never carried out
18. F.O.2/858 Wilson to Sadler 10.3.04.
19. F.O.2/858 Ennis to Sadler

The ordinance created a four-tier court structure, at the apex of which was a Court of Appeal over which the Collector presided. The Collector's Court had full civil and criminal jurisdiction over all persons and over all matters in the district, and any person aggrieved by a decision of any of the inferior courts had a right to present his case to the "Native Appeals Court" for further consideration and decision.[20]

Below the "Native Appeals Court" was"the Court of the Lukiko" over which the Omukama presided. The Court had both original and appellate jurisdiction, and the power to hear and determine civil and criminal causes, such as murder, manslaughter and all major civil cases where the amount or value of the subject matter in dispute was in excess of 50 rupees.[21]

Next, the ordinance provided for the establishment of "Saza Courts" coterminous with the administrative counties and presided over by the County Chiefs.[22] In civil cases the court's jurisdiction was limited to causes in which the value of the subject matter in dispute was 50 rupees or less, whilst its criminal jurisdiction was limited to minor offences punishable with six months rigorous imprisonment or 12 lashes, or where the maximum fine was 30 rupees.[23] All the Saza Courts had no appellate jurisdiction.

The lowest courts in the hierarchy were the "Sub-chiefs Courts", presided over by the Gombolola Chiefs. Like the County Chiefs' Courts, the Sub-chiefs Courts had limited civil and criminal jurisdiction. Each court had power to hear and decide all cases

20. S.5. of No.1. of 1905
21. S.6. of No.1. of 1905
22. No.1. of 1905.
23. Ibid.

provided that no greater punishment than one month's rigorous imprisonment, or a fine of 5 rupees or 6 lashes was imposed. In civil cases, jurisdiction was limited to causes where the amount of the subject matter in dispute was less than 15 rupees.[24] In trying cases, all courts were to be guided by a code of practice and procedure drawn up by the High Court, the object of which was to ensure that minimum standards were maintained throughout the district. These rules were, in fact, no more than a restatement of the rules of natural justice, particularly the audi alteram pertem rule. It was provided, for instance, that no man, subject to Rule 5, should be condemned in his absence, and unheard.[25] In criminal cases the accused had a right to make a statement, put questions and call witnesses, as he saw fit. Likewise, in civil cases, the parties had a right to state their respective cases, call witnesses and were at liberty to cross examine such witnesses.[26] All cases were to be disposed of in accordance with the principles of substantial justice, without undue regard to technicalities of procedure, and without undue delay.[27]

Considering that the magisterial "junctions of chiefs were inseperable from their political and administrative duties",[28] the administration had sought to place all the Chiefly Courts under the control of the Executive rather than the Judiciary. It was contended that Native Courts were Courts of Special Jurisdiction, that the Country was not sufficiently advanced for a separate and regular system of inferior courts answerable to the High Courts, and that, per force, direct subordination to the High Court of the jurisdiction exercised by the Chiefs, was "a measure to be deprecated."[29] In these early days, the

24. No.1. of 1905
25. Rule 5 stated: civil cases may be heard in the absence of the defendant when due notice of the time and place of hearing has been given to the defendant.
26. Rules 2,3 and 4
27 F.O. 2/875 Sadler to Lansdowne (Draft Rules).
28. F.O.2/894 Wilson to Lansdowne.10.2.04.
29. F.O.2/894 Sadler to Lansdowne 4.8.04.

administration was concerned lest the judiciary "might overturn the coach by overloading it with technicalities unsuitable in native procedure." [30] The official view was that:-

> "the institution of High Court supervision over Native Courts in countries of crude conventions must inevitably lead to increased obtrusion of European interference into native methods of jurisdiction." 31

Worse, it was contended that the High Court judges, with their limited knowledge of local conditions, could not in fact, exercise effective control over Native Courts in rural areas. The only difficulty was Ennis' contention on which his draft ordinance was based, namely, that Native Courts, inso far as they exercised civil and criminal jurisdiction were, under the order in Council of 1902, courts subordinate to the High Court.[32] Inter alia, this meant that these courts had to exercise their jurisdiction in accordance with the rules made by the High Court. The Commissioner was "strongly averse to this", however, [33] and in submitting the draft Ordinance to the Secretary of State, for the Colonies, vigorously contested Ennis' interpretation of the Order in Council, 1902, and strongly recommended the amendment, if need be, of the Order in Council, so as to leave the control of Native Courts, in the hands of the commissioner.[34] To this, the Administrative Branch

30. It was principally for this reason that Wilson strongly argued "that the making of rules of practice and procedure be placed in the hands of the Commissioner, confident that there will be thus secured a sympathetic bond between administrative officers and native which is indispensable in promoting content among the people." (F.O.2/894 Wilson to Secretary of State.10.2.05).
31. F.O. 2/894. Wilson to La nsdowne. 10.2.05.
32. F.O. 2/895 Ennis to Wilson.3.1.05. Ennis' contention was based on s.15(1) of the Order in Council, which provided that the High Court had " full jurisdiction, civil and criminal, over all persons and over all matters in Uganda."
33. As provided by s.22(1). Uganda Order in Council, 1902.
34. F.O.2/894. Sadler to La nsdowne, op.cit.

at the Colonial Office, did not demur,[35] the Legal Department, however, disagreed,[36] but recanted after some arm twisting, and put a liberal interpretation on s.22(1)[37] of the Order in Council, thus resolving the conflict and so enabled the Commissioner to frame the requisite rules of practice and procedure, instead of the High Court judges, as he wished, to the chagrin of the Judiciary.[38] The importance of this correspondence can hardly be over emphasised. It underscores the importance the British attached to Native Courts in the development of local government institutions, and sheds some light on the origins of the dual control of Native Courts and helps to explain why this dichotomy of responsibility, despite its drawbacks, remained a central feature of British judicial policy until the late

35. F.O. 2/895 Bottomley's minute to Read 12.4.05. "The principle involved in the establishment of these courts is based on the experience and local knowledge of Wilson and Col.Sadler, and it would be a mistake to upset it."
Read's Minute reads: "Col.Sadler spoke to me strongly on this subject, and I concur in his views. The simpler the judicial machinery in these undeveloped countries the better. If Mr.Ennis' view is correct as to the interpretation of the O in C., the difficulty is at worst a technical one and can be got over by amending the Order in Council."
36. F.O.2/895 Cox to Antrobus 18.5.05. Cox's minute reads: "I agree with Mr. Risley. I think it is essential that the Supreme Court should have powers of revision and control over Native Courts, otherwise as in the Gold Coast extortion and officerism will be liable to spring up in the Native Courts. The Commissioner's fears as to technicalities are natural but unfounded.
37. S.22(1) provided: "Subject to the provisions of any Ordinance, the High Court may,with the approval of the Governor, make rules for regulating the practice and procedure of the High Court and of all other Courts which may be established in Uganda."
38. F.O.2/895. In advising the Secretary of State, Antrobus stated: "I think his fear [ie. the Commissioner's] is not unfounded and I would therefore proceed as proposed by Mr.Risley. The Commissioner when making rules will no doubt consult his legal adviser, or hopefully, the judges."

1950s. Moreover, it settled once and for all, the future pattern of Native Courts in the non-Agreement Districts; for the principle of the "Unyoro Native Courts Ordinance", was extended to Busoga later that year,[39] and in subsequent years, to the Eastern, Northern and Western provinces, including the two "little Kingdoms" of Ankole and Toro to which we now turn. Of interest here are the "Native Agreements" and their interpretation by the Protectorate Government with special reference to the latter's relations with the Ankole and Toro "Native Governments".

3.2.1. THE ANGLO-TORO RELATIONS: THE SETTING

The formal relations between the "little Kingdom of Toro" and the Protectorate Government were regulated by the Toro Agreement of 1900,[40] and the subsequent subsidiary Agreements, the earliest examples of which were the Toro Agreement (Poll Tax), 1910, and the Toro Agreement (Judicial), 1912.[41] The latter, as the names imply, embodied central government policies of general application, throughout the Protectorate, and will not be discussed here.[42] The main Agreement, on the other hand, was based, albeit erroneously, on Toro's indigenous

39. C.O. 536/2/33072 Sadler to Secretary of State. 16.8.05. The Ordinance itself was based on the System obtaining under Agreement in Ankole and Toro Districts.
40. For detailed accounts of the emergence of the Kingdom of Toro, see Ingham, K, The Kingdom of Toro in Uganda, Methuen,1975; Furley, O, Kasagama of Toro, Ug. Journal. Vol.25 (1961) pp. 184-198; and Vol.31 (1967), pp 183-190;Wilson,J.F.M. A History of the Kingdom of Toro in the Western of Uganda to 1900.(MA Thesis,Makarere University).1972.
41. The Toro Agreement,1900, Uganda Laws, Revised Edition (1951)
42. Toro Agreement (Poll Tax), 1910.
Toro Agreement (Judicial), 1912.

political institutions and was, throughout the Protectorate period, the core of the Anglo-Toro relations. Hence, its prominence of place here. It would appear, however, that though generally followed, it was on account of the events which pre-dated it, occasionally disregarded by divers District Officers. It is pertinent, therefore, before examining the main terms of the Agreement, including its interpretation and implementation, to cast a quick glance at some of these events. The origins of the Kingdom of Toro, like those of its ancestor, the Kingdom of Bunyoro-Kitara, are shrouded in mystery, and not unnaturally, read like a fairy-tale. The same cannot, however, be said of its later revival in the 1890s, for, henceforth, the Country's history can fairly easily be eked out from contemporary records; and these show that the Kingdom of Toro was created a monarchy, as Kenneth Ingham puts it, through the "initiative of an adventurous Englishman and the opportunism of the son of a former ruler:" the adventurer was Captain F.D.Lugard and the opportunist prince was Daudi Kasagama.[43] The two, both inexperienced and relatively young men, met in Buganda, some 200 miles away from Toro, and their eventful encounter has been related by Lugard, and like Toro's origins, reads like an imaginary tale:

> "On 5th July, 1891 Zachariah came to see me, and brought four sheep and a quantity of food and co. as presents. He brought a young man, of an extremely prepossessing appearance. This young man together with an older man named Yafeti were, he said, close relatives of Kabarega's and of the royal family of Unyoro. They say they can raise Toro to their standard, and that if they send on messengers there the people will not fly from us but will join us against Kabarega whose tyrannies are detested. Now all this reads like the variest fiction which I could possibly have invented to dovetail with my wishes. I cannot hope that it is true, Inshallah, this may yet prove a trump card." 44

43. Ingham,K. The Kingdom of Toro in Uganda. op.cit.p.3.
44. Lugard,F.D. The Diaries of Lord Lugard, (Ed.) Margery Perham, Vols. 1,2,3, Faber and Faber, London 1959.

Indeed, there is little doubt that Kasagama's arrival at Lugard's make-shift camp in Buddu, in view of the latter's plans to secure the Salt Lake at Katwe was a piece of good fortune. It was Lugard's manna and he seized it with both hands. He immediately set off for Katwe, hurriedly traversed Ankole and, almost without resistence, captured and garrisoned the Katwe Salt Lake and shortly afterwards resumed his trek to the West. He arrived in Toro in early August, drew up the Lugard-Kasagama Treaty and, on August 14, enthroned his protege, and placed him under the direct control of Frederick de Winton.[45] Lugard's Co-adjunctor and the Company Director's son. De Winton's brief was to support and uphold Kasagama's administrative and judicial powers.

> "Your immediate task [de Winton was urged] will be to accompany the King Kasagama on a tour through Toro, and assist him in every way to redress grievances, especially with regard to any wrongs done to the natives by the Soundanese, to establish law and order in the Country, and appoint officials and heads of districts and restore refuges to their shambas, and drive out any remaining chiefs of Kabarega's who return to pillage the Country and murder the people." 46

45. The Treaty's preamble specifically stated that: "I, Kasagama, who am son of Nyaika, the last King of Toro, who Kabarega drove out and conquered, having now been brought back to my father's Country, and made King of Toro by the British, do hereby bind myself by the following treaty, which has this day been made between Captain Lugard acting on behalf of the Imperial British East Africa Company on the one part, and myself and Yafeti my cousin on the other hand."

46. C.6848 (1893) Instructions to F.de Winton, Kavari, November, 27. 1891.

Kasagama's rule, was, however, limited to central Toro, the so-called Toro proper, thus leaving Busongora, Butuku, Kitagwenda and Mboga counties outside his jurisdiction. These sub-regions were, for the time being, to remain under their former chiefs and, of course, under de Winton's benign authority. Not unnaturally, Kasagama resented these arrangements and he was caustically reminded that he "had his hands very full" and that he had yet to prove "his capacity for rule."[47] Before Kasagama could do so, however, the company intimated its desire to abandon Uganda, "as too great a burden". And, as might be expected, Kabarega, sooner rather than later realised the significance of the company's withdrawal, and lost no time in attacking and overrunning Toro. The news of Kasagama's plight reached Kampala in late December, 1893, and early in the new year, Col. Colvile, the new commissioner, dispatched an armed expedition, under Major Owen, to Kasagama's rescue, and on the 3rd March, 1894, the latter was, once again, having been forced to sign away his birthrights, "made King of Toro"; and though, too harsh and onerous, the Owen settlement was a watershed in the Anglo-Toro relations. Henceforward, Kasagama was accepted as the traditional Ruler of Toro, and in due course it became British policy to support and uphold his rule and dignity. However, this

47. The Diaries of Lord Lugard op.cit., ""I said that Kasagama had his hands very full at present to settle Toro proper and until he had done so, he need not come to me with any questions or requests regarding Busongora. First I wanted to see his capacity for rule. If I found he could rule and settle his country, I would enlarge it, but first I wanted to see the heads of districts appointed, officers of state, a law of the land, a court of justice, etc., throughout all the country from No.1.stockade (Wavertree) on the North to Rwenzori on the west and No.4. on the South here. When he had instituted law and order there, I would add Busongora and perhaps Butuku, also the country to the West of Rwenzori and to the boundary of British dominions, but first I must see his capacity for rule."

commitment soon ran into difficulties,[48] but was subsequently honoured and many of its elements incorporated into the Toro Agreement of 1900 between Kasagama and his chiefs on the one hand, and Sir Harry Johnston, on behalf of the British Government, on the other.

3.2.2. THE TORO AGREEMENT, 1900

Having detailed S.S.Bagge, the Collector, to prepare Kasagama and his Chiefs for the proposed "Agreement",[49] Johnston left Kampala for Toro in April, and in late June, in open baraza, set out in broken swahili, the terms of the third Anglo-Toro Agreement, somehow secured Kasagama's approval, and hurriedly returned to base, leaving the bemused chiefs to ponder over his unilateral settlement. In fact, the new charter was somewhat similar to the Owen Treaty of 1894. Thus for example, Kasagama was simultaneously "made King of Toro" and Saza or County Chief of "Toro proper", one of the counties into which, for administrative purposes, the Kingdom of Toro was divided.

48. The fact that Kasagama owed his position to the British was viewed by some District Officers as a licence to do pretty much what they conceived to be in the interests of the country regardless of Kasagama's feelings or views on the matter. Many did not accord Kasagama, in the words of his mentor (Lugard) "the respect due to a King". Instances abound whereby Kasagama was publically rebuked, humiliated and "fined as a low common thief". Even the most ardent supporters of traditional rulers were inclined to regard Kasagama as a "pompous upstart". (See C.O.536/139/5766). On the other hand, Kasagama insisted on his rightgul Kingly authority and autonomy despite the new situation. Consequently, he was always in trouble with officials, especially during the early years of British overrule. (See, 536/6/19337).

49. Having spent three months in Buganda negotiating the Uganda Agreement, 1900, Johnston believed that this would facilitate his Toro mission. There was, however, "consternation" when Kasagama and the chiefs heard of the tax proposals. Kasagama believed, and subsequent events vindicated him, that a considerable number of people would migrate to the neighbouring Congo to avoid taxation. Additionally the wisdom of imposing taxation on a people without due regard to their ability to pay was questionable. But Sir Harry, owing to his mandate was in a hurry to concern himself with the niceties of tax policy.

Worse, Bwamba, one of Toro's traditional counties was left in the hands of the District Collector, and excluded from Kasagama's jurisdiction. Having thus misinterpreted the Country's political organisation, and appropriated for the Crown all the waste and uncultivated land, forests, mines, minerals and salt deposits, the Agreement proceeded to make provision for the imposition of Hut and Gun taxes, the abolition of the traditional octroi, and the maintenance of law and order.[50] Thus the Anglo-Toro relations could hardly have started on a more sour note. The "Toro Agreement", 1900 was arguably no "agreement" at all; it was an imposition from above, and, indeed there was no consensus ad idem.

For the Batoro, however, their new constitutional settlement suffered from five major defects which, incidentally could have been avoided had its framers paid special attention to Toro's traditional system of government. These defects were, in 1906, fully set out in a petition, to the Protectorate Authorities, in the following terms:

> "In our treaty there are five matters which are not satisfactory to us. We petition that they may be put right this time.
>
> 1. We do not want our King to have two positions, that of King and of a Saza Chief. We want him to be the King of the whole country, but not to be reckoned amongst the Saza Chiefs.
> 2. We want to add 4 more Saza Chiefs to the eight, who were not written down in the treaty, but who were Saza Chiefs in Toro before the treaty came. So we petition the Government to Restore Mikaeli, Kimbugwa, Zakalia Kaima, Mariko Mukwenda and Tito Sekibobo. And when the district

50. Vide, the Toro Agreement, 1900. Articles 3 -6

of Bwamba shall be settled, by the Government, we petition that Nicodemu Kasaija be restored, he is the 5th Saza Chief.[51] And we petition that these 5 be made equal to the other Saza Chiefs who are recognised in the treaty, having the same position and the same privileges to houses, guns, land (miles) and a tenth of the "musolo". And we promise that if these matters be so arranged, the whole country will go forward.

3. We petition that a Saza Chief may have power to appoint his heir, but when the Saza Chief dies, the Lukiko and the Government shall discuss whether to accept him. In the event of the heir being rejected the next of kin would succeed. If Saza Chief turned out for his own fault, his successor shall be chosen by the whole Lukiko and the Government representatives.
4. About the (miles) land we have not yet understood; we petition that the matter be rediscussed and that we may have the opportunity to talk it over.
5. The Kabaka agrees to allow his tenth as "Saza" Chief of Toro to go to the 4 new Saza Chiefs. But the tenth of what shall be collected in the capital (kibuga) he wishes to be given to the Katikiro as the reward of his work.[52]

51. Here follows a list of chiefs who were to be made redundant.
52. Under the Toro Agreement, 1900, the Katikiro was granted 16 sq.mls. of private estate and 10.sq.mls. of official estate equal to that of the Saza Chiefs under his and over whom he had precedence. "But he has never received any pay beyond what has been from time to time doled out to him by the Kabaka." (Wilson to Secretary of State. dispatch No.82. at C.0.536/6/19339) also see dispatch No. 81. of 21.5.1906 at C.0.536/6/19338).

> The boundaries of the capital shall be fixed by the Collector and the map be kept in the office. And for the large amount of work which the Katikiro will do all the Saza Chiefs who are written down agree to bring to the King one-twentieth of the rupees from the taxes which they will be given, and Katikiro shall be given them by the King year by year. [53]

The petitioners were thus anxious to bring the 1900 Agreement into line with the prevailing political realities that Johnston had overlooked and largely ignored at the time he thrust its terms down their throats. Maddox's account of the ceremony at which the Agreement was signed sheds some light on the origins of Kasagama's grievances and deserves a full quotation. It reads as follows:

> "The natives were called together one morning and the document which was typewritten in English, was verbally rendered into Swahili by Sir Harry Johnston and translated into Luganda by the interpreter, Yosiya. No questions were allowed, but the King and the Chiefs though asking time for translation and discussion, were compelled to sign it then and there, under penalty of being instantly deprived of their chieftainships. They therefore signed a document of the contents of which they were practically ignorant, and the same with the Commissioner's consent they brought it to me for translation. Soon after this I had some conversation with Sir Harry Johnston and he consented to add the schedule respecting estates to be granted to some of the Chiefs in the Toro sub-division." 54

53. On the 16th January, 1906, the Lukiko drew up another petition re. the rights over mineral deposits, including salt, iron ore, gold and silver; and the reorganisation of the Sazas and Gombololas. In addition the Lukiko petitioned that the succession to the Omukamaship of Toro should be entailed in the family of Kaboyo, that "so long as the Kabaka and Chiefs of Toro shall abide by the words of the Agreement, no one who is not a Mutoro by birth shall succeed to become a member of the Lukiko. Finally, the Lukiko demanded that "a certain mileage of forest be allowed to all the chiefs in their private estates, where forests occur, for building purposes."

54. C.O.536/6/19337. Maddox to Wilson. 3.9.1905.

Kasagama's allegations were, in 1901, looked into and sustained by the Commissioner's trouble shooter, George Wilson, the then Deputy Commissioner.

Wilson's findings are a terrible indictment of Johnston's treaty making processes and are on all fours with Maddox's account quoted above, and make interesting reading.

> "In 1901, I was deputed by the Special Commissioner to look into certain troubles [in Toro, in connection with the Toro Agreement, 1900.] The whole country were as one in expressing feeling that the terms of the Agreement of 1900 were unjust to them [and that] it had been somewhat arbitrarily forced upon them and the missionary who had acted as interpreter in the original negotiations assured me that the natives were not far from correct. My experience in respect of the Uganda Agreement convinced me that while it contained principles vital to the Country's progress and general welfare, and so should be held sacred as far as fundamental elements were concerned, some of the details disclosed lack of local knowledge and so would bear, with some advantage, further consideration in arranging for their precise operation. The same policy would apply to Toro. There can be no manner of doubt [for example] that when Captain Lugard installed Kasagama as Kabaka, he in no sense meant him to be a Saza [chief as well]. Besides, jurisdiction suffers, the system of native courts is deranged and altogether the chiefs deposed from the Sazaships by the Agreement hold an anomalous position, for though officially unrecognised in actual practice they have still to exert the authority of Saza chiefs in the maintenance of order and collection of revenue; and all this they do without remuneration other than voluntary and uncertain contributions from Kasagama." 55

Wilson's recommendations were, however, rejected by the outgoing Commissioner, Col. Hayes-Sedler, who was unwilling to interfere with his predecessor's settlement. He nevertheless directed Knowles, the Acting Sub-Commissioner, Western Province, to inquire into the situation and report to the incoming Commissioner, Sir Hesketh-Bell.

55. C.O. 536/6/19337 Wilson to Sadler 17.10.1905.

Knowle's report, like Wilson's, was generally sympathetic, to Kasagama's cause, and it too, vividly stated that the:

> ".. dissatisfaction said to exist among the chiefs relative to their Agreement with Her Majesty's Government was valid; that the Agreement suffered from several defects and that the chief's requests were just and fair; and advised the Commissioner accordingly." 56

In view of the history of this controversy, however, Knowle's report was, in April, sent to the Colonial Office for further consideration and advice, and two months' later, the Commissioner received the Secretary of State's decision that the Toro Agreement 1900 should be amended in accordance with the wishes of the petitioners set out in Knowle's Report.

Bell, however, had other ideas. He decided to shelve the Secretary of State's decision until, it was argued, he had had time to acquaint himself with the Country, the people and the issues involved. Kasagama was kept waiting and worse, in the dark. In fact, the real reason for Bell's dithering was that he was totally against the proposed land settlement. He thus told Lord Elgin that:-

> "This Government is already pledged to so large an expenditure on the delimitation of Native Estates in the Kingdom of Uganda, that I should greatly hesitate to advise your Lordship to allow a similar arrangement in the other provinces of this Protectorate." 57.

Unfortunately, however, Bell's procrastination soon crystallised into Protectorate policy, which though vigorously opposed by Kasagama and his chiefs; and, in spite of its adverse effects on their morale, authority and efficiency, was for the next ten years relentlessly

56. C.O.536/3/19337. Inc. No.3. to No. 80. of 21.4.1906.
57. C.O.536/6/19339 Bell to Lord Elgin.

pursued by the Protectorate Governments: the Secretary of State's ruling was, with the passage of time, completely ignored by both the Uganda Authorities and the Colonial Office. But Kasagama and his chiefs never gave up the struggle; and in 1926, still unaware of Lord Elgin's favourable decision, decided quiet diplomacy having failed, to give public vent to their plight. They innocently believed that this approach might do the trick. But they were mistaken. Kasagama's public protest did not have the desired effect; it did not lead to a fair and just land settlement, on the contrary, it was misconstrued and, as the following discussion shows, it nearly cost him his crown. He was publically ridiculed, humiliated and indeed, interdicted, albeit for a few months, from his Kingdom. He was exiled at Entebbe, courtesy of the Governor.

3.2.3. KASAGAMA'S "DISLOYAL" ADDRESS

Kasagama's unprecedented public remonstrance with his overlord, for the latter's failure to resolve the thirty year old land teaser, took the form of an open letter to the Western Provincial Commissioner, P.W.Cooper, at his farewell public Baraza, at Fort Portal. Kasagama's valedictory address, of which the following is a literal interpretation was as follows:-

> "We thank God for keeping you well Mr.Cooper, for the time you have stayed here administering with us without any danger in your life and we wish prosperity and peace until you reach your home. We inform you in the name of Toro that although you are going you have done absolutely nothing good for us by which we can remember you, you have left us only trouble as follows: 58

58. "It appears that one hour before the Baraza assembled this letter was discussed with the Saza chiefs and the Katikiro. The Katikiro (a Muganda) strongly advised that the letter should not be read out, and refused to have anything to do with it. In this he was supported by one Saza chief, namely the Kitunzi, while the remaining voted for the production and reading of the letter.(Gowers to Secretary of State). NOTE that this is a translation, which apart from being disjointed, is apt to misrepresent the intentions of the original letter.

(a) You have made our country Crown land in a wonderful way in which we cannot understand.

(b) We wrote a letter to H.E., our letter explaining about Butaka, you did nothing at all about it. But you only hid it.

(c) We wrote our letter regarding salt, but you only hid it, and it never went.

(d) See now when you are going you brought a man who does not at all like our nation, Mr.Sullivan. 59

(e) Now we say good-bye to you. In our opinion we would not want you to administer us again. But only wish you prosperity with your wife to be in peace." 60

While admitting that there might be "some grounds for grievance in the minds" of the landless chiefs, the Protectorate Authorities, the Governor in particular, regarded Kasagama's letter as "insulting" and "in reality a most improper, offensive and disloyal act directed against the Protectorate Government [rather than] a public reproof of the Provincial Commissioner." [61]

59. Mr.Sullivan,D.C., Toro, 1922-1923 "showed a disposition to support the peasantry against extortion and oppression by the chiefs and in consequence was not a persona grata to the Mukama or the chiefs." Thus Gowers stated the reasons for naming Sullivan. The Omukama's version of the story runs: "The cause of our mentioning Mr. Sullivan was this. When he was the D.C., Toro, there was no good co-operation between both His Majestic and Native Governments. When H.E. Sir G.Archer understood our feelings he transferred Mr.Sullivan to another station. Now when the people heard of his coming back to Toro as acting P.C. were afraid that the former trouble will happen again." (Kasagama to Gowers 13.3.1926)
60. C.0.536/139/5166 Enclosure No.1. to Conf. of 21.5.1926.
61. C.0.536/139/5166 Gowers to the Secretary of State 21.5.1926.

The underlying motive, the Governor contended was "a political one", namely, the determination to resist projected reforms which, though admittedly for the benefit of the tribe as a whole, and the peasant in particular, were unacceptable to Kasagama and his chiefs who feared that they "would diminish the possibility of extortion and exploitation of the peasant by the ruling classes."[62] This attitude of mind, Gowers explained was partly due to "the delay on the part of the Government in formulating the new Land Law and the hope against continued assurances to the contrary that freehold estates on the Buganda model" would be granted to the landless chiefs.[63]

Kasagama's letter was thus misconstrued and retribution meted out accordingly: Gower's reaction was swift and strong. Kasagama was hastily despatched to Entebbe and interdicted there and kept away from his people for two months. He was fined one thousand shillings, ordered to read "an ample apology in open Baraza" and forced to "retract unreservedly the contents of his letter to the Provincial Commissioner."[64]

62. C.O.536/139/5166 op.cit.
63. Ibid
64. C.O.536/139/5166 Kasagama's apology which was drafted by the Chief Secretary, was as follows:
"I, Daudi Kyebambe, Mukama of Toro, on behalf of myself and my chiefs, in the presence of all chiefs of Toro here assembled in full Baraza, and in the hearing of the people of Toro retract fully and unreservedly the entire contents of the farewell address to Mr.P.C.Cooper, O.B.E., Provincial Commissioner, Western Province, as I now fully admit that it was expressed in insolent language and was calculated to give serious offence to His Majesty's Representative in Uganda.

I acknowledge the justice of the severe reprimand inflicted on me and also of the imposition of the fine of Shs.1,000 to be paid into the Rukurato Fund. I desire to offer a humble apology to Mr.Cooper and to the British Administration. I hereby promise that I will never be guilty of similar misconduct and that I will fulfil my duty in accepting loyally the orders of the Governor of Uganda and in following the directions of those officers of the Protectorate who are appointed from time to time to administer the District of Toro, and that it will be my endeavour to act in all matters in a constitutional manner."

Gower's own account of these events sheds some light on the Anglo-Toro relation over the preceeding years and reads as follows:

> "For the past 30 years the Mukama's record has been one of consistent dislike of, and resistence to, the advice and guidance of the Officers of the Administration who have on various occasions been appointed to the Toro District. Written records by no fewer than 18 of these officers testify to this fact - three Governors have had to intervene .... and I attach copies of minutes from which it will be seen that each of my predecessors had occasion severely to reprove the Mukama and to convey to him a most serious warning. Following on the reproof and warning conveyed to him by Sir.G.Archer some two years the Mukama returned to Toro in company with Mr.Cooper and, until the event which forms the occasion of this report appeared to have appreciated the wisdom of adopting a more reasonable and courteous attitude towards the local administration.
>
> While admitting that there may be some grounds for grievance in the minds of the Mukama and chiefs, I cannot admit that this in any way mitigates their action.
>
> In view of the Mukama's past record I was at the time considering the advisability of recommending to you that he should be suspended from office for a period of one or two months. However, on the 1st April, the Mukama put in a further written statement in explanation of his conduct.
>
> After due consideration of all factors, I and the Executive Council agreed that the situation would be met by the reading in open Baraza of an ample apology by the Mukama and the payment of a fine by him and the Saza chiefs concerned. Accordingly an apology was drafted and was sent to the Mukama with a covering memo by the Chief Secretary.[65] He signified his readiness to read the apology in open Baraza and duly signed the draft as a mark of his acceptance of the terms.
>
> After the Mukama had accepted the terms of the apology, I accorded him a personal interview during which I told him that the incident could now be regarded as closed, and that he could return to Toro and take up his duties..... I think the action I have taken has had a very salutary effect on the Mukama, and I sincerely trust this severe reprimand, and the fact that he was interdicted from office, for two months, will have taught him a lesson which he will not easily forget." [66]

65. C.O.536/139/5166 Memo of 1.5.1926. The Chief Secretary's memo, inter alia, read as follows:
"His Excellency, the Governor, is constrained to make his feelings of strong displeasure by administering to you this severe censure. .....On receiving a written undertaking from you expressing your willingness to comply with the above order, His Excellency will be prepared to cancel your interdiction and permit you to return to Fort Portal and resume your duties.

66. C.O. 536/139/5166 Gower to Secretary of State. 21.5.1926.

So, for the umpteenth time, Kasagama was berated, humbled and illegally punished for claiming his regal rights and privileges. And, though there was no suggestion that he should be dethroned, partly because he had committed no offence, or broken any law; and partly because he was irrepressible, he was nevertheless told, in no uncertain terms that he owed his position to the British, that he should respect his mentors, and that he had nothing to grumble about. Needless to say that these gross insults, though not uncommon, in those early days of Colonial rule, were, in this instance, uncouth and uncalled for. There is little doubt that without Kasagama's intervention and subsequent collaboration, the British would have found the Barasura a hard nut to crack.[67] Indeed, it was Kasagama who turned some ten or so disparate counties into the Kingdom of Toro, over which, under H.M.Majesty's protection, he presided, for over thirty years. He thus need not have been subjected to some of these indignities; he clearly deserved better "tutors". His superior regal qualities, however, were such that, though he lost many a battle, he never gave up, and he did not suffer in vain. For, following his unregal treatment, the Governor, albeit belatedly, and more importantly, uncharacteristically, relented and appointed a two man committee to re-examine the issues in question.[68]

In their report the committee rightly noted that the Toro Agreement,1900 was vague and, in many ways inconsistent, with Toro's indigenous political institutions, and that the land provisions were particularly inadequate and unfair to Kasagama and his chiefs. They, therefore made specific recommendations on this and other grievances, including the status of Bwamba and the Salt Lakes' Revenues. These recommendations were approved by the Secretary of State in 1927 and brought into force shortly

67. The Barasura were the dreaded Kabarega's warriors.
68. The Committee consisted of two government officials, Mr.C.E.Sullivan and Mr.H.B.Thomas.
69. See. Report of the Committee of Inquiry into the Grievances of the Mukama and the People of Toro,Ug.Govt.Printer,Entebbe.1926.

afterwards,[70] thus restoring the honour of the Toro leadership. Their personal "Ekitibwa" was greatly enhanced and this began a new era of good and cordial Anglo-Toro relations, and until his death on 31 December, 1928, Kasagama did honour his pledges, and so, too, did the Protectorate Government. There is little doubt, however, that this uneasy truce was bought at too high a price; and the question which suggests itself is whether this abusive farce could have been avoided, or at least averted? It is not easy, at this point in time, to offer a categorical answer one way or the other, but the conduct of the Anglo-Ankole relations, discussed below, is refreshingly illuminating. It vividly shows that the Ankole Agreement, 1901, and as a corollary, the Toro Agreement, 1900, was, despite its weaknesses, a serviceable, flexible instrument, and that, with good will and sympathetic interpretation, Gowers' resolute and unyielding approach was unnecessary, unwarranted and, as it happened, counter-productive.

70. C.O. 536/143/14001. L.S.Amery to Governor of Uganda. 15.1.1927.

3.3.1. THE ANGLO-ANKOLE RELATIONS

The first British agents to reach Ankole were H.M.Stanley, in 1889, and Captain F.D. Lugard, in 1891. Having made bloodbrotherhood with the King's emissary, Stanley effected a treaty under which Ankole's rulers, chiefs and elders surrendered "all their rights to him", or his representative, they even went farther and agreed to cede to him all "the sovereign rights of government over [their Country] for ever." [71] These rights and privileges having been granted to the Imperial British East African Company and confirmed by Lugard's treaty with Ntare's envoy, were subsequently, on the demise of the Company, in 1895, acquired by the Crown. But, it was not until 1898, following Mwanga's revolt and flight to the German territory, that the Acting Commissioner, Col. Ternan, decided to bring Ankole under effective British administration. The Commissioner's main concern was to ensure that the authorities in Ankole should not give aid and comfort to the ex-King of Buganda and his allies. To this end, he sent Macallister to Ankole, to establish a "Government Station" at Mbarara and take charge of the Country.[72] In late December of that year, Macallister reached Ankole and found the Country in turmoil: for the years 1895-8 were marked by various calamaties, including famine, invasions, pestilence and succession wars, a state of affairs that blended rather well with his plans. He immediately capitalized on the prevailing chaos, pitched his makeshift camp near Mbarara, and shortly afterwards, the youthful King Kahaya of Ankole, whom he had earlier put on the throne, "moved his village near the newly established"Government Station",[73]

71. The full text of the treaty is to be found in Hertslet's Map of Africa by Treaty. Frank Cass & Co.London,1895.
72. UNA/A4/28, Macallister's Report, 1.6.1899.
73. UNA/A4/28. Macallister's Report, 1.6.1899.

and so the Anglo-Ankole relations began. Several chiefs, formerly independent of Kahaya's predecessors, were without much difficulty, albeit, with "much blood shed" brought under the control of the new regime, and forced to acknowledge Kahaya's authority.[74]

Prominent among these were Chief Musinga of Igara, Ndibarema of Buhweju, and Nduru of Buzimba. And by 1901, the Kingdom of Ankole which originally consisted of four disparate counties, was a compact stretch of territory and three times its former size. It now consisted of ten administrative counties "of Bunyaruguru, Buzimba, Bwawezo, Ibanda, Isingiro, Mitoma, Ngarama (Shema and Kashiri), Nyabushozi, Nshera and Rwampara."[75]

Kahaya's position, however, was as may be gleaned from Macallister's despatches, as precarious as ever.

> "During the last month the virtual deposition of the Kabaka of Ankole and the appointment of chiefs to districts have caused some little excitement, but it may safely be said that the state of affairs is satisfactory. [Kahaya] at first objected to his loss of title and taxes. I told him that the chiefs would be expected to supply him with food, as he is their principal chief, but that I would not enforce any King's taxes in future, it being a matter between him and his people, and quiet optional." 76

74. UNA/A4/28 Macallister's Report. 1.6.1899.

75. The Ankole Agreement, 1900. See also F.O.C.P. 7694 (1901) Wilson to Jackson 3.8.1901. Further boundary adjustments were, so as to secure greater administrative convenience, effected by the Ankole Agreement (Boundaries) of 1923.

Kahaya's powers and privileges were thus summarily curtailed and his position somewhat weakened. Nevertheless, Macallister's arrangements were subsequently confirmed and embodied in the Ankole Agreement of 1901; and the position of the ruling house of Ankole and the status of the chiefs regularised. The Ankole Agreement was, evidently drawn up, at the insistence of Kahaya and his chiefs, "on precisely similar lines to those of the Toro Agreement", 1900.[77] It is extraordinary that the Ankole chiefs who had recently been to Buganda to study its systems of government at first hand, and had apparently, been "struck with the manner in which local affairs [were] discussed and conducted by the Regents and chiefs in the Lukiko at Mengo", [78] should have asked the Commissioner in framing the Ankole Agreement, to follow the somewhat inferior Toro example rather than the Buganda model.[79] The chiefs, it seems, were merely concerned with the regularisation of their "emoluments-pecuniary and in land" rather than the formal structure of local government and administration.[80] In any event, it is doubtful whether any other arrangement would have been acceptable to the Protectorate authorities; the Ankole leadership was evidently, still on probation. It appears that the Young Kahaya, despite his association with the British had not, as yet, been fully recognised by them, nor, indeed, by all the chiefs as their overlord.[81] And so, whilst it was British policy "to support the central authority of Kahaya"[82], the Commissioner was reluctant to conclude a comprehensive treaty with him before he was satisfied that all the chiefs were unanimous in their desire that Kahaya should be recognised as "the principal chief of Ankole".[83] Hence Kahaya's request for an Agreement

77. F.O.C.P. 7694 (1901) Jackson to Lan sdowne. 25.10.1901.
78. Ibid.
79. F.O.C.P. 7694 (1901) Wilson to Jackson 14.8.1901.
80. Ibid.
81. Handbook of the Uganda Protectorate, 1902, p.62
82. UNA/A15/1 Johnston to Racey 20.12.1900.
83. F.O.C.P. 7694 (1901) Jackson to Lan sdowne. 25.10.1901.

was for the second time turned down, but as on the previous occasion, the Commissioner promised to reconsider his decision at a later date. Accordingly, when George Wilson, the Sub-Commissioner, Western Province, visited Entebbe in July, 1901, the question of the Ankole Agreement was once again the subject of discussion.[84]

It was decided that, if Wilson, on his return to Ankole, found that Kahaya had the confidence of all the chiefs, and that the general public had begun to appreciate the advantages of a settled administration, then he could, if satisfied, enter into an agreement with him. Consequently, on his return, the Sub-Commissioner, caused "a large public Baraza to be arranged so that the Bairu and Bakopi could understand the drift of the proceedings,"[85] in fact, the object of the Baraza was to ascertain whether Kahaya was in full control of the situation. Be that as it may, following Wilson's address, all the Ankole chiefs who were "in very fine attire" came forward and offered their allegiance to Kahaya, and signed the following petition.[86]

> "We the undersigned chiefs of Ankole, hereby agree to elect Kahaya, Kabaka of Ankole, and I Kahaya together with my chiefs, in full baraza, do hereby beg His Majesty's Sub-Commissioner to prepare an Agreement on the lines read out to us today, in full Baraza, to be submitted to H.M.s. Acting Commissioner for the Government of the Ankole district." 87

84. F.O.C.P. 7694 op.cit.
85 Ibid.
86 Ibid. Inclusure No.4. Petition of King and Chiefs of Ankole for an Agreement.
87. Ibid.

At long last, Kahaya and his chiefs had passed the test and an Agreement with the British Crown was well within their grasp; Wilson "congratulated them on their progress" and allowed them time "to reflect on what such an Agreement as they desired would mean to them." [88]

For his part, however, Wilson had no hesitation that the proposed Agreement would give Kahaya and his chiefs that sense of responsibility and confidence necessary to produce an effective local administration.[89] Indeed, Wilson believed that his agreement with Kahaya would give Ankole "a methodical system of local government."[90] And so too did Jackson, the Acting Commissioner. The latter thus told the Foreign Office that:-

> "This Agreement is, I consider a very fair one to the Kabaka and chiefs, and entails no actual out-of-pocket expenditure in the form of subsidies. It is one which will cause the Kabaka and chiefs to interest themselves in the question of taxation, and, in view of the fact that it was drawn up at their own special request by Mr.Wilson after he had ample opportunity of judging them and their capabilities, I venture to submit it with confidence for your Lordship's ratification." 91

However, Lord Lansdowne, the Colonial Secretary, found Wilson's Agreement inadequate and imperfect, and indeed, but for the reasons given below, the Ankole Agreement, 1901, would not have been sanctioned.

> "His Lordship observes that the Agreement is said to follow the lines of that entered into regarding Toro, of which, however, a copy has not reached this Department. Lord Lansdowne approved the object with which it has been drawn. But although the Agreement is described as a draft it appears to have been signed by a number of natives who probably considered it as a completed document. For this reason, His Lordship is unwilling to criticise it in detail or to make alterations which would suggest themselves were such criticism undertaken, as the result might be to shake the confidence of the native signatories in the good faith of the administration." 92.

88. F.O.C.P.7694 Wilson to Jackson 14.8.1901.
89. Ibid.
90 Ibid.
91. Ibid. Jackson to Lansdowne 25.10,1901. The Agreement was signed on 7.August,1901 and confirmed by the Foreign Office on 30 January 1902.
92. FO.2/587. Brooke to Jackson 30.1.02.

The opportunity to amend Wilson's Agreement was thus lost, and despite its imperfections it was, for the next sixty years, the cornerstone of Ankole's system of 'Native Government', and administration, and indeed, the Anglo-Ankole relations.

Under the Agreement, the Kingdom of Ankole was divided into ten administrative counties or Sasas on the lines of the Buganda pattern and each placed under an officially appointed and recognised chief.[93] Hut and Gun taxes of three rupees each were imposed on all adult males, and all traditional dues and obligations owed to chiefs abolished. All the Country's"waste and uncultivated land, forests, mines, minerals, salt deposits, revenues from Customs duties, taxes and other sources whatever" were vested in the British Crown.[94] In return, King Kahaya was recognised by "His Majesty's Government as the Kabaka or Supreme Chief over all that part of the Ankole district which is included within the limits of the above mentioned administrative sub-divisions".[95] He was granted an estate of 16 sq. miles in the Shema and Kashari sub-divisions, and a sub-vention of 10% of all the taxes collected throughout Ankole. Next the agreement made provision for the administration of justice and the maintenance of law and order. In particular, it was provided that:-

> "Justice as between native and native shall be administered direct by the recognised chiefs of the ten sub-divisions. In all cases where a sentence of over three months' imprisonment, or a fine exceeding £5 in value, or where property of over £5 in value is concerned, an appeal shall lie from the divisional native courts to the Lukiko of the Kabaka of Ankole.

93. Revised Laws of Uganda (1951) Vol.VI. p.2.
94. Ibid.
95. Clause 3.

> In cases where the imprisonment exceeds a term of one year, or property involved exceeds the value of £100, an appeal shall lie from the decision of the Kabaka or his Lukiko to the principal European Officer in civil charge of the district of Ankole. All cases between natives of the district of Ankole and natives of the other districts of the Uganda Protectorate, or between natives and foreigners, shall be tried by the British magistrates in the district of Ankole and shall be removed altogether from native jurisdiction." 96

The Agreement concluded by declaring that "In all respects, Ankole would be subject to the same laws and regulations as were generally in force,"[97] elsewhere throughout the Protectorate and that it was "open to His Majesty's Government to annul the Agreement, and to substitute for it any other methods of administering the district," which at the discretion of the Commissioner, might seem suitable.[98] Thus any infringement, however minor, of any of the terms of the Agreement was fatal; but typically, the Ankole chiefs had no corresponding powers if the British failed to observe their part of the bargain, to suspend or terminate the Agreement.

Subsequently, the "Agreement counties", otherwise known as Sazas, were, for proper and effective local administration divided into Gommbololas or sub-counties, and each placed under a Gombolola chief. Each sub-county was further sub-divided into several administrative units and each division placed under the jurisdiction of a minor chief. The primary functions of these chiefs were the

96. Clause 6, the Agreement did not set out the composition of the "divisional native courts" and "the Lukiko". Indeed, it was not until 1911, following the enactment of the Native Courts Ordinance, 1909, that "Native Courts" in Ankole were properly constituted.
97. Clause 7.
98 Ibid.

assessment and collection of taxes and the administration of justice in their areas. It was not until, 1911, however, that the chiefly Courts were properly constituted and their powers and jurisdiction defined and regularised. The "administrative functions" of the Chiefs were not however formalised until 1919,[99] and, rather surprisingly, it was not until 1949 that the constitution and composition of "the Lukiko" was statutorily defined.[100] In that year, following the enactment of the African Local Government Ordinance, 1949, the Governor issued the Eishenggero, or Native Council Proclamation and Regulations, setting out the Eishenggero's constitution, composition, powers and duties.[101] In future, the composition of the Council would consist of the Enganzi, Kihimba, Omu biki, the Saza Chiefs nominated and indirectly elected Councillors.[102] The latter were subject to re-selection, to serve for a term of three years, or until the Council was dissolved. The Council had power to fill casual vacancies, of course, and was required to meet, at least, twice a year; the Omugabe, however, and, of course, the District Commissioner, could, at any time, require the Council's Chairman to convene a general meeting. Similarly, the Chairman could, at the instance of the Council itself, or at his discretion, call such a meeting.[103].

99. Vide, The Native Authority Ordinance, 1919, and the Native Law Ordinance, 1919.
100. Legal Notice No. 157 of 1949 issued under the African Local Government Ordinance, 1949, S6(1).
101. Legal Notice No. 166 of 1949
102. Ibid
103. Ibid.

The Council's principal functions were to consider resolutions on local affairs, the annual budget, and, subject to the approval of the Standing Committee and the District Commissioner, the making of bye-laws, in respect of the matters set out in the African Authority Ordinance, 1919, Section 7, Sub-section A and B; and at the request of the Governor, on any subject matter.[104] Such bye-laws had the force of law, breach of which was an offence punishable by

104. Revised Laws, 1951, Cap.72. p.1048. Section 7 as amended, provided inter alia, that "any chief may from time to time issue orders to be obeyed by the Africans residing within the local limits of his jurisdiction as follows:
(1) restricting and regulating the manufacture and sale of liquors;
(2) prohibiting or restricting the holding of drinking bouts;
(3) prohibiting and restricting the cultivation of noxious plants;
(4) prohibiting and restricting the carrying of arms;
(5) prohibiting conduct which might cause a riot or breach of the peace;
(6) preventing the polution of water;
(7) regulating and prohibiting the wasteful cutting of trees;
(8) requiring male Africans to work in maintaining public works;
(9) the provision of porters for Government officials;
(10) preventing the evasion of any tax or legal duty;
(11) regulating the movement of Africans;
(12) preventing the spread of infectious diseases;
(13) requiring Africans to report the presence of stolen property;
(14) the provision of food for sale on safaries;
(15) preventing landlords evicting tenants without good cause;
(16) for any other purpose which the Governor may by rule authorise."

imprisonment, fine, or both.[105] Provision was also made for the establishment of Council Committees and Sub-Committees, the making of Standing Orders and the termination of appointments of councillors.[106] However, the Council - and this is one of the main defects of these constitutional arrangements - had no powers to provide basic local government services; it was mainly a deliberative chamber, and, although the Regulations ensured that the elected Councillors were in the majority, the Chamber was nevertheless dominated by the chiefly hierarchy: the chiefs not only elected the Council, but one of their numbers, the Enganzi, was the chairman. Moreover, the pervasive powers of the District Commissioner tended to render the elective principle a sham. Furthermore, the idea of nominated Councillors, though understandable, was inimical to the future developments of "an efficient and democratic system of local government" advanced by the Colonial Office and set out in the Creech-Jones Despatch of 1947.[107]

The rationale for the "nominated Councillor-device" was following practice elsewhere, to bring into the Council Chamber, experienced and skilled individuals, whose services would, otherwise, have been unavailable. Unfortunately, however, it did, as it happened, have adverse effects on the future development of local democracy; it effectively delayed the early introduction of direct elections, thus depriving the people of their opportunity to participate in the running of their local affairs; it was a powerful instrument of patronage, it was susceptible to endless abuse and it set a bad precedent for the future.

105. Reg. 17(2) The maximum penalty awardable was six months' imprisonment or a fine of five hundred shillings or both such imprisonment and fine.
106. Regs. 11, 15, 16 and 19. See also Cap. 74 S.5.
107. Creech-Jones Despatch 1947. For details see below.

In spite of these reservations, however, these Eishenggero Regulations were a step, albeit a minor step, in the right direction. They were most certainly an improvement on the Wilson-Kahaya Constitutional Arrangements of 1901. And, if Wilson thought that his treaty gave Ankole "a methodical Local Government" system, then these changes did bring the realisation of that notion a jot nearer. That, at least, was the intention. These faint hopes were, however, too optimistic and were regrettably never realised, partly because the Central Government seemed to have no will or inclination to bring that about, and partly because of Ankole's negative attitude towards the Anglo-Ankole Agreement, 1901, of which the following will serve as an example.

3.3.2. THE ANKOLE CHIEFS' INALIENABLE FREEHOLD ESTATES

The Anglo-Ankole relations, as aforesaid, were regulated by the Ankole Agreement, 1901, the main features of which were, as noted earlier, similar to Toro's ; and, therefore, one would have expected that it would give rise to similar practical difficulties, it, in fact, did not, or rather more accurately, the Ankole leadership chose to ignore them. Indeed, of the three Agreement Kingdoms, the Ankole Kingdom, seems to have been more amenable to British overrule than her adjacent neighbours, Buganda and Toro. One of the reasons for this was that the main actors were, apparently, well satisfied with the terms of the 1901 Agreement and, therefore, had good reasons, despite its weaknesses, to adhere to it and to uphold its sanctity. For their part, the Ankole chiefs, particularly Kahaya and Mbaguta, who for the next forty years held the centre stage, were the chief beneficiaries of the Agreement: it was, as already mentioned, drawn up at their request and on their terms; it confirmed their otherwise fragile chiefly positions; and,

perhaps more interestingly, it secured their "emoluments - pecuniary and land".[108] The Agreement thus having, in their view satisfactorily met their more immediate needs, the Ankole leadership, unlike that of Buganda and Toro, was not indisposed to view their Agreement with disfavour. And, so did the British Authorities. They too, found the Agreement equally beneficial; as one of its architects put it, the Agreement entailed, on the British part, "no actual out of pocket expenditure", and more importantly, it caused, as Johnston, quaintly put it, "the Kabaka and chiefs to interest themselves in the question of taxation", stressing, in terms of British policy of the Protectorate paying its way, the significance of the Agreement.[109]

It is also pertinent, in assessing Ankole's posture on this matter of the Agreement, to note the role of the British main dramatis personae, particularly, that of its author, George Wilson. His friendly and civil demeanour in contrast to Johnston's high-handed and cavalier approach to treaty-making, deserves special mention. He painstakingly went through the draft Agreement with the chiefs, clause by clause; gave them ample opportunities for consultation and reflection, and generally, courteously treated them and accorded them their due respect. Furthermore, he even advised the Commissioner and the Collector Ankole, to actually, for at least the first two years, under enforce the Agreement thus giving the nascent chiefs time to acquaint themselves with the new order of things.[110] He wrote:-

108. FOCP.7694. Wilson to Jackson, 3.8.1901. See also
Kabwegyere,T.B., The Politics of State Formation,EALB,1974.
Karugire,S.R., A History of the Kingdom of Nkore,UOP.Clarendon,1971;
Karugire,S.R., Nuwa Mbaguta, EALB. 1973;
Karugire,S.R., A Political History of Uganda,H.E.B.London,1980.
Morris,H.F. The Making of Ankole,Ug.Journal,Vol.21(1957) p.1.
Oberg,K., The Kingdom of Ankole in African Political Systems, Fortes & Pritchard (Eds.) OUP, 1940. pp.121-161.
Williams,L.F., Nuwa Mbaguta,Nganzi of Ankole,Ug.Journal.Vol.10.(1946) pp.124-135.

109. FOCP.7494, Jackson to Lansdowne,28.10.1901.

110. FOCP.7694, Wilson to Jackson, 14.8.1901.

> "I have to report that on the 7th instant in full baraza of the Ankole chiefs, the draft Agreement was signed by them. All the European residents were present, and to insure that the natives should clearly understand the full meaning of the draft, I used a mission interpreter to check my own. It was translated into both Luganda and Luhima. During the week that has elapsed I have seen the chiefs on several occasions, but they have expressed nothing but an impatience to get settled down into the system laid down in the Agreement. As I have implied in my last despatch on this subject. I do not think it would be wise to anticipate a strict and thorough carrying out of the conditions of the Agreement for a year or two. Therefore, if you should approve of it, I should ask for a linient consideration from headquarters for their first efforts in giving effect to the Agreement, whilst here the collector should use every effort to let them know in a definite way the responsibility taken by them in signing it." 111

And so it was done; and with one or two notable exceptions, the British did keep their word.[112] The Ankole Agreement thus began its long life in more congenial circumstances than the Toro Agreement, 1900, on which it was modelled, indeed this alone may be said to have been the secret

111. F.O.C.P. 7694 Wilson to Jackson 14.8.1901. His earlier dispatch to which reference is made details the steps which Wilson took to prepare Kahaya and his chiefs for the Agreement. For instance he gave them a week to reflect on what the Agreement they desired would mean to them. clearly laid down the responsibilities they would assume as chiefs in keeping order in their counties, and the risk their positions would incur for failure to observe the Agreement, carefully outlined the Agreement and clearly made them understand that it would be submitted for approval. Contrast Maddox's account of the ceremony at which the Toro Agreement, 1900 was signed, at p. 97 Supra.

112. The Ankole Agreement was, following Galt's murder in Ankole, unilaterally suspended by the British Commissioner, on 19.4.1905; and it was not fully restored until 12.9.1912. In the meantime however, some useful parts of the Agreement were adhered to as if the whole Agreement was in force. For details of the murder of H.st.G.Galt, see Morris.H.F., the Murder of H.St.G.Galt. Uganda Journal, Vol.24. 1960. p.1-15.

of the success of British overrule in Ankole, and may very well have been the sop that shaped Kahaya's attitude towards the British. Whatever the reason, Kahaya carried his chiefs with him; and so, unlike their Toro counterparts, the Ankole chiefs never challenged the terms of their Agreement; and though, proud of it, they did not, unlike the Baganda, consider it inviolable or unalterable. Their readiness and, indeed, willingness to keep in with their masters even at their expense, may be illustrated by their submissive attitude towards the Central Government's deliberate misinterpretation of Article 7, of the Agreement, the main terms of which were as follows:-

> "In addition to the percentage of the taxes, the Kabaka shall be granted an estate from out of the wastelands... provided that such estate may not include within its limits any large area of forest or salt or mineral deposits. The Katikiro shall in his official position as Katikiro, enjoy the usufruct of an estate to be allotted out of the wastelands... of an area 10 square miles, not, however, to include any large forests or any salt or mineral deposit within its limits. The recognised chiefs ... shall enjoy in their official capacity the usufruct of an estate of 10 square miles from out of the wastelands in their respective sub-divisions.
>
> The private estates to be guaranteed to Kahaya, the present Mugabe of Ankole, shall not exceed 50 square miles in area. The private estate of the Katikiro shall not exceed 12 square miles, and those of each existing chief of a sub-division as named in this Agreement, 10 square miles each." 113

The "official estates" were pure and simple perks, and were to be enjoyed, as such, by the allottees as long as they held office, and so it was construed by successive Governments and few would seriously question this interpretation. What was not clear, however, was whether these "official estates" were granted to the "Agreement chiefs" for life, after which they would elapse and become Government or Crown property, or whether they were, on the demise or dismissal of the

113. The Ankole Agreement, 1901,Article 7. Similar provisions were contained in the Toro Agreement, 1900.

grantee, to be inherited by his successor?[114] This point, was, during the Agreements' currency, never raised, and everyone concerned proceeded on the assumption that the "official estates" run with the office. The case for the alternative interpretation was never made out. The position of "private estates", however was a different matter. Some chiefs, quite rightly, believed that their "private estates" were absolute gifts, granted to them in perpetuity by the framers of the Agreement (who incidentally, had no right to do so) presumably as kickbacks, or inducements for the acceptance of the new constitutional arrangements, or in some cases, as compensation for the loss of their traditional taxes, dues and tribute. Others, however, did not share this view, and so, too, for somewhat different reasons, did the Central Government, and it was sometime before this conflict was satisfactorily resolved. The inheritability or otherwise of "private estates" first came to the fore in 1904. Three "Agreement chiefs" were, in that year, dismissed for incompentency and misappropriation of Government funds. They were deprived of their "titles and official estates", but were allowed to retain their "Agreement private estates" and, on their demise, their heirs were allowed to keep 2 square miles out of the 16 square miles originally allotted.[115] Ten years later, in 1914 Nasanairi Mugurusi, the then Katikiro of Toro was, following his conviction for breach of the Game Regulations, and extortion, demoted, and in 1918, contrary to the Provincial Commissioner's advice, dismissed and ordered to surrender his chiefly "titles and privileges" including his "official and private estates" allotted to him by the Agreement. The Government decision was based on Article 3 of the Toro Agreement, 1900, of which the relevant part was in these terms:-

114. Note that Article 3 para 3 provided that the "Kabaka and chiefs" were to nominate their successors and that such nominees would be "recognised" by His Majesty's Government as the successors to the dignity of the chieftainship."

115. C.O.536/120/4644.Jarvis to Secretary of State.18.8.1922.

> "But should the Kabaka or the other chiefs herein named fail at any time to abide by any portion of the terms of this Agreement, they may be deposed, and their titles and privileges pass to any such other chiefs as His Majesty's principal representative may select in their place." 116

The point at issue was whether the term "privileges" in this provision included "private estates" granted to the "Agreement chiefs", and as such, subject to forfeiture on their loss of office. Many Government officials thought that it did, and so too, did their legal advisers, particularly Howe, the then Acting Attorney-General. Howe's opinion was subsequently "fully supported by Allan Hogg", the Attorney-General, on his return from leave; and the rulers of Ankole and Toro advised accordingly. The former accepted the Attorney-General's opinion as conclusive, [117] but the latter strongly opposed it, contending that it was incorrect, and, in their view, inconsistent with the spirit, if not the letter, of their Agreement. They insisted that Article 3 should be read in conjunction with Article 7 paragraph 2 under which they were granted "official and private estates"; specifically this provided that:-

116. Article 3, The Toro and Ankole Agreements, 1900 and 1901 respectively.

117. C.0.536/120/4644 - Ankole decision was communicated to the Colonial Office:-
"The Lukiko of Ankole have agreed that such estates should be forfeited by the holders when dismissed from their chieftainship for misconduct and incapacity. They have further waived the claim which can be maintained under the Agreement that such estates should pass on in freehold to the successors of deposed chiefs, and have agreed that such estates should pass on forfeiture into the possession of the Lukiko and shall form a "pool" from which the Lukiko may grant estates for life only, to the successors of the deposed chiefs or to other chiefs as a reward for good service. This appears to me to be a satisfactory arrangement."

> ".....the recognised chiefs shall enjoy in their official capacity the usufruct of an estate of square miles from out of the Wastelands in their respective sub-divisions. [That] the private estates to be guaranteed to Kasagama shall not exceed 50 square miles .... [that] the private estates of the Katikiro shall not exceed 16 square miles .... and those of each existing chief of a sub-division as named in this Agreement, 16 square miles each." 118

The Agreement thus made a clear distinction between "official estates" and "private estates"; the former were granted to office holders, "to enjoy in their official capacity" whilst the latter were absolute gifts to the individual "Agreement chiefs" for their use as they saw fit. Special attention was drawn to the use of the term "usufruct" in relation to "official estates", and its omission in connection with "private estates".

This, Kasagama and his chiefs contended was proof that the word "privilege" did not include "private estates". For them, the term "privilege", as used here, referred to "official estates", salaries, allowances and the various exemptions from the Hut, Gun and Poll taxes.[119] Besides, they believed that the Government's approach was redolent with some insuperable difficulties, as may be gathered from the following excerpt:

> "It is stated that there is no doubt that private estates were allotted in the Agreement personally to various chiefs prior to their deposition and that had a survey taken place at the time or title given to the allottees without survey these estates would have been theirs for good in spite of the chiefs subsequent deposition. It was not the fault of the chiefs that Government has waited for over 20 years and not yet surveyed the estates. Even though survey was not possible some form of title might have been given. Had either course been taken then forfeiture would have been impossible. Under existing Government arguments a chief in

118. The Toro Agreement, 1900, Article 7 paragraph 2. The Ankole Agreement, 1901, contained a similar provision.
119. C.O. 536/120/4644 Despatch No. 482 of 18.8.1922.

> possession now of unsurveyed estates without title might receive title shortly on survey and then be deposed, but having received title to his land prior to deposition could he be deprived of his land, yet those through no fault of their own who had not received titles to their estates would have suffered forfeiture. Such would be a state of affairs contrary to equity and British justice. Further, if an allottee has sold any part of his estate prior to deposition and after obtaining his title, the purchaser could not be deprived of it, because it formed part of the original land open to forfeiture on deposition." 120

In addition to the Attorney-General's opinion, there were the Government maintained, good policy considerations for divesting the deposed chiefs of their large private land holdings.

> "I cannot but record that in my opinion and that of other administrative officers it is a misfortune that men who have misconducted themselves and their heirs who hold no position now in the country should become large landowners and for the good of the country I should have liked to have seen such land forfeiture in part by resolution of the Lukiko and sanction to the Government and then registered in the name of the Lukiko and allotted to deserving chiefs for life." 121

There were others, among Government Circles, however, who were inclined to agree with Kasagama's own interpretation, but could not regrettably, break ranks with their peers. [122] They however, urged their immediate

120. C.O.536/120/4644 Jarvis to Secretary of State for the Colonies. 18.8.1922.
121. C.O.536/120/4644 Jarvis to Secretary of State. 18.8.1922.
122. "As Provincial Commissioner", Cooper told Jarvis, the Acting Governor, "the intention of the makers of the Agreement I submit that it appears clear that it was intended that those estates should not be forfeited but that they were given to the actual chiefs holding those positions at the time of the Agreements and this contention appears plain especially from the wording of the memo by H.M. Commissioner dated July 13th 1906 known as the Toro Agreement 1906 and in which he definite ly distinguishes between estates, privileges and emoluments and clearly wishes to remove doubts in the native mind." (Cooper to Jarvis 25.2.1922) See also a Minute on this correspondence, part of which reads: "It seems to me that the personal estates are an absolute gift to individuals. This may have been grease for the wheels - but whatever the reason there does seem to be a clear distinction between the estates to be held by the holder of the office and the estates given to the existing holders. Therefore I agree with Mr. Cooper."

superiors, albeit in private to abide, "at all costs" by the terms of the Agreement. [123]

Despite these exhortations, however, the Central Government was, for a number of reasons, unwilling to reverse its decision, and the Secretary of State was, inter alia, advised that:-

> "The Toro Native Administration is undoubtedly the most unsatisfactory in the Protectorate. A succession of Administrative Officers covering a long period of time have been unanimous in their unfavourable reports. The chiefs are idle and incompetent, and petty oppression of the peasantry by the chiefs obtains to a far greater extent in Toro than in other districts.
>
> The chiefs however, are mainly lazy and unambitious, and dismissal from office is but a little punishment to them if they are able to retire to extensive private estates. I hope therefore, that the opinion of the legal advisers of the Government will be supported and that I may accordingly inform the Toro Native Government that the dismissal of a chief from office means also the forfeiture of his private estate." [124]

123. C.O.536/120/4664. Inclosure No.4. to Dispatch No.482 of 18.8.1922. Cooper to Jarvis 25.2.1922. Cooper's memo to the Acting Governer concluded thus:
"On the other hand, if it was the intention of the Government when making these Agreements and I believe that it was their intention, that the actual allottees at the time of the Agreement should hold and possess these estates as freehold property then this intention should be maintained at all costs in support of the good faith of the British Government and other arrangements made based on the above policy for providing estates but not freehold for existing and future chiefs." See also C.O. 536/107/27057. Coryndon To Secretary of State. 31.5.1920; and Tel. of 18.3.1921, Re Land settlement in Ankole, Bunyoro, Toro and Busoga.

124. C.O. 536/120/4644.

Compelling though these considerations were, they did not find favour with the Chief Secretary's brethren at the Colonial Office. It was rightly felt that such extraneous factors had no bearing on the issue, and that the Government's stance was, under the circumstances, untenable. It was agreed that the Agreement "private estates" were absolute gifts and that they could not be forfeited on the deposition of the allottees. [125] The Government's arguments were accordingly summarily rejected, and the Secretary of State for the Colonies advised that:

> "This dispatch deals with deposition for misconduct and incapacity and it is apparently assumed that such circumstances would amount to a breach of the Agreement. The Provincial Commissioner and the Lukiko indicate that these grants are alienable. If the private estates are alienable, there is not much case for forfeiture on deposition." 126

This view was duly upheld and Jarvis told that his legal adviser's opinion, under the circumstances, was incorrect and unsupportable, and Churchill's terse reply to the Chief Secretary was as follows:-

> "I am advised that these Toro private estates cannot be forfeited on deposition of the Chief but before coming to a decision on the matter, I should be glad to consider the arguments on which the contrary advice of the local legal officers was founded. 127

With that, Jarvis and his legal advisers had to be content; the matter was quietly dropped and the respective Ankole and Toro Governments informed that the "Agreement private estates" were alienable and immune from forfeiture on the allottee's death or dismissal; and so the absurd case of the chiefs' inalienable "fe simple" estates was resolved. Indeed, any other solution would have made them a mere sham, and

125. C.O. 536/120/4644 See Minutes & Comments on Jarvis' dispatch.
126. C.O. 536/120/4644 Minute
127. C.O. 536/120/4644 Churchill to Jarvis 6.10.1922.

though this did not seem to worry the Ankole leadership, it graphically illustrates the point that the Ankole chiefs were, in the eyes of their critics and Colonial masters, "spineless" collaborators and "good and loyal chiefs", respectively. The latter was, of course, sheer flattery and did not, in any case, always serve the Ankole chiefs well. On the contrary, the more they grovelled, the more they were patronised by their overlords: witness for example, their passive but, otherwise exemplary record in the wake of H.St.G.Galt's "Sad fate" at Ibanda, Ankole, on the one hand, and the excessive collective summary justice meted out to them by the British authorities, on the other hand.[128] They were, despite their innocence, severely and humiliatingly punished; two of their colleagues were summarily dismissed and deported from their chiefdoms; they were humbled by the appointment of a Muganda Chief, the imposition of heavy taxes and fines; and the suspension of their coveted Agreement. And, although, most of these impositions had no legal basis whatsoever, they were promptly, unquestioningly and meekly accepted, suffered, efficiently enforced and carried out.

128. Shortly stated, the facts of this case were these: While en route to Entebbe via Mbarara, the Acting Sub-Commissioner, H.St. George Galt, was on the evening of 19th May, 1905 cowardly speared to death by an unknown assailant. The local County and Sub-County Chiefs together with three named persons were immediately arrested, tried and"two principal prisoners" found "guilty of abating Galt's murder" and sentenced to death. They were, however, acquitted by the Court of Appeal, but were immediately re-arrested and deported to Kisumu and their fellow County men, though "thoroughly tractable, peacefull and well behaved," collectively punished by the Authorities. For details see: Morris,H.F. "The Murder of H.St.G.Galt", op.cit.

Their flunkeyism was thus not always well appreciated, or indeed, adequately rewarded. This does not mean, however, that a more robust approach, as Kasagama found to his cost, would have served the Ankole Chiefs any better. They would, in that case, have had to contend with the gubernatorial law, a euphemism for the Governors unwritten and unlimited arbitrary powers, and to that there was no redress, legal or otherwise. They were, arguably, in a no win situation; their plight is another example of the internal contradictions of British Colonial rule that led to its unexpected demise and thus forced the British to quit before the stated aims of their mission were satisfactorily accomplished. That, however, is another story.

CHAPTER FOUR

4.1.1. THE MAKING OF "DISTRICT ADMINISTRATIONS"

The imposition of British "Protection" over the non-Agreement areas was, as the Uganda Order in Council, 1902, put it, "by grant, usage, sufferance, and other lawful means",[1] and though it is rather academic to question the validity of this claim, there is little doubt that His Majesty's seizure of power and jurisdiction over these areas was protracted and invariably bloody;[2] and that some of the "means" used were far from lawful: free beads, trinkets and pieces of cloth were, in fact, the main instruments, and, of course, the "loss leaders". Additionally, there were "punitive expeditions",[3] and one or two coups detat. However, having thus stated the means by which the non-Agreement districts were brought under British "Protection", the Order in Council enjoined the Commissioner, whose task it was to administer the "Protectorate" to divide his domain into "Provinces or Districts and with such sub-divisions", as he saw fit,[4] save that he was to use local materials; and in consequence, no resources, financial or otherwise were provided; he was to use his initiative, and so he proceded to do. The Protectorate was duly divided into Provinces and Districts and placed under Provincial and District Commissioners respectively, and each detailed to administer his territory as best he could. There was no formal blue-print, official policy or manual. Yet, rather remarkably, the administrative structure which emerged had similar features. Each district was sub-divided into several administrative units, on the Buganda pattern, and each placed under a titled chief

1. The Uganda Order in Council, 1902.
2. See, The early Uganda Colonial Reports through to 1930.
3. The term "punitive expedition" which pervades the early Colonial annual reports was a euphemism for mass murder and brutality.
4. The Uganda Order in Council, 1902, Article 6(1).

and so, "a Subordinate black and administrative service"[5] came into being. The creation of this cone-shaped chiefly structure, inevitably varied from district to district, but Eden's modus operandi, in West Nile, set out in full below, was not uncommon, and will serve as an example.

> "The [West Nile] District contains the following tribes: Madi, Kuku, Kakwa, Lugwari, Mada-Ai-ivu, Alur, Okobu, Lendu, ... and talk different languages and are quite unintelligible to each other, except on their borders where they have intermarried. The variety of tribes and languages do not tend therefore to make Administration easy.
>
> The Madi have acknowledged chiefs, but these have a great deal to learn and cannot be considered to have a firm hold over their men.
>
> South of Mt.Wati and around Mt.Luku, the Lugwari are utterly unorganised, there is no chief and it is impossible often to locate even a village headman. Inter village fighting is rife, and the only means of dealing with them will be by means of agents.
>
> The Alur are far the most tractable of all the tribes. They own to chiefs, though the only duty of a chief appears to be to exact a tribute in meat from his followers. One of the most satisfactory features of the year's work was the removal of Omwech, Owin's brother, and the replacing of all the riverain Alur under Chief Owin. The constant fighting between the West Bank and the East Bank has now ceased, and the people are settling down quietly under Owin, who promises well both in strength and justice. The other chiefs, Koba, Omach, Biddei etc., although reluctant at first, are now obedient to Owin.
>
> With regard to the Highland Alur, Chief Mulla has toured with me the whole of his County, never before having been more than a few miles from his village, his County has been preliminary organised into counties under his chiefs, again divided into districts under District Chiefs, with County headmen under them. The principal will be adhered to, but many readjustments will be required before it is complete. The same will be applied to the Lugwari, but will be a longer process owing to difficulty of finding suitable chiefs. Owing to lack of assistance, I am compelled to leave the Madi to their own devices.

5.C.O.536/186/40107 Mitchell to Bottomley, 23.5.1936.

Eventually therefore I propose to have three forms of chiefs fully recognised, both for purposes of justice and tax rebate. Many of these posts for a time being unoccupied. My proposal is that every recognised chief should eventually as remuneration draw 5% rebate on his tax collections, but that the Administration should be prepared to pay out 5% three times over for the same tax, making a total of 15% rebate.

No chief owning to say less than 200 men would be recognised as such. (It is impossible to fix an arbitrary figure). Thus Mulla with 10,000 men would draw 5% on their tax and Nyuka with 200 men, 5% on 200 taxes.

Mulla, with that number would be divided into sub-chieftainships, each of which sub-chief would draw 5% on the tax for which he was responsible. Each sub-chieftainship would be again divided, so that each assistant sub-chief would draw 5% on the tax for which he was responsible, making a total of 15%.

Nyaku 's district would act vice versa. No one under Nyaku would be recognised for rebate, but if he and three or four other such chiefs could continue under one, that one would also draw 5% on the whole without affecting Nyaku and the others.

The amount of rebate would for some time vary in various localities, until responsible chiefs can be found or imported.

This arrangement in its elasticity could, I consider be suitable to such a district as this, and would obviate that tendency of petty chiefs to claim independence, in order to obtain rebate. It affects his rebate,whether he is independent or not.

Apart from the question of rebate, these are the lines on which the district is being organised. In the first degree, is the chief who will always be independent. In the second degree, such as over several whom it is hoped eventually to place one of the first degree. After then, the Administration cannot recognise a chief, though at first he may not be embodied in a large community. With the settlement of the district there will be a considerable amount of movements among the natives, and when they have had time to settle down, the chieftainships will be divided up by natural boundaries, so as to avoid some chiefs having people at a distance settled amidst another chief's men, as in the case when a chief claims allegiance according to family groups.

> The general policy is to consolidate the people as much as possible under big chiefs, to strengthen their hands, and to throw responsibility and onus on to them. As far as possible the natural chiefs are made, but preference is given to the man who can be a chief, and if necessary, a man is imported, as in the case of Hamisi, in Mulla's Countryand Baruka at Arua."[6]

That mutatis mutandis, was the way in which British overrule was established in the non-Agreement districts throughout the Protectorate. That this process was not as flawless as Eden's Report can hardly be over emphasised. It would be strange indeed, if it were otherwise, and a reading of a random sample of Eden's colleagues reports bears testimony to this; the record shows that the establishment of British rule in these areas was slow, arduous and not without difficulties. In addition to the "punitive expeditions" mentioned above, the introduction of "alien chiefs", mainly from Buganda, was another source of worry and a blot on British Colonial rule, and was, as the proceding material shows, the subject of much criticism and was subsequently done away with altogether. It was always resented by the hapless segmentary societies, and it, almost in every case, gave rise to "extortion and petty tyrannies." [7]

Despite these drawbacks, however, the importation of "suitable chiefs" was universally adopted and utilised without qualms. Yet, again, however, there was no common policy, let alone official guidelines; each District Officer was free to proceed as he saw fit. This, not withstanding, however, the general approach was, once again, almost the same everywhere for, both the "System" and its peddlers, the "agents" were drawn from the same source, Buganda, and the whole soon assumed a common pattern; so much so that Salmonson's efforts in Kigezi, detailed below, will be used to illustrate the manner in

6. Annual Report,West Nile District, 1914-1915.
7. C.O.536/41/26752. Jackson to Secretary of State, 14.7.1911.

which chiefly bureaucracies were created in the segmentary societies. Specifically, the Kigezi experience will vividly demonstrate that "District Administrations" as local British rule was, in these areas, called, were the handiwork of District Officers and their "black poodles"; that the "Agency System", though widely used was, in fact, not always conducive to good local administration; that its wholesale and indiscriminate adoption was one of the first central government blunders; that its deployment was, in the long run, counter-productive and that in many cases it was not in fact necessary.

4.1.2. THE ORGANIZATION OF LOCAL RULE IN KIGEZI : THE LOCALE.

In common with her Eastern and Northern counterparts, Kigezi[8] as an administrative unit was created by the combined efforts of the British and their collaborators, both indigenous and foreign. It derives its name from a small lake called Ngezi, now dried up, in Nyakabande Sub-district near to which the Kivu mission, under Captain Coote established a garrison in 1909. Formally Kigezi was not a compact whole; it consisted of the three chiefdoms of Bufumbira, the habitat of the Banyarwanda, Rujumbara inhabited by the Baharoro, Butambi of Banyabutumbi , and Rukiga, the home of the Bakiga, meaning "men of the mountain".[9] And, although there were chiefly hierarchies in the three principalities, there were none in the "difficult country" of Rukiga.[10] The Bakiga, though nominally part of Rwanda, never acknowledged the authority of any chiefs other than their clan heads. The highest indigenous political organisation was the clan, of which there were about 30,

8. Mitchell, Sir, Philip, "Address on Indirect Rule", 17.7.1936
9. The mountain ous district of Kigezi with a total area of 2024 square miles lies in the extreme south west of Uganda and borders Zaire on the west and Rwanda on the south. For a short history of Kigezi, see Denoon, A. (Ed.) A History of Kigezi in South West Uganda. Uganda Press Trust, Kampala, Uganda, 1971. particularly parts 2,3,4 & 5.
10. C.O.536/59/18496.

each of which was subdivided into several lineages, of which there were 95.[11] Here, traditional government, mainly the maintenance of collective security and order, was in the hands of elected heads of lineages and their subordinates. These men were chosen by their peers on account of their bravery, or some other special qualities held in high esteem by the local population. Lineage heads were responsible for rule making and the hearing of cases, save that serious offences were heard by adhoc assemblies of village elders, presided over by the head of the clan or lineage. Cattle and land causes were also dealt with by elders in council. There was provision for appeals and trial by ordeal. The elders' authority was backed by the lineage's public opinion, the members of which were the bulwark of the local customs and mores. It is not surprising, therefore, that upon arrival in 1911, Critchley-Salmonson, the first Political Officer, found that the local machinery of government was too elementary for his immediate needs and in consequence proceeded as an executive action, to draw up "a scheme for the organisation of Rukiga" and its government.[12] First, the disperate principalities, Bufumbira, Butumbi, Kayonza, Rujumbura and the segmentary Rukiga were reduced into an administrative district, and the name Kigezi given to the whole. The former chiefdoms were reduced to administrative counties under their old traditional chiefs, whilst Rukiga, which hitherto had had no paramount chief, was

11. I am indebted to Nuha Karaza of Ruhita, Kabale for this information. (August 1979) Karaza is an elder and former local chief, who has been described as "an oral library of Rukiga history."
12. UNA, SMP 3851 Provincial Commissioner, Western Province to Chief Secretary, 12.3.1914

having been divided into administrative sub-counties, placed under a Muganda Agent, one Yowana Ssebalijja.[13] Ssebalijja was a Roman Catholic evangelist who had served in Ankole for many years, before he was respectively selected to accompany the British Section of the Uganda-Congo Boundary Commission, 1907-1908, and the Kivu mission, 1909 - 1910 and so began the Bugandanisation of Rukiga. As elsewhere, the principal argument for the importation of alien chiefs, as the following extract shows was, that the Bakiga had no chiefs and in consequence incapable of governing or ruling themselves.

13. UNA.SMP 1857. D.C.Ankole to Chief Secretary, 24.5.1912.

"With regard to Agents and Followers, I have gone into the question very thoroughly with Mr. Critchley-Salmonson and have the honour to submit the following as the arrangements which have appeared to us most suitable:-

(i) In Makaburrís country: 1 Muganda "Adviser" @ Rs.25.00 p.m.
(ii) In Rukiga (including Chinchizi, Kayonza and Rushenyi) :

(a) 1 head Agent (not "Saza") Yowana Sebalijja @ Rs.50.00 p.m.
(b) 1 Sub-Agent for E.Rukiga, Yonazani Basakabalaba @ Rs.20.00p.m.
(c) 1 Sub-Agent for Kayonza-Chinchizi @ Rs.10.00p.m.
(d) 14 followers @ Rs. 3.50.p.m.

This scheme was almost identical with that submitted by Captain Reid in his No.K.4/12 of 12.1.1912 and was supported by the same arguments as those submitted by his successors as noted here.

> "I am of the opinion that the Bakiga people consisting of 10,000 able-bodied men will not be in a position to govern themselves by themselves for many years; owing to the absence of any tribal organisation; or rule by the Chiefs, such as is usually found among primitive people. The tribe is so split up into numerous small clans, all bitterly opposed to one another, that any cohesion is an impossibility to exact any obedience from the various clans, to any clan headman in the capacity of a tribal chief without great difficulty and which would be free from bloodshed. Rukiga may be described as a district where the impossible is always happening, and the inevitable never comes off." 14

That in a nutshell was the classic justification for employing foreign agents. These Agents it was argued, would bring cohesion where none existed; would teach the indigenous people to obey British commands, including the assessment and collection of taxes, the maintenance of law and order, and the hearing of cases. Officials, holding such views, gave the Bakiga's capacity for rule very little if any, consideration.

Henceforth, Rukiga was to be divided into five subdivisions and each placed under a salaried Muganda Agent, with the rank of Gombolola Chief; and "five sensible Bakiga heads of clans placed under him, as Sub-Gombolola Chiefs". [15] The Agent's main functions were to teach their charges the art of government and administration, and in particular, tax gathering and the hearing of local disputes. The latter, despite current legislation was to follow the following pattern:-

14. SMP. 3851, op.cit.
15. Ibid.

> "I would recommend that the Gombolola chiefs and the Sub-Gumbolola chiefs sitting in Lukiko, be allowed to hear cases of a petty nature and that fines as shown in Enclosure 2 be allowed; these fines to be divided in the proportion of 1/4 to the Saza Chief and 3/4 to the Chiefs who constitute the Gombolola Lukiko; the amounts to be entered in a book and inspected by the District Officer. No sentences of imprisonment or flogging to be allowed and any other cases not mentioned to be sent to the District Court. A fee of Rs. 11 for hearing cases to be allowed, and divided among the chiefs who constitute the Lukiko." [16]

These home-spun judicial arrangements did not, however, follow the existing relevant legislation,[17] and were subsequently readjusted accordingly. Somewhat uncharacteristically, however, Sullivan did not dwell too much on "native taxation". He simply announced that

16. SMP.3851. The schedule of cases triable by Gombolola Courts was as follows:

CRIME	FINE
(i) Adultery	If wealthy, 1 cow, peasants 10 goats all to go as compensation (According to Native Custom)
(ii) Refusing to obey chiefs orders as to clearing roads etc. attendance at Lukiko.	First offence. /50 Second offence 1/00 Third offence 2/00
(iii) Minor cases of assault.	Up to Rs. 5/- Compensation to be given out of fine up to one half of fine.
(iv) Assaulting chiefs or threatening to use spears.	Rs. 5/- If chief assaulted is not member of Lukiko, to receive compensation of half the fine.
(v) Minor cases of theft such as Water pots, Spears,, Food, Honey	Up to Rs. 5/- compensation to be given out of fine.
(vi) Allowing goats or cattle to trespass into other peoples food shambas.	Up to Rs. 5/- Compensation to be given out of fine.
(vii) Acts towards armed followers and official followers Lukiko messengers, when carrying out orders of Lukiko to be considered as acts against the Chief but triable by the District Officer.	

17. SMP. 3851 P.C.W.P. to C.S. 12,3.1914

a small sum would be set aside out of which tax rebate would be paid to the chiefs and their "official Baganda followers."[18] These arrangements were approved by the Governor and Sullivan urged to implement them at once, "lest the chiefs should change their minds, [and] make the introduction of the Scheme more difficult."[19]

Already, however, the Baganda Agency was increasingly coming under severe criticism, and some officials were beginning to voice their reservations, albeit privately.

> "I have the honour to draw your attention to a system now in vogue, of administering certain districts in the Northern and Eastern Provinces through the Agency of Baganda, and it is with regret that I find myself obliged to criticise and in disagreement with a policy which I cannot help but condemn as a whole, as obsolete unsound and unjustifiable." 20

Even the system's most ardent supporters were, while setting it up, beginning to be disillusioned with their protege's handiwork. Thus, in 1913, the Kigezi District Commissioner reported that:-

18. SMP 3851 C.S. to Governor 26.3.1914. Part of the Minute reads:
> "The local petty chiefs are apparently ready to acquiesce in it now and are prepared for it. If a delay of 4 or 5 months occurs, before it is introduced, they may change their minds, or disturbances may occur, and quarrels arise which would make its introduction more difficult."

19. Ibid.
20. C.O.536/41/26759 Jackson to Secretary of State. 14.7.11.

> "On assuming charge of the District, the Native Administration was in an embryo state, and the agents appeared to be exercising too much liberty, and the natives were not taking sufficient part in the administration of their native country."[21]

He found this state of affairs very uncomfortable and proceeded to curtail the Agents' judicial and administrative powers. He promptly decreed that all Agents were to act as "Advisers" rather than substantive chiefs; that they were to be sparingly employed; and that they were to be "carefully supervised" in order to avoid "any cause for complaint against them" by the local population.[22] Besides his "armed followers", each Agent was to support no more than three private followers. The "official followers" were to hold their free plots of land and offices as long as their work remained satisfactory; and though these followers could take gainful employment as clerks, or roadheadmen, they were debarred from holding chiefly offices, and no alteration to this list was to be made without the District Commissioner's approval. The non-Agent Baganda were to be registered, charged rent and were to remain in Kigezi at the District Officer's pleasure; and no gang of Baganda sycophants were to hold any official position without his consent."[23]

This, the District Commissioner hoped would go a long way to eliminating the dangers and abuses to which the Baganda Agency was susceptible. He was too optimistic, however. In 1914, he joined the army and left his plan uncompleted; and his successor does not appear to have been

21. SMP 3851. Op.cit.
22. Ibid.
23. Ibid.

> "These drafts, except for some small amendments, were prepared by me when I was in Kigezi last year in consultation with Mr. Sullivan, the Assistant District Commissioner in charge, who was anxious that the Scheme should be initiated." per Chief Justice to Chief Secretary. 26.10.1915.

properly detailed to execute it. Indeed, he appears to have been oblivious to his predecessor's criticism of the Baganda Agents. For it was not until 1915 for example, that Sullivan's judicial arrangements were implemented.[24]

Somewhat extended powers were given to Sub-Divisional Courts, and provision made for appeals from the new courts to the District Court at Kabale. The County Court was to consist of three members appointed by the Governor and was to sit monthly. The maximum punishment it could impose was a term of three months' imprisonment or a fine of 150 rupees, whilst the monetary limit on the value of the subject matter in dispute was set at 200 rupees. The jurisdiction of the Sub-Divisional Courts, which were to sit weekly, was considerably less than that of the County Court, and there was no right of appeal from the former to the latter.[25] All appeals lay to the District Court, and, as elsewhere, the new chiefly courts had no jurisdiction to hear the following cases:

(a) Offences committed in urban areas;

(b) Civil and criminal cases in which the parties were in Government Service, including messengers, clerks and Askaris;

(c) Breaches which were punishable as offences of any Special law, eg. Arms, Game, Forest, Fiscal, Mining;

(d) Matrimonial causes other than those arising from a marriage contracted under, or in accordance with local law and custom. 26

24. SMP 3851. op.cit. In civil cases the value of the subject matter in dispute was increased to Rs. 75/- while in criminal cases, the Courts were empowered to impose a fine not exceeding RS.30/-.
25. Ibid.
26. Ibid. See Proclamation of 29 October, 1915.

Sullivan's proposals envisioned the establishment of a comprehensive network of Native Courts, but owing to the outbreak of hostilities in 1914, the Chief Justice advised against it, and it was not until 1920 that such courts were established throughout the District.[27]

Meanwhile the courts in Rukiga had been the subject of reorganisation, and the Bakiga had accepted the changes with equanimity, and like the District Commissioner, they, too, were evidently well satisfied with them.

27. SMP 3851.op.cit. Proclamation of 20 January, 1920, cancelling the Proclamation of 1915 (Rukiga) : of 1917, (Rujumbura and Rwanda); and of 1918 (Kinkizi and Kayonza).

"As regards para 7 of the Chief Justice's letter, the number of cases tried in the Native Courts of Rukiga to date is 146 of which 9 were heard in the County Court and 137 in the Sub-Divisional Courts.[28] The Courts appear to be working satisfactorily. Minor cases of assault are the commonest cases met with. Cattle cases and civil claims also occur in some numbers. All Native Courts keep records in their books of the cases heard, showing briefly names of parties, claim or charge and the judgment of the Courts. Up to date 2 cases have been revised by me, no appeals have been made."[29]

28. Ikumba Sub-Div.ct. heard (11) cases, Buhara (12), Nyarushanje (43), Mpalo(66), Bukinda (5).

29. SMP 3851. D.C.Kigezi to P.C.Western Province, 7.11.16. Paul Ngorogoza's account of the early court proceedings is illuminating. He writes:
"At first, the chiefs had no court buildings, and they dealt with cases in their residences, playing indoor games, such as that played with stones. When the accuser and the accused were talking, the chiefs would be busy playing their game, "One,two three, four". Preoccupied with these things, they would ask the complainant and defendants "What have you said? Repeat what you have said". This greatly inconvenienced the litigants, because the chiefs did not pay attention to what they were saying, before leaving their "one, two, three, four", and whilst the calabashes of drink were in their hands. Their clerks deserve sympathy because they had no desks to write on or chairs to sit on and had to write when they were seated cross-legged, but these things were gradually improved later. Courts were built and equipped with strong chairs and tables for the chiefs and clerks to sit on while writing. However, there was no remarkable improvement until 1920 when the District Commissioner Philips, brought Baziba clerks to deal with cases and letter writing in the towns, where cases were judged in Swahili."
(P.Ngologoza, Kigezi and Its People. EALB, 1969, p.57).
The author, Paul Ngologoza, O.B.E., K.S.G. was born in 1896 at Rubaya, Kigezi. He was first appointed Chief in 1923, becoming Muruka Chief in 1925 and Gombolola Chief in 1929. In 1936 he was appointed Saza Chief, a post be held until 1946 when he became the first Secretary-General of Kigezi. In 1956 he was appointed Chief Judge and in 1959 became Chairman of the Appointments Board. He retired in 1960, but is still active in the Country's affairs.

Elsewhere, however, the "anti-British elements", or rather the "freedom fighters" were, with some success, challenging the District Commissioner's authority. They were violently opposed to British rule and its attendant machinery and impositions, including taxation.

> "East Rukiga was thrown into considerable disorder by the anti-European preaching and claims of sovereignty of two natives known as Muhumuza and Kigeri." [30]

The District Commissioner thus noted and advised the Governor, that there were sporadic "attempts to undermine European authority" in these areas; and "in the interests of British prestige and the welfare of the people", a series of "punitive expeditions" were, with severe reverses, sent to capture the movement's ringleaders. [31]

30. C.O.536/48/3552. Reid, Political Officer Kigezi to Governor 4.1.12; Reid's affidavit reads in part as follows:
"In October 1914, whilst I was outside Nyindo's village I was attacked by Nyindo's bowmen who actually shot at me and Abdulla, Government Agent Kigezi. During the night war drums were beaten all night in Nyindo's village and this beating of drums was accompanied by shouting to the effect that "we are going to drive the Europeans out of the Country". On the following morning, Nyindo, with over 1200 men of whom a large number were natives from German territory, attacked the village of the loyal chief Musakamba at whose principal village I was encamped. A large number of huts were burnt and several loyal natives were killed."
See also CO.536/82/5688. Dispatch No.346 of 20.12.1916.

31. CO 536/86/46246: Thus MacDougall's affidavit re: deportation of Chief Musinga of Kayonza in 1917 in part reads:
"In 1914, after the outbreak of war, Mginga left Kayonza without permission of any sort and went to Izomba in German East Africa. Mginga was not seen again until February 1917 when he was arrested. Mginga was absent from his Country and consorting with the enemy throughout the period that the war was waged in and around the District of Kigezi."

Such "punitive measures" however, tended to fuel rather than quell the rebellion, and it was not until 1918 that the Bakiga resistance finally succumbed to the thunder of the mighty maxim gun,[32] and it was not until then that the District Commissioner's hegemony was effectively established over these areas.

In the meantime, his authority was confined to his standing camps and its adjacent areas. Even here, however, his position was precarious; the collection of taxes, for example, was "not to be unduly pressed", for the people had, as yet, to accept his overlordship and his "Agents" had to proceed with caution, and it was not until 1919, that the whole administrative district of Kigezi was brought under his effective control.[33] It was, as it happened, in that year too, that the Chief's executive powers were, for the first time, respectively set out in the Native Authority and the Native Law Ordinances, both of 1919.[34]

The object of the Native Law Ordinance, 1919, which was drafted and published in March 1914, but enactment deferred until after the war, was to provide for the Constitution of Native Councils and the progressive development of native and customary law. Yet again, however, the need for legislation was dictated by practical rather than theoretical considerations.

32. CO 536/86/46246: Dispatch No.191 of 10.7.17. Deportation of Mginga ex Chief of Kayonza.
33. KDA SMP 1857. Grant to D.C. Ikumba. 11.10.1912.
34. Uganda Laws, Revised Edition (1951) pp.1046-1053.

> "Instances have occurred in which action has been taken locally which has purported to alter native law, such action can have no validity and although it is most desirable that the gradual upward trend of native opinion should be reflected in an improvement of native law, yet it is obviously inadvisable that any alterations should be made which have not been fully considered and which are not in accordance with the general native policy of the Country.
>
> It may well happen too that an administrative officer holds entirely different views from those held by his predecessors on such subjects and if the matter is left entirely to local authorities he may exact his influence with the native chiefs to reverse the action which has been taken." 35

These "Native Councils" unlike the "Lukiko", had no legislative powers. Like the "Lukiko", however, each Council had power, subject to the Governor's disallowance to prescribe penalties for breaches of customary law; to effect alterations in "Native Law" and to hear and determine cases both civil and criminal within their jurisdiction. [36]

Of more importance, however, was the Native Authority Ordinance, 1919, which though, not novel, since it "contained nothing new that was not already in existence, and in practice throughout the Protectorate."[37] defined the powers and duties of the chiefly hierarchies that constituted the "Native Authorities". Each chief was empowered to maintain law and order in his County or sub-county and was to continue to exercise his enormous traditional powers and those held under various Protectorate Ordinances.[38] He was, for example, responsible for the prevention of crime; the arresting of offenders, with or without a warrant, save that such arrestees were, in serious cases, to be brought

35. CO.536/95/52716 Dispatch No.282 of 21.7.1919.
36. Cap. 62
37. UNA. SMP 5568 (1919).
38. Cap. 72. S.3.

before the District Commissioner within 24 hours. This provision was directory, however, its breach did not invalidate the arrest, but could well lead to the Chief's censure, or reprimand.[39] Each chief had broad powers to issue orders either on his initiative or at the instance of the District Commissioner, on a wide range of specified subjects,[40], and failure to obey any of such orders, was a criminal offence subject to a maximum fine of 150 shillings; or two months' imprisonment, or both.[41]

40. S.7. for the Specified Subjects see p. 114 supra.
In addition S.6. provided:
Subject to any orders of the District Commissioner any chief may direct any African within the local area of his jurisdiction to attend before him, or before a native court, or before any Government official. Any African who when so directed to attend before any such person shall, without reasonable excuse, fail to attend as and when directed may be arrested by or under the orders of such a chief and taken before such person as aforesaid.

41. S.12 as amended in 1925 by 14 of 1923. S.4.

Most of these powers were new and certainly wider than many a chief had possessed before. Consequently, the extensive supervisory powers of District Officers, not withstanding, the existence of these wide powers soon led to arbitrary and autocratic rule, "extortion and inefficiency", and, it was some time before this situation was satisfactorily resolved. [42]

42. One of the objects of the Ordinance had been to give District Commissioners "close control" over the chiefs, and this sentiment was given expression in S.13. which, inter alia, provided:- Any chief may be fined any sum not exceeding Shs.600 or sentenced to imprisonment for a period not exeeeding six months in case he shall be convicted of any of the following acts or neglects, that is to say:

(a) If when directed by a D.C. to meet any Government Official, he shall, without good and sufficient excuse, neglect to obey such direction;

(b) If he shall, without lawful excuse, neglect to exercise the powers conferred upon him by this Ordinance;

(c) If when directed by a D.C. to issue orders he shall without lawful excuse, neglect to issue the orders directed;

(d) If he shall, without lawful excuse, neglect to enforce any orders issued by a D.C. under this Ordinance;

(e) If he shall, without lawful excuse, neglect to cancel any order under this Ordinance when directed by a D.C. so to do;

(f) If he shall, without lawful excuse, neglect to enforce any lawful orders issued by a Chief to whom he is subordinate;

(g) If he shall be guilty of any abuse of authority conferred on him by law or native custom.

4.1.3. THE WITHDRAWAL OF THE BAGANDA AGENCY

Kigezi's administration was, until 1920, almost entirely in the hands of "alien chiefs", who had steadily increased since they were first introduced into the Country, in 1913.[43] Even the principalities of Bufumbira, Kayonza, Kinkizi, and Rujumbura were, as mentioned earlier, under the supervision of Baganda Agents, who were the medium of communication between the District Officer and the local population. These Agents were, among other things, employed on the grounds that there were no Bakiga chiefs of sufficient standing and authority to exercise control over their own people; that they would instruct local headmen "in the ways of native administration",[44] teach the people to make roads, build rest houses, cultivate cash crops, and generally "exercise a civilising influence" over their charges.[45]

Nearly all British Officials took the view, as it happened, quite wrongly, that there were:

> "no persons in the district of sufficient intelligence to act as chiefs, in the sense of the word as used among uncivilised tribes elsewhere; hence any thing in the way of native administration is difficult both to start and carry out." 46

In the County of Rukiga, the situation was even more complex. The Bakiga were split up into small clans; they recognised the authority of no chief, and many clan heads, though prepared to work under an Agent, were averse to their subordination to their peers from different clans, and of course, from different tribes.[47]

43. Kigezi District Archives, Annual Report for 1919/20.
44. C.O. 536/21/37925. Bell to Secretary of State. Dispatch 200 of 11.9.1908.
45. C.O. 536/41/26752. Jackson to Secretary of State, Dispatch 202 of 14.7.11.
46. Kigezi District Archives. Annual Report for 1913.
47. Nuha Karaza, Oral Communication, August 1979.

The British, under these circumstances, had no difficulty in concluding that the system of employing foreign agents, was the only method of administering the district, not withstanding that government, by and through these Agents in the Eastern and Northern Provinces, had already been attacked by the Governor "as obsolete unsound and unjustifiable."[48] Indeed, arrangements for the replacement of all "alien Chiefs" by local chiefs in these districts were well under way.

Several District Officers were well aware of these short-comings and were anxious to avoid them. But the whole question was fraught with much difficulty. On the one hand, there were those who argued that a summary breaking up of the Agency System would be followed by disastrous results, for not only would "considerable loss of revenue be incurred, but a fatal blow would be given to the cotton industry."[49] On the other hand, there were those who, though not oblivious to the Agents' achievements, were concerned that the Agents not only exercised too much power, but that "their overbearing and domineering attitude "to their charges was detrimental to British interests, and that their misconduct was "the direct cause of 90% of so-called rebellions in areas where British rule had never been personally unpopular."[50] Worse, some Agents were accused of murder and other serious crimes. Jackson, thus told the Colonial Office that the Agents,in the process of,-

48. C.O.536/41/26752. op.cit.
49. C.O.536/52/37001. Wallis to Secretary of State. Dispatch 436 of 28.10.12.
50. Kigezi District Archives. Annual Report for 1919/1920.

> "educating their wild and savage pupils, do a good deal of killing all of which, in the native mind, is duly credited to the "Sirkal" or in other words, the District Commissioner, tied down to his station, and alone, perhaps 40 or more miles away .... is not fair to the natives, nor is it fair to the District Commissioner." 51

The use of Luganda as the official language and the attempts to impose it on the local populations was, yet another source of concern, criticism, resentment and offence.

> "The language has been the most material influence in misleading the indigenous population as to the government's attitude towards alien customs and misleading the Baganda as to their own position in the country. In short I cannot, but consider its employment in this district to be a distinct political error. The local population has been submerged, incoherent, and voiceless; their demands, needs and aspirations have only reached the government indirectly, coloured by Baganda intermediaries - who have been from time to time confused by volcanic upheavels arising from resentment of them by the people whom they have, perhaps unconsciously misrepresented." 52

However, British attitude towards these strictures and the agency system generally continued to be somewhat ambivalent and each District Commissioner was, for the most part, left to his own devices.

However, a majority of officers, despite the individual officer's inclination to do away with the Agents altogether appear to have plumped for a gradual removal of their proteges. [53]

51. C.O. 536/41/26752 Jackson to Secretary of State. 14.7.11.
52. Kigezi District Archives. Annual Report for 1919/1920.
53. C.O. 536/50/22189. The policy followed in many districts was along the following lines: "As soon as it is found that an Agent aided chief can be entrusted with the conduct of the affairs of his district, the Agent is removed and the chief left to carry on the work." Governor to Secretary of State. Dispatch 248 of 18.6.12.
Further, owing to the war and the subsequent shortage of administrative staff, it was found necessary to retain many of these Agents for a longer period than would otherwise have been the case.

Thus, though the removal of the Agents from Kigezi was commenced in 1920, it was not completed until 1930. Here, the end of the Baganda Agency began with the dismissal of five Agents for misconduct, the abolition of all Kiganda chiefly titles, the introduction of Swahili, as the official language, the appointment of Baziba Swahili-speaking clerks and the removal of all non-Swahili-speaking Baganda clerks.

Shortly afterwards, Yoweri Luwanga, a Muganda Adviser, Ikumba sub-county, was withdrawn, leaving Joseph Kalimalwaki, a Mukiga, in sole charge of the sub-county and thus began the process of employing local material for local administration.[54] The appointment of an indigenous chief in Rukiga, "a very sound move carried out by Mr. Adams", the Assistant District Commissioner, had a profound effect on the Bakungu-lower chiefs-and the Bakiga generally.[55] Henceforth, the local chiefs, mainly Bakungu, showed "more and more interest in their position and more ambition to advance; and a decided improvement in the performance of their duties. Kalimalwaki's exemplary service and the salutary effect his appointment had on his compatriots led, despite the Agents' attempts "to create an impression of indispensability" to the further retirement of alien Agents in favour of indigenous chiefs."[56] For extraneous reasons, however, progress in this direction was painfully slow. One of the most important factors which hampered the smooth implementation of the "Kigezi for the Kigezian" policy was the terror

54. Kigezi District Archives. Annual Report for 1923.
55. KDA. File No.9. Philipps to Provincial Commissioner, 6.2.29.
56. KDA. File No.9. Philipps to Provincial Commissioner. 6.2.29.

inspired by the supernatural activities of the anarchic Nyabiingi movement which made it imprudent to dispense with the services of the County Agents, who alone, so the British thought, were unaffected by Nyabiingi's influences.[57] Whereas therefore, there were "enough Bakiga competent in both character and ability, to fill all the Gombololas of their own tribe"; and there was "no reason for retaining" Baganda Sub-Agents in Rukiga, none were appointed until 1929, when following the final collapse of Nyabiingi's movement, seven such appointments were made.

In the same year, Rukiga containing 20,000 taxpayers, was divided into two counties, Rukiga and Ndorwa, and each placed under an indigenous Saza chief; viz: Rwomushana and Mukombe respectively. Both chiefs were, according to official reports, able, diligent and excellent administrators. They were variously described as "quite stolid, reliable, loyal and exceptionally strong and energetic" chiefs.[58] Each had already "stood a period of prolonged test in charge of the most difficult Gombololas throughout the district,"[59] and, indeed had had "long years of exemplary service; spoke good Swahili; and had "an unusual driving force of character," and as might be expected both had "undergone an intensive course of instruction in their duties" before appointment and had acquitted themselves well.[60] Additionally, and perhaps more importantly, both chiefs had been "put in with success to clean up Gombololas outside their tribal areas left in a state of

57. KDA File No.9.op.cit. Philipps to Provincial Commissioner. 14.2.29.
58. KDA File No. 2650, See also Confidential Reports re Mukombe, Rwomushama - upon appointment.
59. KDA File No.9. lo.cit.
60. KDA 1102/487 P.C. to. C.S. 16.12.1929.

anarchy" by Baganda Sub-Agents; thus putting to an end any lingering doubts in the minds of the British, as to the Chief's capacity for rule.[61]

Having thus cleared the psychological barrier, the indigenous chiefs had no difficulty in meeting the requirements of the District Commissioner, and his glowing praises, once reserved for the Baganda Agents, began to be showered upon them.

> "Practically all chieftains in the District are now occupied most satisfactory by indigenous chiefs. They are, on the whole, both more capable and more honest than the class of non-indigenous Sub-Agents previously in charge of Gombololas. There are two Gombololas, on borders and occupied by many alien natives of petty trade class, which it may be wiser to keep for a year or two in charge of carefully selected non-natives of the District." 62

The two Gombololas in question were Ruhinda in Bufumbira and Kamwezi in Rukiga. Even here, however, the hey-day of the Baganda Agency was at an end; elsewhere the services of "Advisers and Agents" were, forthwith, terminated and local chiefs installed with "highly satisfactory results".[63] The "petty broils, interclan quarrels and bloodshed" the fear of which had forced the hands of successive District Officers to employ alien chiefs, thanks to the good sense of the men of the mountains", did not materialise.[64] The withdrawal of the Agents was, contrary to current conventional wisdom, followed by "a more effective administration and a more enthusiastic co-operation" between the people their own chiefs and the British Authorities.[65]

61. KDA File No. 9. D.C. to P.C. 7.5.1929, see also File No. 7.
62. KDA File No. 9. D.C. to P.C. 28.11.1929.
63. See SMP 3851 op.cit. District Commissioner's Report.
64. KDA Provincial Commissioner's letter No. 1102/487 of 16.12.29.
65. Ibid.

Some would no doubt argue that, but for the "civilizing influence" of the Agents, the Bakiga would never have recorded, within such a short period, such advance and successes. A ca sual perusal of contemporary records, however, suggests otherwise,[66] these reveal that the local "clan heads, headmen and elders" could, from the outset, quite easily, have administered their areas without too much difficulty, the meanial tasks performed by the Agents, particularly the collection of taxes, the maintenance of law and order, were by no means beyond their ken. Many were, however, fiercely opposed to British overrule and were, therefore, unavailable for appointment. Thus the importation of "chiefs" was not solely due to lack of local talent; on the contrary, the Baganda Agency was a potent instrument of Colonial Rule; the Agents were not chiefs, but, like their British superiors, rabid imperialists.

Besides, having served as guides, companions porters and clerks, many an Agent expected and was invariably appointed a "chief" in return for his past free services. His chieftainship - the spoils of office - was in view of the collector's meagre financial resources, his remuneration albeit in kind, and had, therefore, nothing to do with the paucity of local "chiefs", or the inability of segmentary societies, such as Kigezi, to muster a handful of tax collectors, administrative and judicial operatives to serve British interests without the supervision of alien intermediaries. However, the British as aforementioned, had other ideas, and it was not until 1929 that the Bakiga were, subject to the supervision and control of the District Commissioner, given their "Home Rule".

66. K.D.A. No.1102/487. op.cit.

4.2.1. THE INFORMAL RELATIONS BETWEEN THE PROTECTORATE GOVERNMENT AND THE NON-TREATY DISTRICTS.

The relations between the Protectorate Authorities and the various district administrations were, initially conducted within the legal framework of the Uganda Order in Council, 1902.[67] The Order, however, did not comprehensively prescribe the manner in which the administration of these districts was to be carried out and by whom; it merely empowered Her Majesty's Commissioner, to divide the Protectorate, for administrative purposes, into provinces and districts. In him was vested all rights of government, including the power to legislate for the administration of justice, the raising of revenue and for the general governance of the Protectorate. And, it was in the exercise of these powers that the Commissioner placed each Province under a Sub-Commissioner, and each District under a Collector, the respective precursors of the Provincial and District Commissioners. Each administrative area was further sub-divided into administrative Counties and Sub-Counties, and each sub-division placed under a local chief. The latter's functions were, during the early days of the Protectorate, administrative, judicial and fiscal, and in the exercise of their powers, each chief was under the control and supervision of the Commissioner, through the Collector in charge of the District. Whilst some of the chieftainships were traditional and hereditary, a good many were the Collector's creation, and in many ways, like their creator, the Protectorate civil servants.

At the same time, however, they were the "Local Authorities" in their areas, and as such, were responsible for the maintenance of law and order, the collection of taxes and the welfare of their people. Each chief thus owed allegiance, both to the "Local Authority" of which he was an

67. The Uganda Order in Council, 1902. The London Gazette, August 15, 1902, pp. 5307-5311.

integral part and the Protectorate Governments of which he was a paid lackey. His was thus an enviable position, and any dereliction of duty, or indeed, any failure to come to the District Officer's expectation, was, as Chief Aliko found to his cost, always ruthlessly dealt with and the culprit taught an unforgettable lesson.

> "A thorn in the side of the successive Administrations in the person of ex-chief Aliko was removed in January.... This will very considerably strengthen the chiefs as showing the Mandi the ultimate even if differred fate of those who defy the authorities." 68

The dismissal of Yosiya, the 16 year old King of Bunyoro, and the installation of his brother, Andereya is another case in point. The facts of this case, set out below, shed some light on the constitutional relations between the chiefs, the Central and the Local Authorities, and will serve as an example.

In 1899, "a thorn in the flesh of the British" in the person of Kabarega, the indefatigable and the most famous of Bunyoro's rulers, was, together with Mwanga, the Kabaka of Buganda, captured and subsequently deported to the Seychelles Islands and was succeeded by his infant son, Yosiya. Major Price, the military officer in charge, was detailed "to run both the civil and military affairs" in Bunyoro, and according to Wilson, "threw himself heartily into the scheme , which he believed worked admirably".[70] Subsequent frequent changes in officials, however, threw the scheme into neglect, and in 1900, when Wilson went to Bunyoro he "found the youngster running riot with all sorts of non-descript characters in his enclosure".[71] Young Yosiya was duly cautioned and "reinstated on the throne and taken on tour of his country," and a few months' later sent to Kampala to meet the Buganda Regents.

68. Annual Report, West Nile District. loc.cit.
69. F.O.2/858 Sadler to Lansdowne 4.8.1904.
70. F.O.2/858 Wilson to Sadler
71. Ibid.

The verdict, according to Wilson, was that "young Yosiya had improved vastly" and, on Wilson's return to Bunyoro, in 1901, he found his protege "with a following of the best chiefs, and altogether with increased prestige."[72] Shortly afterwards, however, Wilson, was, in quick succession, succeeded by Stanley Tomkins and Stanley Bagge, in 1901 and 1902, respectively. These "changes threw [Wilson's] Scheme into neglect", and disarray, and once again, unfavourable reports about Yosiya's misrule and conduct began to appear, and culminated in the Regent's petition, for his removal, of which the following is a verbal translation:-

> "To our distinguished chief Mr.S.S.Bagge, we bring to your notice a very serious matter from our Baraza. The Saza chiefs are greatly troubled at heart on account of the doings of our King, Yosiya who rules on us.
>
> In the first place he is perfectly devoid of wisdom, a thorough fool and does not understand matters. He is also thoroughly heathenish.
>
> Therefore, Sir we beg of you very much to find us another King who is worthy to reign over us. We have chosen one, a man of power who thoroughly understands the affairs of the Country a man of great wisdom whom we approve to reign over us, his name is Andereya Bisereko, he it is who knows our customs, and he is an older prince than Yosiya. All is signed Sir. We the Saza Chiefs of Bunyoro." 73

Similar charges were made by Bagge, Lloyd and Tomkins and in consequence Yosiya was unceremoniously deposed "before the situation became worse, and whilst it could be done without risk of disturbances."[74] The Secretary of State was accordingly informed that the "semi-imbecile" Yosiya was unsuitable, that it was impossible to "foresee" that his Kabakaship would be in any way very beneficial to either the administration or his people, and that, in view of all the circumstances, he had been deposed and replaced by his elder brother, Andereya, "a bright, intelligent lad of twenty, much liked by the people, and who gives promise in every

72. F.O. 2/858 op.cit.
73. Ibid.
74. Ibid.

way of becoming a chief useful to us and his Country."[75] The accent was, of course, on "a chief useful to us,"[76] and, in practice, that was a euphemism for co-operative, loyal and subservient chiefs. In Eden's words, "every petty chief", [who] was inclined to be independent, was deposed and replaced by a suitable chief."[77] Similarly, Sadler's account of Yosiya's character and suitability for office included the following illuminating passage:

> "Although warned by the Regents, from time to time where he, [that is Yosiya] went wrong, there has been no tendency to improve and latterly he has taken to assert his position, and decline to listen to advice. He appears to have inherited some of the worst of Kabarega's tendencies, and shows no signs of any desire to do otherwise than idle and follow his natural instincts. That, in effect, was the most serious charge against 'the boy' and indeed, the reason why he and his mother, described 'as a bad woman and a vicious intriguer', were deported to Buganda." 78

The early years of the Protectorate thus saw a general "weeding out" of the "misfit, malcontents and agitators", and the introduction of a new breed of useful and "suitable chiefs". These "upstarts" were given the "emblem" of authority, endowed with traditional rights, including the privilege to tribute and corvee, and placed under the control and supervision of the Protectorate Government through the District Commissioner. Each chief, under the watchful eyes of the District Commissioner, was responsible for the day to day administration of his area, the maintenance of law and order, the provision of "Burungihwansi" the administration of justice, the correction of taxes, the enforcement of Protectorate laws including the multifarious edicts, orders and directives issued by the District Commissioner and the various departmental field officers, and thus his inferior and vulnerable position emphasised.

75. F.O. 2/858 Sadler to Lansdowne. op.cit.
76. Ibid.
77 See Eden's Report. op.cit.
78. F.O.2/858 Sadler to Lansdowne. op.cit.

Having thus set up "suitable" chiefly hierarchies replete with traditional powers and reorganised the local indigenous political institutions along the Ankole-Buganda pattern, the administering power soon found it necessary to provide a uniform legislative code under which the preceeding ad hoc arrangements were to be nurtured, guided and, for the purposes of British rule, put to good use. However, owing to the outbreak of the 1914 - 1918 European War, it was not until 1919 that the 1914 draft legislation: the Native Authority and the Native Law Ordinances were enacted and brought into force. Under the former "An Ordinance to make provision for the Powers and Duties of Native Chiefs and for the Enforcement of Native Authority", the chiefs' traditional powers were defined, vastly increased and consolidated.[79] It was laid upon the chiefs, as a primary responsibility, the duty to maintain order, including the prevention of crime, and were, for this purpose given powers to arrest, search and seizure; and were in addition, empowered to issue orders having the force of law, on a variety of subjects, of which the most important were concerned with law and order, corvee, and housing accommodation.[80]

79. Cap.60. Section 3, The Native Authority Ordinance, 1919.

80. Cap.60. Section 7, Native Authority Ordinance, 1919, later renamed "African Authority Ordinance, 1949, the recital of which was: "An ordinance to make provision for the Powers and Duties of African Chiefs and for the Enforcement of African Authority". Section 7B covered 16 topics ranging from the "distilling of native intoxicating liquors " to the "preventing of eviction of natives without good cause from land occupied by them."

The Native Law Ordinance, 1919, made provision for the recognition or constitution of local chiefly councils and, empowered them, subject to the approval of the Governor, to alter Native Law and to fix penalties for its breach, or infringement.[81]

The chief's magisterial powers were, simultaneously increased and brought under the ambit of one ordinance, the Native Courts Ordinance, 1919, and inter alia, provision made for the "enforcement of tribal authority".[82] Section 45 specifically stated that:-

> "The Supervisory Courts may, should they deem fit, for the enforcement of the lawful orders of Native Courts of recognised tribal chiefs or Councils of elders, try persons disobeying such orders and on conviction impose a sentence of imprisonment of either description not exceeding six months or a fine not exceeding rupees five hundred or both." 83

Furthermore, the chiefs were, in most districts, recognised to a greater or lesser extent, as having authority over the allocation of land within the limits of their chiefdoms. Thus by the early 1920s, the position of chiefs vis-a-vis the protecting power had already been reduced to a common pattern: They were statutory magistrates, law makers, and

81. Such Councils were recognised or constituted thus:-
Busoga District Council : Date of Legal Notice 1/3/1920.
Ankole & Toro District Councils : Date of Legal Notice 13.6.1920.
Acholi, Bunyoro & Lugwari District Councils: Date of Legal Notice 1/3/1921
Bugisu District Council : Date of Legal Notice 16/3/1925.
Teso District Council : Date of Legal Notice, 15/11/1925.
82. See, No. 24 of 1919
83. S.45 of No.24 of 1919.

executive operatives, whilst their position in relation to the District Commissioner was akin to that of "Agent and Principal", the latter being the Principal or "Supreme Chief". He was the link between the Protectorate and the Local Authorities. In him were vested enormous and varied powers of intervention in local affairs, and many a chief, all of whom were his appointees, looked up to him for advice and guidance. Yet, they also owed allegiance downwards to their local communities and were responsible for their peoples' welfare. There was, as yet, however, no clear distinction between Protectorate and Native Affairs; there was as witness Sir Philip Mitchell's remarks, on "Indirect Rule" in 1936, shortly after his arrival in the Country, one single "Administration". He wrote:-

> "There is no division of function between the British Government and the Native Authority by subject - nothing resembling dyarchy. With a few exceptions such as the raising and control of armed forces, which are and must be reserved entirely to the British Government, the division may be described as horizontal rather than perpendicular; that is to say that in principle, no branch of the administration is entirely British or entirely Native, but that up to a point, all are Native, in their simpler, or at any rate, their local aspect, and thus British: it is moreover exiomatic that in the sphere of administration (excluding large townships where different issues arise) the point at which the division occurs aught to be constantly rising, until the native Africa executive administration is the function of the local native administration ....." 84

To this end Mitchell enacted two ordinances, the Native Administrations (Incorporation) Ordinance, and the Native Administration Tax Ordinances, both of 1938.[85] The former an enabling piece of legislation, was the first legal recognition of the changing character of "District Native

84. Mitchell, Sir Philip, "Address on Indirect Rule", 17/7/1936
85. Nos. 8 and 16 of 1938.

Administrations", and made provision for the constitution of "rulers, chiefs or other native officials", virtuiti officii, as corporate bodies having a separate existence and a separate legal personality with perpetual succession, the right to acquire property, the right to sue and be sued.[86] Mitchell believed that this arrangement would make the beginning of the end of the first phase of the existing "horizontal relationships between the Protectorate and the Native Authorities."[87] The slow speed at which Mitchell's plan was implemented, however, negatived the importance of the Ordinance, and was evidently dictated by the unwillingness of many a District Officer to free the chiefs from the district officer's apron-strings.[88]

86. Section 4 of No.8. of 1938.
87. Mitchell, Address on Indirect Rule, op.cit.
88. Thus whilst Buganda was brought under the Ordinance immediately after its enactment in 1939, the Western Kingdoms and the Kigezi District Administration were not "incorporated" until 1944 and 1950 respectively. None of the District Administrations in the Northern Province, had been incorporated when the 1938 Ordinance was repealed by the District Councils Ordinance, of 1955.

Mitchell's other enactment, the Native Administration Tax Ordinance, 1938, had as its main objectives the rationalisation of local taxation and the establishment of a new tax for "Local Authorities", thus enabling them, for the first time, to raise the bulk of their own revenue locally and without the fiat of the Central Government.[89]

Meanwhile, the extensive judicial legislative and administrative powers which the chiefs wielded, were increasingly causing grave concern among certain sections of the Administration. The defects of the chiefly hierarchies, systematically set up in the preceeding thirty years were beginning to surface: the System presented enormous opportunities to the unscrupulous chief, and regrettably, many a chief did succumb and indulged in "petty oppression" of the peasantry or simply amassed wealth at the expense of his charges, and in consequence lost their respect and support and, in serious cases, lost all control and influence over them to the detriment of local administration.

More importantly however, the position of "Civil Servant Chiefs", was in the light of the new government policies, increasingly becoming more anomalous and more difficult to defend.

> "You cannot establish native authority upon a basis of chiefs selected and appointed by the foreign power: you may get, by this means, a useful temporary agency of administration, but it will not be native. That is not to say that it is impossible ever to create a new native authority, but it is very difficult and a very slow process; and if, there is a real traditional native authority ready to your hand, it is also unnecessary and generally unwise." 90

89. Cap. 188.
90. Mitchell, "Address on Indirect Rule" op.cit.

In fact, it was the System's proneness to produce "local tyrannies" and nepotism, together with its most insidious twin by-products that, in 1937 prompted the Teso District Commissioner to institute, among other things, "a series of Councils at District, County, Sub-county, and Parish levels, with lay nominated councillors in the majority."[91] The idea was, firstly, to neutralise the immence personal authority of the chiefs, and secondly, to enable the growing number of young educated elite, to participate in the proper administration of their areas. It is important to note, however, that the chiefs were invariably the chairmen of the new councils, that the nature of their authority and responsibility vis-a-vis the new councils, was not stated, and that their position remained undefined. This, not withstanding, however, the Teso experiment was, during the next decade, extended to other Districts, save that Councils in the Agreement areas remained dominated by the local chiefly hierarchies. In 1949, statutory effect was given to these arrangements and tentative efforts made to determine the constitutional relations between the chiefs, the central and local government administrations.[92]

Under the Ordinance, the chiefs were to be "Officers of the African Governments", but were to be appointed by the Governor, or such other person authorised by him, and though "Officers" of District Councils were, in the exercise of their chiefly duties, to be wholly responsible to the Central Government Authorities, some of their important powers were, however, vested in the new District Councils.[93]

91. Lawrence J.C., The Position of Chiefs in Local Government in Uganda. JAA. Vol.V. 1953 pp. 69-72.
92. Vide, the African Local Governments Ordinance, 1949.
93. See, The African Local Governments Ordinance, 1949.

It is worth noting, however, that the chiefs were active members of District Councils and as such were able to bring their influence to bear on these and other matters on which they had had vast experience. They were however, no longer the sole keepers of their peoples' consciences and were beginning to lose some of the draconian powers, they formerly possessed. They had ceased to be law givers, government advisers, or sole "judges"; their magisterial powers were increasingly being exercised by the non-chiefly magistrates. The formal definition of the chief's position, however, did not go hand in hand with reality. In actual practice, the chiefs "though the executive officers of the local government, were still largely responsible to the District Commissioner."[94] Moreover, the headquarters organisation of the new African Local Government, "despite the high sounding offices, such as Secretary-General, remained very much what its predecessor had been - little more than an extension of the District Commissioner's office from which advise and direction were sought on the most trivial of administrative matters."[95]

Such were the visible manifestations of "the belief in indefinite time ahead" Syndrome,[96] of which the following was a typical expression:

94. Morris.H.F., "The Framework of Indirect Rule in East Africa", in Indirect Rule and the Search for Justice. Morris.H.F & Read.J.S., Clarendon Press. Oxford, 1972. p.34.
95. Ibid.
96. Cohen, Sir Andrew, British Policy in Changing Africa, Routlege and Keegan Paul, London, 1959. p.26.

> "In another ten years we shall have a black race managing its own local affairs almost completely and accustomed to honesty and justice and therefore not prepared to stand either dishonesty or oppression. I said ten years, make it twenty if you like or fifty or a hundred and fifty: it does not matter. What does matter is that the essential civilizing work should be done by means such as we are using of helping, obliging if you like - the African to civilize himself." 97

This belief that "time was on their side" was, as late as 1959, still strongly held by a majority of British Officers and is plainly evident in their constitutional proposals and submissions to Wallis and Wild in 1953 and 1959 respectively.[98]

For example, the Government's memorandum on the Wallis Report begins with:

> "Government regards the Report as a most valuable document and in general considers that the recommendations should be accepted as the basis for future policy. Some details of the proposals are not regarded as acceptable in full, nor can all the recommendations be put into force immediately. Councils must be given time to gain experience and the pace at which the recommendations can be carried into effect will necessarily vary from district to district." 99

Even more startling, in view of Government policy on local government, the cornerstone of which was "the development of an efficient and representative local government,"[100] was the Provincial Commissioner's contention "that it was essential to preserve the powers of the chiefs."[101]

97. Mitchell, Sir Philip, African Afterthoughts. Hutchinson, London, 1954. p.
98. Wallis, C.A.A., Report of an Inquiry into African Local Government in Uganda. Government Printer, Entebbe, 1953. Wild J.V. Report of the Constitutional Committee, Government Printer, Entebbe, 1959.
99. Government Memorandum on the Report by Mr.C.A.G.Willis of An Inquiry into Africal Local Government in the Uganda Protectorate, 1952. p.1.
100. Ibid.
101. Wallis Report. loc.cit.

Yet, as Wallis tersely noted: "it is not possible to maintain simultaneously the two positions, one, that the power of the chiefs shall be preserved, and two, that more powers shall be given to local government bodies."[102] Inevitably, "as the power of local authorities increases, so the position of the chiefs must change."[103] Indeed, the process had, albeit, unnoticed, already begun, the District Councils, as noted above, had the power to make by-laws for precisely the same subjects as those on which the chiefs were empowered to issue orders by virtue of the Native Authority Ordinance, 1919. There were thus, "two sources of law on the same subject, in the same area."[104] This, Wallis felt, was untenable, and argued that the Government should formally recognise the chiefs' changed position by repealing section 7 of the Native Authority Ordinance, 1919, thus relieving the chiefs of their law-making powers and effectively making them local councils' "enforcement officers". [105] Wallis believed that "the system of a recognised chieftainship [did] not mix with the System of [representative] local government."[106] He wrote:-

> "The chief's responsibility for maintaining law and order is now one of his most important duties, but in spite of the Native Authority Ordinance, he really performs it in a personal capacity. The adoption of a policy of local government means that the personal rule will gradually give way to the rule of law. This in turn means that the discretionary power of individuals over the public will be replaced by the power of officials, whose actions are regulated by a law of general application in the territory." 107

102. The Wallis Report.op.cit. p.60
103. Ibid.
104. Ibid. p.60.
105. Ibid. p.60.
106. Ibid. p.61.
107. Ibid. p.60-61.

Wallis' recommendations were, with some reservations, accepted by the Government and embodied in the District Administrations (District Councils) Ordinance, 1955.

Under this legislation, of which the principal object was "to devolve greater responsibilities on District Councils and to better define their position in relation to the administration of the Protectorate,"[108] the position of the chief vis-a-vis the District Council and the Central Authorities was further defined and the term "chief" itself given a new meaning, namely, "any person or any one of a class of persons recognised by the Governor as a chief."[109] Section 66(I) provided that:-

> "Subject to its Staff regulations, a council may employ at such remuneration as it shall determine such officers, chiefs and employees as it shall think necessary for the efficient discharge of its functions and subject to its staff regulations may dismiss any person so employed: Provided that the Governor may direct that officers and chiefs of any class or classes shall not be engaged or dismissed save with his consent: And provided further that in any district where all or any officers, chiefs or employees are traditionally employed by any person then the Council shall act on behalf of such person." 110

108. No.1. of 1955.
109. Ibid. S.2.
110. ibid., S.66(I) and S.66(3) stated that:-
Notwithstanding the provisions of S. 1) and (2) of the section no chief of or above the rank of sub-county chief or its equivalent shall be dismissed or subject to disciplinary action save in accordance with disciplinary regulations made by the Governor in Council which shall prescribe:
(a) the punishment that can be awarded to such chiefs;
(b) the person or persons who can award such punishment;
(c) the manner and procedure for inquiries into the conduct of such chiefs and the person or persons who shall conduct such inquiries, and
(d) such matters as shall be necessary to assure the speedy and just determination of complaints in regard to the misconduct of such chiefs.

This, inter alia, meant that, in future, all chiefs were to be local government employees and, as such, the "Local Authorities" executive officers; and were, subject to certain exceptions to be appointed and dismissed by the employing district administrations through their appointments committeess. They were thus to continue to serve two masters in the discharge of their various duties and responsibilities. Indeed, the future success of S.66. largely depended on its interpretation and implementation by the Officers of the Provincial Administrations. Already, however, some of their commentaries upon it, did not augur well for the future. Thus, for example, a year after the 1955 Ordinance came into force, one District Commissioner, categorically stated that:-

> "The effect of the District Administration (District Council Ordinance) on the position of chiefs, is not likely to be immediate. One of the Provincial Commissioners, speaking in the debate on the Ordinance in the legislative council said: "although this Ordinance ia a rather formidable piece of legislation, there is nothing revolutionary in it; it is merely legalising much of what is already being done....." The effect of the Ordinance is not revolutionary, but evolutionary. No one can gauge the exact pace of this evolution but the function which the chiefs at present perform are so vital to administration that any violent change is out of the question. The debt owed to chiefs is fully recognised by the Protectorate Government as is shown by the official Memorandum on the Wallis Report: "both Protectorate Government and local government bodies depend very largely on the chiefs to give effect to their policies in the field, and they must continue to do so until there is such large corps of technical staff available than at the present. Any sudden change in the position of chiefs would probably have most grave results and might lead to a complete breakdown of administration, Chiefs are, in fact, an indispensable part of the local government structure." 111

111. Lawrence. J.C.A. "The position of chiefs et.el. op.cit.p.192.

Thus, in spite of the Ordinance, and official rhetoric notwithstanding, the chiefs' position remained, as some unofficial members of the Legislative Council put it, "uncertain, invidious and embarrasing",[112] and so it remained until the end of British overrule in 1962, and so it remains to this day; and sadly, there is no scintilla of evidence of any movement. This, as one observer put it, "is a confused constitutional position of which the chiefs are happily unaware, since few of them know what the Ordinances contain."[113]

Unfortunately, however, this blissful ignorance was bought at too high a price and at somebody's expense. Nor is this an isolated example, in fact, it can, without too much ingenuity, be repeated ad nauseam. Moreover, like Colonialism - its benevolent benefactor - this legacy, the beneficiaries of which are yet unborn, is sure to remain a controversial matter for many a year to come.

112. Lawrence, op.cit.
113. Wallis. Report of An Inquiry. op.cit. pp. 59-60.

CHAPTER FIVE

THE REFORMED LOCAL GOVERNMENT SYSTEM

5.1.1. THE PRELUDE TO CHANGE

The preceding material, the Kigezi example, in particular, shows that the British were, throughout the interwar years, proccupied with the extention of British hegemony over the eastern, northern and western provinces. Their primary objectives were the maintenance of law and order, the imposition of taxation, the modernization of indigenous local tribunals and the formation of chiefly hierarchies. The latter were the main link between the people and the collector, and indeed, were the local executives. There was, as yet, however, no definite or common local government policy: each officer was left to his own devices, and his approach was inevitably dictated by local conditions, the exigencies of the moment and administrative convenience. The introduction of colonial rule was thus the work of "the man on the spot", and not surprisingly, his handiwork varied from district to district and from time to time. It was highly personalised and in some cases too autocratic: both the Provincial Commissioner and the Governor were rarely involved in local issues. The collector, and later the District Commissioner, was in full command of his charges. Yet, the general administrative pattern which emerged had many common features of which the exercise of power by and through central government appointed chiefs was, despite its disadvantages, the most dominant and the most important: this was largely due to the universal imitation and adaptation, regardless of local conditions, of the Buganda System; and the fact that this System was as alien as, say the English or the French was generally disregarded. The fact that it was of African origin was sufficient to commend it for general application to the Nilotic and

Bantu acephalous societies. But as indicated earlier, its introduction was not without its critics,[1] and as time went on, it became increasingly difficult to defend, and by 1947, even its most ardent supporters were beginning to voice, albeit in private, the dangers of the monster they had helped to create.

> "To begin with this system served its primary purpose of maintaining law and order, but it patently provided no outlet for the energies and ambitions of the growing number of educated or semi-educated Africans, who by the third decade of the present Century were beginning to chafe at the nepotism, petty tyrannies and "closed shop" of the chiefs' class, many members of which were completely illiterate and all of whom depended on the backing of Government for their power and authority, instead of on tribal sanction and consent. Moreover, it was obvious that local self-government on democratic lines, could not be achieved unless the administrative machine was overhauled and broadened." 2

Yet again, these criticisms had already been anticipated by some progressive officers, and modest reforms carried out on an experimental basis. The pilot scheme was initiated by the Teso District Commissioner, as early as 1920, and involved the "setting up of local Councils based on the Councils of Elders which most tribes at one time possessed in some shape or form."[3] This experiment, apparently, "showed sufficient promising results" that it was "adopted in neighbouring districts", and was subsequently universally used throughout the non-treaty states.[4] This conciliar system was, in fact, foreshadowed in the Native Law Ordinance, 1919, which, paradoxically, had as its main object, the curbing of the predilections of certain District Commissioners to tamper with customary law at variance with their own notions of justice and

1. See the preceding chapter pp. 137-147.
2. Kennedy's"Note". op.cit.
3. Ibid.
4. Ibid.

morality, without the sanction and consent of the indigenous population.[5] The constitution and composition of these councils varied from district to district, but by 1940, the general pattern was more or less settled, and the structure of "Native Councils" in vogue in Busoga, set out below, though not typical, was by no means uncommon. According to the Provincial Commissioner, these arrangements consisted of chiefly councils at the District and Gomolola levels only[6], the Saza Councils, the official line went: "are not necessary and are merely a duplication."[7]

The new District Council consisted of the Kyabazinga, the Secretary, the Treasurer, the Saza Chiefs, the clan heads, the Mutara, elected representatives and the non-official nominees. The latter were drawn from local dignitaries, leading farmers, traders and teachers and held office at the District Commissioner's pleasure. The main functions of this august body were:-

(a) to pass the annual Native Administration budget.
(b) to consider and recommend any matters which may be referred to them by the District Commissioner, and to perform any other duties which may from time to time be assigned to them by the Provincial Commissioner.
(c) to consider resolutions and recommendations received from local Councils, and from Standing Committees, and to frame resolutions for the consideration of the Provincial Commissioner.
(d) to make proposals for the alterations, or additions to customary law and native jurisprudence generally.

5. See the explanatory memorandum by the Attorney-General. Under the 1919 Ordinance: the Governor could constitute or recognise Native Councils for the sole purpose of altering native law and custom. It is to be noted that such Councils already existed in the Agreement areas, albeit, in a very crude and elementary form.
6. See Tongue's confidential despatch to the D.C. Busoga.
7. Ibid.
8. Ibid. All the nominated representatives were to be appointed by the Provincial Commissioner.
9. Ibid. The total membership of the Council was set at 120 councillors. The proceedings of this Council were formal and were governed by rules of procedure framed, with the approval of the P.C. and by the District Commissioner.

The Gombolola Councils, which were "less formal bodies", and were designed to "perform much the same duties as Parish Councils in England",[10] consisted of:-

> "Owe : Gombolola, Miruka chiefs. All or an elected number of Mitalla chiefs, Local Clan Heads [and the] Representatives of the peasantry." 11

Needless to say that the Councils of Busoga, like their counterparts elsewhere in the Protectorate had no executive powers: they were entirely advisory, totally dominated by the Chiefs and in reality, "no more than a section of the District Commissioner's office."[12] "The chiefs, from the head of the Saza to the Abe - Miruka" run the official line, "must clearly understand that they derive their position and authority solely from their appointment by Government; that they are government servants and only hold office as long as they perform their duties to our satisfaction."[13]

10. See. Tongue's Confidential Despatch. op.cit.
11. Ibid. The chief functions of these Councils were:
    (i) to consider and discuss generally all matters affecting the welfare of the people in the Gombolola and the ways and means of effecting this and to carry out instructions and orders given by the authorities with regard to health, agriculture etc.;
    (ii) to frame resolutions with regard to the development or modification of Busoga Customary law;
    (iii) to provide non-official members for the Gombolola court.
12. Dundas, Sir. Charles. Native Administration in Uganda. Government Printer, Entebbe, 1941. p.1.
13. Tongue's Confidential Despatch. loc.cit.

It soon became clear, however, that the establishment of these Councils, though an advance in itself, was of little value; it was imperative that they should be given positive executive powers.[14] Many officers were, however, against such a move; they felt that further structural changes were necessary before any devolution of power could take place. In reality, however, the main problem was the District Commissioner's fears that such "premature devolution" would inevitably lead to inefficiency and loss of revenue. Consequently, progress in this direction was painfully slow. Nevertheless, modest efforts were made "to strengthen the existing Councils on a democratic basis" and attempts made to secure "competent and selected executives", by broadening the "franchise."[15]

The first step to this end was taken in Buganda, in 1945. In that year, the Lukiko passed an electoral law for the election of non-official Councillors to all local Councils in Buganda.[16] This move towards democracy, however, did not involve any devolution of executive powers to the Councils, indeed the chiefly hierarchy remained dominant and responsible to the Kabaka, and not surprisingly, the 1945 reforms did not, as anticipated, generate much interest in local affairs, or drive the "educated young" in their droves, to seek elective council office, on the contrary, they voted with their feet.

14. Dundas, Native Administration in Uganda. op.cit.
15. Dundas' memo. op.cit.
16. Under this legislation, the elected unofficials were approximately one-third of the membership of the County and Sub-county Councils, whilst in the Lukiko they held thirty-one out of eighty-nine seats.

In the meantime, the Conciliar System in Buganda was gradually extended throughout the Protectorate, and by 1947, there were everywhere a chain of councils, based on the territorial divisions into which each District was divided and there were several local variations to suit local requirements. Thus, for example, there were in the Eastern Province, four categories of Councils: the District or Tribal Council, the County Council, the Gombolola or Sub-Chiefs' Council and the Muruka or Village Council.[17] And as in Buganda, so in the Eastern Province, the representation of unofficials was secured by a system of elections, the modus operandi of which was as follows:-

> "On every grade of Council there is a large unofficial majority and as far as possible every type and grade of society is represented. The election of unofficial representatives is left entirely to the people themselves and no attempt has been made to frame regulations as to what procedure should be adopted. The African has his own methods and if left to himself usually obtains something like unanimity in arriving at the final choice. Each Council is the Electoral College for the Council above; but by virtue of the popular election for membership of the Muluka Council which, it must be emphasised is the basis of the whole system, no person amongst the "popular representatives" or the minor clan or Sept Leaders, can serve on any Council unless he has originally been chosen by the people of his village or its equivalent to a seat on the Muluka Council. Similarly, when his term of Service on one of the higher Councils is completed he must be re-elected to the Muluka Council before he can be eligible to serve a second time on any Council. There is thus no short-cut to the Tribal Council for would-be professional politicians.
>
> If any member of a lower Council is elected to a higher Council he automatically resigns his seat on the lower Council and someone else is elected in his place thereon. By this means no one can normally be a member of more than one Council, though in exceptional circumstances, e.g. when a chief is Head of a major Clan and has a seat on the tribal council by virtue of that Headship, is at the same time a member of the lower Councils by virtue of his Chieftainship, he can sit on two Councils. There can accordingly be no complaint regarding anybody having to waste a large part of his time on council business.

17. Kennedy's "Note" op.cit. p.1.
18. Ibid.

The term of office of elected members was fixed at three years, save in Miluka Councils where it was twelve months, but one-third of the Councillors on each Council fell due for replacement or re-election every year. Thus whilst continuity was maintained, provision was made for the yearly injection of fresh blood into the Council. But following the Buganda example, these Councils had no executive powers: they too were purely deliberative and advisory chambers, and were answerable to the District Commissioner. Yet according to contemporary official records, they were "popular with the people", and membership thereof was "regarded as an honour."[19] Their more positive functions however, were two-fold: they provided "an antidote to oppression and to the further seizure of power by the chiefs", and secondly, they enabled the local communities to participate, albeit on a very limited scale, in the management of their local affairs.[20]

The chiefly element, however, remained dominant and unchanged. Worse, the electoral arrangements coupled with the Council's lack of real powers tended to discourage the growing number of young educated men and women from becoming Councillors. This, it is contended, is the explanation why the chiefs did not, as anticipated, oppose the establishment of these Councils. It is also felt that the inadequacy of these arrangements was largely responsible for the postponement, until 1955, of the necessary reforms. It is doubtful, however, whether the "man on the spot" had the desire or the inclination to effect such changes. Thus it took a Labour Secretary of State, for the Colonies, the Rt.Hon. Arthur Creech-Jones, to initiate the next move forward. He too, however, was responding to some pressing problems, and more importantly, to some outside pressures, particularly, the "Allies", and his proposals for local government reforms,

19. Kennedy's "Note" op.cit. the gubernatorial authority, unscathed.
20. Ibid.

the details of which are discussed below, are illuminating; and incredible, though it may seem, this was the first time that the Colonial Office had, on its own initiative raised a major policy issue relating to "Native Administration". Hitherto, "the man on the spot" had always had the first and last word on the matter; his decisions were seldom, if at all, overruled, and sure enough, as shown below, Creech-Jones' policy was no exception; it was met with criticism, delay and worse.

5.1.2. THE CREECH-JONES' PROPOSALS FOR REFORM

> "Since I took office as Secretary of State in October I have been considering some of the basic problems of African Administration, and I think it right that I should now address you on this subject, since our success in handling these problems and the extent to which we can secure the active co-operation of the Africans themselves, may well determine the measure of our achievement in the programmes of political, social and economic advancement on which we have now embarked. I believe that the key to success lies in the development of an efficient and democratic system of local government. I wish to emphasize the words efficient, democratic and local ..... because they seem to contain the kernel of the whole matter: local because the system of government must be close to the common people and their problems, efficient because it must be capable of managing the local services in a way which will help to raise the standard of living, and democratic because it must not only find a place for the growing class of educated men, but at the same time command the respect and support of the mass of the people." 20a

Such. broadly, was the crux of the new policy and its rationale. Clearly, Creech-Jones' approach to local government in the Colonies was markedly different from that of his predecessors; he was more forthright, positive and direct. Local government, he argued, would "provide the people with their political education and the channel for the expression of their opinions."[21] He also maintained that an efficient and democratic system of local government was "essential to the healthy and political

20a. The Secretary of State to the Governors of the African Territories.25/2/47
21. Ibid.

development of the African Territories", and that it was "the foundation on which their political progress" was to be built.[22] This, he believed, would eventually enable the people to run their own internal affairs without too much Central Government intervention.

> "Without an efficient system of local government,[he insisted], the great mass of the African population will derive only partial benefits from the monies voted for development by the Colonial Legislatures and the grants made under the Colonial Development and Welfare Act." 23

The "African Governments" were accordingly urged to give these"questions the very closest consideration" and were directed to submit, within "three months" their "views on these points and to report on the steps which you are taking to deal with them". [24]

Whilst most African Governments replied almost immediately and their responses were positive and promising, the Uganda Government's reply was nearly three months' late, ambivalent and tentative, and it was not until 1948 that the Governor, Sir John Hall, unveiled his personal plan for reform.[25]

> "It is a matter of prime importance to devise some unifying process which over a period of years will tend to provide a sense of common interest, common purpose - and later, it is hoped of common nationality - and at the same time to encourage and not impede the growth and development of indigenous policital institutions.
>
> The Uganda Government hopes to find this unifying process in a progressive development, both in executive responsibilities and in their representative character, of the System of Councils with official and elected members at the level of province, district, parish and village. These Councils will be of little

22. Creech-Jones. op.cit.
23. Ibid.
24. Ibid.
25. Halls' despatch of 29.8.1947.: His Excellency, the Governor, wishes the people of Uganda to know that, with the full approval of the Secretary of State, it has been decided to extend and develop Local Government throughout the Protectorate by encouraging Native Governments, Administrations and Councils, to assume greater responsibilities than hitherto for the administration of their own areas. Thus Africans will be enabled to take a greater part in administering their own local services."

> value as an educative factor or as an outlet for political aspirations unless they are given both at the district and at the provincial level real financial and executive responsibility. Deliberative and advisory functions will not be enough. " 26

The accent was on "the progressive development of local councils at the provincial, district and parish levels and on their "official character".[27] The existing System of Councils was to be directly linked with the Legislative Council and the Central-Local financial relations accordingly adjusted. All "Native Administrations" were to be given "greater responsibilities than hitherto for the administration of their own areas."[28]

Hall's intentions were, however, shortly afterwards, "modified by the recommendations made at the Provincial Commissioners' Conference.... that draft legislation should be prepared giving the Governor power:-

(a) to constitute provincial, district and other grades of Councils;
(b) to endow the Councils with authority:-
  (i) to legislate in certain specified matters of local government including the levy of local taxation and the enactment of native laws;
  (ii) to pass the native administration budgets;
  (iii) to act in such advisory and executive capacities in matters of local government as may be approved by direction of the Governor."29

These proposals were incorporated into a draft Ordinance which defined in some detail, the Councils' executive and legislative powers, and submitted to the Provincial Commissioners' Conference held on the 1st and 2nd July, 1948, for their review and revision. Instead of

26. Hall's answering dispatch. op.cit.
27. Ibid.
28. Ibid.
29. The Wallis Report. op.cit.

making verbal amendments, however, the Conference reversed its previous decision, effected major changes and recommended the enactment of "a simple, short and flexible instrument" so as to allow the various circumstances of the district to be treated by separate regulations for each district, and that "Local Governments" should be constituted consisting of:

> "(a) Councils; and
>
> (b) Local executive officers appointed by and responsible to the Governor."[30]

These changes were duly accepted and the bill on which the African Local Government Ordinance, 1949, was based was drafted and had the following as its aims:

> "The object of this bill is to reconstitute the System of African Local Governments throughout the Protectorate. These Governments will be composed of two parts, the executive and the deliberative. The executive part of these Governments as established by this bill makes no change in the System at present in force. On the deliberative side the System of local councils which has gradually been built up over a period of years is put on a regular basis." 31

Thus the draft Ordinance was at variance with the Governor's proposals, the Provincial Commissioner's recommendations and was clearly inconsistent with the Secretary of State's policy set out above: there was "no change in the existing system," indeed, the Councils' executive powers were based on the Native Authority Ordinance, 1919.[32] That was the Uganda Government's response to Creech-Jones' unequivocal dispatch, the core of

30. Wallis' Report, op.cit.
31. The draft bill : objects and reasons., per the Attorney-General.
32. Cap.74. No.2. of 1949.

which was the "development of an efficient and democratic System of Local Government" throughout the Protectorate. It is hardly surprising therefore, that the African Local Government Bill was unfavourably received both within and outside Uganda.

Despite this reception, however, the Bill was duly enacted and, its contents not withstanding, the preamble proudly proclaimed that:-

> "And whereas in order to devolve greater responsibility upon African local authorities it is desirable to reconstitute such councils, to increase their powers in matters of local government and to define their position in relation to the administration of the Protectorate." 33

In fact this was not entirely true; the 1949 Ordinance did not, as the "objects and reasons" of the draft Ordinance indicate, make any "change in the System at present in force," it merely put it "on a regular basis," [34] in other words, the existing ad hoc councils, the handiwork of individual officers, were regularised and placed under the umbrella of a single instrument: the African Local Governments Ordinance, 1949, of which the following provisions were the most important.

Section 3 and the Regulations issued under it made provision for the establishment in each district, Buganda excepted, of an "African Local Government", consisting of chiefs, a district council and

33. The African Local Government Ordinance, 1949.
34. Ibid.

lower councils.[35] The chiefs were to be appointed, or their appointment approved by the Governor, or some other person authorised by him, and were to be responsible to the Governor, or such other authorised persons for the proper exercise of their duties.[36] Every chief was to administer such Protectorate laws as he was "legally competent to administer and in particular the provisions of the African Authority Ordinance and any bye-laws lawfully made" by the District Council.[37] Thus, the chiefs were still regarded as central government agents rather than local government officers. Their real government duties were therefore incidental to their main duties set out in the Native Authority Ordinance, 1919. Similarly, section 5 was reminiscent of the old order and clearly contrary to the intentions of the framers of the new policy in the Colonial Office. It simply stated that:-

35. Vide,
The Busoga District Council Proclamation. L.N. 8 of 1949
The Bukedi District Council Proclamation. L.N. 9 of 1949
The Bugishu District Council Proclamation. L.N. 10 of 1949.
The Teso District Council Proclamation L.N.11 of 1949.
The Karamoja District Council Proclamation.L.N. 44 of 1949
The Acholi District Council Proclamation. L.N. 45 of 1949.
The Lango District Council Proclamation L.N. 46. of 1949.
The West Nile District Council Proclamation. L.N. 47 of 1949.
The Madi District Council Proclamation. L.N. 48 of 1949.
The Kigezi District Council Proclamation L.N. 139 or 1949.
The Eishengyero of Ankole Proclamation L.N.157 of 1949.
The Bunyoro-Kitara Rukurato Proclamation. L.N.158 of 1949.
The Toro District Council Proclamation. L.N. 159 of 1949.

36. S : 4(1)
37. S : 4(2)

> "The District Commissioner in charge of any district may appoint such financial, standing and advisory committees as may be necessary for the proper administration of such district. Such Committees shall consist of such persons as the District Commissioner shall think fit to appoint and shall be presided over by the District Commissioner." 38.

Having thus ensured the close central government control over the new local government bodies, the Ordinance proceeded to provide for the making of regulations and the establishment of councils at the Provincial, District and Village levels. Inter alia, the Regulations prescribed the constitution of the councils and the election of the councillors, and ensured that each council had a majority of elected members; the latter being indirectly elected by the lower councils in the "Local Council hierarchy." Each district council was to meet twice yearly, or as directed by the District Commissioner, for the transaction of its business, namely, the consideration of Budget proposals, the passing of resolutions and the making of bye-laws for the good rule and government of the area under its jurisdiction. [40] Such bye-laws however, were subject to the Governor's approval and were limited to the subjects set out in paras (A) and (B) of S.7 of the Native Authority Ordinance, 1919, [41] and breach of any of the provisions of the Council's bye-laws was an offence punishable with imprisonment for a maximum period of six months, or a fine of five hundred shillings, or both. [42] Such, broadly, was the Government's final interpretation and implementation of H.M.Government's local government policy. Quite simply, the 1949 Ordinance was an anti-climax

38. S.5.
39. See L.N.17 of 1949 : the Bugisu District Council Regulations, Reg. 12(i) and (ii).
40. Reg. 18(1)
41. Reg. 17(1)
42. Reg. 17(2)

and thoroughly disappointing, and not surprisingly was the subject of adverse comment both within and outside the Country. Firstly, the African Local Governments as such had no functions or responsibilities other than those arising from the Native Administration (Incorporation) Ordinance, 1938,[43] the re-vamped Councils had no responsibilities, for their bye-law making powers were subject to the disallowance powers of the Provincial Commissioner or the Governor; and so, too were their budget decisions and resolutions.

Thus, the Bukedi District Regulations, 1949, specifically stated:-

> "The Council shall complete its consideration of the budget of the finances of the Local Government for the ensuing year by 31st October and shall forthwith forward its resolution on it to the District Commissioner. The District Commissioner on receipt of the budget resolution from the Council shall forthwith forward it to the Protectorate Government with his recommendations. In due course the budget resolution shall be returned to the District Commissioner with the instructions of the Protectorate Government thereon." 44

The position of the District Commissioner, as chairman of the Standing Committee of the District Council, of which he was not even a member was, to put it mildly incongruous, as well as anomalous, and equally, so was the position of the chief, an ex-official member yet an officer of the African Local Government, albeit, selected by and responsible to the Governor. In practice, the main defects however, was the lower council's lack of any duties let alone executive functions, other than their triennial duty of selecting members of superior councils. [45] And, not

43. SS. 4 and 7
44 The Bukedi District Council Regulation, 1949. Reg. 19(2)(3) and (4).
45. Vide, Wallis Report. op.cit. p.11.

unnaturally, this gave rise to a feeling of frustration and to unreasonable demands that all "local issues" should be referred to the lower councils, which thus on occasion became embroiled in some central-local contentious matters, many of which were unsuitable for discussion at that level. Worse, the new councils had no new sources of revenue. For the 1949 Ordinance, despite Hall's earlier intentions to adjust the central-local financial relations, was silent on the matter; the District Councils' powers of taxation continued to be derived from the Native Administrations' Tax Ordinance of 1938.

Despite these strictures, however, Hall's reform efforts were by no means worse than worthless; the Ordinance gave the hitherto informal councils some legal status: recognised the elective principle, including the unofficial majority element in all local councils, and arguably, made some contribution, albeit minimal, towards local democracy. Its fatal effect was to run counter to current local government literature and, in particular, the Secretary of State's dispatch which postulated "the development of an efficient and democratic system of local government."[46] In the words of a report submitted to the Cambridge Summer Conference in 1951:-

> "Local government bodies should never be set up for their own sake as an administrative exercise, or to be important agents of Central Government: but should always be built around the administration of at least one service in an autonomous fashion." 47

That regrettably, is precisely what Hall's reforms did and did not do: they fully met the former but not the latter bidding. Local Administrations were still regarded as "important agents of Central Government"; they

46. Creech-Jones Dispatch, op.cit.
47. Proceedings of the Cambridge Summer School Conference,1951.

were the weak link between the people and the Centre, and it was to strengthen this bond that the 1949 Ordinance made provision for the establishment of advisory councils, at the provincial level, to bridge the gulf between the Central Legislative Council and the local District Councils.

5.1.3. THE PROVINCIAL COUNCILS : THE CENTRAL-LOCAL COUNCIL LINKAGE

This, it was hoped, would enable the people to "assume a greater share in the responsibilities of the Government of the Protectorate as a whole,"[48] and would ultimately replace the existing system of African Appointment to the Legislative Council by a system whereby:-

> (a) "The Eastern and Northern Provincial Councils shall each elect from amongst their members two African representatives;
> (b) In the case of the Buganda Province, His Highness the Kabaka will continue for a time to nominate one of his ministers, and the Buganda Lukiko shall elect from amongst its members a second member;
> (c) In the Western Province the Provincial Council shall elect from among its members one representative, and a second representative shall be nominated in turn by the Mugabe of Ankole, the Mukama of Bunyoro and the Mukama of Toro." [49]

Thus, these Councils were to act as electoral colleges, and not as "Regional Authorities", and clearly were not to be the highest tier of "Local Government" either, but rather Protectorate Agencies, for the selection of the African members of the Legislative Council, and in some important respects, decidedly inimical to the new local government policy. Hall's plan was, however, duly adopted and incorporated into the African Local Government Ordinance, 1949 of which section 8(i) provided that:-

48. Hall's Dispatch. op.cit.
49. Ibid.

> "The Governor may, if he sees fit, establish by order published in the Gazette, a Provincial Council in any Province to consider matters affecting the whole province." 50

It was provided, however, "that no power shall be given to a Provincial Council to make laws or bye-laws, otherwise, its debating powers were virtually unlimited. [51] The same could not be said of its executive or legislative powers, however, it had none, and like all Councils, it too, was under the control of the Protectorate Authorities. Thus, Section 8(2) simply authorised the Governor, by virtue of section 6(2) to prescribe:-

> (a) the constitution of the Council;
> (b) the appointment or election of members of the Council;
> (c) the manner and reasons for which membership of the Council may be terminated
> (d) the periodic dissolving of the Council or parts of it;
> (e) the powers of the Council;
> (f) the frequency of the sittings of the Council and the procedure whereby and manner in which the Council shall conduct its business including the number of members that shall constitute a quorum of the Council. 52

Such Councils, were in 1949, set up by Executive Orders in the Eastern, Northern and Western Provinces. These orders were, mutatis mutandis, in similar terms and the Western Province Provincial Council Order, examined here will suffice as an example. [53] According to this Order, the Privincial Council was to consist of twenty members; four ex-official members, one from each district; eight elected members, each District Council electing from among its own members two representatives: one of whom was to be a chief, and the other, a non-chief and neither employed by an African Local Government or the Protectorate Government; and eight

50. Cap.74. No.2. of 1949. S.8(i)
51. Ibid. S.8(2)
52. Ibid. S.
53. Legal Order No.210 of 1949

nominated members: of these four were to be selected by the Provincial Commissioner, while the hereditary rulers of Ankole, Bunyoro, Toro and the Kigezi District Council Standing Committee were each to nominate their representative.[54]

The Council was to meet at least once a year, or as directed by the Provincial Commissioner. Its main business was to consider resolutions submitted by the Provincial Commissioner, the Constituent District Councils, or by any two members from two different districts; and if required by the Governor to select, subject to the Governor's approval from its own elected or nominated members, the Western Province Representative member to serve on the Legislative Council. Council resolutions were to be submitted to the Provincial Commissioner and the relevant District Councils for information, and, in appropriate cases, for consideration and implementation.[55] Such resolutions, however, could not be considered by the Provincial Council, unless and until the Council's Standing Committee, over which the Provincial Commissioner presided, had had an opportunity to examine them. The Council held its first meeting, at Masindi, from the 14th to 15th February, 1950. It was opened by the Provincial Commissioner, but its plenary sessions were presided over by the local chairman the Katikiro of Bunyoro.

One of the preliminary issues with which the Council had to deal, was appropriately enough, the question of the "official language", for use in Council and Committee meetings. It was summarily resolved, at the instance of the Chairman, that members should use their local languages, which, in the circumstances, were not dissimilar. Next, the Council

54. Ibid. Regs. 4, 6, 7 and 8.
55. Reg. 17(1),(a),(b),(c) and (2).

sent "a message of loyalty"[56] to the Governor; elected its first Legislative Council representative; made proposals for the amendment of Regulation 18 of their "Constitution", the establishment of a Common fund, the supply of drugs to Hospitals, Health Centres and Dispensaries and the introduction of an education rate of tax; and in addition, made the following suggestions for the Governor's consideration and advice:-

> "(a) The higher scale of pay enjoyed by Protectorate Government employees tends to undermine the morale of Native Government employees. The prestige of Native Governments suffers as a result. It is recommended that a happy media be found for Scales of Salary.
> (b) The Provincial Council recommends that Block Grants be given to Native Governments by the Protectorate Government so as to enable the former to carry out their work more efficiently.
> (c) The Provincial Council recommends that consideration be given by Government to pay to Native Government Treasuries a percentage of the revenue derived from the following: forest produce, minor townships, hides and skins, minerals, swamps, Katwe Trading licences, etc.
> (d) The Provincial Council recommends that junior members of certain departments of the Protectorate to Government should be under Native Governments in matters of discipline and that in matters of policy they should remain under the Protectorate Government (ie. Education, Agriculture, Medicine, etc.)
> (e) The estimates in connection with Subventions are sometimes incomprehensible. The Council recommends that every effort be made to make them understandable to Native Governments." 57

Such was the range of issues which the Council grappled with at its first brief session, and a perusal of the Minutes of the Council, despite the clear words of the Ordinance to the Contrary, shows that most members behaved as if they had wide and unlimited executive powers: it is possible that the Councillors wished to behave as if they did, or that none had had access to the Ordinance or the relevant Regulations, or that they simply

56. Minutes of the Council meeting, February 1950.
57. Ibid.

chose to ignore them. Thus, for instance, the resolutions submitted by the Kigezi District Council did not conform to Regulation 17(b); they mostly dealt with wide-ranging matters of purely local concern, and many were ultra vires the powers of the Provincial Council.[58] Similarly, the election of Kamese, the Assistant Agriculture Officer, Masindi, by the Bunyoro Central Council, as their representative on the Provincial Council was unconstitutional: it was Contrary to Regulation 8(1) of the Western Province Provincial Council Order, 1949.[59]

Despite these initial difficulties, however, the Council's first meeting was by all accounts a success. Most of its resolutions were adopted and promptly carried out by the appropriate bodies. Following this modest success, however, the Council's promising start was soon dissipated, partly because it had no positive functions, and partly because the first session revealed that it was more than likely to degenerate into a "troublesome forum", and most unlikely to fulfil the aims and objectives for which it was created. The Council's second meeting was thus poorly supported, the Provincial Commissioner was, for example, "for unavoidable reasons"[60] unable to address the Council; and though, some of the items for discussion were imaginative and of some constitutional significance, the Council's proceedings were lacklustre and uneventful. The Council, like its counterparts elsewhere, soon fell into desuetude and Hall's mechanism for linking the periphery to the Centre thus brought to an abrupt and ignominious end.

58. K.D.A. ADM. 18 of 8.1.1950
59. Legal Notice No.210 of 1949
60. The Second Minutes of the WPPC Meeting of 4.7.1951. There were, in addition, five absentees, including two "heads" of districts.

5.1.4. THE COHEN LOCAL GOVERNMENT REFORMS

The third phase of local government reform was ushered in by the newly appointed Governor, Sir Andrew Benjamin Cohen, in January, 1952. Having been a leading member of the African Department at the Colonial Office in London, Cohen was closely associated with the policies of Creech-Jones on devolution,[61] and his attitude towards local government reform was, not unnaturally, expected to be different from that of his predecessors; and as it turned out, these expectations were not unduly disappointed. It soon emerged that the new Governor was keen to foster a unitary form of Central Government, together with a strong system of Local Government, and that he was anxious to develop both simultaneously. As regards the latter, Cohen's intentions were clearly stated in his first annual report for 1952.

> "The Government attaches the greatest importance to the development of a modern, representative and efficient system of local government which it considers to be the foundation for progress. Through efficient local government social and economic services can be built up and political training provided for the people at the same time as satisfying their legitimate desire to take part in the management of their own affairs. " 62.

61. Cohen was, in fact the architect of this policy. For a detailed study of Cohen's contribution to decolonization, see Robinson R, "Andrew Cohen and the Transfer of Power in Tropical Africa, 1940-51" in Morris-Jones and Georges Fischer (eds.) Decolonization and After, Frank Cass & Co.Ltd., 1980.pp.50-72. See also Lapping, B. End of Empire, Granada Publishing, London, 1985.
62. Colonial Report on Uganda, 1952. p.11. : A sum of £350,000 was set aside to cover the cost of building a local government training centre at Entebbe, with the object of supplying local government with more efficient and better trained staff. A new Secretariat post at Executive level namely Secretary for Social Services and Local Government was created for the implementation of the new local government policy. Such was Cohen's commitment to the political development of the Protectorate.

Cohen found the African Local Governments Ordinance, 1949, singularly inadequate for his purposes, and within months of taking office, he invited his former colleague at the Colonial Office, Claude Wallis, to inquire into and report on local government in the Eastern, Northern and Western Provinces;[63] and his Report's opening remarks are worth quoting in fully. He wrote:-

> "There are in Uganda two constitutional ideas about local government. The first is the idea expressed in the Secretary of State's despatch of 25th February, 1947. This despatch suggested that policy should be directed to building up an efficient and democratic (later changed to representative) system of Government. The second idea is that of native states. The contrast may be put this way: the first idea refers to the local part of government and the second idea refers to the Government of the locality.
>
> These ideas are mutually exclusive; yet both are in the field. Consequently, it is not easy to find anyone who can readily define Government policy in respect of the internal administration of the Country. There is doubt even about the Government's own intentions. On the one hand, it has subscribed to the first idea by nominally accepting the policy outlined in the Secretary of State's despatch. On the other hand it has passed an Ordinance (No.2. of 1949) which in Clause 3 says "In each district there shall be an African Local Government which shall consist of etc., etc.," This Ordinance is an expression of the second rather than of the first idea. Unless the meaning of English words is to be distorted out of all recognition, the term "an African Local Government" must mean in Uganda what it would mean in England. There it could only be used of an African State such as Liberia or Ethiopia." 64

63. The problems of local government in Buganda were at the time, the subject of consultation between the Protectorate Government and His Highness's Government, and thus were outside Wallis's brief. So, too, were the problems of urban local government.
64. Wallis' Report of An Inquiry into African Local Government in the Uganda Protectorate. 1953 paras, 9 and 10, p.13.

That was the position at Entebbe; the position in the districts was, as Wallis found, equally disturbing. Again, Wallis's account of this confusion is worth repeating here. He wrote:-

> "All the Standing Committees made it plain that they are bent upon reaching the status of a native state. The object is to achieve a constitution as like that of Buganda as possible, and they believe that they will eventually supplant the Protectorate Government as the Government of their areas in nearly all affairs. In short they aim at Home Rule and think that this was the Protectorate Government's intention in handing over, as they say, the power to govern their areas. Moreover, it seems to them that this is the logical development of past administrative policy. Clan barriers have been broken down, sections have been amalgamated, a tribal organisation has been created and a tribal loyalty has been developed. In their own estimation they have arrived and they cannot understand why the Protectorate Government, having granted them the name of Governments, still withholds the realities of power and still resists the appointment of rulers of paramount chiefs, and the officers appropriate to a native state. There is scarcely any feeling yet among Africans for Uganda as a unified Country with a sense of common interest and common purpose. Consequently, there was little speculation in the Standing Committees about the possible form of a Central Constitution. If pressed, they would usually talk of a federation of states, each with its own Ruler and Ministers." 65

65. Wallis Report p.13. Nor were the chiefs alone, some British Officers held the same view, thus the Northern Province District Commissioners, while agreeing with "the principles of fostering the idea of a Uganda as a single state, felt that the idea of a federation of local Governments might be the ultimate development most in keeping with the native idea." Minutes of the District Commissioner's Conference, Northern Province, November, 1952.

The significance of these extracts is twofold: firstly they reveal some of the causes and effects of previous policies, and secondly, they shed some light on the pitfalls awaiting Cohen's proposals for reform; and it was to counteract these widely and strongly held views that Wallis urged the Government to adhere to the following plan:- [66]

> "(a) A unitary form of central government on parliamentary lines covering the whole Country, and
> (b) Local Government on British principles but adapted to Uganda conditions - at various levels beneath the Central Government.
> (c) For Buganda:-
> (i) A Provincial Government on parliamentary lines at Mengo - linked with the Central Government in accordance with the 1900 Agreement, and
> (ii) Local Government on British principles at Saza and lower levels - deriving power from the Mengo Government.
> (d) For Toro, Ankole, Bunyoro:-
> To fit the general framework of local government, but due regard to be paid to the special position of the Rulers." 67

Having thus outlined the general structure of Central and Local Governments, Wallis proceeded to make detailed proposals for the organisation, constitution and composition of rural local government in the Eastern, Northern and Western Provinces taking "the English System of Local Government as his model." [68] The centrepiece of

66. See Wallis' Report, p.14. The reasons for this are fully set out at page 14 of the Report, and the relevant part reads as follows:- "To resolve the uncertainty a choice among possibilities should be made and the choice made known to everyone. Only the broadest statement is necessary; no details need be worked out yet. But not until the choice is made known will it be possible to frame a coherent policy about local government."
67. Wallis' Report p.15. Query, whether Wallis' Scheme for Buganda and to a certain extent for Ankole, Bunyoro and Toro, was any different from the existing regime, of which he was so critical and sought to change in his Report.
68. Wallis' Report p.55.

his plan was the proposal for the devolution of power, including the power of local taxation. It was proposed, for example, that all local authorities, with the exception of Karamoja, should be given responsibility for the following local services, primary education, dispensaries, environmental health, local water supplies, local forests, roads and extension work in agriculture and industry.[69] "I am assuming," he wrote, "that the long range policy of the Uganda Government is to establish local authorities, not agencies."[70] Hence, Wallis's recommendation for the devolution of taxing powers, to enable the local authorities to carry out their new functions. Accordingly, it was recommended that all local authorities should have the power to levy a graduated poll tax, as opposed to the flat rate poll tax which, in his words, was "the most primitive form of taxation known to man".[71] He recommended that the Central Government should force the pace by:-

> "(a) abolishing poll tax;
> (b) reducing the Subventions for education by a like amount;
> (c) pegging the African Local Government tax at a fixed level;
> (d) insisting that any further revenue should be raised by graduated assessments." 72

Next Wallis considered the position of the chief and his place in local government. Taking the view that "an official who draws a salary from a public body should not be a member of that body," Wallis suggested that Councils should only consist of appointed and elected councillors; it was his contention that there was no place in local government for the distinction between official and unofficial members. He also took special

69. Wallis' Report. op.cit., p.46
70. Ibid. pp.25-26
71. Ibid.p.25
72. Ibid. p.26.

exception to the existing system of indirect elections through the medium of Chiefly Councils, on account of its complexity and failure to meet its stated aims.[73] He accordingly recommended that in future, elected councillors, who were to command a majority over the appointed members, should be directly elected by the public on the basis of one man, one vote.[74]

Finally with a view to placing local government bodies, urban as well as rural, under a single ordinance, Wallis recommended the repeal of the Native Authority Ordinance, 1919, the Native Administrations (Incorporation) Ordinance, the Native Administration Tax Ordinance both of 1938, and the African Local Government Ordinance, 1949, and the passage of fresh legislation based on "the latest research into local government in Africa", much of which was, in his words, "applicable to Uganda."[75] This Ordinance was to state, in broad terms, "the maximum scope of local government,"[76] giving the Governor power to establish local authorities and to vary their powers according to local conditions, the ability of individual authorities, and was to differ from the existing miscellany of legislation in several respects. In particular, the new Ordinance was inter alia:-

"(i) to provide local taxation;
(ii) to prescribe the maximum powers of local authorities in detail under departmental headings;
(iii) to spell out the bye-law making powers of local authorities;
(iv) to provide for public direct elections and the appointment of councillors; and
(v) to list local authority services, both mandatory and permissive." 77

73. Wallis" Report. op.cit., p. 48
74. Ibid.
75. Ibid.
76. Ibid.
77. Ibid.

Wallis's proposals were accepted and many given expression in the District Administration (District Councils) Ordinance, 1955; and in the Regulations made under it.[78] By the Ordinance, the objects of which were to make provision for the "Constitution of District Councils," the Governor was empowered to establish such Councils, and to delimit their powers.[79] Each District Council, a body corporate, was, in addition to County Chiefs, to consist of a majority of wholly elected members, and was to have a chairman and a vice-chairman. Each Council was to meet at least three times a year. Its meetings, committee meetings excepted, were to be open to the public, save that the chairman had power, if necessary, to exclude the public.[80] Every Council was required to keep minutes of all Council and Committee meetings, copies of which were to be open for inspection by members of the public. However, the chairman had power to issue an order providing that Council Minutes should not be available for public inspection.[81]

Each Council was given power, subject to the approval of the Provincial Commissioner, to make standing orders for the regulation of its proceedings including provision for the payment of travelling, attendance and subsistence allowances. Subject to its Constitutional Regulations each Council had power to appoint three named Committees and any other such Committees as it saw fit.[82] All Committees were to have power to co-opt members provided, at least two-thirds of each Committee were members of the Council.[83] With the exception of their bye-law

78. No.1. of 1955.
79 S.3(1)
80 S.9
81. SS.12 & 13.
82. S.14(1) and (2). The Statutory Committees were: education, finance and appointments committees.
83. S.19(1)

making powers, the passing of estimates, the imposition of taxation, and the borrowing of money, every council had power to delegate to any of its committees, with or without restrictions, any of its functions as it thought fit.[84] All Committees, the Education Committee excepted, were responsible to the appointing Council. The Education Committee, as under the 1949 legislation, was semi-autonomous: though a committee of the Council, up to a half of its membership, including the chairman, was appointed by the Provincial Commissioner. Further, it was specifically provided that this Committee's decisions were "not subject to confirmation, alteration or amendment by the Council."[85] The other two statutory committees, though responsible to the Council, were also charged with specific functions for which they were the responsible authorities. The Finance Committee's duties were to draft estimates,make recommendations on financial affairs, keep under review financial policy and advise the Council accordingly; whilst the Appointments Committee was responsible for the appointment of chiefs and other employees, and the implementation of S.69 of the Ordinance, the terms of which were as follows:-

> "A Council, with the prior approval of the Provincial Commissioner, shall make regulations to be known as "staff regulations" for the following purposes relating to persons in or desiring to enter its employment -
> (a) maintaining discipline;
> (b) regulating appointments, remuneration, promotion termination of appointments, dismissals and leave;
> (c) providing for interdiction and the salary to be paid during interdiction;
> (d) regulating the payment of allowances, the grant of advances, and the terms and conditions of service generally; and
> (e) such other matters relating to departmental procedure and the duties of officers, chiefs and employees, as the Council considers can best be regulated by such regulations."

84. S.19(1)
85. S.21(6).

86. No.1. of 1955. S.69(1)

Hitherto, the position of the Chief had been uncertain, he had executive, legislative and judicial powers and was an officer of the African Local Government.[87] Yet, he was a Government appointee, and was in the exercise of some of his duties, a Government Agent. It was to resolve this uncertainty that S.69(1) was inserted into the Ordinance. Henceforth, every Chief was to be appointed by his Council's Appointments Committee, save that in respect of Senior Chiefs, the Committee's powers of appointment and dismissal were fairly circumscribed and subject to the Governor's surveillence.[88] This provision described as "the most radical in the Ordinance" was the subject of much debate, both in and outside the Legislative Council. Many members argued, for example, that the Chief's position was untenable; that in a nutshell, he was being required to serve two masters; the appointing Council and the Central Government respectively. This and other related arguments were, however, summarily dismissed by the Government and its supporters.[89] Indeed, the Government was quite satisfied with their proposal, for one thing, the proposed clause was "merely legalising much of what was already" in vogue; and as the Attorney General pointed out, the Chief's posotion was, under the Bill, adequately protected.[90]

87. Vide. The Chief's powers under the following Ordinances:
    Native Authority Ordinance, 1919.
    Native Law Ordinance, 1919.
    African Law Governments Ordinance, 1949
    The Courts Ordinance, 1940.
    African Authority Ordinance. 1955.
88. S.66(3)
89. Thus for example, according to Cox, the Provincial Commissioner, Western Province, the government was entirely happy with the Chief's position. He said: "I have more direct contact with chiefs than most members of this Council, and I cannot see what all this is about. I cannot see that the Chiefs will be in any difficulty whatsoever." (Legislative Council Debates 34. Session.12.1.55).
90. Ibid.

> "It is intended," he said, "that these Regulations should make provision for a proper inquiry before a chief is dismissed. It is therefore assumed that the chiefs will not be able to be dismissed because they are unpopular with a political clique that happens to have a large say in the District Council affairs." 91

This argument, however, did not deal with the whole issue: it merely covered the Chief's tenure of office; his constitutional position remained anomalous and potentially untenable. His loyalty would in many cases, have to be devided between his two masters: the District Council of which he was the Executive Officer, and the Central Government of which he was an employee.

As mentioned earlier, the position of the Chief was a curious one, and was, incidentally well established in law: under the Native Authority Ordinance, 1919, the Chief was a legislator: under the Native Courts Ordinance, 1919, he was a judge: under the African Local Government Ordinance, 1949, he was an officer of the African Local Government, but he was appointed or approved by the Governor and was responsible to him: and under the Native Authority Ordinance, 1919, he was responsible to the Central Government for the maintenance of law and order. Many a chief, as noted earlier was, however, oblivious to their enormous powers and perhaps because of this, many, did very well, indeed.[92] The same could not however, be said of the British Authorities, they knew the contents of the legislation, but they were, for short-term expediency or political reasons, most unwilling to regularise the Chiefs' anomolous position. It suited them well and, in their eyes, legal nuances did not count for much. Thus, the Government's response to Wallis's proposal that the Chiefs' magisterial, executive and legislative powers should be abolished, was forcibly put as follows:-

91. Legislative Council Debates op.cit.
92. Wallis's Report, op.cit. pp.59-60

> "Government recognises that there is likely to be a gradual change in the position of chiefs as local government bodies gain experience and strength, but this process cannot be hurried. Both the Protectorate Government and the Local Government bodies depend very largely on the chiefs to give effect to their policies in the field, and they must continue to do so until there is a much larger corps of technical staff available than at present. Any sudden change in the position of the chiefs would probably have most grave results and might lead to a complete breakdown in administration. Chiefs are in fact an indispensable part of the local government structure. It is agreed that the judicial and executive functions of the chiefs should be separated as soon as possible, but it is considered impracticable to appoint all Presidents and Members of Courts by name. It would be preferable, it is thought, to codify existing District Administrations Orders, rather than to attempt to pass a series of new bye-laws on the same subjects." 93

Some tentative steps were, however, taken in 1957 and efforts made "to insulate chiefs from political and other influences,"[94] thus acknowledging, albeit, obliquely, the force of their critics' arguments.

Section 69 was duly amended and the appointment of chiefs placed in the hands of independent Appointments Boards, but the Chief's legal position, vis-a-vis, the Central Government and the Local Government bodies remained unchanged. The control of the chief was still a thorny and sensitive issue.

The Government was, however, as regards Wallis's proposals for the devolution of power, more forthcoming. Inter alia, provision was made for the prevention of crime, the arresting of offenders, the control of pests, the maintenance of nurseries, the relief of famine, the provision of medical services, the establishment of trading centres, and the organisation of social and sporting activities.[95] The Government's

93. S.M.P.C. 4772 of 20.2.1952
94. Colonial Annual Report, 1957.
95. Section 34 (i) - (xxi).

aim was, apparently, to draw up a comprehensive list of services which "a really progressive authority might be performing at the end of, say, 10 or 20 years."[96] Hence, though, none of the existing authorities was capable of "taking over these services, except roads", the listing of these functions in this fashion was regarded as a good thing in itself, in that it would "give local authorities something to aim at." [97]

Whether in fact that was the case, is a nice question. It is noteworthy, however, that provisions of this kind were widely advocated, and indeed, were invariably inserted in most local government ordinances of the day.

Additionally, subject to the Provincial Commissioner's approval, provision was made for the making of bye-laws,[98] on a wide variety of subjects, including the enforcement of hue and cry,[99] the regulation of native marriages,[100] the control of drinking and brewing of beer,[101] the regulation of [sic] borrow pits or other excavations.[102]

96. Wallis's Report. p.55.
97. Ibid.
98. Section 36(1) - (xxxviii)
99 S.36 (xxxiv)
100. S.36 (xxxii)
101. S.36 (xxx)
102. S.36 (xxii)
These bye-law making powers, however, were subject to the Provincial Commissioner's veto power. S.40 stated that:
The Provincial Commission may at any time after having given to a Council reasonable notice and having considered the representations of the Council thereon, make or amend any bye-law which such Council is empowered to make or revoke any bye-law made by such Council or by him.

Of more immediate importance, however, were the financial provisions, considered later, the most radical of which, was the provision for the imposition of the Personal Graduated Tax, which it may be noted, was a condition precedent to the devolution of responsibility. In other words, the transfer of services to any District Council, was contingent and dependent upon that Council's willingness and undertaking to impose the new levy.

5.2.1. THE DISTRICT COUNCILS' CONSTITUTIONAL REGULATIONS

The District Administrations (District Councils) Ordinance, 1955 was an adoptive as well as an enabling legislation. Firstly, Local Authorities were free to decide whether or not to come under it, and many as it happened, did not adopt it. Secondly, it empowered the Governor to establish District Councils and to prescribe their "Constitutional Regulations" as he saw fit, providing of course, that one or more Councils were willing to come under the Ordinance. Consequently, a detailed examination of the Ordinance without a corresponding perusal of the Constitutional Regulations, made under it, is apt to be misleading and incomplete. For the flesh which covered the bare bones of the Ordinance is to be found in these Regulations. Here, are detailed, the rules governing the composition of Councils, the Councillors' qualifications and disqualifications, the appointment of local government officials, the appointment of Committees and other matters not dealt with in the parent ordinance. The actual details of these Regulations varied from area to area, but the Kigezi District Council Constitutional Regulations, 1956, embodied many of the common features found in others, and will serve as an example.[103]

103. Vide, Legal Notice Nos: 10 of 14.1.1956 and 11 of 18.1.1956.

Under these regulations, the Kigezi District Council was to consist of 61 official and non-official members. The official side was to consist of ex-officio and elected official members. The ex-officio members were the Secretary-General, the Treasurer, the Clerk of Works, the five County Chiefs and Kigezi's representative on the Legislative Council. The elected official members on the other hand, were to consist of two Sub-County and two Village Chiefs elected by the Ndorwa County Council from among its members and one Sub-County and one Village Chief from each of the four remaining counties, elected by each of the County Council from amongst its own members. In contrast, the thirty-three non-official members were to be directly elected by the male tax-paying public. The electoral process, which was both cumbersome and complex was, briefly stated as follows:-

Each Village Council was to nominate one of its members as a candidate for election to the District Council and to submit their nomination to the Secretary-General and to the Sub-County Chief in charge of the area. Every Sub-County Chief was to publish the candidate's name at its office for public scrutiny before the election. On polling day, at least three weeks after nomination, he was to summon all male tax-payers to assemble at the Sub-County headquarters for the election of their representative.

Elections under these rules - the first direct elections in the Protectorate - were held throughout Kigezi in early February, 1956. All tax-payers gathered at the Sub-County headquarters between 10.00 a.m. and 12 noon on polling day and lined up behind the candidate of their choice. There were no well organised political parties and the elections were largely fought on religious grounds. In most areas the electorate had been instructed by their leaders to divide the votes amongst their co-religionists so as to ensure the election of the "mission sponsored"

candidate. In some areas, however, the presence of a substantial non-christian population produced something approaching a free vote. Here, instead of voting in accordance with the wishes of the Church, the pagan voters lined up behind the candidate of their own choice. In a few wards, where one religion or the other was dominant, the situation was complicated by other considerations: such as Clan loyalty, family feuds, and personal vendettas. These and other considerations formed the basis of many a vote. And, though religious antagonism may not be the soundest of reasons on which to contest local government elections, it was, in this case, the causa causans. As one official observer put it : "These elections were organised by the Administration and fought by the Church,"[104] and the latter's efforts were, as the following table shows, not wasted.[105]

	Roman Catholics	Protestants.
Ndorwa County	4	7
Rukiga County	4	2
Kikinzi County	1	4
Bufumbira County	1	4
Ruzhumbura County	0	6

Of these councillors, 13 were school masters, 8 farmers, 5 catechists, 5 traders and 1 surveyor. There was an 80% turn out on polling day owing to the missions' interest in the outcome of the election; and despite their "action groups" and "pressure tactics", no disorderly incidents occurred.

104. KDA/ADM. 20, DC to MOLG 17.2.1956
105. Ibid.

Having thus made provision for the appointment and election of councillors, the Regulations proceeded to outline the administrative machinery of the Council. It was provided that the Council should meet at least three times a year and whenever requested so to do by the District Commissioner; and all council meetings were to be chaired by the Secretary-General. Provision was made that the bulk of Council business should be transacted by its Committees, viz: the Standing Committee, Finance Committee, Appointments Committee, Tender Committee, Forestry Committee and Trades Committee. All committees, with the exception of the Appointments Committee, over which the District Commissioner presided, were to be chaired by members of the Council.

The functions of the Council were divided into two broad categories, mandatory and permissive functions. The former consisted of ten functions as opposed to the twenty listed in the Ordinance and ranged from the establishment of tree nurseries to the establishment of registries for marriages, birth and death. The second category, the so-called permissive list, though more comprehensive than the mandatory schedule was also shorter than that in the Ordinance: it covered 26 out of the 37 topics listed in the Ordinance. Thus, subject to the prior approval of the Provincial Commissioner, the Council had power, inter alia, to perform any of the following functions:-

(i) provision of services for the improvement of agriculture;
(ii) controlling tribal hunting and fishing;
(iii) preparation and provision of housing schemes;
(iv) making of roads, paths, culverts, bridges and water courses;
(v) maintenance of building standards. 106

106. S.19.

Likewise, the Council's bye-law making powers under the Regulations, were not as extensive as provided for under the Ordinance. In addition to the bye-laws relating to the transferred services, the Council, with the prior approval of the Provincial Council, had power to make bye-laws relating to seven specified matters, including the regulation of excavations, the performance of communal labour, and the prohibition of the growing of noxious plants.[107] The Ordinance was thus more comprehensive than the "Regulations" made under it.

5.2.2. THE 1955 ORDINANCE IN PRACTICE

The main plank of Government policy since 1947 had been to extend and develop local government by encouraging local authorities to assume greater responsibilities, thus enabling them to take an active part in the administration of their areas.[108] The second limb of this policy, and the most important was the development of "an efficient and democratic system of local government."[109] Towards this goal the Government first issued the African Governments Ordinance, 1949. The Ordinance, as noted earlier, brought the disparate "African Governments" under one umbrella, but was a far cry from the Government's declared policy. Some years later, however, following the publication of the Wallis' Report, the Government issued the District Administrations (District Councils) Ordinance, 1955. Yet again, however, the pre-legislation intentions were not fully incorporated into the new Ordinance.

It thus will not have escaped notice that the gulf between the ante and post legislation official rhetoric was quite considerable. Indeed, as is shown below, it was to grow wider and wider as the Ordinance was applied

107. S.20
108. Hall's "Announcement" of 11.3.1948.
109. Creech-Jones' dispatch of 25.2.1947.

to the various districts that chose to come under it. Suddenly, it was realised that District Councils had to be effective working organs of local government before they could assume their new statutory powers and since, this was not the case, the Ordinance's most progressive provisions were accordingly reversed, and the District Commissioner's pre-legislation close supervision and controls reimposed and the legislation thus rendered nugatory. For example, towards the end of 1957, the Chiefs' Disciplinary Rules were drastically amended so as to give the:-

> "Protectorate Government better control over Chiefs and other Senior Officials in the Council's Service so that any abuse of power by Appointments Committees could be prevented from reacting adversely on the interests and efficiency of staff." 110

True, the District Commissioner was, under the Ordinance, no longer chairman of the Council's committees, and most of his former powers were now in the hands of the Provincial Commissioner, but in reality, he still wielded enormous powers. In Kigezi, for instance, he was chairman of the most important committee, the Appointments Committee; had power to appoint up to seven members of the Council; and all local chiefs were responsible to him in respect of the maintenance of law and order and in the exercise of their other numerous statutory functions.[111]

The argument that Councils were in embryo simply because they had never been given responsibility and allowed to exercise it without the ever watchful eye of the District Commissioner was usually brushed aside and totally ignored. Emphasis was, once more, placed on the negative, rather than the positive aspects of local government; local politics were

110. Colonial Annual Report, 1957, p.7.
111. And the transfer of his powers to the Provincial Commissioner was symbolic rather than substantive.

frowned at and efforts made to prohibit councillors raising political issues, contending that politics had no place in local government, that party politics would interfere with the proper functioning of Councils, and that that would do "incalculable harm to the progress of the Country".[112]

The Annual Report for 1958, thus bluntly stated that:-

> "Outside Buganda, District Councils continued in most cases to perform their functions satisfactorily, but,,, their efficiency was reduced by dissention between opposing factions within them. In one extreme case a Council became completely ineffective and it was necessary for it to be resolved. a new Council was formed with all the representatives being elected by taxpayers throughout the District. During the year steps were taken to insulate chiefs and other persons employed by District Councils from political and other influences. The District Councils' Ordinance was amended to provide for the replacement of Appointments Committees by independent Appointments Boards to be appointed by the Governor, and at the end of the year arrangements for the establishment of these boards were well advanced." 113

Further changes were subsequently made and several Constitutional Regulations amended so as to provide for the election of the Chairman from among the non-official Council members, in place of the ex-officio Chairman, thus acknowledging albeit reluctantly, that the position of the Chief as set out in the Ordinance was both anomalous and potentially untenable.[114] Indeed, it is now possible to state categorically that the position of the "Official Councillor" was in practice untenable. Already, it will have been inferred from the foregoing discussion that the Government was beginning to appreciate the Chief's predicament;

112. Western Province Annual Report. 1959. p.50.
113. Colonial Annual Report, 1959. The 1959 Report is in similar terms, and to minimise the possibility of Councils being prevented from functioning on any occasion through the action of a minority faction, several Constitutional Regulations were amended to reduce the quorum from 2/3 to 1/2. (Annual Report 1959). p. 6.
114. In Ankole, for example, the Regulations were amended to permit the separation of the two posts of Enganzi and chairman of the Council. Provision was also made for the establishment of the Ankole Appointments Board for the appointment of the Enganzi and other Senior Officials.

hence the efforts to insulate him from "political and other influences". These reforms, however, did not go far enough, and it was left to individual councils to effect further changes to maintain the insulation of the executive from local politics as they saw fit.[115] Clearly, the retention of ex-officio councillors on Councils as a link between the Council and its executive officers was a great mistake. And, as may be gleaned from the following, the practice was neither fair to the chiefs not to the non-official councillors.

> "The District Council, the quorum of which had been reduced in the previous year in order to make it less easy for a minority party to hamstring the proceedings by boycott, again met four times. Acrimonious and wasteful sessions took place against a background of general unwillingness to take responsibility on any major issue. Chiefs and officials found themselves in the unenviable position of having the power to sway the balance by their vote - and were the target for the animosity of both sides." 116

The Acholi experience, which was by no means uncommon, underscores the chief's dilemma; and highlights the demerits of placing him in the invidious position of holding the balance of power.

One of the cardinal aims of the 1955 Ordinance had been to enable the Government to encourage local authorities to assume greater responsibilities than hitherto for the administration of their own areas. It was felt that

115. These varied from area to area, but several councils endorsed the view that ex-officio members should cease to sit as Council members or at least have no voting powers, and many implemented this principle. (See for instance, the Northern Province, Annual Report for 1960).
116. Northern Province Annual Report for 1960. p.5.

the existing legislation which was devoid of any reference to local services was quite unsatisfactory. In the words of a paper presented at the Colonial Office Summer Conference on African Administration, at Queens' College, Cambridge in 1951:-

> "The primary function of a local government body is to provide civic services and though it must have legislative powers, these should be regarded in the main as incidental to the provision of these services. Local government bodies should never be set up for their own sake as an administrative exercise, or to be important agents of Central Government, but should always be built around the administration of at least one service in an autonomous fashion." 117

In line with this reasoning, Wallis recommended, and the Government accepted that, at least, primary education, dispensaries, local water supplies, local forests, roads and extension work in agriculture and animal industry, should be the subject of devolution. By the time the 1955 Ordinance came into force, however, Governor Cohen had already left Uganda and the Ordinance was half heartedly implemented by his successor, and it was some time before the Ordinance's devolution provisions were given effect, even then, however, with qualified enthusiasm. In 1960, the responsibility for primary education was transferred to all but five districts in the Eastern, Northern and Western Provinces. Five districts were still not yet under the legislation. Besides, primary education, the only other service to be devolved was water supply, save that agricultural extension work was transferred to two districts, Acholi and Bunyoro. For each of the transferred services there was a Standing Committee which, with the aid of seconded staff, was responsible for carrying out the service on behalf of the Council.

117. Africa No. 1178 (1951)

Although the transfer of these services was the first phase of an on going devolution programme, no further transfers were to take place before October, 1962. That there were practical difficulties, few would deny. That many, if not all, of these difficulties were self inflicted wounds is equally clear and that many of these were not insurmountable is also self evident. Yet, the Government, having passed the necessary legislation seemed unable to implement it. One of the most important and certainly the most frequently cited impediment was that the people were "backward and uncivilised", and that, of necessity, were incapable of running their own affairs; hence, the argument went, the need for keeping them under the watchful eye of the District Commissioner.

Assuming, for argument's sake, that the people were "incapable of self-governing", the question which suggests itself but which is infrequently asked, is, why these people, after several decades of British rule, were still "backward and uncivilised?" Clearly, one of the reasons for this is that the people had never been given the necessary training, or given the opportunity to do their own thing, albeit, under supervision. The official insisted, however, that the people "were not ready - they had much to learn. This argument too, Macaulay had met more than a century ago."[118] Harold Macmillan, as he then was, thus recalls and continues:-

> "Many politicians of our time are in the habit of laying it down as a self-evident proposition that no people ought to be free till they are fit to use their freedom. The maxim is worthy of the fool in the old story, who resolved not to enter into the water till he had learnt to swim. If men are to wait for liberty till they become wise and good in slavery, they may indeed wait forever." 119

118. Macmillan, H. (now the Earl of Stockton). Pointing the Way, Macmillan, London Ltd., London, 1972 p.118. quoting Thomas Babington Macaulay, Critical and Historical Essays. London. 1851. p.19.
119. Macaulay.T.B., "Essay on Milton" p.19. quoted by Macmillan, Pointing the Way, Ibid. p.118.

The moral of the story is clear enough, and it is not surprising, therefore, that the Cohen reforms, the prerequisite of which was "a hands on experience" did not take root. They were too early and too much. The people were not, at least in the foreseeable future, expected to run their own affairs, and, in consequence, were, for obvious reasons, not shown the ropes. None, including the most optimist expected the process of decolonization to begin before the year 2001. The idea that self-government would, in the fulness of time, be given and taken, was a possibility many British Officers did not take seriously. The unique dilemma facing the would-be reformer was to colonize and decolonize at the same time, and that was the predicament against which the postwar reforms were conceived and implemented; and not surprisingly, as the preceding material vividly shows, the attempt was, from the outset, doomed to failure.

CHAPTER SIX

THE DEVELOPMENT OF LOCAL GOVERNMENT IN URBAN AREAS

6.1.1. THE EARLY URBAN LOCAL GOVERNMENT LEGISLATION

The organisation of urban local government unlike its counterpart in rural areas, owes little to indigenous historical antecedents. It is a direct product of Protectorate legislation. The seminal instrument of which was the Preservation of Order by Night Regulations, 1902,[1] made under article 99 of the Africa Order, 1899. As the name implies these Regulations were solely concerned with the preservation of peace

1. FO.2/588,Cir.2 of 1902 - King's Regulations. The Regulations are interesting reading and are reproduced below for ease of reference:
   1. From and after the date of these Regulations, no ngoma, Kinanda maulidi, native dancing or drumming shall be permitted between the hours of 9pm. and sunrise, in any street or open space of any town or area to which these Regulations may be applied, without leave first being obtained.
   2. Any person wishing to hold any ngoma or dance as aforesaid must first obtain a permit in writing from the Collector or such person whom he may appoint, who may grant or withhold permission at his discretion.
   3. There shall be charged for every such permit for an ngoma ya pepo, two rupees; for any other ngoma or dance as aforesaid, one rupee, provided that no fee shall be charged for a permit to hold a maulidi or other religious celebration.
   4. Any person obtaining a permit for an ngoma or dance, as aforesaid, will be held responsible for the maintenance of due order there at, and in the event of a disturbance or breach of the peace taking place, will be held liable for breach of the Regulations, unless such a person can prove that the disturbance or breach of the peace that may take place has been occasioned by causes beyond his control.
   5. No person shall use the streets of any town or area to which these Regulations maybe applied between the hours of 9pm and sunrise unless he carry a light or be furnished with such pass as the Collector may from time to time authorise or prescribe or be able to satisfy the police as to his respectability in such other manner as the Collector may consider sufficient.
   6. These Regulations maybe applied in whole or in part by the Commissioner to any town or area of the Uganda Protectorate and adjoining territories by public notification.
   7. Any person convicted of a breach of these Regulations will be liable to imprisonment of either description for a term not exceeding one month or to a fine not exceeding two hundred rupees.
   8. These Regulations may be cited as "The Preservation of Order by Night Regulations, 1902. "

and quiet in the newly, and indeed, largely European established Government Bomas and townships. The Regulations were too specific and too limited in scope, and were shortly afterwards repealed and replaced by the Uganda Townships Ordinance, 1903.[2] The Regulations are, nevertheless of historical importance. They, inter alia provide the earliest example of imposed administrative law and its application. Moreover, they shed some light on some aspects of Government policy about urban local government during the early years of the Protectorate.

At that time, the main consideration was the development of centres in which Europeans could live in leafy and salubrious surroundings, and from where the adjacent rustic areas could be administered. So, as new districts were brought under British rule, headquarters were set up and centres established where "Europeans could live free from the dangers of tropical diseases."[3] To this end, special measures, including the virtual catharsis of the indigenous communities, were instituted to make way for European habitation. The original aim was apparently to prevent the spread of sickness, but it also, as it happened, led to the segregation of the races.[4] Indeed, the very idea for the establishment of these attractive conditions for "European enterprise" was part and parcel of a more complex question. It was according to Mair, "one of the major problems of policy which any African Administration"[5] had to decide, for on that depended every other policy decision, including the siting of government stations, the pattern of urban growth, the form of urban local government and the administration of urban justice. For example, Portal's principal reason for transferring his headquarters from Kampala to Entebbe, was the latter's salubriousness.

2. The ordinance is considered below.
3. Cmd.9475 (1955) (East Africa Royal Commission 1953-1955) (hereinafter called the "Dow Commission" after its chairman). page 201.
4. Ibid. p. 216
5. Mair, L. Native Policies in Africa, Routledge & Sons,1936.p.8.

> "I moved the headquarters from that close, unhealthy and altogether hateful spot Kampala, to a lovely place on the lake; two great grassy hills like the Kingsclere Downs rising almost straight out of the water." 6

In many instances, however, the siting of government posts was haphazard and fortuitous. Besides, not all townships and trading centres owe their origin, siting and growth solely to European enterprise. Some conurbations of some sort, were evidently in existence longer before the advent of British rule. Entebbe, Masindi, Mbale and Mengo may be cited as examples. These were, however, the exception rather than the rule. The foundation of towns in East Africa was largely a European affair.

> "Except on the coast there were few towns in East Africa prior to the establishment of European administration. Away from the coast there were a number of organised concentrations of huts which surrounded the headquarters of hereditary chiefs north and west of Lake Victoria; but these were temporary growths which bore no resemblance to the permanent urban centre as we know it to-day. During the nineteenth century, a number of trading centres were set up in land by Arabs. Towns developed along the routes which were opened up into the interior by European enterprise from the beginning of the present century, especially as a result of the building of railways. A number grew up around the lake ports. As new areas were brought under European administration headquarters were set up which were the origin of many of the larger towns in East Africa today."7

6. Portal. G. The British Mission to Uganda, 1894, pp.252-3. Johnston gave similar reasons for his choice of Jinja. He wrote: "I have decided to transfer the civil headquarters of the Administration in Busoga District to Jinja from Iganga. Iganga is not a very healthy place and it is so to speak, 'nowhere' and commanding no important route: whereas Jinja is of great importance as being at the Rippon Falls, and commanding what may become a very important transport route along the Nile." FO.2/666.
7. Dow Commission p. 200.

By 1903, The Boma or Government station which until then had formed an oasis amidst a conglomeration of huts, was beginning to acquire the air of a township in contradistinction to its neighbourhood. Hitherto, the question of urban development had been given, if at all, little consideration mainly because most towns were largely official, they were patronized by Government officials and their fellow country folk in industry and commerce. However, the rapid expansion and growth of the Asian and European communities, particularly at Entebbe and Kampala, and the increasing difficulties in enforcing ordinary administrative and sanitary measures, led to the promulgation of the Uganda Township Ordinance, 1903,[8] which though designed for Entebbe was, as it happened, for the next forty years the legal framework within which urban local government was nurtured.

3.1.2. THE TOWNSHIPS ORDINANCE 1903

The inadequacy of the Preservation of Order by Night Regulations, 1902 alluded to above, led to the enactment of the Townships Ordinance, which laid down the procedure for the establishment of townships, the responsibility for their administration, the levying of rates, and the making of bye-laws, the need for which was, according to the then British Commissioner, as follows:-

> "It is principally in the interests of Entebbe that legislation has now become desirable owing to the rapid development of the town and increase of population, and the difficulty in enforcing ordinary administration and sanitary and other measures for the safety and convenience of the public within the town without properly defined powers. It is right too, that the residents in the town should now bear a proportion of the cost of policing the town and keeping it clean. A certain amount of revenue, too, will be obtained by the permits issued under the Fees and Royalties Regulations." 9

8. F.O.2/592. Sadler to Lansdowne. 18.8.1902.
9. F.O.2/592. Sadler to Lansdowne. 18.8.1902. : The Fees and Royalties Regulations referred to formed part of the Draft Townships Regulations, but were severed from the latter by the Foreign Office, redrafted and approved for issue separately as the Fees and Royalties Ordinance, 1902. The Ordinance authorised the Commissioner to fix fees or charges in respect of markets, slaughterhouses, public cattle sheds, dog licences, cattle pounds. F.O.2/588

Additionally, there were certain local matters including the indiscriminate digging of holes, the storage of kerosine, the illegal hawking of goods, which the Authorities were anxious to suppress, but could not do so satisfactorily without statutory powers.[10] Indeed, the case for legislation was overwhelming; the Collector was eager to obtain the necessary powers for the provision of water supply, street lighting, "particularly in the Indian and Native portion of the town,"[11] and the collection and removal of night soil. Legislation was thus, once again, dictated by local conditions in contradistinction to a pre-determined Government policy about urban local government. However, having clearly identified the problem, the Government proceeded with commendable dispatch. The Legal Vice-Consul was briefed and directed to prepare an Ordinance, the principal object of which was to enable the Commissioner to deal with the preceding matters, as he saw fit. In framing the Regulations, Ennis, the Legal Vice-Consul, took as his model the relevant legislation in force elsewhere in the Colonies.[12] The result was a set of detailed Rules and

10. F.O. 2/592. Ennis' memo. Incl. No.4. in Dispatch No.219 of 18 August, 1902.
11. Ibid.
12. F.O.2/592. Ennis to Sadler, 9 June, 1902. In part the memo reads: "I have followed to some extent the East Africa Regulations on the different subjects dealt with, viz: the Street Cleaning and Lighting Regulations, the Nairobi Municipal Regulations, 1900 and the Building Regulations 1901. I have also been guided by the Sanitary Board Regulations of the Federal Malay States and such other literature on the subject, I have been able to find; and throughout I have consulted the Collecter, Entebbe."

Regulations that left the control of township matters in the hands of the Commissioner. Ennis' draft ordinance was, in accordance with the Uganda Order in Council, 1902 submitted to the Colonial Secretary for advice.[13] In theory, no legislation could come into force without his sanction and in this matter, he had wide discretionary powers. He could, for example, allow or disallow, wholly or in part, any ordinance and upon such disallowance, the legislation in question would, if already in force, though without prejudice to anything lawfully done or suffered thereunder, cease to have legal effect forthwith.[14] Thus, though the intended effect of these provisions was to enhance the Commissioner's influence and prestige, they had the unfortunate effect, whether by design or otherwise, of further diminishing the civil liberties of the individual. It is important to remember, however, that at that time, the individual's rights, political, legal or otherwise, were not of major concern to the British authorities. The Government's priorities lay elsewhere, and partly because of this, no ordinance, however, repressive had ever been countermanded by the Colonial Office. In this case, however, the Secretary of State's disallowance powers were exercised and the draft legislation recast and returned to the Commissioner with instructions to consult with his counterpart Sir Charles Eliot, in the neighbouring East Africa Protectorate, or Kenya, as it is now called. The Secretary of State's reasons for this were set out in his terse dispatch to the Commissioner and were as follows:-

13. The Uganda Order in Council 1902, London Gazette, London 1902. pp. 5308-5311, Article 12(1) states:
"The Commissioner may make ordinances for the administration of justice, the raising of revenue, and generally for the peace, order and good government of all persons in Uganda."

14. Ibid. Article 12(5) provided that:- "The Secretary of State may disallow any ordinance....." These provisions were revoked in 1920 and these powers vested in the Legislative Council and the Governor respectively. See the Uganda Order in Council, 1920, articles 8 and 9.

> "With regard to the draft Township Regulations, I am to inform you that Regulations on the same subject had been prepared by His Honour Judge Cator (when on leave in this Country) for issue in the East Africa Protectorate. These draft regulations have been referred back to Sir C.Eliot for further consideration. Copies of them are now sent to you with a printed copy of a draft ordinance based on those submitted by you. In view of the desirability of such matters being treated in the two Protectorates with as great uniformity as possible, I am to request that you will consult with the authorities in the East Africa Protectorate with a view to the submission to the Secretary of State for approval of a draft ordinance and Rules embodying provisions suitable for adoption in both Protectorates. The provisions of the ordinance should be of as simple a kind as possible and should be framed so as to give power to the local authorities to settle details according to local conditions." 15

Ennis's original drafts were accordingly streamlined and fresh legislation prepared in accordance with the instructions of the Foreign Office. The end product was a short and simple enabling ordinance, the Uganda Township Ordinance, 1903 and a set of comprehensive and complex rules the Townships Rules, 1904.[16] The ordinance which came into force in early September, 1903, empowered the Commissioner by proclamation, in the Gazette, to declare any place, in the Protectorate, a Township[17] and to make rules for its health and good government.[18] Subject to minor limitations, the right to make rules included the power to levy local rates, impose fees and charges including, penalties for the breach or non-observance of any Rules provided that no such penalty exceeded two months' imprisonment or a fine of 200 rupees, or both.[19] Despite these wide

15. F.O. 2/588 Lansdowne to Sadler. 21.10.1902."The Foreign Office draft was prepared on the Model of the Central Africa Protectorate Regulations with sundry modifications, rendered necessary owing to the existence of the Roads and Buildings Regulations in East Africa."
16. No.10. of 1903 and Official Gazette No..105 of March 1904.
17. SS. 1 and 2.
18. SS. 4 and 5.
19. S. 6.

powers, however, the Township Ordinance was, in some respects, far from satisfactory. The Ordinance's main weakness was that it left the control of township affairs despite the Secretary of State's directive, to the contrary, in the hands of the Commissioner, rather than the local township authority.[20] The result was that urban affairs were the responsibility of the Collector who had neither the time nor the staff to oversee their proper administration and development, and not surprisingly, many a township's affairs did not receive the Collector's deserved attention. However, there were in the eyes of the Commissioner, very good reasons for this. In addition to flexibility or more accurately, expediency, there were, as the following extract shows, several reasons why the Secretary of State's instructions were ignored by the "man on the spot" and his advisers.

> "Were we to appoint a Board now it would mean that a grant in aid would be necessary, and the municipal revenue would not be likely to meet expenditure for some years; it would also mean a variety of questions connected with roads, sanitation and other municipal matters would be raised by the Board which are at present dealt with by the Administration and should continue to be so dealt with, for at least a year, if not longer. With the exception of three or four European firms, and the native bazaar, Entebbe is exclusively occupied by Government officials." [21]

With his brief to preside over a self-financing Administration, and unwilling to soak "the poor urban dweller," Sadler was thus most anxious to keep an eye on urban affairs and it was not until 1914 that Local Sanitary Boards were appointed for the Protectorate's main urban centres. The affairs of the minor townships, however, remained under the direct control of the District Commissioners and were throughout the Colonial era the responsibility of the Central Government.

20. F.O. 2/588/ Lansdowne to Sadler. 21.10.1902.
21. F.O. 2/857 Sadler to Lansdowne. Dispatch No.105. of 7.4.04.

6.1.3. THE TOWNSHIP RULES, 1903

As indicated earlier, the principal object of the Township Ordinance, 1903, was to enable the Commissioner to improve Entebbe's salubriousness for European habitation. In particular, the Government was anxious to make provision for the supply of wholesome water, the provision of modern civic amenities, the suppression of nuisances and the eradication of vermin. These and other kindred matters were extensively dealt with in the Township Rules, 1903, which, though gazetted in March 1904, did not actually come into force until two long years later; and even then were partially implemented, and it was not until 1909 that the entire corpus of these Rules was fully applied to Entebbe as originally planned. This undue delay was, rather ironically, entirely due to the Commissioner's unwillingness to over-burden himself and his "impecunious" sub ordinates with local taxation. He was under pressure from a vociferous minority of officers who were, "not in the habit of paying rates" to refer the whole rates issue to the Colonial Office.[22] He duly obliged and pursued their cause somewhat relentlessly. He erroneously believed that H.M.Commissioner was, by virtue of his office exempt from local taxation. He thus emphatically asserted that:-

> "I am under the impression that in no colony does an officer administering the Government pay taxes of any sort. I know that this is so in the West Indian Colonies in which I have served, and I believe also in West Africa. The Governor represents the Sovereign to whom in theory all taxes are due, and it is therefore considered unreasonable that he should pay dues to himself." [23]

Bell's spirited defence, however, cut no ice at the Treasury, the mandarins in Whitehall were not impressed. Their view was that the Commissioner was, despite a paucity of precedents, liable to pay local

22. C.O.536/27/2723. Inc.No.2. in Dispatch No.180 of July 7, 1909.
23. C.O.536/16/11996. Bell's minute of 21.1.1907.

taxes, and advised the Secretary of State accordingly. He, too, however, "had considerable difficulty in finding precedents".[24] The cases in which the Governor's ratability was raised were exceedingly rare, but, as usual, not without actual precedents. In 1887, a somewhat similar point was raised by Governor Pendall of Grenada, but was summarily rejected by the Foreign Office.[25] It was held that the Governor was not exempt from taxation and Bell's submission was, in accordance with this decision, politely, but firmly rejected, and advised accordingly.[26] The Governor was liable to taxation. Nor did Bell's contention that "the officer administering the Government in a colony represented the Sovereign" fare any better. It too, was summarily dismissed and the Governor advised that:-

> "It is not the case that a Governor (or Commissioner) represents the Sovereign in all respects. He only does so to the extent of his Commission, as may be seen from a reference to the cases of Commissioner v. Kyte, and Musgrove v. Pulido quoted in Tarring's "Laws relating to the Colonies", pp. 38 et seq." [27]

Indeed, a cursory glance at the headings in any elementary textbook on the British Constitution would have revealed that the Governor's position was dissimilar to that of a Viceroy and that the former's privileges were derived from his Commission and limited to those expressly or impliedly conferred on him by the appointing authority.[28] But, for

24. C.O.536/16/ 1196 op.cit. Stogg's minute 29.8.1907.
25. See Draft Dispatch to the Governor of Grenada at 25987/87.
26. C.O.536/16/11996. Secretary of State to Bell. Conf. of Sept.23,1907: The Secretary of State's dispatch, in part, reads: "The general rule in the Colonies, is, in the absence of special legislation, that the Governor pays all taxes levied on individuals to which he would be liable if he were a private person, in the present case, I am advised that if the fees are of that nature, they should be paid accordingly." (C.O. 536/16/11996)
27. C.O.536/16/11996 Secretary of State to Bell. Conf. of 23.9.1907.
28. See Phillips.O.Hood, & Jackson Paul. Constitutional and Administrative Law, Sweet & Maxwell.London.1978. pp.678-679.Wade,E.C.S. & Phillips, G.Godfrey, Administrative Law,Longman,London.1977. De Smith.S.A. Constitutional and Administrative Law. Penguin.London. 1977.

some reason, Bell chose to rely on his experience and was not unduly disappointed. However, that was not the end of the matter, for Bell had another string to his bow. He totally ignored the Secretary of State's dispatch, bid his time, and had the temerity to refer the same question to the Secretary of State for further consideration.

In view of his previous rebuff, however, Bell's second tale was more refined and disarmingly told. His theme was, however, still too miserly and dogmatic. Thus, while admitting that the amount of fees involved was "trifling", he insisted that "a general principle" was involved and that he was indisposed "to create a precedent which might have a far reaching effect on [his] successors", and he advised the Secretary of State accordingly.[29]

> "I have the honour to ask for Your Lordship's instructions and to express the opinion that to pay such rates would undoubtedly be considered a hardship by officers appointed previous to Your Lordship's despatch of January 12, 1907." [30]

This, Bell believed would sway his superiors at the Colonial Office. He so desperately wanted a favourable reply, however that he even resorted to unseemly means, intimidation and scare tactics. He thus informed the Secretary of State that his previous ruling that Government Officers were liable to pay rates was inconsistent with the latter's terms and conditions of employment, and that the Officers concerned intended to insist on their contractual rights, particularly, the right to "free quarters".[31] Allegedly, the recalcitrant officers intended to submit and indeed, to insist that the term "free quarters" in their employment

29. C.O. 536/27/27231 Bell to Secretary of State. 7.7.1909.
30. C.O. 536/27/27231 Dispatch No.180 of 7.7.1909.
31. Russell's Minute of 2.7.1909. Inc. No.2. in Dispatch No.180. above.

contracts, meant, quarters "free of all rent, rates, taxes and other outgoings."[32]

Apparently, such was the case in Nigeria and Bell was unaware of any special reasons for giving a different interpretation to the relevant phrase in the instant case. In any case, Bell contended that any other approach of interpretation would, in his view, require fresh legislation which according to local legal opinion, "would create class differentiation" and thus offend the elementary canons of equal taxation.[33] Bell's legal adviser's opinion that the enforcement of the Rating Rules "should be carefully weighed" was quoted with approval and the Secretary of State advised accordingly.[34]

Bell's arguments were, however, once again, rejected, and though, greatly exercised by the tone of his dispatch, the Secretary of State did not remonstrate, let alone, censure the Commissioner's intransigence. But, having learnt, for the first time, that his previous ruling had been ignored the Secretary of State was anxious to ensure that the new ruling would be carried out. He thus reiterated his decision, in no uncertain terms, insisted on its immediate implementation and strongly urged the Commissioner to submit detailed periodic reports on the working of the Rating System.[35] Despite an incessant and thorough perusal of the relevant papers, however, no such reports have been discovered, indeed the correspondence on this matter seems to have ended with the Colonial Secretary's exhortations; the Governor as usual, having the last laugh. The importance of this duel, however, can hardly be over emphasised; it sheds some light on some

32. Ibid. (Russell was Crown Advocate & Legal Adviser to the Government).
33. Inc. No.1. in Despatch No.180 of 7.7.1909.
34. Inc. No.2. in Despatch No.180 of 7.7.1909.
35. C.O. 536/27/27231 Secretary of State to Bell.

of the problems with which this thesis is concerned, and in particular, the Colonial Office's role in policy formulation, the relations between the Secretary of State and his "man on the spot", vis-a-vis, the administration of the Colony or Protectorate. Its significance here, however, lies in the fact that the rating of official tenements was the pith and substance of the entire urban legislative programme, and there can be no doubt that the wholesale derating of government "free quarters" would have emasculated the new urban policy.

> "Entebbe is so completely an official town that if officers are not rated, the municipal receipts must be small. I fail to see why all residents should not contribute towards the necessary expenditure for improving its salubrity." 36

But Bell and his associates had other ideas, and as, indicated above, the Secretary of State's ruling, notwithstanding, they seem, whether by design or otherwise, to have successfully swatted the assessment rules, and some would say, the entire urban policy. Indeed, Bell's niggardly and Scrooge-like demeaner in this matter did not augur well for the future, it set the pace for the under-development of local government in urban areas, and it was not until 1947 that the vestiges of his approach were finally put to rest, the scars, however, remained, incalculable harm had already been done, and the Local Government (Rating) Ordinance, 1947, could hardly have began in more inauspicious circumstances; its fate was thus sealed.

36. C.O. 536/14/28430 Wilson to Secretary of State. 13.7.1907.

6.1.4. THE TOWNSHIP RULES, 1903 : FURTHER PROVISIONS

Besides the Rating Rules, the Township Rules, 1903, provided for the lighting and cleaning of streets, the demolition of insanitary buildings, the construction of sanitary premises, the removal of nuisances, the control of bakeries and abattoirs, the abatement of fires and street noises, the impounding of stray pets, the regulation of public markets, and the preservation of law and order in urban areas, particularly between the hours of sunset and sunrise. The rules were thus as comprehensive as they were complex, and though specifically designed for Entebbe, they were subsequently applied to other townships without modification and apparently without too much difficulty. But the same cannot be said of the way in which they were enforced by individual officers, and indeed, by the Courts. An examination of the few reported cases reveals that the authorities had real difficulties in administering and applying individual rules to individual cases. It seems that a good many enforcement officers had little time for the nuances and the niceties of the law; instead, many preferred, it would seem for the job in hand, to follow their own instincts, and on being challenged to resort to the criminal code to justify their otherwise, illegal and arbitrary actions.

Rex v. Valji Bhanji and Co., 1911[37], is a case in point This was a petition, for revision, by a firm of Indian Traders, against their conviction by the Kampala Town Magistrate, under s.188 of the Penal Code, 1900,[38] for the disobedience of the District Commissioner's

37. Uganda Law Reports, Vol.2. p. 14.
38. The Penal Code, 1900, section 188, now section 166 of Cap.22., provided that:
"Any person who unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, is guilty of a misdemeanour."

order to fill up a choo on their premises. The petitioners argued that their conviction was bad in law, in that the authorities had erroneously invoked s.188 of the Penal Code, 1900, instead of Rule 74 of the Township Rules, 1903[39] In fact, both the District Commissioner and the petitioners were wrong: the alleged disobedience was not to an Order made under Rule 74 of the Township Rules, 1903, but to an Order which purported to be made under Rule 5 of the Township Rules, 1910, the terms of which were as follows:-

> "Upon notice being given by the District Commissioner to the occupier of any house in a township that any choo or sanitary arrangement upon his premises is insanitary, the occupier shall within a period to be stated in the notice, not being less than 24 days, fill up such choo or remove or otherwise deal with such sanitary arrangements as the District Commissioner shall direct." [40]

The evidence for the prosecution that the District Commissioner had to issue a general notice that all privies and native choos, in Kampala, should be closed. And the question for the Court was whether he had, under Rule 5, such power to issue such a notice for the indiscriminate closure of privies and choos, or whether, in the exercise of his powers, the District Commissioner had to inspect each and every sanitary arrangement under his purview before making a valid order.

39. The Township Rules, 1903, Rule 74 provided that:
"Where it appears to the Collector that any accumulation of weeds, undergrowth, manure, refuse or other noxious matter ought to be removed, the Collector shall give notice to the owner of occupier of the premises or land upon which such accumulation occurs, to remove the same within 48 hours; and should the owner or occupier fail to comply with the order, the government may undertake the work and charge the occupier or owner with the cost incurred."

40. The Township Rules, 1910. Rule 5.

Held, That the District Commissioner had no power to issue an order, by means of a general notice, for the filling of privies and choos; and that the notice to be valid had to be specific in each case. That is to say that before making a closure order, the District Commissioner had to satisfy himself that the sanitary arrangement in question was actually insanitary, and in urgent need of closure.

> "In our opinion the Rule indicates that the District Commissioner should come to a decision as to whether a particular choo or sanitary arrangement is insanitary, a decision which should be exercised on reasonable grounds in each case." 41

Yet another case which lends support to the contention that the authorities disregard for the Township Rules and let it be said the Rule of Law is Haji Tomachi Sulemani v. Jinja Township Authority,1923.[42] This was an appeal from a magistrate's decision refusing the appellant's claim for compensation, arising from the demolition of their property made by the District Commissioner, under the Township Rules, 1916, the relevant provision of which provided that:

> "Whenever it appears to the Township Authority that the immediate destruction of any building is necessary or desirable for the purpose of preventing the spread of disease, the Township Authority may apply to any Magistrate for an order authorising such destruction and if the Magistrate is satisfied that such destruction is necessary or desirable for the said purpose, he shall make such order and direct the payment of such compensation (if any) as to him may be just." 43.

41. 2 ULR.1911 p.14
42. 3 ULR.1923 p.129.
43. The Township Rules 1916, Rule 92.

In this case, no demolition order was sought by the Township Authority, but they were satisfied that the immediate removal of the appellant's building's roof was necessary to check the spread of the much dreaded plague. The case was dismissed on other grounds, but the facts of the case are germane to the contention that a good many enforcement agencies had considerable difficulties, intentionally or otherwise, in applying individual rules to individual cases. But as the two preceding cases indicate, these operational difficulties, or rather flagrant abuses, had, rather regrettably very few critics. The victims were largely illiterate Asians, and the idea of bringing an action against the District Commissioner - their Bwana Kubwa or boss - for failure to observe some obscure Township Rules, of which many were blissfully unaware, did not figure much in their imagination. Besides, such law suits were fraught with difficulties. The authorities, as we have seen, had carte blanche powers that were virtually judge-proof; very often the victims had no real legal remedies, and as Sulemani's case demonstrates, the judiciary did not always protect the interests of the little man : the judges appear to have been more executive-minded than the Executive. Thus Sulemani's appeal was unceremoniously dismissed and the District Commissioner's arbitrary action upheld without commenting on its illegality, or disapproving of it, or indeed, laying down some ground rules for the future. True, the judiciary had a duty, in appropriate cases, to support the Township Authorities, and this seems to have been the main consideration in these two cases and few would quarrel with that. Equally, however, the Courts had a legal duty to uphold the rights of the individual; and though, the judges' cavalier attitude, displayed in these decisions, is, given the Colonial Milieu, hardly surprising, there is little doubt that such "hard decisions" brought the law into disrepute and thus, arguably, discouraged the would-be litigants - hence the paucity of decided cases.

6.2.1. THE LOCAL SANITARY BOARDS

Until 1914, the Township Rules, 1903, as amended, were successively administered by the Collector, the District Commission and the Local Sanitary Committees, consisting of the District Commissioner- the chairman and executive officer - the District Medical Officer of Health, and the District Engineer.[44] The duties of these Committees were to inspect and advise upon the general sanitation of the town, the supply of wholesome water, the siting and sanitation of streets, the erection of buildings, the disposal of sewage and refuse, the prevention of Malaria, and the control of infectious diseases. The Committee was free to meet at such times and at such places as it saw fit or as was convenient for the carrying out of their duties, save that they could be required to hold meetings by the Provincial Medical Officer of Health or at the request of any two of its members.

In 1914, however, the Rules were drastically altered and provision made for the appointment of Advisory Local Sanitary Boards, as the urban local authority bodies responsible for the administration of the Township Rules within their jurisdiction. It was provided that in every township there should be a Local Sanitary Board, consisting of the District Commissioner the President and Executive Officer - the District Medical Officer of Health, the local representative of the Public Works Department and in the larger townships, some Asian and European non-official members.[45] Each board was to meet whenever summoned by the President, who was at liberty to call meeting as he thought fit, and whenever so requested by two or more

44. Cirs. 14 of 18.6.1912 and 4 of 18.4.1914. The first towns to have Local Sanitary Committees were Entebbe, Kampala, Jinja, Hoima, Mbale and Mbarara.

45. In July 1914 three unofficial members were appointed to be members of the LSBs for the Townships of Kampala and Port Bell and Jinja respectively.

Board members. The Board's duties were identical to those of their predecessors, the Local Sanitary Committees and were, as before, mostly carried out by the Executive Officer, and in 1916 this informal arrangement was recognised and given statutory force and enlarged at the expense of the Board.

> "The Executive Officer, or other officer duly authorised in writing by the Township Authority, in case of emergency or in case no other member of the Board is available, shall be entitled to exercise all the powers and do all the acts as may lawfully be done by the Township Authority and all acts done by him shall be deemed to be done by the Township Authority." 46

These powers were in 1929, further extended and provision made for the Executive Officer to institute law suits in the name of the Board without their prior authorisation. At the same time, and rather ironically, membership of the Board was increased and provision made for the appointment of more non-official members. For example, the Kampala Local Sanitary Board was enlarged from 7 to 12 members and the number of non-official members doubled. All members were, however, still appointed by the Governor and all held office at his pleasure: the Boards were still an integral part of the Central Government and were largely run by its officials. Board meetings were normally held twice a month and were presided over by the District Commissioner.

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There were no Committees. Much of the Board's business was planned and directed by individual Board members especially the Executive Officer., the Medical Officer of Health and the Executive Engineer. In addition, to his administrative duties, the Executive Officer was responsible for

46. Rule 17(7) of the Township Rules. 1916.

the preparation of the assessment list and the collection of rates, fees and other municipal charges. Public health, sanitation and other related matters were under the direct control of the Medical Officer of Health; while the environmental planning, the design and the construction and maintenance of roads, public buildings and related matters were under the control of the Executive Engineer: the Township Authority was thus almost entirely in Government hands.[47] Indeed, it was wholly financed and controlled by the Central Government, whilst its receipts, such as rates, bucket fees, market rents, and charges were all paid either directly or indirectly into the Protectorate's coffers. Besides, several of the Boards' services were in practice, invariably run by the appropriate Government Departments and the cost charged onto the account of the Township Authority. Thus, outside Kampala, the construction and upkeep of all urban roads was carried out by the staff of the Public Works Department, under the direct control of the Executive Engineer who, though a member of the Board, was of course, a civil servant. In fact, the duties of the Boards were so closely interwoven with Government Services that it was difficult clearly to delimit the powers of the Township Authority. The nature and extent of this administrative and financial nexus is well documented and the following, excerpt will serve as an example:

> "The finances of the township are under the control of the Board, but this is largely nominal, being limited to preparing the annual municipal budget and submitting to the Government for sanction. In actual practice the Board is precisely in the same position as a government department, since the Board's annual estimates can be, and usually are, amended as the government considers desirable. Indeed, the

47. As the Report of the Local Government Committee, 1930, pointed out: "The Staff of the Township Authority is housed in the District Commissioner's office. Consequently, with the District Commissioner as President and Executive Officer, the organisation develops into a branch of the Provincial Administration." (Rept. p.5.)

> municipal revenue and expenditure are incorporated in the Protectorate Budget. The Board is subject to the same financial controls as Government departments. All receipts and expenditure are passed through the Government accounts, and the sanctioned expenditure cannot be varied without the prior approval of the Government." 49

The principle of central control which was the essential element here, continued to bedevil the relationship between the Government and the Local Sanitary Boards for several years. There were several reasons for this, not least of which was the publics' lack of interest in the management of their municipal affairs. Most of the potential urban electors were as one astute observer put it: "birds of passage, here today and gone tomorrow." [50] There was, accordingly, hardly any demand, even in the major townships, for some semi-autonomous urban local authorities. The hub of the matter was the financing of municipal services. The rate-paying public, almost exclusively Europeans and Asians, preferred, "at the cost of having no municipal vote, to allow the Protectorate Government to balance the municipal budget out of Protectorate funds."[51] For the grant of local autonomy would, of necessity, mean increased responsibilities, including higher rates; and this, they were not prepared to accept. And in consequence, many urban dwellers were indifferent and the Government, for their part, were not at all unhappy with the existing arrangements. Nevertheless, they were well aware that these arrangements were far from ideal. Accordingly, in 1930, having reviewed the machinery of local government in urban areas, the Local Government Committee

48. Report of the Local Government Committee, 1930.p.2.
49. Ibid. p.3.
50. Mirams Report., op.cit. at p.24
51. Thomas & Scott., op.cit. at p.78.

recommended that interest in municipal affairs should be encouraged and stimulated by the introduction of an elective system, at least, for the appointment of a portion of members of the various Local Sanitary Boards.[52] In particular, the Committee considered that the stage of development then attained by Kampala was sufficiently advanced to warrant a considerable degree of local autonomy.[53] The Committee therefore recommended the establishment of a Municipal Council for Kampala, in place of the Local Sanitary Board, but sadly, insisted that the Governor should have power to dissolve or suspend the Council, if in his opinion, the Council's duties were not being carried out in a proper manner. The Council was to consist of 19 members of whom 13 including 6 non-officials were to be nominated, whilst the remainder were to be directly elected by the local government electors on the basis of one man - one vote. For this purpose, Kampala was to be divided into four Wards: Nakasero (2 councillors), Old Kampala, (1 councillor, East Kampala (1 councillor) and Town Ward (1 councillor).

The Committee, however, felt that the time was not yet ripe for the preparation of a full electoral roll such as would be necessary for a completely elected municipality. Hence the Committee's recommendation that a list of electors should be prepared every two years for each election. The right to vote was to rest upon registration and the occupation, as owner or tenant of immovable property or premises within the urban area; or being resident or having a place of business in a ward, and in receipt of an annual income of not less than £120; or being the wife of a qualified voted.[55]

52. Report of the Local Government Committee, 1930. p.6.
53. Ibid. p.5.
54. Ibid. p.8.
55. Ibid. p.34.

Any person of either sex whose name was on the Electoral Roll would be entitled, subject to the usual legal restrictions, to stand for election as a councillor for a term of two years. The Committee also recommended that all races should be eligible for membership of the Council, but that no one should be eligible unless he could speak, read and write English to the satisfaction of the Returning Officer,[56] a stipulation which virtually defranchised the majority of urban dwellers.

Finally, it was recommended that the Council should have its own, as distinct from the Central Government, executive staff consisting of the Chief Municipal Officer, the Medical Officer of Health, the Executive Engineer, and the Finance Officer. In the first instance, such Officers would be on secondment from the Government, but the Council would have full executive control over them. In particular, it was proposed that the Chief Municipal Officer who was to be in attendance at all Council Meetings (without a vote of course) should be under "the general control of the President, or of the Standing Committee, or of the Council" as a whole.[57]

These proposals were, with modifications, subsequently incorporated into the Local Government (Municipalities) Ordinance, 1947[58], and thus the legal framework, for the proper development of urban local government, at least, in the larger townships, would be well and truly established. Unfortunately, however, as has been remarked in connection with local government arrangements in rural areas, legal provisions of this nature, though well meant, did not at times accord with reality; and no better example could be cited than this Ordinance which, though a model instrument, at least in theory, was in practice, as is shown below, an anti-climax - it was disappointingly implemented, thus robbing it of its content.

56. Local Government Report op.cit.p.34
57. Ibid.p.34
58. No.34 of 1947.

6.2.2. THE MOVE TOWARDS MUNICIPAL COUNCILS

Until 1938, urban local government was, as alluded to above, in the hands of the various Local Sanitary Boards. In that year, however, the management of urban affairs was placed in the hands of the newly created Township Authorities,[59] and though still under the control of the Governor,[60] the new Urban Authorities enjoyed greater executive and legislative powers than their predecessors. Thus, for example, they had complete autonomy to make standing orders for the regulation and conduct of their own internal affairs and subject to the Governor's approval, to make bye-laws for all or any of the following purposes:

(a) the prohibiting or regulation of the hawking of wares or of the erection of stalls on or near any street;
(b) the establishment, management and control of pounds and the powers and duties to be exercised by pound masters;
(c) the seizure, impounding and sale of stray animals and the disposal of the proceeds of such sale;
(d) the preservation, control and management of streets and open spaces and of trees and shrubs in public places;
(e) the control and management of public recreation grounds or parks including the charges for admissions into inclosures.
(f) the general control and management of cemeteries and crematoria. [61]

The maximum punishment for any breach of any of these bye-laws, was a fine of up to 200 shillings, or a custodial sentence of thirty days.[62] However, a bye-law could further provide that, in addition to any penalty, any expenses incurred by the Authority in consequence of any infringement should be paid by the party responsible for the violation of the bye-law.

59. Cap.102 Uganda Laws(1951 Edition) p.1397. S.4(1)
60. S.4(2), 4(3)
61. S.31
62. S.32.

Despite these powers, however, none of the Township Authorities had an independent existence. They were appointed by the Governor and were under his control. Even Kampala, despite its importance and the growth of unofficial participation in the management of its affairs, was still run as a branch of the Provincial Administration, like any other minor rural trading centre, and it was to deal with this anomalous situation that the Municipalities Ordinance, 1947 was enacted.[63] It had as its main objective, the devolution of power to the major Township Authorities in the Country. The Ordinance, based on the lines of that of Kenya and the then Gold Coast, provided for the establishment of Municipal Councils, or Boards, the provision of local Social Services and the imposition of local rates. Having empowered the Governor to declare any area to be a municipality, to prescribe the Composition of Municipal Councils or Municipal Boards and provided for the making of rules for Council elections, the Ordinance proceeded to prescribe the administrative machinery of the new urban local authorities.

Under the Ordinance, every Municipal Council was a body corporate, under a special denomination, having rights and duties, particularly of taking and granting property, of contracting obligations, of suing and being sued.[64] Each Council had power, subject to the Governor's approval, to appoint certain named chief executive officers, to establish named departmental committees and to delegate any of its powers to any of its Committees, sub-Committees or Officers, as, in its discretion, saw fit.[65]

63. Cap.103. Uganda Laws, (1951 Edition) p. 1411
64. S.6.
65. S.16 (1)

The Council's general powers were contained in part four of the Ordinance and included: the making of bye-laws for the good rule and government of the municipality; the construction and maintenance of public roads, gardens and parks; the provision of public transportation; the maintenance of dipping houses, slaughter houses and fire brigades; and the provision of housing accommodation - municipal housing, ("Council Estates") and mortgage advances.[66]

Finally, the Ordinance provided for the central local financial relations[67] and set out, in some detail, the new urban authorities' sources of income, the main heads of which were:-
Central Government Grants, local rates, fees, charges, dues, rents and a variety of miscellaneous sources, including one-half of all fines imposed in respect of any contravention of any bye-law; premiums on the sales of Crown Land, and the proceeds of sales of by-products.[68]
The foundation was thus laid for the steady development of an efficient and representative system of local government in urban areas throughout the Protectorate.

In 1948, Kampala, the Protectorate's Capital, was declared a Municipality and brought under the Ordinance with effect from 1 January, 1949,[69] and a Municipal Council consisting of 26 entirely nominated Councillors set up, including a Mayor and a Deputy Mayor.[70] The Council was organised into five functional committees and four departments under appropriate executive officers responsible for general administration, finance, public health, public works and planning. The municipality was rated under

66. S.31
67. Part V. SS.52-71.
68. S.53
69. L.N. No.250. of 1948.
70. L.N. No.241. of 1949 and 243 of 1950.

the Local Government (Rating) Ordinance, 1948[71] from which source it derived about 42% of its revenue. This, however, was quite inadequate to meet the Council's needs and the municipality was in receipt of grants in aid, some of which were mandatory whilst others were discretionary; and as a quid proquo its annual estimates were subject to the Governor's approval. Otherwise, the municipality had autonomous powers in contradistinction to the provincial townships which had no independent existence.

This disparity between Kampala and her rustic urban sisters was, in 1954, summarised by Buchanan, the recently appointed Local Government Commissioner, as follows:-

> "In my study of urban local government in Uganda, I am struck by the very great gulf between the autonomous Kampala Municipality (population 40,000 approximately), with a budget of 410,000 and estimated capital expenditure of over £½ million in 1954, organised under a Mayor, Council and principal departments on the normal British model, albeit subject to fairly strict control of Government at this stage - between this municipality and the Townships Authorities which have no independent existence, no financial responsibility, almost no conciliar existence, Separate from the Government officials who conduct various urban services and which are, in effect, just minor government agencies organised departmentally." 72

This distinction between these two authorities, both in principle and in fact, was a reflection of the policy enshrined, on the one hand, in the Townships Ordinance, 1938, and on the other, in the Municipalities Ordinance, 1948, under which the Urban Authorities and the Kampala municipality were respectively governed. Another anomaly which was the bugbear of urban local government administration and practice was the sharp differentiation made between the urban and the peri-urban

71. Cap. 104. Uganda Laws, (1951 Edition) p. 1455
72. Buchanan, L.M. Report on Urban Local Government in Uganda, Entebbe, 1954, p.1.

areas. Thus, though, in law, the Municipal and Townships Authorities had full jurisdiction over all persons within their boundaries, there were, in practice, two and some times three Authorities with concurrent jurisdiction over some urban dwellers. In Kampala, for example, the indigenous urban dweller, though legally under the jurisdiction of the Municipal Council, was, in fact, subject to the jurisdiction of the Kabaka's Government, to whom he paid taxes, though he derived no benefits in return; while the European or Asian, living in Kampala paid his rates to the Municipal Council, and was naturally subject to its jurisdiction. The reasons for this have already been alluded to and need not be rehearsed here, suffice it to say that they had a deleterious effect on the development of urban local government, and led to the subordination of all urban authorities to the Central Government. With a few exceptions, their accounts were kept as part of Central Government accounts, whilst a member of the District Commissioner's staff invariably acted as the Executive Officer, while the District Commissioner, Kampala, Jinja and Mbale excepted, was always the Chairman of the Urban Authority within the limits of the administrative district over which he presided.

These arrangements, though convenient, and under the circumstances, perhaps inevitable, held up the introduction of responsible and democratic government in the urban areas. No township, not even the Municipality of Kampala had had an elected Council; all members of urban authorities, large or small, were appointees of the Governor.

Throughout the 1950s these arrangements were the subject of adverse comment by the East Africa Royal Commission (1953-1955),[73] the

73. East Africa Royal Commission Report. 1953-1955, Chap.19.

Commissioner for Local Government (1954)[74] and the Uganda Relationships Commission, 1961.[75] For instance, the latter Commission having examined the development of urban areas throughout East Africa, tersely commented that:

> "In the past too little attention has been paid by East African Governments to the problems which arise from this development." 76

This, in their eyes was due to the theory and practice of Indirect Rule which "concentrated on the development of rural tribal societies, neglected the training of an educated urban elite and encouraged the view that the town was an unsuitable habitat for Africans."[77] Indeed, the Commission was struck by the general "tendency to look on the Westernised African with suspicion,"[78] and not surprisingly, therefore there was no machinery for the administration of African affairs within the limits of urban areas. For example, the Kampala Municipal Council, the largest and most advanced in the Country, had no African Affairs Department; the indigenous urban dwellers were thus under the jurisdiction of the Kabaka's Government, rather than the Municipal Council.[79]

74. Report of the Urban Local Government, op.cit.
75. Report of the Uganda Relationships Commission, 1961. Chap.16. See Also Wallis' Report, p. 67.
76. Royal Commission, p.200
77. Ibid. p. 201.
78. Ibid.
79. The Baganda together with the other indigenous urban dwellers were under the jurisdiction of the "Kibuga" and the "Omukuluwe Kibuga" and lie outside the scope of this study.
For a detailed account of the Buganda Government vis-a-vis, the "Kibuga", see P.C.W. Gutkind, The Royal Capital of Buganda, The Hague, 1964.

The Royal Commission also found that, while the Boma was satisfactorily administered, the African areas whether within or outside the municipal boundaries, were often without an effective administration.[80] The responsibility for these areas was shared by the Central Government and the adjacent Local Authorities, but their spheres were confused and ill-defined: there was uncertainty and overlapping. Accordingly, the Commission listed four requirements which, in their view, were needed to remedy these anomalies:-

> "(a) an overall policy for urban development which took all the factors in the urban situation into account;
> (b) an administrative machinery for the supervision and execution of this policy;
> (c) an administrative system for dealing with these special requirements of the African population; and
> (d) the improvement, as an emergency operation of the deplorable conditions in the peri-urban African quarters." 81

To this end, the Commission strongly recommended the appointment of a Local Government Specialist to advise the Government on this and other kindred matters. His first duty would be to study the different facets of the urban problem, the administrative organisational needs, and the formulation of the overall policy along the lines indicated above.[82] Next he was to monitor and oversee the urban development, and, in particular, the co-ordination of the views of the different departments concerned with urban affairs. Wallis, too had recognised the need for this king of appointment, but unlike the Royal Commission, he was apprehensive about the division between town and country which this appointment entailed.

80. Royal Commission, p. 237
81. Ibid. p. 237.
82. Ibid.

> "I understand that approval has already been given to recruit one experienced local government officer and that he will probably be placed in a new section of the Secretariat dealing mainly with urban local government. If any of the three officers mentioned in paragraph 195 is also recruited I assume that he will be placed on the staff of the Secretary for African Affairs, who is responsible for African rural local government. No doubt contact will be maintained, but this dichotomy cannot be a good thing. If the Government is to be in a position to observe and guide the development of local government as a whole it will be advisable to bring both urban and rural local government under a single direction. In my opinion, single direction is more important now during the formative years than it may be later when the system has been established. " 83

He emphasised the need for co-operation, uniformity and unanimity, and hoped that the proposed appointees would discharge their individual responsibilities in perfect harmony.[84] These proposals were accepted by the Government, and shortly afterwards, one Buchanan, lately of the Sudan Civil Service, was named Commissioner for Local Government and detailed to make proposals for reform.

Buchanan's first assignment was to study and report on certain aspects of urban local government, including the central-local financial relations, the amelioration of particular difficulties, and the consequential amendments to the existing urban legislation. Like the Wallis and Munster Commission before him, he too, was critical of the Government's past policies and said so in no uncertain terms.[85]

Buchanan's Report which appeared in 1954, premised its recommendations on the assumption that the system of urban local government would be based, with modifications to suit local conditions, on the British model. He

83. Wallis's Report. p. 68.
84. Ibid. p. 68
85. Vide. p.240 Footnote 7.2 supra.

took the view that a formal system of central-local government relations in urban areas was "pointless - and indeed dangerous", unless it could be related to agreed objectives formulated from the answers to the following two questions:-

(a) What is the system required to achieve? and
(b) What are the circumstances in which the system is to operate? 86

The new system of Urban Local Government was thus to be determined by the answers to these two questions, the first, in particular.

"In regard to the first question, I assume the following fundamental principles to be acceptable:-

(i) local government should be regarded not merely as a method of executive action but as a major element in the promotion of democratic institutions;
(ii) the individual citizen should be given the opportunity to play a definite part in local administration through representative machinery;
(iii) the central machinery of government should be confined to matters which cannot be satisfactorily dealt with in any other way, and to major issues of policy domination by a centralised bureaucracy should be avoided.
(iv) the need for flexibility, variety and experiment in the administration of local services should be recognised." 87

Given this conceptual framework, the Commissioner proposed that the Central Government should grant a large measure of autonomy to Urban Local Authorities compatible with the duty of the Central Government to safeguard particular standards and services of common national interest.[88] Since, however, several towns (approximately 100) were too small to be autonomous as envisaged by the Commissioner, and

86. Report on Urban Local Government. p.2.
87. Report on Urban Local Government, p.2.
88. Ibid. p.31

indeed, were unlikely ever to develop into financially viable local government units, it was recommended that they should be brought within the ambit of the District Councils responsible for the areas in which they were situated.[89] On the other hand, however, he strongly recommended that Jinja, Mbale, Masaka, Tororo and Soroti should be given special attention and encouragement to proceed as rapidly as possible along the road to the independent status indicated above. But he strongly recommended that the major townships such as Entebbe, Gulu, Fort Portal, Lira, Mubende and Mbarara should continue to be run as small Protectorate enclaves in conformity with the Township Ordinance 1938,[90] and that the number of non-official members should be brought to parity with official members, and a non-official chairman appointed together with a Town Clerk, as principal adviser and chief executive officer.[91]

Finally the Commissioner considered the "delicate matter" of representation on the Kampala Municipal Council.[92] Hitherto, representation on the Council, though "representative" of the most important interests, except the ratepayers as such, was nevertheless undemocratic.[93] The most serious weakness of that system of representation was its non-responsiveness to popular influence: there was "no public goad or public restraining influence."[94] which could readily be felt by the Council. The Mayor was evidently conscious of this and was apparently anxious that councillors should "begin to identify themselves with particular areas (possible electoral wards of the future")[95] Having thus reviewed the representation question, the Commissioner continued:

89. Report on Urban Local Government,p.1.
90. Ibid.p.30
91. Ibid. p.25
92. Ibid. p.25
93. Ibid.p. 25.
94. Inid. p.25.
95. Ibid. p.25.

> "This matter will need full discussion but the sooner a proportion of councillors are elected the better for the general health of the Council. It is my experience that such matters are better tackled in stages but unless there are strong reasons to the contrary, I suggest that in principle the sooner a start is made the better; the potential electorate of Kampala is no less capable of understanding elections and their object than that of Nairobi and Khartoum or Lagos, or any other of the principal towns of Africa where elections are ordinary occurrences." 96

Buchanan's recommendations were accepted and embodied in the Urban Authorities Ordinance, 1958,[97] and in the rules and regulations issued under it. The existing legislation was repealed and both major and minor towns placed under one Ordinance. Part 1 of the Ordinance set out the administrative machinery of the principal townships,[98] and made provision for the declaration of municipalities, the establishment of Municipal Councils, the election or appointment of Municipal Councillors, including their powers, duties and privileges.[99] Each Council was vested with the duty to control, manage and govern the Municipality, to safeguard public health and to maintain public order within the limits of its jurisdiction.[100] Every Council was, among other things, empowered to establish, acquire, erect, maintain and control systems of street lighting, clinics, dispensaries, health and innoculation centres, public baths, and swimming pools, botanical and zoological gardens, public weighing machines and public monuments.[101] Subject to ministerial approval each municipality had power to pass bye-laws for the well-being of its inhabitants, the prevention and suppression of nuisances and for the good rule and government of the municipality generally.[102]

96. Report on Urban Local Government p.25.
97. No.16. of 1958.
98. SS.3 to 7.
99. SS.8 to 13.
100. SS.29; 30.
101. S.30(1) and Schedule 1.
102. S.42.

Elsewhere the management of urban affairs was left in the hands, either of a Town Council, as in Masaka and Mbale,[103] or a Town Board as in the more smaller urban and trading centres.[104] Under these arrangements, the Town Council or Town Board, appointed by the Minister, could be granted, at the discretion of the Minister, similar powers to those exercised by the Municipal Councils, or at the other extreme even fewer than they previously enjoyed.[105] The pre- 1958 structure was thus retained. And so was the dual system of urban and rural local government based on a racial instead of geographical consideration.[106] The second weakness of these arrangements was the existence of too many small urban areas with inadequate resources, population and areas to support and provide essential civic services. Thirdly, and more importantly, though the Ordinance had made provision for local elections and the Government had been implored, by its expert advisers, including Wallis and the Munster Commission, to make arrangements for direct elections at least, of a proportion of councillors in the larger municipalities; both the Kampala and Jinja Municipal Orders of 1958 placed the appointment of Councillors in the hands of the Governor, rather than the Ratepayers.

103. Legal Notice No. 342 of 1958: The Masaka Town Council Order,1958.
104. Legal Notice No. 341 of 1958: The Mbale Town Council Order, 1958.
105. Legal Notice No. 344 of 1959: The Town Boards Order 1958.
Legal Notice No. 343 of 1958: The Urban Authorities (Application to Towns)Order, 1958 The first schedule of this order applied certain powers contained in the first schedule of the parent ordinance to the Towns as follows: (a) Sub-paragraphs (a),(d), (e),(f),(g),(i),(j),(m),(o),(q) (r),(s),(u) and (w). (b),SS.39. 41, (69,(70) (71) and (7) of the Ordinance. The Second Schedule (1) applied s.4(2); (2) applied ss.6,20,27,28,31 to 33 inclusive, 37. 38. 40, 47 to 52 inclusive and 54-58 inclusive of the Ordinance, (3) applied S.59 with modifications and 41 applied Part IX of the Ordinance to Masaka and Mbale respectively.
106. Vide, Munster Commission.

Like Col.Sadler (in 1902) the Government was anxious to retain its grip on the evolution of urban government and the conduct and management of municipal affairs. The reasons for this were many and various. The following paragraph from Buchanan's Report to which reference has already been made, summarises the matter rather well.

> "This delicate matter is probably best ventilated in discussion only at this stage, and any implementation of agreed proposals timed to coincide with other likely constitutional changes, such as extended boundaries, an increase in councillors, a general settlement of central local financial relations, and consequential amendments to existing legislation." 107

In consequence, it was not until September 1962, that elections were held in the Kampala, Jinja and Mbale Municipalities,[108] and even then not all municipal councillors were popularly elected. Thus only 12 of the 31 members of the Kampala Municipal Council were directly elected, while the rest, as heretofore, were appointed by the Central Government.[109] Similar arrangements were mutatis Mutandis made in respect of the Jinja and Mbale Municipalities, and subsequently became one of the characteristics of Urban Local Government institutions. The administration, like its predecessors, found it both expedient and convenient to retain general control over these Urban Authorities. The ratepaying public was still largely apathetic and the government was not unwilling to let sleeping dogs lie. It is thought that the Asian-European factor was largely responsible for this state of affairs. For it was felt that a genuine reform of Urban Local Government would set "a bad precedent" in that District Administration would most certainly demand similar treatment and the authorities were not prepared to hazard

107. Buchanan. Report on Urban Local Government, op.cit. p.25-26
108. L.N. 120 of 1962; see also L.N. 150 & 208 of 1962.
109. L.N. 339 of 1958.

that risk. Thus local government in urban and peri-urban areas was consistently and deliberately underdeveloped by the Colonial power, for its progressive reform would, it was feared, influence events elsewhere; and by their successors partly because it was not practical politics.

In the case of the former, the necessary reforms were clearly incompatible with the basic tenets of Colonialism, and despite the rhetoric to the contrary, there was, as indicated above, no serious attempt to devolve power to the periphery. Most of the "model instruments" examined here were, it is contended, simply placed on the statute book to placate Government critics, both at home and abroad. Hence the massive gulf between the legal provisions and their implementation. Again the inescapable conclusion is that the development of urban local government was, for policy reasons, stunted by the Colonial power; it was sacrificed at the alter of "efficiency" and Colonial dogma.

CHAPTER SEVEN

THE ANTECEDENTS OF LOCAL AUTHORITY FINANCE

7.1.1. THE FINANCING OF PROTECTORATE ADMINISTRATION

The British Government, having reluctantly accepted responsibility for Uganda, was as has been mentioned, most anxious to establish a self-financing Protectorate Administration.[1] This policy was first expounded by Sir Gerald Portal's despatch to the Earl of Rosebery, dated November, 1893.[2] Portal's Scheme, the object of which was to relieve the British taxpayer of the Uganda expense, was embodied in his Provisional Agreement (the details of which have already been noted), with Buganda on 29 May, 1893.[3] This treaty, was adopted by his successor and subsequently ratified by the Secretary of State, and until 1900, was the basis of H.M.Commissioner's taxation powers.

1. F.O. 2/200 Hill to Johnston. 1.7.1899.
2. C.7303. Portal to the Earl of Rosebery. 1.11.1893. The relevant portion of Portal's despatch reads:
   "The fourth suggestion is that the direct administration of Uganda should be undertaken by Her Majesty's Government. This is the solution which would recommend itself most strongly to the missionaries, and even to many among the Waganda themselves. I regret, however, that ..... I am unable to recommend it for the acceptance of Her Majesty's Government. So many English Officers would be required for the conduct of such an administration, so great would be its expenses, and so inadequate, at all events for several years to come, its returns, that the advantages conferred upon Uganda by such a system could hardly, it appears to me, be commensurate with the sacrifices made by England."
   Accordingly, Portal recommended the declaration of a Protectorate for "its moderate cost to H.M.Government is more than outweighed by the advantages which it will confer upon British Commerce .... and upon all the Countries within the British sphere of influence in East Africa." (C.7303. Portal to Rosebery.1.11.1893)
   Portal's approach was subsequently aggressively pursued by the Treasury and soon crystallised into official policy and was the basis of indirect rule.
3. C.7303 Portal to Rosebery 1.11.1893.

It appears, however, that little use was made of this provision, for the next five years Buganda was the scene of successive wars and war-like operations; and, as a result, 'native taxation' was rendered almost impossible. At the same time, however, the pacification of the Country gave rise to considerable Government expenditure. And the cost which Portal had put at £20,000 per annum had by 1899 risen to £300,000; whilst the establishment of a Government post in the interior had rendered the building of a rail link inevitable, with the result that:

> "The British taxpayer had, before the close of the century, contributed in all a sum approaching six million sterling towards an undertaking which, in its inception was a concession to public idealism." [4]

Such was the backwater against which H.M.Special Commissioner, Sir Harry Johnston was invited "to place the Administration of the Protectorate on a permanent and satisfactory footing,"[5] and in

4. Thomas.H.B. & Spencer A.E. A History of Land and Surveys, Government Printer, Entebbe, 1938. p.61
5. F.O. 2/200 Salisbury to Johnston. 1.7.1899. The relevant part of the despatch reads as follows:-
"The main object of your appointment is to place the Administration of the present Protectorate on a permanent and satisfactory footing. The political position of the Protectorate is somewhat peculiar, inasmuch as a portion of it is under the nominal dominion of the King of Uganda, with whose predecessors a treaty was signed on behalf of Her Majesty's Government on the 29th May, 1893. In this portion of the territory, therefore, the revenue is collected in the name of the King, and it is through him and on his account in the first place, that such revenue and expenditure should be dealt with as though collected and expended on behalf of Her Majesty's Government. You will pay special attention to the possibilities of raising the present revenue, whether by Hut Tax or otherwise, without risk of arousing the susceptibilities of the natives or pressing unduly upon their resources."

particular to devise financial arrangements for making the Protectorate Administration self-financing.[6] He was strongly advised to pay special attention "to the possibilities of raising revenue by a Hut Tax or otherwise, albeit "without arousing the susceptibilities of the natives or pressing unduly upon their resources".[7] These policy considerations were given prominence of place in the Uganda Agreement, 1900[8] and subsequently incorporated into successive tax ordinances, with which this chapter is concerned. The object is to present a historical sketch of this legislation and its implementation and the evolution of the central-local financial relations. It is hoped, given the Governments' tax policy, that this approach will throw some light on how the canons of taxation such as equity and ability to pay were subordinated to other considerations, the financial needs of the Central Government, in particular, and the effect this had on the future financing of local government authorities and the development of local government in general of which it was an essential part.

6. F.O. 2/200 Hill to Johnston. 1.7.1899
7. F.O. 2/200 Hill to Johnston. 1.7.1899. Similar instructions were given to Col.Hayes Sadler, the first substantive Commissioner for Uganda. He too, was to make the Protectorate pay for its occupation. Hill's instructions were specific and unequivocal. The Foreign Office despatch to Sadler stated that: "A matter of the first importance is to raise revenue without pressing hardly on the natives or hampering European Commerce."
8. Revised Laws of Uganda 1951.

7.1.2. THE HUT TAX REGULATIONS, 1900.[9]

Johnston reached Kampala on 20 December, 1899 and three days later met the Buganda leadership and, without more ado, launched into the terms of the proposed Agreement and went on:-

> "The form that I propose that taxation should take is that of a Hut Tax of the value of 3 rupees per annum, and a Gun Tax of 4 rupees per annum. This gun tax would mean that anyone who possessed or used a gun or pistol or several guns or pistols, would have to pay 4 rupees per annum., without which licence he would neither be allowed to retain in his possession or use such weapons." [11]

Having thus"broached the subject to the Regents and other leading chiefs," Johnston found that "they were not only prepared before hand for the proposal, but were prepared to view it favourably." [12] Nevertheless, the chiefs took a robust stand and asked for more time for consultation with the Lukiko and their missionary advisers. And though "the Country was ripe for these measures",[13] and Johnston had hoped for a quick response to his proposals, he did not receive the Regent's reply until January 1900. For, while they readily accepted the principle of taxation, they nevertheless sought certain modifications. In particular, they asked for a reduction in the rate of the hut tax and for the postponement of the gun tax, for at least a year or so. They vehemently argued that the peasantry were too poor to bear the tax burden on the ground that the Country had not yet recovered from the ravages of wars of attrition of the last decade. In view of his instructions, however, Johnston had very little room for manoeuvre. Accordingly the Regents' proposals were politely but decidedly rejected. In particular, Johnston was averse to

9. Cir. No.10. of 16.3.1900.
10.F.O.2/204 Johnston to Salisbury 24.12.1899.
11.F.O.2/204 Johnston to Salisbury, Despatch No.27. of 24.12.1899.
12.Ibid.
13.Ibid.

the idea of subsidising the Kabaka.[14] In particular, he found the Regents' proposals for extra allowances, in lieu of their participation in the taxation of the country, more than he could bear,[15] but he was not unduly obdurate.

> "I have been careful to take into consideration vested interests and in all cases where the country possesses chiefs able to govern their people and to cooperate with us in the collection of taxes I have proposed to pay those chiefs subsidies to the extent of 10% of the value of the taxes collected by them, this subsidy to be regarded as their share of the local taxation" 16

Additionally, the Regents were each offered generous estates in land, a salary of £200 per annum, and total exemption from taxation. And, as might be expected, Johnston's tax proposals were accepted in toto, and incorporated into the Uganda Agreement, 1900, in which it was stated that:-

> "In order to contribute to a reasonable extent towards the general cost of the maintenance of the Uganda Protectorate, there shall be established the following taxation
> (a) A hut tax of three rupees, or 4s per annum, on any house, hut, or habitation, used as a dwelling-place.
> (b) A gun tax of three rupees, or 4s per annum, to be paid by any person who possesses or uses a gun, rifle, or pistol." 17

In future, each dwelling-place of whatever description was to be subject to taxation, but as this provision would have caused hardship, it was agreed that a collection of not more than four houses in a separate

14. F.O.2/204 op.cit.
15. F.O.2/204 Ibid.
16. Ibid.
17. Uganda Agreement, 1900, Article 12

and single enclosure and inhabited by a man and his family should, for tax purposes, count as a single dwelling-place. Besides, temporary shelters, rest houses, churches and schools were exonerated from the new levy. So, too, were the residences of the Kabaka, the Queen mother, the Regents and the Saza chiefs.[18] Furthermore, the collector had power to exempt or to grant relief to any tax payer who, in his opinion was too poor or destitute to be taxed, and his decision was final. The assessment and collection of taxes were, however, left in the hands of the Saza chiefs who, in this matter, were accountable to the collector,[19] The proceeds of the hut tax were to be handed over intact to the Commissioner, as Buganda's contribution towards the general revenue of the Protectorate. In return, it was agreed that "no further interior taxation" was to be imposed without the agreement of the Kabaka and the Lukiko.[20] This arrangement, however, did not affect the question of "exterior taxation", to wit township rates, water charges and market dues. Nor did it exonerate the peasantry from their traditional obligations relating to military service, the upkeep of roads, or tribute.

In order to enable the individual to discharge his tax liability without too much difficulty, the Commissioner was empowered to make regulations for the payment of taxes in labour or in kind, in lieu of cash as he saw fit.

Such regulations were issued within a week of the signing of the Agreement, on 16th March, 1900. The Hut Tax Regulations consisted of 5 articles, including a schedule of about 30 items which at stated

18. Articles 10 and 12
19. Article 12
20. Ibid. The meaning of "exterior taxation" is discussed below, pp.267-270.

rates were to be accepted in lieu of cash. Eight hundred cowrie shells, for instance, would count for one rupee, so too, would 2lbs. of cleaned rice; 8lbs. of uncleaned rice; 10lbs. of wheat, and 40lbs. of English potatoes; whilst a cow and calf would count for 45 rupees.[21] The animals, wild and tame; the goods and produce handed in, in lieu of cash, were to be sold as soon as possible, while ivory, rubber and other readily saleable articles were to be sent to the Coast for sale, or export.

In a predominantly agricultural economy, the provision for the payment of taxes in kind was not only imaginative, equitable and perhaps inevitable, it also made for convenience. This common sense approach to taxation had the desired effect, the results were startling. Within a few weeks of the introduction of the hut tax, people began to bring in all manner of creatures as they could lay their hands on; and Government centres were soon filled with animals and produce of all kinds. Such was the response that the Deputy Commissioner had to ask the collectors not to proceed "with undue haste in the collection of taxes."[22] They were advised to exercise great care in accepting produce in lieu of cash; they were to ascertain in advance whether or not the produce tendered was easily and readily disposable; and were urged to "refuse to accept all but sound, healthy, animals", and, in forwarding them from one centre to another, all such animals, including livestock were to be "driven slowly and for short distances each day."[23] The payment of taxes in kind, however, was soon running into other difficulties, mainly because insufficient arrangements had been made for the reception, storage and disposal of the more exotic tax receipts.

21. Cir. No. 10 of 16.3.1900
22. Cir. No. 29 of 1.8.1900
23. Cir. No. 29 of 1.8.1900

> "Collectors are probably aware that great losses, through deaths, have occurred in the livestock accepted in lieu of cash in payment of taxes. At certain stations deaths have amounted to 10% per week and in certain instances where livestock have been sent from one district to another, deaths have reached 60% during a journey of 20 days. With regard to the animals which are still alive there is little or no prospect of their being converted into cash in lieu of which they were accepted." 24

The Administration was in a quandary. So, on his return from Fort Portal, Johnston invited the Regents and other leading chiefs to Entebbe to review the methods by which taxes should be paid. As a result the existing Hut Tax Regulations were drastically streamlined and collectors "requested ordinarily to desist from accepting livestock" or perishable food staffs in payment of taxes.[25] As a temporary measure, however, the Commissioner authorised the acceptance of the following wild animals for special purposes at the stated rates:-

> "Young zebras alive and in good condition = 60 rupees
> Young zebras, partially trained and easy to deal with = 90 rupees
> Wild pigs in good condition = 3 rupees
> Young elephants in good condition = 3,000 rupees
> Young hippopotamus in good condition = 300 rupees" [26]

It was emphasised, however, that "in preference to any other method, Hut and Gun Taxes should be paid in Rupees", but that where this would cause hardship, ivory at the accepted rates, or India Rubber of good quality would still be accepted in lieu of cash; whilst those unable to pay their taxes in cash, ivory, rubber or wild animals would be required to work for a month - tax labour - in lieu of each Hut or Gun tax. Johnston had always recognised that he would have to exercise "great discretion, caution and patience," in his dealings with Buganda, and in particular, in the important question of "Native Taxation".[27]

24. Cir. No. 29 of 1.8.1900
25. Cir. No. 39 of 11.10.1900
26. Cir. No. 34 of 11.10.1900
27. F.O.2/204 Johnston to Salisbury, Despatch No. 27 of 24.12.1899

In May 1900, therefore, he issued a circular to all the collectors and assistant collectors echoing his brief[28] - the relevant part of which was as follows:-

> "HM special commissioner desires to impress on officials the need for gentle and prudent measures in connection with this tax for several years to come, until the Natives of the Protectorate have come to realise the advantages of a civilised Administration and the fairness in principle of native contribution towards the expenses of that Administration." 29

In the meantime, recalcitrant tax payers were to be remonstrated with and urged to pay their taxes voluntarily. Upon their continued refusal to pay, their names were to be noted; they were to be given no advice, assistance or protection against their enemies, and were not to be allowed to settle on Government land, or trade in Government centres, or register as labourers or porters.[30] As far as possible, tax administration was to be left in the hands of the Chiefs, and no police or soldiers were to be employed in the collection of taxes, save with "the direct consent of the Commissioner".[31] The main aim was to cultivate the goodwill of the tax paying public, with an eye to voluntary compliance, the testimony of which was the absence of punitive sanctions. It is well to remember, however, that the chiefs, under the Agreement, were immediately under the control and supervision of the Commissioner; and that any dereliction of duty was punishable by instant dismissal, fine or imprisonment as Chief Kiimba, among others, discovered to his cost.[32] Moreover the Kabaka's civil list and the chief's stipends were dependent on effective tax administration[33]; and more ominously the Agreement provided that:-

28. F.O.2/200 Hill to Johnston Despatch No. 1 of 1.7.1899.
29. Cir. No. 22 of 10.5.1900
30. Cir. No. 34 of 11.10.1900
31. Ibid.
32. Crown v. Kiimba 1 ULR, 1910, p.97
33. F.O.2/204 op. cit.

> "Should the Kingdom of Uganda fail to pay to the Uganda Administration during the first two years after the signing of this Agreement, an amount of native taxation, equal to half that which is due in proportion to the number of inhabitants; or should it at any time fail to pay without good cause or excuse, the afore said minimum of taxation; Her Majesty's Government will no longer consider themselves bound by the terms of this Agreement." 34

These, rather than tax offences, were the real sanctions. Johnston had estimated that his tax measures would in the financial year 1900-1901, at least, bring in some £15,000;[35] in fact the actual amount realised was far in excess of this figure.[36] Despite this initial success, however, the Hut Tax was the subject of criticism on account of its inherent defects. In the first place, the Hut Tax as the name implies was a tax on any house, hut or habitation used as a dwelling-place,[37] and as such was a premium on good housing in that it led, as Fisher's contemporary account graphically illustrates, to overcrowding and insanitary conditions.

> "In one small beehive hut, having no partitions, there would be originally a man and his wife and children, one or two goats and several fowls. On the introduction of the Hut Tax the father in law and mother in law came and took up their quarters there, and so halved the payment. To these would be added a newly married brother and his bride, who now had an excuse for not troubling to build a separate hut: thus the tax was reduced by mutual arrangement to one rupee each man.Of course there were a few stray bodies to do odd jobs, and all these were packed in the hut at night, to say nothing of the rat and insect life that was legion." 38

Secondly, the Hut Tax was regressive in character, the tax burden being heaviest for the poorest tax payer, since the amount paid by the poor

34. Uganda Agreement, 1900, Article 20
35. Cd. 256 (1900), Johnston's Preliminary Report on Uganda
36. Cd. 671 (1901), Johnston's Final Report on Uganda.
Johnston after stating the various methods of payment continued:
"In this way we gathered in taxes of face value approaching £60,000, but the actual cash value which we banked, so to speak was not more than £34,000 - twice the amount I had estimated as the results of the first year's taxation."
37. Article 12
38. Fisher, A.B. Twilight Tales of the Black Baganda, London, nd. p.33

represented a very large proportion of his money income; in many cases this proportion approximating 100 per cent. It follows that the tax bore most heavily on the poor. Thirdly, it was alleged that the Hut Tax tended to differentiate between the married and the unmarried state. This argument was refined by the commissioner, inhis confidential despatch to the Secretary of State, the relevant portion of which was that:-

> " The tax is often given as an excuse by young Baganda for not settling down and marrying that as soon as they do so they become liable to the tax." 39

In many instances, therefore, the commissioner, continued:

> "they prefer to remain as they are, leading openly immoral lives, to settling down in married state. From the Missionary Societies of all three denominations, I hear the same story, and the incidence of the tax is looked upon by them, for this reason, as operating to some extent against the successful result of their teaching." 40

Fourthly, the Hut Tax was susceptible to endless abuse, partly because it was only payable by owner-occupiers, and as a result, the tax could easily be evaded "altogether by having no domicile".[41] Fifthly, it was alleged that a good many potential tax payers migrated from Buganda into the neighbouring districts, "with the view of escaping taxation altogether".[42] It may be noted, however, that this argument

39. F.O.2/858 Sadler to Lansdowne, Conf. No. 1 of 6.7.1904
40. Ibid.
41. F.O.2/858 Sadler to Lansdowne. He said among other things that: "There are numbers of young men in Uganda, separated from their parents, who either live together in one hut paying one tax between them, or who evade the tax altogether by having no domicile."
42. F.O.2/589 Jackson to Lansdowne Conf. Despatch No. 43 of 25.1.02 The relevant portion reads: "Regarding emigration from the Protectorate into the German Sphere,I believe in 1900 and even at the beginning of last year, a few people did leave Uganda and Ankole and crossed the frontier into German Territory with the view of escaping taxation altogether. A good many also migrated from Uganda into Toro, Unyoro, and the Bukedi country for the same reason."

raises a separate issue; it does not go to the root of the matter, it merely indicates that the tax paying public had not accepted taxation with equanimity. In other words, the Hut Tax as such, was not the direct cause of migration. This too is the explanation why many a tax payer indulged in tax evasion by devising "all kinds of cunning to avoid payment",[43] in kind or otherwise.

43. Fisher op. cit. p.14. Such schemes included the following: 'When the tax gatherer was expected, the owner of the hut would go off and pay his long lost brother a protracted visit, leaving his wife to face the wrath of the baffled "Publican" or to be taken hostage. Others packed up wife and family, leaving kith and country, and fled to the wilds, sooner than put in a few day's work each year to enable them to meet the tax."

7.1.3. THE UGANDA POLL TAX AGREEMENT, 1904

It is evident that the Hut Tax, despite its revenue yield, was in several respects unsatisfactory, and therefore, was, from its inception, doomed; and not surprisingly, early in 1903 the Regents sought leave to impose a Poll Tax, in lieu of the Hut Tax. It was proposed that "a tax of three rupees" should be imposed on "all males between the ages of 18 and 65",[45] so as to ensure a more general distribution of taxation than hitherto, the idea being

> "to reach those who are able to pay, but who, not possessing huts, at present go free, to prevent evasion of the tax by overcrowding in huts and particularly to remove the great distinction made by the Hut Tax between married and unmarried state." 46

The Commissioner, on receipt of the Regents' petition, however, "demurred to the three rupees on the ground that it would be a heavy burden of taxation on the country."[47] He pointed out that the proposed tax would mean that every man between the ages of 18 and 65 would be liable

> "for the amount now paid by the hut, and although it was proposed to exempt huts occupied by women only, in many cases many huts would have to pay two or three times what they do now." 48

That, indeed, was the raison d'etre for the Regents' proposal, which had, as its principal object, the closing of that loophole. Rather ironically, however, the Commissioner saw it differently, and was

45. F.O.2/858 Regents to Tomkins 8.1.04
46. Ibid.
47. Ibid. Sadler to Lansdowne 6.7.04
48. Ibid.

inclined to uphold the status quo. Equally, however, the Regents, who were apprehensive about the decrease in revenue and the effect this might have on their stipends, and in particular on Buganda's ability to meet her treaty obligations were adamant. And, in consequence, the Commissioner had several meetings with them, the object of which was to consider the Commissioner's proposals, including a Poll Tax of 2 rupees. The Regents were, however, averse to a lower tax rate proposed by the Commissioner, and strenuously argued that if a Poll Tax of 2 rupees were imposed, they would be unable to meet their commitment under the 1900 Agreement, and that, if that occurred, the Agreement, as Johnston intimated, might be terminated. Evidently, Johnston had told them that

> "if there were a falling off in the amount of tax paid, ... the Agreement would not be binding;" 49

and that the Chiefs were not ready to countenance. Consequently, in order to resolve this impasse, the Commissioner proposed, and the Regents accepted, that, in addition to the existing Hut Tax of 3 rupees per annum, a Poll Tax of 2 rupees should be imposed "on marriageable young men living apart from their parents or guardians".[50] And so, the Uganda Poll Tax Agreement, 1904, was conceived and executed on September, 23, 1904.

> "In addition to the Gun Tax and Hut Tax of 3 rupees there shall be payable by each adult male subject of the Kabaka, who is not liable to pay the Hut Tax, a Poll Tax of 2 rupees per annum, provided always that such tax shall not be payable by persons who live in the house of their parents or guardians and contribute to the payment of the Hut Tax of the said house." 51

49. F.O.2/858 Regents to Tomkins 8.1.1904
50. F.O.2/860 Sadler to Lansdowne, 6.7.1904
51. Uganda Poll Tax Agreement, 1904, Article 1

Thus, the Poll Tax Agreement, despite its stated objectives, did not deal with the drawbacks of the existing Hut Tax legislation. For example, the Agreement did not remove the differentiation drawn by the Hut Tax between the married and the unmarried state. Indeed, it made the distinction worse at the expense of matrimony. Witness the dual system of taxation and the two-tier tax rate. Worse still, it did not tackle the question of tax evasion by over-crowding in huts, which incidentally, was one of the principal objectives for the imposition of Poll Tax in contradistinction to the Hut Tax: Indeed it exacerbated the situation. The proviso to the first Article, which granted tax relief to male adults living with their parents or guardians was, as it happened, a tax dodger's charter. The term "guardian", in particular, was unfortunate: it was susceptible to endless abuse, being "open to too much construction".[52] It was not, according to one bemused official, beyond the bounds of imagination for anyone to

> "foresee the possibility, among people with the natural intelligence of the Baganda, of the young men ultimately evading the tax by a wholesale adoption of guardians." 53

In practice, the more lasting defect of the Uganda Poll Tax Agreement, 1904, was the introduction of a dual system of taxation which subsequently became a feature of British tax legislation at the expense of good tax administration;it made for complexity. It is also noteworthy that there was "no tax of a precisely similar nature in the colonies" or

Protectorates under the administration of the colonial office; and, but for its local acceptability, the Marquess of Lansdowne, the Secretary of State for the Colonies, would not have sanctioned it.[54]

52. F.O.2/860 Wilson to Lansdowne Despatch No. 271 6.10.04
53. Ibid.
54. C.O.536/860 Lansdowne to Sadler, op. cit.

7.1.4. THE GUN REGULATIONS 1900

The Gun Tax, despite the nomenclature, was in reality not a tax, but a system of licensing guns, rifles and pistols. The licence was payable by any person who possessed, or made "use of a gun, or any weapon discharging a projectile by the aid of gun powder, dynamite, or compressed air."[55] However, it was provided that

> "A native who pays a gun tax may possess or use as many as five guns. For every five or for every additional gun up to five, which he may be allowed to possess or use, he will have to pay another tax." 56

Similar, and somewhat interesting exemptions were granted to the Kabaka, the queen mother, the three Ministers of State, the Saza chiefs, the members of the Lukiko, and all land owners with more than 500 acres of real property. The Kabaka, for instance, was credited with 50 gun licences, and, each of the three Regents, 20 free gun licences per annum.

Arguably, the Gun Tax was neither a tax, nor a revenue licence. Its principle object was to curtail the circulation of firearms in the country, thus keeping in check the destruction of the highly prized elephants,[57] and, indeed, succeeded in demilitarising the country. For a large number of guns were "brought in, the people preferring to give up their guns to pay the tax".[58] In consequence, the Gun Tax only realised £103 in 1900-1901 and £159 in the following financial year,[59] — and was shortly afterwards phased out.

55. Uganda Agreement, 1900, Article 12
56. Ibid.
57. Cd. 256 (1900) H.M. Special Commissioner's Preliminary Report, p.7
58. F.O.2/594, Sadler's Report on the Working of the Hut Tax, 1902
59. Ibid.

7.1.5. THE BUGANDA TAX CODE 1900: "INTERIOR AND EXTERIOR TAXATION"

As has been mentioned, Johnston's main task was to establish a self-financing British administration over Buganda. He was, it will be recalled, enjoined to endeavour to raise revenue "whether by a hut tax or otherwise".[60] However, he was to proceed with caution, in particular, he was told not to "risk arousing the susceptibilities of the natives or to press unduly upon their resources."[61] To this end, Johnston concluded the "Uganda Agreement", 1900, and it is well to recall the relevant tax provisions, the terms of which were as follows:-

> "The taxes agreed upon at present shall be the following:
> '(a) A hut tax of three rupees, or 4s per annum, on any house hut or habitation, used as a dwelling-place.
> (b) A gun tax of three rupees, or 4s per annum, to be paid by any person who possesses or uses a gun, rifle or pistol.'
> The Kingdom of Uganda shall be subject to the same Customs Regulations, other Regulations, and so forth, which may, with the approval of Her Majesty, be instituted for the Uganda Protectorate generally, which may be described in a sense as exterior taxation, but no further interior taxation, other than the hut tax, shall be imposed on the natives of the province of Uganda without the agreement of the Kabaka, who in this matter shall be guided by the majority votes in his native Council." 62

The Agreement thus envisaged the establishment of two different sources of revenue - "interior and exterior" taxation. It seems, the maintenance of H.M. Representative and the Administrative machinery was intended to be thrown on the Protectorate, and it was to give effect to this policy that two taxes were imposed - the hut and gun taxes. It was hoped that these two "primitive" taxes would yield sufficient revenue to maintain the Protectorate. The "Uganda Agreement" thus specifically stated that:-

60. F.O. 2/200 Hill to Johnston, 1.7.1899
61. Ibid.
62. Uganda Agreement, 1900, Article 12.

> "In order to contribute to a reasonable extent towards the general cost of the maintenance of the Uganda Protectorate, there shall be established the following taxation for Imperial purposes, that is to say, the proceeds of these taxes shall be handed over intact to Her Majesty's representative in Uganda as the contribution of the Uganda province towards the general revenue of the Protectorate." 63

It is equally clear, however, that the intention of the Agreement was to impose only such taxes as would suffice for the financing of British overrule; it was not intended, it would seem, to raise more funds than would meet the needs of that Administration, without the agreement of the Kabaka and the Lukiko. So, while the Agreement gave the British "a benign authority to advise the Kabaka and to impose taxes (duly specified)",[64] it did not, contrary to anticipations expressed at the time of the Agreement, wholly "surrender into the hands of the British Government the right of taxation",[65] nor indeed, did it solve "the question of the taxation of the natives".[66] It would appear, for example, that "interior taxation", was within the Kabaka's prerogative rather than the Commissioner's, and, if that was the case, the Commissioner's taxing powers, upon which the success of Johnston's settlement depended, were not as unlimited as was generally claimed. The question for consideration is, briefly, this:- What additional taxes, if any, could the Commissioner impose over Buganda, with or without the Kabaka's consent? In considering the Commissioner's taxing powers, in this respect, the meaning of "interior" and "exterior" taxation - "a most unsatisfactory phrase in the Agreement", has to be ascertained.[67] According to Ennis, who first raised the issue as early as 1903, the phrase "interior" and "exterior" taxation could be construed in two ways:-

63. Article 12 of the "Uganda Agreement," 1900
64. UNA, Smp 119/1909 Acting Commissioner's Minute of 8.7.09
65. FOCP 7620 (1900) Johnston to Salisbury 12.3.1900
66. Ibid.
67. CO 536/43/56670

> "(a) That revenue and charges to be collected under laws applied generally to the whole Protectorate are to be deemed "exterior" while revenue from laws of local application is to be deemed "interior" taxation.
> (b) That the revenue and charges to be collected under laws of general application, and which have an exterior element in them, as in customs involving exports and imports and Porter Regulations applying to the engagement of porters for work outside the Kingdom are to be deemed "exterior" taxation; while revenue from laws of general application without any such exterior element, and laws of local application is to be deemed "interior" taxation". 68

Clearly, neither construction was without reproach. Ennis' first construction, for instance, would have permitted the imposition of income taxation over Buganda, if an income tax ordinance were enacted for general application throughout the Protectorate. Such legislation would have conferred unlimited powers of taxation on the Administration. Yet Article 12 expressly stated that "no further interior taxation, other than the hut tax, shall be imposed on the natives of (Buganda) without the Agreement of the Kabaka" and the Lukiko.[69] This privilege was one of Buganda's most cherished rights in the Agreement, and there is little doubt that the Kabaka would have strongly resisted any attempts, from whatever quarters, to whittle it down.

Ennis' second construction, which was based on an ambiguity in the Agreement was not without its ironies. For example, it would have had far reaching financial consequences for the revenue authorities. It would have rendered many revenue measures, under which licence fees and charges for specific services were collected, ultra vires the Agreement; and the Protectorate would, without doubt, have vigorously contested it; for it would have increased the Kabaka's powers of taxation at their expense. Not surprisingly, therefore, Ennis was inclined to favour the first of his two interpretations:

68. UNA, SMP 119/1909
69. Article 12

> "That revenue and charges to be collected under laws applied generally to the whole Protectorate are to be deemed "exterior" taxation; while revenue from laws of local application is to be deemed "interior" taxation." 70

The Administration was accordingly informed that they could impose, without the Kabaka's consent any tax providing that such tax was of universal application; and that "no further interior taxation" could be imposed without a fresh Anglo-Buganda Tax Agreement. Ennis' interpretation was well received in certain ranks of British officialdom but was, in fact, never officially adopted. It was considered injudicious, owing to the negotiations which were in progress, regarding the abolition of the hut tax, to broach the matter to the Kabaka and his advisers; the issue was quietly dropped. But, as the following discussion shows, that was not the end of the matter.

7.1.6. THE KABAKA'S "BARREN PRIVILEGE"

The question under consideration involved the whole principle of taxation in Buganda, and was no doubt of some considerable importance. Upon it depended the Commissioner's power of taxation. That part of the Agreement which gave rise to this difficulty was the notorious Article 12 quoted above. As the preceding discussion illustrates, its terms were, from the British point of view, far from satisfactory; they were couched in vague and obscure language, and Ennis' constructions, notwithstanding the Kabaka's residual rights in relation to taxation, meant that no taxation, "interior"or otherwise could be imposed in Buganda without the royal assent: witness the "Uganda Agreement" (Poll Tax), 1904. But, suppose the Commissioner wished to impose an income tax or some other form of taxation, could he, without the Kabaka's consent do so, without breaking the Agreement? There was no direct provision in the Agreement, but Article 6 specifically stated that "the Kabaka shall co-operate loyally with Her Majesty's Government in the

70. UNA, SMP 119/190

organisation and administration" of Buganda.[71] This, it was thought, implied that the commissioner could insist on his advice, and that the Kabaka was obliged to accept and execute it. According to the Crown Advocate, however, this interpretation of the Agreement was incorrect, and obviously, contrary to the terms of the Agreement.

His contention was that the Kabaka could not be compelled to "explicitly follow the advice" of the Commissioner against his will. Indeed, he argued "that, as regards taxation, practically the whole power" was in the hands of the Kabaka and the Lukiko.[72] The Crown Advocate realised the dire consequences which his construction might engender and was obviously anxious to find a way out.

> "A fourth course might be to hold this part of the Agreement as void for uncertainty. I submit the question whether an amending agreement should not be made. In my opinion, this would be the best way out of this difficulty." 73

In the meantime, the Commissioner was urged to refer the matter to the Secretary of State for further consideration and determination. Accordingly, Sir Hesketh H. Bell, sought Lord Crewe's advice and received the following reply:-

> "The matter is one of much difficulty, but I am advised that the interpretation which Mr. Russell in the memorandum enclosed in your despatch has put on the relevant clauses of the Agreement is the correct one. It therefore appears that the legality of certain existing taxes is open to question. In the circumstances, I would suggest that it would be advisable to call a meeting of the Buganda representatives, at which proposals would be submitted for modifying the Agreement so as to read that no tax, beyond those already in force, shall be imposed without the consent of the Kabaka, unless it applies to all inhabitants of the Province, whether natives or others. This would have the effect of legalising ex post facto the existing taxes and would also, I think, give the Government all the power for the future which is necessary." 74

71. Article 6
72. UNA, SMP 119/1909 Russell's memo of 7.7.09
73. UNA, SMP 119/1909 Russell's memo of August 1907
74. UNA, SMP 119/1909 The Earl of Crewe to Bell 2.10.1908

In the light of this decision, the Crown Advocate was asked to reconsider the whole question and if need be to prepare an amending agreement. Naturally, he was gratified to learn that the Secretary of State had confirmed his opinion, but he was unable to chime in with Johnston's proposal for the amendment of the "Uganda Agreement," 1900.[75] Russell's view was that the Kabaka would be most reluctant to accept the proposed amendment, and that,[76] in view of the Secretary of State's ruling, he could not be compelled to do so; and that, in any case, such an amendment was inconsistent with the general tenor of the Secretary of State's despatch.[77]

> "To acquire power for the Government to impose taxation on the Baganda, without the consent of the Kabaka, provided that such taxation applied to all the inhabitants of the Province whether natives or others, would give, in effect, almost absolute powers to the Government and would take away the security from taxation contained in the Uganda Agreement, 1900. For instance, under such a power a general income tax might be imposed without the consent of the Kabaka. Such a power would be a complete alteration of the clause of the Agreement under consideration, the interpretation of which has been stated by the Secretary of State to be that the only taxes or fees which could be imposed on the Natives of Buganda without the Agreement of the Kabaka would be such taxes and fees as were collected under laws of general application which have an exterior element in them, as customs involving exports and imports and Porter Regulations applying to the engagement of porters for work involving a journey outside Buganda. Having now ascertained what is the meaning of the Agrement in reference to taxation I submit that it would at the present time be injudicious to raise the matter." 78

Bell was accordingly advised "that this matter should for the present be allowed to rest".[79] He believed that the Government's position would not in any way be prejudiced by such a delay; and that the Kabaka and his people would "have a much needed rest in respect to their charter, the Uganda Agreement, 1900.[80] Russell's opinion was

75. Russell's memo. op. cit.
76. Ibid.
77. Ibid;
78. Ibid
79. Ibid
80. Ibid.

accepted by the Governor, and the proposed amendment, the object of which was to enable the Governor, without the Kabaka's approval, to levy taxes in Buganda, "was postponed sine die, because of the suspicious attitude of the Baganda".[81] The matter would presumably have ended there, but, in framing the "Uganda Agreement" (Poll Tax), 1919, the Governor, Sir Robert Coryndon, sought to modify the existing tax arrangements unilaterally, without the Kabaka's consent. Unlike his predecessors, Sir Robert was a no nonsense Governor. He believed, the Agreement notwithstanding, that the power of taxation resided in the Govenor, pure and simple. He strenuously argued that the Kabaka's power, under the agreement, was, in practice, no more than a mere "power to argue on points of taxation."[82] This, Coryndon contended was "a barren privilege",[83] for His Majesty's Government has the power to compel their acceptance of any proposed tax, partly because of its power to determine the percentage of the rebate returnable to the Native Government, and also the allocation of the total sum to the salaries of the Kabaka, his ministers and chiefs, and partly because of the provision in the Agreement which the Native Government is required to co-operate with and be guided by the advice of His Majesty's Representative."[84]

And, as a corollary, the Government could amend the "Uganda Agreement", 1900,"regardless of the wishes of the Kabaka and his Council, so as to allow the Governor to increase taxation without their consent."[85] He laid great stress on the essential point in Article 11 by which the Kabaka was required to "explicitly follow the advice of Her Majesty's Representative."[86]

81. Colonial Office minute at C.O. 536/43/56670
82. Coryndon to S/S. Conf. of 30.6.1919
83. Ibid.
84. Ibid.
85. Ibid;
86. Article 11 of the Uganda Agreement, 1900

This, according to Coryndon implied that in matters of internal administration, including taxation, the Kabaka was obliged to seek and follow, "loyally" of course, the Governor's advice or that of his field officers. He thus told the Secretary of State that:-

> "I see no reason why the Secretary of State need hesitate to remind the Kabaka that the concurrence with the provision I quote above is essential if the Agreement is to be maintained. Upon the weight accorded to the advice of the Government on matters of internal administration, I draw your attention to Lord Granville's dicta that "the position in which Her Majesty's Government are placed towards His Highness (the Khedive) imposes upon them the duty of giving advice with the object of securing that the order of things to be established shall be of a satisfactory character, and possesses the element of stability and progress. My opinion of the Uganda Agreement is becoming stronger. We will have continued bother with that document as the years pass, chiefly as to mining terms and taxation. They do value the agreement very greatly as their charter, but while I believe that such an instructment should remain, I think it should be recast on modern lines, of course, without robbing them of any real content. But it will never be satisfactory if done by their Governor. A weighty official should come out from England and complete the horrific task and then retire." 87

Coryndon realised that there would be considerable difficulties in carrying out his reforms. He was equally determined, however, that there should be "a definite end to friction upon all future taxation proposals."[88]

> "There is no doubt that the Baganda look on the Uganda Agreement, 1900 as a "sacred document", and the whole people would regard a proposal to alter its spirit with the gravest concern." 89

Thus, though, Coryndon was inclined "to do away with the Agreement altogether, with its "vagueness and obscurity of language and its unnecessary restrictions"; he proposed "to retain the Agreement, but to excise from it the whole provision by which no future taxation

87. Coryndon to S/S op. cit.
88. Ibid.
89. Ibid.

can be imposed except by agreement with the Native Government."[90] He strongly felt that the Governor should have the power to impose taxation without having to knuckle under the Kabaka. Coryndon's plan was to place "the Baganda upon the same footing with regard to taxation as any other tribe" in the Protectorate.[91]

> "His Highness and his advisers must remember that the Baganda are only one of many tribes in the Protectorate and must be administered with them; that no native tribe can retain the power to obstruct any measure which the Government believes to be in the interests of the people". 92

Thus, though the "Uganda Agreement", 1900, was binding in honour only, it could not, interestingly enough, be unilaterally altered by the Governor, the Kabaka's consent was a condition precedent to its alteration. Coryndon's proposals were thus doomed to failure. He had to secure, by cajolling, the Kabaka's consent; he could not enforce his orders, and that, understandably, Coryndon found demeaning. He thus persuasively argued that the protecting power had, under the Agreement, the power to "insist on the adoption of the policy they recommend."[93]

The Colonial Office could find no general provision to that effect, and was at a loss to know what to do.

> "It may be an anachronistic Agreement, it may give much trouble to the administration and occasion loss of possible revenue, but there is the issue: and how can the Secretary of State authorise a procedure other than strict adherence to the Agreement? In any event if the Secretary of State does decide against the Governor, it will be a 'victory' for the Buganda chiefs at the expense of the Administration. We must word the reply to the petition that we give the maximum support to the Governor compatible with the general decision." 94

90. Coryndon to S/S op. cit.
91. Ibid.
92. Ibid.
93. Ibid.
94. Lord Milner, S/S, to Coryndon 29.9.1919

Coryndon was accordingly advised that the proposed poll tax Agreement should be made acceptable to the Kabaka and the Lukiko; and was, with tongue in cheek, sympathetically told:-

> "I have given close attention both to your own arguments and those of the Native Government, and after full consultation, I feel that while I am most reluctant to withdraw my support from you in the matter I could not advise His Majesty's Government to alter or amend the formal Uganda Agreement, 1900, unless the Kabaka and the Lukiko were willing to agree to such amendment or alteration, which would appear to be out of the question at present." 95

Thus, though, the Secretary of State appreciated Coryndon's dilemma, and, of course the need to uphold the Governor's dignity, he, nevertheless, conceded and held that the Agreement had to "take precedence over such considerations, however, inconvenient" that may be.[96] So, the Kabaka's "right to argue on points of taxation", far from being, in Coryndon's words, "a barren privilege", was virile, sacrosanct and inviolable.[97] That, that was the case, given the fact that the Agreement was not legally enforceable, is one of the many telling ironies of Colonialism.[98] It vividly highlights some of its contradictions and dilemmas, and serves to explain some of its notable failures.

95. C.O.536/93/50670 Milner to Coryndon, Conf. disp. 29.9.1919
96. Ibid.
97. Coryndon to S/S op. cit.
98. All Native Agreements were binding in honour only.

7.2.1. THE TAXATION REGIME UNDER THE TORO AND ANKOLE AGREEMENTS

Article 5 of the Ankole Agreement, 1901, bluntly stated that:-

> "There shall be imposed henceforth on the natives of the Ankole district the same taxation as is in force by proclamation in the other provinces or districts of the Uganda Protectorate, to wit, the hut tax and the gun tax." 99

This, according to Wilson, the Acting Sub-Commissioner, implied that the Administration had power to impose any taxation in these "two little Kingdoms", providing the same taxation was in force elsewhere in the Protectorate.[100] He contended that this provision was of general application, and that, a poll tax having been established in Buganda, in accordance with the terms of the "Uganda Agreement", 1900, similar taxation could be instituted here, by proclamation, as was done in the non-agreement districts; there being no need for fresh tax agreements with the chiefs. Wilson's interpretation was, however, in sharp contrast to his legal advisers'. For them, Wilson's opinion was contrary to the terms of the Agreements.

> "By the Poll Tax Ordinance, 1905, a poll tax of 2 rupees was imposed. In Buganda this was secured by Agreement. So far as Ankole was concerned it was considered that in view of Article 5 of the Ankole Agreement, 1901, a new Agreement was not necessary, and accordingly no Agreement was entered into. I apprehend that it was considered that the words "there shall be imposed henceforth on the natives of Ankole district the same taxation as is in force by proclamation in the other provinces or districts of the Protectorate" meant that the taxation in Ankole should be the same as from time to time should be in force in other districts; and thus, the poll tax having been established in Buganda, the leading province of the Protectorate, a poll tax could be imposed in Ankole without an amending Agreement. 101 For the reasons which

99. Vide, Article 5, Ankole Agreement, 1901, See also Toro Agreement 1900
100. C.O. 536/1/14537 Wilson to S/S Despatch No. 78 of 20.3.05
101. C.O. 536/28/40759 Russell's memo upon Poll Tax for Ankole and Toro Districts. The Poll Tax Ordinance, 1905, was imposed on the district of Toro by a notice dated 18/4/1905, the grounds for considering that no new Agreement was necessary being the same as in the case of Ankole.

> I have given I venture to submit that the interpretation which has been placed upon the article of the Agreements in question is not correct. It appears to me that a new Agreement is necessary before a tax which is neither a hut tax or a gun tax can be imposed." 102

Wilson's superiors were accordingly advised that amending Agreements were necessary, before fresh taxation could be imposed in these districts. This interpretation, in Bell's opinion, was unfortunate, "in view of the possibility of its being considered advisable to impose a Poll Tax of 3 rupees in Toro in lieu of the" existing mixed Hut Tax and Poll Tax.[103] He, accordingly, sought the opinion of the Secretary of State, and received the following reply:

> "I am advised that the Crown Advocate is correct in his opinion that a fresh agreement with the Kabaka and chiefs of Toro is necessary for the purpose of imposing new taxation on the natives of that district." 104

This despatch was translated into reality by the Toro Agreement (Poll Tax), 1910, under which a poll tax of 6 shillings was imposed on "every adult male native of Toro over the age of 18 years",[105] in place of the existing Hut and Poll Taxes levied under the Hut Tax Regulations 1900, and the Poll Tax Ordinance, 1905; and, incorporated (by reference) the Poll Tax Ordinance, 1909. The Poll Tax Ordinance (No.2) 1909, and the Poll Tax Ordinance (No. 3), 1909;[106] and was to be read in conjunction with the Toro Agreement, 1900.[107] In particular, it was expressly provided that:-

> "The following exemptions from the poll tax additional to those mentioned in the said Ordinances, shall be made, viz., all persons who by virtue of the note appended to the Toro Agreement, 1900, are entitled to exemptions from the hut tax in respect of any building or hut, shall instead thereof receive in each year one

102. Russell's memo of 3.6.09
103. C.O. 536/28/40759 Conf. Despatch of 15.11.09
104. C.O. 536/28/40759 Conf. Despatch of 7.1.10
105. The Toro Agreement (Poll Tax), 1910, Article 3
106. Article 5
107. Article 6

> poll tax ticket in respect of each exempted building or hut. Such poll tax ticket may be given by the person receiving it to any person and shall exempt the person to whom it is given from the payment of the poll tax for the year of issue of such ticket." 108

In addition to these exemptions and privileges, Kasagama and his chiefs were to receive 20% of the proceeds of the poll tax in accordance with the proportions specified in Article 7 of the 1900 Agreement.[109] Thus, for example, Kasagama was to receive 20% of the total value of all the taxes collected in his Kingdom; whilst each county chief was to receive 20% of the total value of taxes collected in his county. With the exception of this concession, the objects of which are obvious, the proceeds of the new tax, like those of the Hut tax and the Gun tax, were to be remitted to the Protectorate Government for Imperial purposes. No further direct taxation, however, could be imposed without Kasagama's consent. It is true, this arrangement had no binding force; yet its significance, in terms of the Anglo-Toro relations and indeed Toro's status within the Protectorate can hardly be over emphasised. Henceforward, Kasagama, like his counterpart in Buganda, had to be consulted before any taxation other than the Hut tax and the Gun tax could be imposed on his people. That, in the eyes of the rulers of Toro, was no empty gesture: it was a privilege of immense importance which in subsequent years was valued immensely by the chiefs and the nation as a whole. Of course, they had no veto power; and, indeed, had no say in the determination of tax rates; in any case, it was most unlikely that a new form of taxation would be introduced in the near future. Income taxation, the only form of impost, the introduction of which would have necessitated a new Agreement - even this was doubtful - was still a long, long way off;

108. Article 5
109. Article 4

some sixty years, in fact. Kasagama's rights - the right to be consulted, the right to advise and the right to warn - were thus, for practical purposes, mainly honorific privileges.

7.3.1. THE HUT AND GUN TAXES IN THE NON-AGREEMENT AREAS

"Native taxation" in the Agreement areas was, as noted above, governed by the terms of the "Native Agreements" and the subordinate legislation issued under them.[110] This farcical example, however, was not followed in the non-agreement districts. Here, "native taxation" was governed by the Hut Tax ordinance and the Gun Tax ordinance, both of 1900;[111] ostensibly because there were "no chiefs to consult on the subject".[111a] In fact, Johnston had expressed, long before his arrival in the country, that the British were free, except in Buganda, to deal with the country as they saw fit.[112] He, thus, inter alia, claimed that:-

> "Toru is practically ours because we have placed and maintain the present King on the throne. Unyoro is ours by right of conquest; rights over land in Ankole shall be acquired in much the same way as in Toru. Elsewhere, I reserve to the British Government the arbitrary right to take at any time sites that might be needed for military purposes etc." 113

He, however, assured the Foreign Office, as regards "native taxation" that he would,

> "besides using great discretion, caution and patience in the matter, only impose taxation with the consent of the native chiefs, so long as those native chiefs continue to govern their people in such manner as not to oblige the Imperial Government to intervene at its own cost to secure good government." 114

In the latter event taxation would be imposed by order without the consent of the chiefs in order to meet the costs of such administration. So, in

110. Vide, the Toro and Ankole Agreements of 1900 and 1901
111. The Hut and Gun Tax Regulations were subsequently called "Ordinances"
111a. F.O.2/204 Johnston to Salisbury 13.10.1899
112. F.O.2/204 Johnston to Salisbury 13.10.1899
113. Ibid.
114. Ibid.

> "those districts such as Ankole, Toru, Unyoro, and parts of the Nile Valley where we have had to establish a military occupation, or where we have had to intervene in order to restore order - that is to say where the sovereignty has wholly passed to us - I propose to establish native taxation as I should institute any other order for the government and well being of the district since there are no chiefs to consult on the subject." 115

This, implicitly, gave him the right to make "Regulations", at his discretion, under the African Order in Council, 1889.[116] As in Buganda, however, "native taxation", in these areas, was to take the form of a Hut Tax of 3 rupees per hut per annum, and a Gun Tax of 4 rupees per annum.[117] And, likewise, the gun tax would mean that anyone who used a gun or several guns would have to pay 4 rupees per annum, without which licence he would neither be allowed to retain, in his possession, or to use such weapons.[118] And as in Buganda, "in default of money" the revenue authorities, were, as a temporary measure to accept either saleable produce or a month's labour on Government works in lieu of the Hut Tax or two month's labour in lieu of both Hut and Gun taxes.[119] Even here, the keyword was voluntary compliance, and, it was emphasised that taxation would only be imposed where the country was under direct British control, or where it was under the control of "friendly chiefs willing to co-operate" with the Administration:[120] in other words, "no government, no taxation."[121] These were, in outline, the terms and conditions under which Johnston proposed to establish a

115. F.O.2/204 op. cit.
116. F.O.C.P.7375, see also London Gazette, 22.10.1889 part XI
117. F.O.2/204 loc. cit.
118. Ibid.
119. Ibid.
120. Ibid.
121. Ibid.

revenue system outside the Agreement areas. As, in the British colonies and Protectorates elsewhere, so in Uganda, he argued, the surest prospect of obtaining local revenue sufficient to meet administrative expenditure lay in "the moderate taxation of the natives".[122] To this end, he enacted the Hut Tax Ordinance, and the Gun Tax Ordinance, both of 1900, and applied them to the districts under effective British control.[123]

Section 2, of the Hut Tax Ordinance, established a Government tax of 3 rupees, payable annually by every owner or occupier of any building used as a dwelling place, whether permanently or otherwise. The tax was due and payable on the first day of January, after which date it became a debt due to the Government and recoverable by process of law, like an ordinary debt. The Hut Tax Ordinance was thus similar to the Hut Tax provisions of the "Uganda Agreement", 1900, on which it was based, and so, too, was the Gun Tax Ordinance, 1900, save that the Ordinance imposed a fine of 150 rupees or 3 months' imprisonment for tax evation or avoidance; and that, in these cases, the gun or hut in question was liable to forfeiture, or confiscation.[124] And so the strictures already mentioned in respect of tax administration in Buganda, apply with equal force here. None the less, Johnston believed that it was along these lines that the surest advance would be made in the direction of a self-supporting state.[125] And, though, he was "not so sanguine as to suppose that" his revenue measures would in the near future enable the country "to pay off its debts", he nevertheless believed that they would, in due course, "produce local revenue sufficient to relieve the British tax payer from any obligation to provide further funds for the protection

122. Cd. 256 (1900) Africa No. 6 p.7
123. No. 2 of 1900 S.8
124. Vide, S.8 and 9 of the respective Ordinances
125. Cd. 256 (1900)

and development of Uganda."[126] He, accordingly, instructed all heads of districts to institute "gentle and prudent measures" for the economic and efficient collection of the Hut and Gun Taxes.[127]

Both taxes were to be collected by the chiefs, who, where possible, were to be "induced to pay in bulk for their people" in saleable articles such as rice, wheat, coffee and ivory, to name but a few, even if this meant accepting more varied kinds of produce than were on the officially approved list.[128] Whether or not these instructions were adhered to is not easy to determine. It would appear, however, that many chiefs and collectors did not always observe the letter let alone the spirit of these instructions with far reaching consequences for the revenue system. Despite these difficulties, however, Johnston's revenue measures were otherwise successful. The returns for the first two years were:[130]

District	Collected In	Amount 1900-1901	Amount in 1901/2
		£	£
Mau	Cash	28	49
	Kind		13
Nandi	Cash	1129	1317
	Kind		507
	Labour		105
Baringo			
Elgon	Cash/Kind	1738	529
Busoga/Buke di	Cash	187	1451
Buganda	Cash	17615	16378
	Shells	7692	
	Kind		1200
	Labour	1519	11347
Ankole	Cash	1516	328
	Kind		36
	Labour	39	483
Toro	Cash/Kind/Labour	485	292

126. F.O.2/204 op. cit.
127. Cir. No. 22 of 10.5.1900
128. Cir. No. 29 of 10.11.1900
129. Cir. No. 29 Ibid.
130. UNA/A27/12 Statement showing amount of Hut Tax in the year 1901-02 as compared with 1900-1901. The value of cowrie shells burnt was £7691-7-1 (in 1901). The amount for Gun Tax in 1900-1901 and 1901-02 were £1082 and £733 respectively. (UNA/A27/12 (1902-1905) Special Files and Statement showing amount collected for Gun Tax in the year 1900-1901 as compared with the amount collected in 1901-1902.

Bunyoro	Cash	1034	587
	Kind		56
	Labour		676
Bari/Shuli/ Dodinga	Cash	7	29
GROSS TOTAL		3309	35929

In spite of these excellent results, however, there can be little doubt that Johnston's tax arrangements were unsatisfactory. Enough has already been said to show that they suffered from serious defects.[131] Yet it was not until 1914 that the Hut Tax Ordinance, 1900, was finally repealed. It would seem that the drawbacks of the Hut Tax were, in view of Government policy, regarded by Johnston and his successors, as a necessary evil. Johnston had estimated that the British dealings with Uganda had cost the British tax payer over six million pounds sterling, viz. £1,394,000 for administration and £4,900,000 for the construction of the Uganda Railway,[132] and his mission was to relieve the British tax payer from any further financial burden connected with the administration of Uganda. He thus, somewhat peevishly, noted

> "What justification is there for this outlay, and what hope of ever recovering the sums advanced, either by direct payments to Imperial Treasury or indirect profit to British commerce?" 133

The solution, in his view, lay "in the moderate taxation of natives" and, in the creation of ideal conditions for British enterprise.[134] It is hardly surprising therefore, that the defects of the Hut Tax were relegated to the lumber room. For one thing, Johnston took the view that the hut was the best taxable unit. He, erroneously, believed that it was the best measure of ability to pay; and, in consequence, other forms of taxation do not appear to have been seriously considered.

131. See, tax administration in Buganda, supra. pp.263-266
132. Cd. 671 (1900)
133. Ibid.
134. Ibid.

Indeed, it appears, that the revenue authorities would never have entertained any tax reforms, but for the heavy losses of revenue occasioned by the widespread evasion of the Hut Tax. It is significant, too, that, both in Buganda and in the non-agreement areas, the need for reform was, as indicated below, spearheaded by the Native Authorities, the British authorities were merely interested in the tax receipts and hardly cared about the Hut Taxation's social costs.

7.3.2. THE POLL TAX ORDINANCE, 1905[135]

In March, 1905, shortly after the introduction of Poll Tax in Buganda, the Acting Commissioner,

> "circulated among the responsible Administrative officials an invitation to ascertain if the same taxation would be acceptable in their Provinces and districts." 136

This enquiry was prompted by the Mukama and chiefs of Bunyoro who were anxious to substitute the Poll Tax for the Hut Tax. Their reasons appear sufficiently in the following extract from Wilson's despatch to the Secretary of State for the colonies and were as follows:-

> "Instantly sub-commissioner Fowler reported that the Kabaka and chiefs of Bunyoro asked that the tax should be applied to their country. This I was prepared for as they have previously expressed to me their wish for such a tax, as the Hut Tax has ever been regarded as a burden undesirably distinctive in its bearing upon married persons; the Poll Tax fills the gap in its especial application to bachelors." 137

Fowler's report was shortly afterwards followed by Galt's conveying the Ankole chiefs' wishes to adopt the Poll Tax in place of the Hut Tax.[138] Reports from elsewhere, however, were less encouraging. Most officers were against the imposition of the Poll Tax on the grounds that the people were "not sufficiently acquainted with the principle of the Hut

135. No. 1 of 1905
136. C.0.536/1/14537 Wilson to Lansdowne, Despatch 78 of 20.3.05
137. Ibid.
138. Ibid.

Tax."[139] None the less, Wilson

> "decided to enact the Poll Tax Ordinance, so as to meet the legal requirements, and to which it was necessary to enact promptly so as to benefit by the collections which were undertaken by the chiefs and which delay would have injuriously affected." 140

By the Ordinance, a poll tax of 2 rupees was imposed on "each adult male native of the Protectorate" who was not liable to pay the hut tax, under the Hut Tax Ordinance, 1900.[141] The tax was payable in the same manner as the hut tax, including payment in labour in lieu of cash.[142] However, the Poll Tax Ordinance, unlike the Hut Tax Ordinance, did not make provision for revenue offences and their punishment. Otherwise the Ordinance was on all fours with the existing legislation; it was in its essential respects similar to the terms of the "Uganda Poll Tax Agreement", 1904, and was open to similar criticisms and abuses; and so, the Buganda precedent was, once again, adhered to. The reasons for this hardly need any emphasis. What is interesting, is that Wilson, the author of the Poll Tax Ordinance, 1905, had as early as 1903 strongly recommended the abolition of the Hut Tax. He confided in the Commissioner thus:-

> "Some of the means of evasion known to be employed invoke more serious results than simply direct loss of revenue to the state. There is that of overcrowding in huts: there is further that of refraining from marriage so as to avoid absolute need for a separate dwelling, and yet again, that of repudiation of the married state, by which phrase I refer to cases where heads of families send their wives to live temporarily with their friends while they themselves pose as bachelors or widowers, and live elsewhere until the period of tax collection is over, when the family reunites and lives again in the hut it had deserted.
>
> I am told that in some parts of the country owing to these cases, on an average one hut is made to suffice for three families. The mischief is the more far reaching in a country so lax in its code of morality as this is, it can easily be imagined what opportunities for moral irregularities arise from

140. C.O.536/1/14537 op. cit.
141. Poll Tax Ordinance, 1905, S.1
142. S.I. It follows that the Hut Tax Ordinance, 1900, was left intact despite its defects.

> such conditions of overcrowding and depreciation of marriage, and I have felt bound to sympathise entirely with the missionaries when they have represented these circumstances as a set off against the great benefits accruing from the tax." 143

The excerpt is self-explanatory, it states the case against the hut tax succinctly. Yet, as has already been stated, the Hut Tax Ordinance, 1900, was not repealed until 1914. In the "agreement Kingdoms", however, the tax on huts was in 1909 superceded by a universal poll tax of 5 rupees payable by "each adult male native of the Protectorate in the district in which the Ordinance is in force."[144] For the purposes of this Ordinance "adult male" meant any male, who in the opinion of the District Commissioner, was above the age of 14 years;[145] otherwise the new Ordinance was in similar terms to the Poll Tax Ordinance, 1905, which, incidentally, was left intact. Section 2 thus provided that:-

143. UNA/A27/13 Informal Minute for HM Commissioner by Wilson 2.12.03
144. No. 5 of 1909 S.3. The term "native of the Protectorate" was not defined. However, in 1910, the Poll Tax Ordinance, 1910, provided that the term included "every male native of East Africa who has been resident in the protectorate for one year, prior to April for which such tax is due." (S.2) The reasons for this were stated as follows: "I have purposely proposed that "East Africa should be inserted instead of 'Africa' so as to exclude Egyptians, Cape Boys and Arabs, as I think such persons should be classified apart from natives of East Africa. There are many natives of German as well as British East Africa who are permanently resident or employed for several years at a time in Uganda, and it appears to me that such persons should take their share in providing for the government of the country. Further it would be possible for natives of British and German East Africa to live a short distance within the Uganda boundary and thus avoid paying taxes to either their own territory or that of Uganda, while benefiting by the good government of both." C.O.536/32/39947.
    In 1914 the term "native of the Protectorate" was defined to mean a "native of Africa", not being of European or Asiatic race or origin who has been resident in the Protectorate for one year.
145. In March 1909, the age of majority was raised to 18 years by the Poll Tax Ordinance (No.3), 1909, S.2.

> "This Ordinance shall apply to such districts as the Governor may from time to time notify by Proclamation; and, the Hut Tax Regulation, 1900, and the Poll Tax Ordinance, 1905, shall not apply to any district to which this Ordinance applies." 146

Inter alia, this meant that the chiefs responsible for tax administration were still powerless (they had no statutory powers) to deal with recalcitrant tax payers. The Johnstonian approach still held sway. However, its weakness was soon realised, and this anomaly rectified by the enactment of the Poll Tax Ordinance, (No.2) of 1909, under which failure to pay the poll tax was punishable by a fine not exceeding 15 rupees, or imprisonment not exceeding 3 months.[147] Section 3 provided that:-

> "Any person who possess the means of paying the said Poll Tax and who upon demand shall neglect or refuse to pay the same shall be liable to a fine not exceeding three times the amount due from him or in lieu thereof to imprisonment with or without hard labour for a period not exceeding twice the period for which he might have been called upon to labour had he not possessed the means to pay the said Poll Tax." 148

This section applied to those tax payers with the means to pay; those with no means to pay were dealt with under section 4, by which

> "Any person who has not satisfied the said Poll Tax before the expiration of the period within which the said Poll Tax is payable and who upon being required so to do neglects or refuses to work for the Government at such times and places and for the full prescribed period as may be directed by the District Commissioner or person authorised by him in his behalf shall be liable to imprisonment with or without hard labour for a period not exceeding twice the period for which he ought to have worked for the Government as aforesaid." 149

These provisions were, however, from the point of view of the tax administrator, still far from satisfactory. In Rex v. Kakoyikoyi,[150] for instance, the High Court held that no tax payer could be imprisoned

146. S.2 of No. 5 of 1909
147. S.2 of No. 2 of 1909
148. S.3
149. S.4
150. (1910) 1ULR 85

for non-payment of poll tax, unless and until he had been required to work and had neglected or refused to do so.[151] In this case the defendants were convicted by the District Magistrate, and each sentenced to two months' rigorous imprisonment, although neither had ever been required to work nor neglected or refused to work. It was held that imprisonment could only be awarded under S.4, where it was proved against the accused that they were required to work and neglected or refused to do so. Accordingly, the decision of the District Commissioner was set aside and the tax payers released forthwith. In the instant case, the accused had almost served the whole of the period for which they could have been called upon to work in lieu of the 1909-1910 Poll Tax;[152] nevertheless, the effect of the Court's decision on tax administration hardly needs emphasis, it virtually nullified section 4, and, no doubt, many a District Officers' tax collecting efforts. Regrettably, however, the two hapless tax payers' rights were not protected: no compensation, for wrongful imprisonment was ever paid; for under the existing legislation and under the colonial regime they had no right to such compensation. That was colonial power. Any recognition of such a right was always viewed with suspicion - it was in some ranks of British officialdom a sign of weakness.

7.3.3. THE MOVE TOWARDS THE HARMONIZATION OF POLL TAX LAWS

It will have been observed that the Poll Tax Ordinance, 1909, did not abrogate nor amend the Hut Tax Ordinance, 1900, or the Poll Tax Ordinance, 1905. Section 2 merely provided that the existing legislation "shall not apply to any district to which this Ordinance applies."[153]

151. per Ennis and Carter J.J. at p.86
152. (1910) 1ULR 85 at p.86
153. No. 5 of 1909 S.2

The Ordinance was originally intended for Buganda only. Shortly after its enactment, however, it was noted that large numbers of tax payers were leaving Buganda for Ankole, Bukedi, Bunyoro and Toro, in order to escape the increased taxation in Buganda.[154] Under these circumstances, therefore, the revenue authorities had no alternative but to try to prevent this wave of emigration. Accordingly, Tomkins, the then Acting Governor, directed that the Poll Tax Ordinance, 1909, should be applied to the districts in question. However, when news of this reached London, the Governor, who was then on leave in England, advised against the extension of the new ordinance to the Western Kingdoms. Instead, he suggested that the full rate of 5 rupees "should be levied on all Baganda and Basoga settling in those countries."[155]

This led to the enactment of the Poll Tax (Baganda and Basoga) Ordinance, 1910, the main provision of which provided that:-

> "A Poll Tax of Rupees 5 shall be payable by all adult male Baganda and Basoga in the Protectorate, whether resident in Buganda or Busoga or not and the provisions of the Poll Tax Ordinance, 1909, the Poll Tax Ordinance (No.2), 1909, the Poll Tax Ordinance (No.3), 1909, shall so far as the same are applicable, apply to such Baganda and Basoga. Provided always that Baganda and Basoga who, before the 1st day of April 1909, had permanently left Buganda or Busoga to live elsewhere, shall pay such tax as from time to time shall be payable in the part of the Protectorate where they shall reside: the burden of proof of such change of domicile as aforesaid shall be upon the Baganda or Basoga desiring to establish it." 156

In this way, the revenue authorities sought to stem the tide of emigration. However, it would seem that these arrangements did not prove particularly successful. For, shortly afterwards, the Poll Tax Ordinance, 1909, as amended, was applied to the so called "tax haven" districts of

154. C.O.536/26/19220
155. Ibid. Bell's minute of 8.7.09
156. No. 4 of 1910, S.2

Ankole, Bunyoro and Toro. In Toro this was effected by the Toro Agreement (Poll Tax) 1910, under which, a poll tax of 3 rupees was established in lieu of the Hut and Gun Taxes imposed by the Toro Agreement, 1900.[157] In Ankole and Bunyoro districts, on the otherhand, a poll tax of 5 rupees was imposed by proclamation as provided by the Poll Tax Ordinance, 1909, S.4.[158] It is evident that the Government's approach to taxation was still largely amateurish and pragmatic, it would seem that the revenue authorities, despite the colonial office's injunctions to Johnston, had no clearly thought out policy on this vital matter! Hitherto the hall-mark of the revenue system had been the differential taxes and tax rates within the various administrative districts; the origin of which was the distinction drawn by the early British officers between the so called "highly developed tribes", on the one hand, and the "primitive tribes", on the other.[159] The result, as the foregoing material indicates was the proliferation of piecemeal tax legislation. Thus, by 1913 there were no fewer than 15 different ordinances, in force, in different parts of the Protectorate. Clearly, this state of affairs was very unsatisfactory: it was confusing and made for complexity; and, indeed, it was increasingly becoming difficult to defend the existence of differential taxes and tax rates in the same district.[160] In the result the existing legislation was, in 1914, collated and embodied in the Poll Tax Ordinance of that year; and, so ended the dual tax legislation, though regretably, not the corollary two-tier tax structure. In future, a poll tax of 3 and in some districts, 5 rupees was to be imposed "on every adult male native of the Protectorate."[161]

157. Toro Agreement (Poll Tax), 1910
158. See also, No. 7 of 1911
159. For instance, see H.M. Special Commissioner's First Report Cd.671(1901)
160. C.O.536/62/38509, Att. General's Report on the Draft Poll Tax Ordinance 1913
161. No. 2 of 1914 Schedule 1

Provision was, however, made for the exemption of several classes of tax payers, including crown tenants, school pupils, ex-soldiers and segregation camp attendants.[162] Additionally, tax payers in Ankole Buganda, Bunyoro and Toro "having by one wife five or more living children over the age of one year" were to be exempted from taxation altogether. The object of the latter exemption was "to encourage the natives to breed and raise large families,"[163] thereby promoting the increase of population in those areas where the infant mortality rate was extremely high.

> "At present the infant mortality is appalling and the population is dying out steadily. The death rate is 30% and the birth-rate is only 17%. The women give hardly any care or attention to their children and seem to consider them an accumbrance. I believe that exemption from Poll Tax could greatly encourage them to be good mothers." 164

These provisions apart, the Ordinance, as mentioned above, merely codified the existing legislation and as such may be indicted on several counts, the gravest of which, from the revenue point of view, was the wholesale adoption, despite the "Kakoyikoyi case", of sections 4 and 5 of No. 6 of 1909,[165] the effect of which, as Rex v. Malingumu,[166] shortly afterwards poignantly demonstrated, was to cripple the District Commissioner's tax collection endeavours. The accused, in this case, were convicted "of being unable to pay Poll Tax and neglecting to do so when order to do so and sentenced to three weeks' rigorous imprisonment" and, in addition, ordered to pay the tax due.[167] Having thus stated the facts, the Chief Justice continued:-

162. Ibid. S.X(1) to (10), and (12)
163. Ibid. S.X(11)
163. C.O. 536/14/2394 Fidde's minute (n.d.)
164. Ibid.
165. Poll Tax Ordinance, 1909
166. (1915) 2ULR 125
167. Ibid.

> "Charges against two separate accused for two separate offences unconnected with each other cannot legally be tried together . Moreover, the sentences are illegal, as it appears the accused had no means to pay the tax, but no order to work appears to have been made under section 7 of the Ordinance, so the accused have not refused to work and rendered themselves liable to punishment under section 9. The Magistrate has not specified the particular section of the Ordinance under which a conviction has been had. It may not at first sight be clear from the Ordinance whether the Government in the case of a person who has not the means to pay may elect either to require a person to work under S.7 or to prosecute him under section 8, or whether the later section is intended to be used only where a person has the means to pay but neglects or refuses to do so. I consider however that the latter construction is the correct one, and is moreover in accordance with the law on the subject prior to the present ordinance." 168

It was held that

> "before a person can be imprisoned for failure to pay Poll Tax it must be shown that he had the means to pay, or that having no means to pay an order to work has been made under section 7 of the Ordinance, which order had been disobeyed." 169

The Magistrate's decision was accordingly quashed and the order for payment of the tax cancelled. Similarly, in Rex v. Tabula[170] the District Magistrate's decision was set aside, simply because the revenue authorities had not shown that the accused had the means to meet his tax obligations and that he had, upon demand, refused or neglected to do so. In that case the accused had failed to pay his tax for three years, and was sentenced to two months' rigorous imprisonment for each of the three previous tax years. His simple and piteous plea was that he was a poor man with no fixed abode. The judgment after discussing the conduct of the case below including the failure of the Magistrate to express an opinion as to the truth or falsity of the plea, made the following pronouncement:-

168. (1915) 2ULR 125
169. (1915) 2ULR 125
170. (1915) 2ULR 165

> "Sections 7 and 9 of the Poll Tax Ordinance, 1914, provide that a person who has not the means to pay cash may be required to work for the Government for one month and if he neglects or refuses to work as lawfully required shall be guilty of an offence. Section 8 further provides that a person who neglects or refuses to pay tax on demand shall be guilty of an offence. It is clear therefore that the last mentioned section of the Poll Tax Ordinance, 1914, must be read with Sections 7 and 9 and that it is only in the event of the accused neglecting or refusing to pay the tax upon demand, if he has the means to pay it, that he has committed an offence; if he has not the means to pay when he is asked there are two courses open, either to give him time to pay or to require him to work for the Government. In other words, before a conviction can be had it must be shown that the tax was demanded and that at the time or subsequently the accused had the means to pay but neglected or refused to do so; it is not sufficient to show that the tax was demanded and that the accused had previously had the means to pay but had spent it or could have had the means to pay if he had chosen to work." 171

In the instant case there was neither proof of demand nor neglect or refusal to pay or indeed, that the accused had the means to pay. Accordingly the decision of the District Magistrate was quashed and the accused set free. In cases where the tax payer had no taxable income, the District Commissioner had, in Carter's words "two courses open (to him), either to give him time to pay or to require him to work for the government."[172] From the revenue point of view, such a procedure was cumbersome, costly and inefficient. Indeed, this prescription hardly differed from Johnston's "pole pole" approach, to taxation, in the early years of British rule which it sought to replace. These "liberal", and somewhat "unique" court decisions did not, however, constitute a charter for tax delinquents. In the latter case, for instance, the Magistrate's decision was quashed "without prejudice to the right of the District Commissioner to order the man to work, in lieu of tax, for the prescribed period in respect of each year for which"[173]

171. (1915) 2ULR 165'
172. Per Carter, C.J. in Rex v. Tabula (1915) 2ULR 165, at 166
173. Ibid.

the accused had not paid his poll tax; which in this case amounted to 18 weeks instead of 12 weeks laid down by the relevant Ordinance.[174] This sentence was, however, less than that originally imposed by the District Commissioner.[175] That said, however, this state of affairs was both unfair and unsatisfactory. Yet this anomalous situation was not rectified until 1923.[176] In the meantime, the Poll Tax Ordinance, 1914, itself had been, in the light of experience, drastically modified to meet some of the criticisms alluded to above. Of significance were the following amendments:-

174. This anomaly was due to the fact that taxation in Buganda was governed by the Poll Tax Ordinance, and the Native Law entitled "The Law for the people who do not pay their taxes before the end of the year for which it is due, 1910", under which six weeks' work could be ordered in lieu of payment of poll tax. The main provisions of this enactment were in similar terms to the Poll Tax Ordinance, 1909, recast by the 1914 legislation, but left intact in the case of Buganda. Hence, the accused being a Muganda was dealt with in accordance with the "Native Law".
175. A prison sentence of 24 weeks had been imposed.
176. The terms under which the conflict was resolved were set out in the Uganda Agreement (Taxation of Natives), 1922, as follows: "The Governor agrees to introduce an ordinance to amend the Poll Tax Ordinance, 1920, so that natives of Buganda shall be allowed to pay their poll tax at any time before the thirty first day of December of the year in which such tax is due; and upon such ordinance being passed and approved by His Highness the Kabaka and the Native Government, the Kabaka agrees to repeal the native law entitled "the Law.....1910". Accordingly, S.9 of No. 27 of 1920 was amended in 1923, by No. 3 of 1923 in accordance with the above Agreement, thus bringing Buganda into line with the rest of the Protectorate.

(a) the onus was placed on the tax payer to prove that he was incapable of paying poll tax, thus overturning the rule in Rex v. Kakoyikoyi. 177

(b) the penalties for non-payment of poll tax were greatly increased; the term of imprisonment, for instance, was trebled, from two to six months. 178

(c) Section 12 provided that a delinquent tax payer would not be exempt from a civil action for the recovery of poll tax. The motivating factor behind this provision was the rule in Rex v. Malingumu and Petero. 179

(d) the police and the revenue authorities were empowered to arrest, without warrant, anyone contravening the provisions of the ordinance. 180

The cumulative effect of these changes was the reversal of the previous tax collection machinery, the main feature of which was the absence of the use of force and coercion. The "softly softly" approach advocated by Johnston and successfully implemented by his successors was no longer necessary; indeed by 1920 it was regarded by many as a liability. Hence these reforms. It would appear, however, that the pendulum swung from one extreme to the other. The Colonial Office, for instance, took special exception to section 7 and the use of the police and coercive methods in tax administration. Section 7 provided that:

177. (1910) 1ULR 85
178. S.10 provided that: "Any person as aforesaid who has neglected or refused to pay Poll Tax in any year prior to that in which the same shall become due shall be liable to a like punishment in respect of every such neglect or refusal for any number of past years not exceeding three. Provided always that the maximum term of punishment which may be inflicted in respect of non-payment of Poll Tax shall not exceed six months".
179. (1915) 2ULR 125
180. S.17 provided that: Any Police or Administrative Officer may arrest without warrant any person failing to observe the provisions of this Ordinance.

> "Any person liable to pay poll tax who proves to the satisfaction of the District Commissioner or the court that he has not the means to pay the same in cash may be required to work for the Government for a period not exceeding two months in lieu thereof by the District Commissioner and if directed by the court such work shall be done in custody." 181

The following excerpt from a colonial office minute on the Poll Tax Ordinance, 1920, succinctly states their objections to S.7 in these terms:-

> "I do not think the stigma of custody need be added. Ex hypothesis the person in question is only not paying because he has not the cash. I submit the same procedure should so far as possible be followed in all the EA colonies in regard to native taxes. This is a departure from the Kenya provisions. It has been suggested to Kenya that the corresponding provision in the Kenya Ordinance should be cancelled." 182

Similarly, S.10 was attacked for departing from the policy of the Secretary of State for Colonies, on native taxation in East Africa.[183] Further, the powers of arrest under S. 7 were considered "unusual in this connection", and in any event too excessive.[184]

Despite these observations, however, the Poll Tax Ordinance,1920, was, without modifications, approved by the Secretary of State for the Colonies. However, the Governor was directed to furnish periodic reports on the working of S.7; and his first report, in part, was as follows:-

> "It is the practice for persons required to work under section 7 of the Ordinance to be placed under the supervision of a member of the Native County Police during the performance of this work. In districts where there are no county police,

181. No. 27 of 1920 S.7
182. C.0.536/104/2930
183. C.0.536/104/2930, the matter is put thus: "S.10 is badly drawn and I think it impossible to give a meaning to it according to its grammatical construction. The intention seems to be to enable a person who has neglected to pay his poll tax 3 out of 4 consecutive years to be sent to goal for 6 months - a very severe penalty for not paying from 9 to 22½ florins. This is a departure from the Kenya practice."
184. C.0.536/104/2930

> a constable of the Protectorate Government Police force may be required to undertake the supervision. Such persons are not subject to further restraint unless it is evident that they deliberately intend to evade their obligation in which case it would be the duty of the Lukiko authorites to enforce the attendance until completion of the work." 185

The second report was more comprehensive and informative, and for the first time spelt out the policy considerations behind the legislation. Among other things, it was reported that section 7 was applied to tribes who were in an early stage of development, and were accordingly not in a position to pay poll tax in cash. In lieu of such payment, the report continued,

> "the young men of the tribe are called upon to work for short periods on constructional works, such as the bridging of swamps and the cleaning of roads or broad pathways, which are necessary for the opening up of the district to trade, as well as for efficient administration." 186

Here, the only way in which the tax paying public could obtain cash for the payment of tax was by the sale or export of cattle, sheep and goats. However, this was fraught with difficulties; the Governor, for instance, was reluctant to offend local customs and prejudices against the sale of livestock.

> "Nothing, however, would create more discontent and mental distress to a primitive tribe than the decrease of their livestock in this manner, and the tribe would infinitely prefer to work off their obligations by unpaid labour. I am therefore very much opposed to such a policy, apart from the consideration that in many areas necessary veterinary restrictions on the movement of livestock would render it an impossible one." 187

The report also examined the possibility of paying "the natives for their labour on public works" and recovering in poll tax the money so paid.[188]

185. C.O.536/113/46400 Despatch No. 390 of 9.8.21
186. C.O.536/119/31883 op. cit.
187. Ibid.
188. Ibid.

However, this, too, was open to objection. Firstly, the wages were so low that it would be necessary for a man to work for at least a complete month before he could earn enough money to meet his tax obligations. It was considered that this "would be burdensome and objectionable to individuals of a remote and undeveloped tribe."[189] Secondly, the Governor was of the view that

> " a system of inducing raw natives to work in return for a cash payment, which is immediately taken away again as Poll Tax, would seem to such natives to be incomprehensible and accentric conduct on the part of the Government." 190

It was felt, under these circumstances, that the relations between the tax paying public in these areas and the revenue authorities were likely to be far more friendly and generally satisfactory under the existing arrangements than they would, if the alternative considered above were adopted.[191] Accordingly, the Governor sought permission from the Secretary of State for the Colonies, for the continuation of tax-labour, and received the following reply:-

> "I am not in favour of the principle of tax labour if it can be avoided, but in view of the representations contained in your despatch, I do not wish to insist on the entire abolition of the system in Uganda. I consider, however, that its working should be closely watched and that as a general rule it should be confined to cases where the native has no other means open to him of paying his tax." 192

The position of the Colonial Office in this matter was far from clear. It would seem, despite this rhetoric, that Winston Churchill, the Secretary of State, was indifferent to tax labour and the sale of cattle

189. C.O.536/119/31883 op. cit.
190. Ibid.
191. Ibid.
192. Ibid.

to obtain cash for the payment of poll tax.[193] Indeed, though anxious to harmonize "native taxation" in East Africa, he had no clearly defined policy on the matter; his approach to "native taxation" was largely pragmatic. In the result, tax administrative practice in East Africa was not always uniform, it varied from area to area and was usually determined by local conditions rather than by the mandarins at the colonial office. The following excerpt from a colonial office minute on tax labour is illuminating:-

> "I do not like tax labour, but seeing that we have just decided to allow it to be introduced into Tanganyika Territory in spite of the decision to abolish it in Kenya, I do not see very well how we can refuse to allow it to continue in Uganda." 194

In line with this reasoning, tax labour was allowed to continue, and, despite the International Labour Convention, 1920, tax labour remained a central feature of tax administration throughout the interwar years. In sum, the Government's tax policy, though successful in terms of tax receipts, was still in shambles. That Government policy on "native taxation" was in such a state, however, is hardly surprising; it was on all fours with its ilk in other areas. True, it in no time, solved the thorny question of financing the Protectorate and so relieved

193. C.O.536/119/31883 thus part of his despatch to the Governor reads: "I realise the force of the special considerations which arise with regard to the sale of livestock as indicated by you in para. 3 of your despatch. I would observe that this method of paying tax is normally employed in the case of the Masai in Kenya without, so far as I am aware, any trouble arising. While, however, I think this method should be encouraged, and consider that a less conservative attitude on the part of the pastoral tribes of Uganda would be for their ultimate benefit I do not wish to force the sale of stock as an alternative to tax labour in cases where it is strongly opposed."

194. C.O.536/119/31883

the Imperial Treasury and the British tax payer from shouldering the burden of "the Uganda expense", rather earlier than had been anticipated, but that was not its only, or indeed, the most important achievement. Mention has already been made of the total disruption it brought in its train, and abominable, though, that was, it was by no means the worst effect of that policy. It vies, for pride of place, with the overcrowding, squalor, disease and the migration of people and the ensuing misery.

In retrospect, however, and from the point of state craft, the worst effect and, indeed, the most lasting legacy of "native taxation for Imperial purposes" was the stultification of local government and local government finance, in particular, the two were utterly and completely stunted. Yet, rather ironically, the transformation of "native authorities" into autonomous local government bodies was, according to the Canons of Trusteeship, the centre piece of British colonial policy. Such a policy, however, was incompatible with "native taxation" - another cardinal policy - the aim of which was "to amass revenue at any cost, and to cut expenses to breaking point".[195] The latter was anathema to the former, and the Government's dilemma was to try to harmonize the two irreconcilable policies. Needless to say, they did not succeed.

The list of colonial dilemmas was, evidently, indeterminate, and "native taxation" was one of the more intractable contraditions of colonial rule. Inter alia, this policy meant that the Colonial Government was the sole recipient and disburser of all the tax receipts; and that the "Native Authorities", which were, according to "official policy", being groomed and developed to take over, at some unspecified future date, the administration of their areas, were totally dependent on

195. Sir Frederick Jackson, (Governor of Uganda, 1911-1917) to Read, Private and confidential of 19.7.1911

central Government subventions, and had no say in, either the raising or spending of such funds. They had no single independent source of local revenue - the hallmark of local autonomy - and were, in practice, no more than field agents of the Colonial Government of which, of course, they were employees; and it was not until 1955 that the folly of this policy was generally recognised and publically acknowledged and concerted efforts made to take the necessary corrective action. And so it was, albeit belatedly, that the last five years of British colonial rule were, in this sphere, solely preoccupied with the unscrambling of the 50 year old central-local financial nexus, and the devolution of financial responsibility to the newly created District Administrations. This process, the details of which are discussed below, will pari passu, highlight the effects, if any, "native taxation" had on the development of local authority finance, and whether the District Commissioner's half a century of good housekeeping was a boon or not.

CHAPTER EIGHT

8.1.1. THE EMERGENCE OF LOCAL AUTHORITY FINANCE

Whilst there is no universally accepted approach to local authority finance, it is, nevertheless, generally appreciated that the existence of financial resources which are independent of the state are a sine qua non of a proper system of local government and administration. For without them, local government authorities become mere appendages of the state machine, and the elective principle a mere farce. What is more, local government, may, in such circumstances, be "reduced to the status of a mendicant begging for as much as can be spared from the national purse each year".[1] It follows, therefore, that financial autonomy is the backbone of responsible local government. The degree of that autonomy, however, will invariably depend on the amount of revenue advanced by the state to local government authorities.

Unfortunately, however, the simplicity of this formula gives little indication of the intricacies of local government finance and taxation. First, it overlooks the fact that for the proper management of the nation's economy the central government has to retain certain supervisory powers over the financial activities of local government authorities. Second, it ignores the fact that, "however, good the division of taxable resources between the centre and local government authorities, there is inevitably a gap between the expenditure of Local Government and their income. This gap has

1. Report on Urban Local Government, L M Buchanan, Government Printer, Entebbe, 1954, p.27.

to be filled by grants".[2] Thirdly, and more importantly, it presupposes the existence of semi-autonomous local government bodies at various levels beneath the Central Government. This, however, is not always the case. Thus, for instance, for over half a century, following the establishment of effective British rule in 1900, Native Governments and Administrations in Uganda, were no more than mere agents of the Protectorate Government, and were throughout this period, virtually dependent on Central Government grants and rebates. The entire power of taxation was, as a matter of Government policy, in the hands of the Protectorate Government. The "Native Governments and Administrations" were responsible for the assessment and payment of taxes, whilst the Protectorate Government was "the sole receiver and disburser of the revenue derived from direct native taxes".[3] Of particular interest here are the subventions and Central Government grants in aid to the "Native Governments and Administrations" and the financial relations between the Protectorate Government and the "Native Authorities".

From 1900, when the first "Rebate" on Hut and Gun taxes collections was made to "Native Authorities" through to 1955, the grants in aid which the Protectorate Government increasingly provided were of the character of percentage grants. The amount received by each Native Authority depended, not upon its needs, but upon its expenditure, and, there was, evidently, "little method and much intricacy about the computation of this rebate".[4] Thus, for example, the percentage grant system in vogue, in 1942 was:-

2. Report of the Relationship Commission, Earl of Munster, Government Printer, Entebbe, 1961, p.313.
3. Memorandum on Native Taxation, Sir Charles Dundas, UGP, 1942, p.1.
4. Ibid. p.2.

> "In Buganda, Madi, and West Nile 20% of the Poll Tax; in Ankole, Kigezi and Bunyoro 30%; in Lango 10% on 13/- of a 15/- tax plus 2/-; in Busoga 10% plus 6/- tribute; in Teso, Budama and the Central District 10% plus 3/-; in Karamoja 3/- (out of a 7/- tax); in Toro 2/- on 6/- taxes and 40% on 10/- taxes."[5]

Besides Rebate on Poll Tax collections each "Native Authority" received other contributions from the Central Government, most of which partook of the nature of percentage grants; and these together with Rebate were, in 1942, equivalent in amount to 33 1/3% of the Poll Tax receipts.

> "But here one comes upon most involved transactions because the Native Authorities also make contributions to the Government. Thus in Buganda the Protectorate Government gives to the Native Government Rebate to the amount of £31,000 and receives from the Native Government £13,400 for road maintenance and receives from them £550 for audit fees, pays to the Native Government £212 on account of Poll Tax transport. The net result is that the Protectorate Government gives to the Native Government £42,462 or 27% of the Poll Tax of Buganda.
>
> Much the same is the case everywhere else in Uganda. The Native Authorities make tax collections for the Government, pay it to the Government, receive back rebate, make reimbursements to the Government, and are given grants by the Government: altogether a most complicated proceeding entailing a great deal of accounting with waste of time, staff, and, be it noted, a preposterous paper consumption which could well be saved."[6]

The net result of all this was that the "Native Treasuries" were throughout the interwar years, "virtually operated by the District Commissioners simply because the Native Authorities [could not] understand the accounting system",[7] and the Protectorate

5. Memorandum on Native Taxation, op.cit. p.2.
6. Ibid. p.2.
7. Ibid.

Administration was evidently well satisfied with the way in which "Native Treasuries" were being run.

> "It is only natural that finance as a new conception in African society should present the greatest problem, and because of its novelty it must lag behind other more familiar functions of the Native Administration. Pride may justly be taken in the soundness and efficiency of the financial position and management of the Native Treasuries, but this fact is manifest proof that they have been the concern of the Native Administrations to only very slight extent. It is true that in many cases they are run by native staff paid from Native Treasury funds, and in some cases Katikiros or a Senior Native Administration Official presides thereof; but in other cases it is the District Commissioner who virtually controls the business as though it were a branch of his office. I naturally realise that in certain tribal areas it cannot be otherwise at the present time, and I am concerned only to see gradual progress made in the way of more direct and active participation and control by the Native Administrations themselves."[8]

During the 1940s, however, there was growing dissatisfaction in some quarters with the existing central-local financial relations between the Protectorate Administration and the "Native Authorities". This was a period when Native Governments and Administrations were being reorganised and given powers to manage their own internal affairs to the utmost of their abilities. However, that object could not be achieved nor the ultimate policy implemented, if the District Commissioners contiued to treat "Native Treasuries" as though they were local departments of the Protectorate Exchequer. The percentage grant system had clearly led to an undesirable degree of Central Government control over the activities of Native Treasuries, often to the disregard of broader issues of principle and Government policy. However, the Administration was beginning to realise, in view of the

8. Memorandum on Native Taxation, op.cit. p.2.

changed circumstances, that "direct taxation should be presented to the native in its right perspective".[9]

> "Formerly the Poll Tax went straight into the coffers of the Government and I speak from personal knowledge when I say that the native had his own views as to whether it went from that depository. It would, of course, be easy to prove by statistics that in Uganda all the Poll Tax and more is expended for the direct use and benefit of the native communities, but not that each tribe receives according to its contribution. I think this could be more effectively demonstrated in practice."[10]

Indeed, a growing number of taxpayers were beginning to ask some awkward questions and somewhat "rather suspiciously whether the contribution made by their Native Treasury to the Medical Department" was expended in their locality; and, an examination into this point disclosed that those contributions had in fact not always been expended locally; indeed, it was conceded that "the native might put the same question respecting local expenditure of his Poll Tax".[11] For, while it was true to say that all Poll Tax preceeds were "devoted to native services it is not correct to say that each tribe or area receives according to its tax contribution".[12] Accordingly, the key to future policy was to be found in "the making of these Native Treasuries more genuinely a function of Native Administrations",[13] so that it might be visibly demonstrated to the native that more than half his taxes go to his own Treasury for expenditure in his own tribal country".[14] Towards this end, the existing taxes - the Protectorate Poll Tax and the Native

9. Memorandum on Native Taxation op.cit. p.4.
10. Ibid. p.4.
11. Ibid. p.4.
12. Ibid. p.4.
13. Ibid. p.4.
14. Ibid. p.4.

Administration Tax - were to be consolidated into one, and the entire proceeds assigned to the Native Treasuries for their own use. This proposal, had as its "ultimate aim, the abandonment of direct taxation of Africans for Protectorate revenues", and the elimination of "payments to and from the Protectorate Government".[15] Thus, at some future date, the entire proceeds of direct taxation "on natives would accrue to the Native Treasuries and so become in effect a local tax".[16] The only question was whether, that aim could be realised "without detriment to Administration and Finance".[17]

> "A legitimate criticism of the scheme may be that a Native Administration emancipated from rigid control might not devote all these monies to the purposes for which they are intended."[18]

On the other hand, "the whole system of Poll Tax and all its implications" was, without question, "a blot on our fiscal practice",[19] and Dundas, among others, felt that the time was "ripe, if not overdue", for its overhaul. In any event the aims of Government policy for the establishment of "Native councils" on a democratic basis could not be fully realised, "if their principles were to be subordinated to other considerations such as convenience and efficiency. Native Authorities were not instituted for sterner control of the people and Native Treasuries were not created merely in order to give the District Commissioner a freer hand in local expenditure".[20] Those institutions were "set up solely in order to implement the policy of Indirect Rule and unless they function in

15. C.O. 536/209/40256 Dundas to S/S. 7.1.1943. See also C.O. 536/209/40256 Dundas to S/S. 3.9.1942.
16. Ibid.
17. Memorandum on Native Taxation, loc.cit.
18. Ibid.
19. C.O. 536/209/40256 Dundas to Sir Arthur Dawe. 8.1.1943.
20. Native Administration in Uganda, op.cit.

conformity of that policy there is no justification for their existence".[21] Few would quarrel with Dundas' planned reform. There were sceptics, however. But even here there was no opposition to the principle; the only point at issue was the timing and mode of their implementation in the various areas of the Protectorate. "The Regents of Buganda, for instance, have expressed their full agreement with the aims I have set, but would prefer to await the results of trials elsewhere of the new system envisioned."[22] Dundas' problem, however, lay elsewhere. He thus confided in the Secretary of State that:-

> "While some of my administrative staff have shown interest in the subject I have detected no enthusiasm but then I have been forced to realise that for the most part the provincial administration in Uganda is not very receptive to new ideas."[23]

Undeterred, however, Governor Dundas informed the Colonial Office of his intention to recast the percentage grant system and asked for permission to introduce "a single tax in the Eastern Province as from 1st January 1943"; and in early December 1942 received the following reply:

> "The desirability of aiming at the eventual conversion of the consolidated tax into a purely local tax at the sole disposal of the Native Treasuries appears to me to be open to question. Such a development would mean that the African had no direct financial interest in those services which must of necessity remain a charge on Central Government funds and the effect might be to make the Central Government dependent on the Native Administrations for a substantial part of its means of existence - a state of affairs which you will doubtless

21. Memorandum on Native Taxations, op.cit
22. C.O. 536/209/40256 Dundas to S/S 3.9.1942.
23. C.O. 536/209/40256 Dundas to Sir Arthur Dawe 8.1.1943.

agree would be unsatisfactory in the extreme."[24]

Not unnaturally, Dundas was disappointed, but not at all surprised, and his response, set out in a private letter to Sir Arthur Dawe is illuminating.

> "I dislike occupying your time with argument on a subject whereon there is no common basis for agreement and this is no time for academic discussion. But I do want to have it known that I regard the whole system of Poll Tax and all its implications as a blot on our fiscal practice. I can think of no other better method than indirect taxation. We have for instance at the present time special Wartime reveunue derived almost wholly from native production and consumption, pretty nearly equivalent to the sum of Native Poll Tax. I incline to think it could be substantially more and on the other hand I consider the Poll Tax to be in any case too high.
>
> If the Native Administration Tax remains, and even if it be increased, it is not the same thing when a Native Government exacts cash from its people and when we do so. We must appear as an immensely rich and all powerful foreign autocrat squeezing hard earned money out of poor needy folk for our own purposes."[25]

Dundas then restated his main proposals, outlined in his Memorandum on Native Taxation, and continued:

> "I recognise that so long as such a policy is not agreed in principle the time is inopportune for raising the subject and in that case it may be as well not to tamper with any part of the existing system. But assuming the time is not yet ripe, I apprehend that when it is so I may not be concerned with such matters and I therefore take this opportunity to record my own views for what they may be worth someday in the future."[26]

24. C.O. 536/209/40256 Oliver Stanley to Dundas 3.12.1942. It is noteworthy that the levy of a single tax, as proposed by Dundas was by no means a new practice - it was in force in Nigeria, Nyasaland and Northern Rhodesia and Tanganyika. Yet Dundas' request for its introduction in Uganda was turned down. The Colonial Office was anxious that Uganda should adopt the Kenyan system under which a "native tax" was imposed by the Central Government and local rates were imposed by the Local "Native Councils" for their own purposes.
25. C.O. 536/209/40256 Dundas to Dawe 8.1.1943.
26. Ibid.

Meanwhile, the existing financial arrangements between the Protectorate Government and the "Native Authorities" were to remain unaltered, save that steps were to be taken "to reduce the numbers of Africans imprisoned for tax default".[27] It was hoped that this would obviate the appreciation of what Dundas regarded as "harsh measures in the enforcement of tax collections";[28] indeed, if he had not been overruled by his superiors in London, he would have abolished Poll taxation and its attendant machinery.[29] He strongly believed that "a system of taxation which occasions the annual imprisonment of large numbers of taxpayers must be fundamentaly wrong and a cause of estrangement between the people and the paramount power".[30] Despite Dundas' spirited efforts, however, the imprisonment of tax defaulters was, until 1955, one of the main features of Poll Tax administration;[31] and so, too, was the subordination of "Native Authorities", in financial terms, to the Central Government. In the eyes of the Colonial Secretary, "native taxation" for "Protectorate purposes" was the main bond between the Governor and the governed,

27. C.O. 536/209/40256 Dundas to S/S. 3.9.1942. There were 9,000 males, nearly 1% of the taxable population, in prison, many for a third of a year, at a cost not far short of or even exceeding the taxes from them, "and this at a time when the great need is manpower, merely because we retain a bad system of taxation". (Dundas to Dawe, 8.1.1942.)
28. C.O. 536/209/40256 Dundas to S/S. 7.1.1943.
29. Ibid.
30. Ibid.
31. C.O. 536/209/40256 Dawe to Dundas 26.5.1942. In 1949, Sir John Hall, Dundas' successor, having, as has been seen, reorganised the "Native Authorities" on the lines of Creech Jones' Despatch of 1947, devolved certain powers on to the "Native Councils", fixed the Administration's share of the Poll Tax at six shillings per head per annum and increased the African Administration tax by an amount equivalent to the former rebate which he abolished. However, this experiment, as Dundas had predicted, was shortly afterwards brought to an abrupt end, and the financial responsibility for the devolved services, the "Native Treasuries" having failed the test, handed back to the Protectorate Administration. And subsequent attempts did not fare any better. Such was the legacy of the inter war period financial controls over the Native Governments and Administrations.

and its premature severance was to be deprecated;[32] and so it was done. The projected financial reforms were put in cold storage, and shortly afterwards, Dundas was replaced by Sir John Hall. There was, of course, no direct connection between Dundas' transfer and his views on "native taxation"; it is however noteworthy that his successor did not carry out his predecessor's root and branch tax reforms. He, however, did respond, albeit, cautiously and, as it happened, without success, to the post war, inside and outside, calls for reform.[33] Having taken little part in financial administration, however, the "Native Treasuries" were ill-equipped to handling large sums of public funds, and many were soon relieved of their recently acquired financial responsibilities. The last 50 years had hardly taught them anything, and Hall's modest financial reforms were the first, in a series, to reap the benefits of their inexperience. Thus, though, the British approach to "Native Taxation" realised its first policy objective - the establishment of a self-financing Protectorate - it did not achieve its equally important second objective - the training of the "Native Treasuries" to administer their financial affairs. Again, the reason is not too far to seek: as has been mentioned the two policy objectives were contradictory, and it was not until 1955 when this somewhat primitive form of taxation was superseded by the Personal Graduated Tax, the details of which are set out below, that, once again, further efforts, were made to devolve certain financial responsibilities on to the newly created District Administrations. The damage had already been done, however; and as the preceding account indicates, these efforts, too, were foredoomed; many a District Council did not come under the new

32. C.O. 536/209/40256 Oliver Stanley to Dundas 3.12.1942, see the passage quoted at foot note 24 supra.
33. Vide, Imperialism at Bay, 1941-1945, Louis, R.W. OUP, 1977, passim.

ordinance, and the few that chose to assume the new responsibilities, having failed, owing to lack of experience, to meet the Government's strigent requirements, were relieved of their financial duties, and the latter, once again, returned to the Central Government.

8.1.2. THE NEED FOR PERSONAL GRADUATED TAXATION

Before the passage of the District Administration (District Council) Ordinance of 1955,[34] the financial arrangements between the Protectorate Administration and the Native Governments and Administrations were dominated, as has been seen by the Poll Tax rebates and the African Administration Tax, which despite the name was imposed by the Governor in Council under the African Administration Tax Ordinance, 1938.[35] Thus both taxes were levied by the Protectorate Government though the proceeds of the latter went direct into the coffers of the "Native Treasuries". There was, as time went on, however, growing dissatisfaction within the ranks of British Officialdom with these fianncial arrangements between the Protectorate Administration and the various Native Authorities. Indeed, it was universally accepted that Poll Tax was not a satisfactory form of 'Native Taxation', but the Government, though

34. No. 1 of 1955. S. 51(1) provided that:- any rate or tax including the district administration tax may be based upon any one or more of the following systems:- (a) a uniform rate per head; (b) a graduated rate per head; (c) a rate based on the value of any movable or immovable property belonging to, leased, lent or occupied by any person liable to pay the rate or tax; or (d) any other system approved by the Governor in Council.
35. Cap. 188. Section 3(1) stipulated that:- "there shall be charged, levied, and collected - an annual tax to be known as the African Administration Tax. (2) The tax payable shall be at the rates specified in the schedule to this ordinance in respect of the areas and the class of persons therein mentioned. (4) The proceeds of the tax shall be payable to such African Administrations as the Governor may direct".

not oblivious to this it could not dispense with its proceeds, nor indeed, find a good substitute therefor. And it was not until the 1940s, that serious attempts were made to find alternative sources of revenue. As a flat rate levy, it was argued, Poll Tax was regressive, inequitable and an unsatisfactory form of taxation. It did not recognise the concept of "ability to pay", one of the most important canons of taxation.

> "Turning first to direct taxation of Africans, its form is that of a poll tax or house and poll tax at a flat rate which does not vary with the resources of the individual, though it is higher in districts where conditions are favourable e.g. availability of paid employment. The tax is, of course, regressive in character, the burden being heaviest for the poorest man.[36] It is also the case that the necessity for earning money to pay tax sometimes forces the African male into wage earning employment, away from his tribe with consequent disruption of his normal way of life. The tax has been criticized on the grounds that it implies recognition of the "plurality of Society in East Africa ...."[37]

In Dundas' eyes, however, these criticisms, though valid, were

36. It was pointed out that "in the case of the lowest income groups it might represent a considerable burden amounting, in some cases, to nearly the whole of the cash income". Woods Report p. 112. See also Report on Revenue and Taxation, A.E. Forrester, (the Treasurer of Uganda) Government Printer, Entebbe, 1936 p.4: "In Uganda the bulk of the taxation is paid by large numbers in small sums. Generally speaking, the amount paid by each individual represents a very large proportion of his money income, in many cases this proportion approaches 100 percent."

    And as early as 1914 the Committee appointed to inquire into and offer suggestions for revising additional revenue to meet the increased expenditure of the Protectorate had this to say:
    "The injustice of the Poll Tax when it is the only direct tax is that the sacrifice demanded from the Native is not in proportion to his means, the wealthy chief who owns from 10 sq miles up to 100 sq miles (as in the case of the Katikiro of Buganda) and has a large herd of cattle pays the same in direct tax as the ordinary working peasant." (C.O. 536/68/18929. Inc. No. 1 in Despatch No. 178 of 24.4 1914.)
37. Report on A Fiscal Survey of Kenya, Uganda and Tanganyika, Sir Wilfrid Woods, Government Printer, Nairobi, 1946 p.12.

misdirected; the problem, in his view, outlined below, lay elsewhere: the tax itself.

> "While I consider that in Uganda native taxes are unduly high, it is less the incidence and burden than the existing form and nature of taxation which I would see changed. The Poll Tax System has not been a very happy feature of Administration in Africa and we would do well to soften its appearance for the future. The time for doing so is ripe, if not overdue. For over and above all other objections I feel strongly that this system of taxation is now out of date and has become a misfit in the general framework of our policy of African Administration. It survives from a time when rough and ready means of furnishing revenue was unavoidable and when also a visible sign of submission was of practical consequence. Since then the whole relationship between our Government and Native Communities has been tranformed, and so also has the fiscal system undergone radical changes, in as much as there is now not only a Protectorate Administration and a Protectorate Treasury but there are also Tribal Administrations and Tribal Treasuries."[38]

Dundas maintained that had these conditions existed at the beginning of this century, the Poll Tax system in question would never have been devised. He thus believed that the time had come, if not overdue to "review the system in its relation to modern conceptions of Administrative practice and policy".[39] He, accordingly, drew up his Memorandum on Native Taxation, the upshot of which was his abortive fiscal reforms considered earlier. These efforts, however, were not entirely wasted. Dundas' fiscal policies, having been condemned by the then Colonial Secretary, were subsequently embraced by his successors at the colonial office and incorporated into the post war financial reforms, of which the high watermark was the Graduated Personal Tax, the main features of which are considered below.

38. Memorandum on Native Taxation op.cit.
39. Ibid.

8.1.3 THE GRADUATED PERSONAL TAX LEGISLATION, 1955

Until 1953, the revenue sources of local administrations were basically the Poll Tax rebates, and the African Administration Tax collected by the "Native Authorities" but imposed by the Governor in council under the relevant legislation; at a flat rate which varied from area to area according to the varying economic conditions; provision being made for the partial or total exemption of those incapable of paying the full rate. In 1952 the Central Government at the behest of Andrew Cohen, the new Governor, wishing to adjust the Central-Local relations, including the financial relations, invited a local government expert, Claude Wallis, to inquire into and report, inter alia, on the devolution of financial responsibilities onto the various local government bodies. In this connection, Wallis found that progress towards graduation of taxation had been hampered by:-

"(i) lack of insistence by the Central Government;
(ii) the maintenance of a flat rate poll tax by the Government itself;
(iii) local vested interests;
(iv) inability to think except in terms of a scheme uniform throughout a district;
(v) fear of getting out of line with neighbouring districts;
(vi) confusion with income tax;
(vii) thinking only in terms of varied rates of poll tax."[40]

Wallis thus found that the existing financial arrangements between the Protectorate Government and the "Native Authorities" had largely been influenced by political rather than by sound fiscal considerations. The imposition of the Protectorate Poll Tax, and its retention, despite its defects, is a case in point.

40. Report of an Inquiry into African Local Government in the Uganda Protectorate, C.A.G. Wallis, Government Printer, Entebbe, 1953, p.26.

> "In 1943 the Governor asked whether he could combine the Poll Tax and the Native Administration Tax. This was considered undesirable as it was felt that the natives should make a contribution to the Central Government and should be aware of their duty to do so."[41]

"Indeed, the only argument I have heard in support of retaining the Poll Tax is that it is a loyalty tax."[42] Evidently, this view was shared by a large number of witnesses, including one or two 'Native Administrations'! Yet, Wallis "found no evidence that the people's loyalty to the crown" was in doubt: "it seems to be deep and general and to be undisturbed even by the equally deep general suspicion about the Government's land policy."[43] Nevertheless, the argument persisted. But in keeping with his other proposals, Wallis dismissed this argument, and duly recommended that the Central Government should force the pace by:-

> "(a) abolishing Poll Tax;
> (b) reducing the subventions for education by a like amount;
> (c) pegging the African Local Government Tax at a fixed level;
> (d) insisting that any further revenue shall be raised by graduated assessments."[44]

> "The adoption of a rational and just taxation policy, [Wallis insisted], is essential if local governments are to assume complete financial responsibility for their present functions, let alone extend them. The flat rate is the most primitive form of taxation and became out of date as soon as variations in individual wealth appeared. In all districts now there is some variation of wealth: in some districts the variation is considerable. Graduation of taxation should now become the criterion of a local authority's understanding of what financial responsibility means. It should be kept permanently on the agenda until a satisfactory plan has been worked out."[45]

41. C.O. 536/213/40256 Minute by Footman - 18.5.1944.
42. The Wallis Report op cit p.26. Wallis felt that this was a political, not a financial argument. He records "that Bukedisupp orted it".
43. The Wallis Report loc cit. p.26.
44. Ibid. p.26.
45. Ibid. p.27.

Wallis' recommendations were, with minor exceptions accepted and embodied in the District Administration (District Councils) Ordinance, 1955, and in the rules and regulations made under it. Under this legislation, District Councils were authorised to levy an annual tax - the District Administration Tax - for their own use.

It was provided that the rate or tax should be based on one or more of the following:-

"(i) a uniform rate per head;
(ii) a graduated rate per head;
(iii) a rate based on the value of any property owned by the person liable to pay the rate or tax;
(iv) any other system approved by the Governor in Council."[46]

Thus, regretably, the Personal Graduated Tax was not mandatory; the Ordinance was permissive, and not surprisingly, only 10 District Councils adopted it: the rest remained under the African Local Governments Ordinance, 1949.

In broad terms, the graduated personal tax is an income tax based on ability to pay, "but one which is suitably adapted to African conditions."[47] In fact, the tax introduced in most areas between 1954 and 1956, was in its essential respects a poll tax dressed in modern garb: it was based on the value of the taxpayer's visible possessions and income earning assets both movable and immovable. Assessments were made at sub-county level, partly on the information furnished by the chiefs and partly on the personal knowledge of the members of the Assessment Committee. The tax rate was fixed locally,

46. No. 1 of 1955, Section 51 (1)
47. Report of the Uganda Fiscal Commission, Ursula Hicks, Tress, R.C., and Sims, F.H., Government Printer, Entebbe, 1962, p.18.

subject to the Provincial Commissioner's approval, and initially ranged from 20 through to 100 shillings. As anticipated, each tax authority published its tax schedules and rates that varied according to the varying local economic conditions, and while this had been the theoretical justification for the imposition of the graduation of taxation, in practice it soon proved unworkable. To the extent that different district councils fixed varying tax scales the system opened itself to endless abuses. It was common place for ordinary individuals to pay taxes in those tax districts where the rates were lower than in their own districts, thus avoiding the payment of relatively higher taxes. Besides, some taxpayers were constantly moving their goods and chattles across district boundaries in search of liberal tax assessments. Moreover, salary and wage earners, whose earnings were readily verifiable tended to pay relatively higher taxes than farmers and others whose wealth and assets were difficult to assess. Indeed, early attempts to make assessments more equitable by taking into account the individual's income earning assets such as livestock, coffee trees and cotton were strongly resisted by the farmers and their supporters on the District Councils.

Clearly, such differences were arbitrary, unsound and indefensible, and as might be expected, tax assessment regulations were subsequently formalised and standardized throughout the Protectorate. In 1958, the Protectorate Authorities intervened and imposed an upper limit of 400 shillings, and this was subsequently raised to 600 shillings. Despite these changes, however, the methods of tax assessment remained crude and susceptible to such abuses as deliberate under, or overvaluation, harrassment, bribery and corruption.

Yet another assessment related problem was the non-uniformity of tax administration - i.e. assessment, collection and enforcement - within any tax area. Tax assessment and collection varied from county to county and sometimes within the county and the amount collected depended largely on the chief's efficiency, ability and industry, and this in turn led to the introduction of the so called tax quota system of which the modus operandi in Bukedi will serve as an example.

> "In 1956 a detailed study was made of the tax payments in each county and the average rate of tax paid by each tax payer was obtained. This revealed a remarkable difference between payments in the six counties. In Budama County, where assessment had been efficiently carried out, the people were paying at an average rate of shs. 34/25, whereas in the worst county, Samia Bugwe, people were paying shs. 26/10. This situation clearly had to be rectified as it showed that some counties were in effect 'sponging' on the others, and were not playing an equal part in the development of the district.
>
> To counter this a quota system was evolved in 1957 whereby each county was given a tax quota, based on the number of taxpayers multiplied by a standard average rate of tax. This was designed to ensure that every county contributed equally to district revenues, and it enables the people to feel that they are being equally taxed with their neighbours in adjoining counties. The quota is then broken down within the county to the Kitongole level and assessment committees have to ensure that while still assessing people on an individual basis, the quota for each Kitongole is reached. This arrangement has proved popular and has resulted in a considerable increase in revenue."[48]

48. African Local Government Taxation in Bukedi, Government Printer, Entebbe, 1958.

In fact the quota system was far from popular and was the subject of much criticism and is said to have been one of the causes of the disturbances which occurred in the Eastern Province in 1960.[49]

> "The evidence that an alleged high level of taxation and an imperfect method of assessing and collecting it were the unifying forces in the disturbances has been overwhelming, and we are compelled to give the subject detailed examination."[50]

And so, they did, and the Commission's report sheds some light on tax assessment and the quota system in the district. The Commission found that the quota system had, "in an area where intertribal jealousies abound", ensured that each area contributed its fair share of taxation, and that it had efficiently served the purpose for which it was designed.[51] However, it was also found that the quota system was fraught with difficulties. In particular, the Commission noted that:-

> "The difficulties of assessment have been inextricably complicated by the application by the district council of a system of 'quotas' upon each saza, which in turn are broken down into quotas for Gombolola and lesser units. In fact the individual assessments have been affected by the quota allotted, and the general complaints regarding the system of taxation as distinct from the specific complaints by individuals, have nearly all been directed at the quota rather than at the method of assessment in the narrower sense. We have concluded that these complaints are not without foundation."[52]

49. Report of the Commissioner of Inquiry into Disturbances in the Eastern Province, 1960, Bennett, K.G., Government Printer, Entebbe, 1960, p.39.
In this connection the Report has this to say:-
"Indeed, the quota system has been under attack in Bukedi itself and, complaints having come to the District Commissioner's notice, the Finance Committee of the District Council appointed a subcommittee to consider the matter in July 1959, and its report dated two months later, shows the inextricable connection between assessment and quotas."

50. Bennett's Report Ibid. p.39.
51. Ibid p.38-39.
52. Ibid p.39. See also Mr. J. Wasukulu's letter to R.F. Roper, the D.C., Bukedi, dated 13.1.1960 - Bennett's Report Ibid. Appendix 3.

Even the District Commissioner was "satisfied that in some cases the African Local Government graduated tax has been wrongly or arbitrarily assessed."[53] Indeed in 1959, complaints having come to the District Commissioner's notice, the Finance Committee was forced to appoint a subcommittee to look into and report on the quota system. The subcommittee's Report, of which the following is an excerpt, was equally critical.

> "The general opinion expressed in the district is strongly opposed to a form of quota system given to counties each year. Objecting to a quota system for all counties, it was stated that when quotas are given to counties this enforces chiefs to assess high taxes to people in order to get the required quota from the County and to get excess if possible, even if some people supposed to pay the quota have immigrated."[54]

Despite this general opposition, however, the subcommittee recommended, and the Finance Committee accepted that the "quota system should continue to guide the superior power to know how much is to be the revenue in the district and enable the committee concerned with the estimates to run its work properly."[55] As the Commission laconically states: "The quota system had become prostituted."[56] Finally, there was the issue of reassessments to which the quota system gave rise. It will not have escaped notice that the quota was a break down of the desired and possible total tax revenue from the district or its sub-divisions, and the purpose of

53. Message from the D.C., Bukedi, to the people of Bukedi, Bennett's Report, op cit. p.87, Appendix 7.
54. The Bennett Commission, Ibid., p.39.
55. Ibid., p.40.
56. Ibid., p.42. "There was good evidence that there had been some reassessment in the previous years." Thus one witness "admitted that of 2419 taxpayers, 600 - mainly factory workers - had been assessed. And it was not always that, on reassessment, a mere single step in the tax progression - shs. 10/- - was added to the original sum. We have inspected tickets showing tax increases of shs. 40 and shs. 50 ....."

the quota was to ensure that that target was achieved. The tricky dilemma, with which the tax collector had to contend, was what to do where there was a shortfall? According to the Bennett Commission, reassessment was the only answer. Indeed, the Commission found, in almost all the cases where there was a shortfall, that the Saza chief "gave instructions to the chiefs to raise taxes to those people who were wealthier and also to reassess those who had been out",[57] and were quite satisfied that reassessment was a common feature of tax administration in the district, and in view of their findings, had no hesitation in recommending its abolition.[58]

> "Not withstanding the perfectly proper reasons for its introduction and its usefulness, we consider that the quota system must be abandoned, and with it will go the device of reassessment, which we are convinced played so large a part in causing dissatisfaction with the tax system. It can be held against it that it influences an assessment which by law should be made in relation to the payer's capacity and not be influenced by other considerations. In addition, it is the mass hysteria which the word now evokes which persuades us to recommend as we do. No amount of reasoning, even given the requisite understanding, would remove the stigma which attaches to the system."[59]

Finally, the Commission, as part of a process to transfer the burden of tax administration, particularly assessment from the chiefs to the Council, recommended that a subcommittee of the district council should be set up to supervise the work of the assessment committees;

57. The Bennett Commission, op cit., p.42.
58. Ibid., p.42. It is reported that: Reassessment was prevalent, and it was fatal. But the pressure took other forms. We are quite satisfied that people previously exempt were assessed to quite considerable taxes. We are also satisfied that, in the search for "starters", youths below the age of 18 years were assessed. Old men entitled to reduction, if not exemption, were taxed. There had been frequent annual increases in personal assessments of as much as shs. 20 and if these were not capricious they were certainly so regarded."
59. The Bennett Commission, loc cit., p.44-45.

and that such a subcommittee, consisting of elected members, and including a high ranking officer such as the Treasurer or the Assistant Treasurer, should bear responsibility for the making of assessments, it being understood that the Council itself was ultimately responsible for the work of its subcommittee. It seems the taxpaying public and indeed certain Government officials, including the District Commissioner, were of the view, albeit erroneously, that tax assessment was the responsibility of the chiefs. In fact the responsibility for tax assessment was vested in the District Council.[60] In practice, however, the chiefs were the dominant force, and this led some of them, with a view to meeting their quotas, into following improper practices and procedures which, as the foregoing material shows, ultimately brought the whole tax system into disrepute. Rather surprisingly, there was no statutory authority for the appointment of assessment committees; such committees as existed were appointed by the District Councils, at their discretion; and this, it was alleged, was the cause of the confusion, first referred to above, and, of course, largely dictated the proposals of the Bennett Commission.

The Commission's proposals were accepted by the Government and were subsequently incorporated into the Local Administrations Ordinance, 1962,[61] which fixed the maximum tax rate at shs. 600 p.a., and

60. L.N. 329 of 1958. This Legal Notice varied the provision which originally provided for a flat rate tax of 22/- 00 that "any person whose means are in the opinion of the Council, sufficient to pay a greater tax, such person shall pay an additional amount of tax, as the Council may, having regard to his means, determine."
61. No. 23 of 1962. The main provisions of this Ordinance lie outside the scope of this study, but are outlined here for the sake of completion.

provision made for the establishment of Assessment Committees, proper assessment procedures, and the abolition of all the previous "bewildering complex of taxes", noted earlier, including those "which had racial overtones."[62] An attempt was thus made to inject a fair amount of justice and fairness into an inherently inequitable tax regime; mainly because the assessment of a person's ability to pay more than the standard rate was liable to infinite variation. In consequence, the poor, despite the graduation of taxation, continued to pay a large proportion of his meagre income to the state in the form of the Personal Graduated Tax.

However, the new measures were a major improvement on the existing machinery of tax assessment and collection. In particular the establishment of Assessment and Appeal Committees was of the greatest importance and a timely provision. It brought the tax structure into line with modern conceptions of taxation and fiscal administration. Under these arrangements, assessment committees were set up at every Gombolola, throughout the Protectorate. Each Committee consisted of the Gombolola chief, the ex officio chairman, two parish chiefs and two elected members of the Sub-county Council. The purpose of having such committees was to ensure that the knowledge of the local "notables", both official and unofficial councillors, should be utilised to determine the correct and appropriate income brackets in which individual taxpayers belonged. Each Assessment Committee was responsible for determining the individual's tax liability and the assessment of the taxpayer's means for meeting his tax obligations. The determination of taxable income was carried out in three stages as follows:-

62. Report of the World Bank of the Economic Development of Uganda, 1961, p.64.

> "The first process is to determine the standard rate of return on particular assets, proper to the season and the district: so much per coffee tree, so much per head of cattle, and so on. Secondly, a popular committee (consisting of the sub-county chief as chairman, one parish chief, the parish chief of the area being assessed, and two other persons, from the sub-county elected by the Council) visits the taxpayers.[63] The business of this body is purely fact finding: counting coffee trees, checking salaries, noting as well as they can the turnover or stock in trade of a shopkeeper. All sources of income for each taxpayer are then entered on a form which is signed or otherwise identified by the taxpayer. The final stage, which is usually performed in full village meeting, consists merely of the necessary arithmetic to calculate the taxpayer's total income. From this any allowances are deducted to give his taxable income. This method of assessment has several merits. It is simple and cheap. The taxpayer knows his assessors and they are familiar with his circumstances. When the processes are carried out conscientiously it is ideal for peasant farm and mixed incomes, but it can easily go wrong. Not all village chiefs are energetic or competent to carry out their work properly. It has been put to us, too, that political affiliations have been allowed to influence tax assessments. It must also be acknowledged that the machinery of popular assessment works much less efficiently at the higher than at the lower levels: it is too easy for the local rich man to find ways of securing a favourable assessment."[64]

Nevertheless, the general opinion among the various local administrations was that the existing machinery of assessment, though not perfect, was worth preserving. In particular, they pointed out that the presence of non-officials "gives psychological satisfaction to the taxpayers, who get a feeling of assurance of a fair deal in the assessments made, than would be the case with the civil servants who may be revenue minded."[65] What was needed, therefore, was a much greater use of training courses for chiefs, members of assessment committees, and others connected with tax assessment and collection; and obviously, there was a need for model codes for the guidance of local administrations in the preparation of their own assessment

63. S.65 (2) of No. 23 of 1962.
64. Report of the Uganda Fiscal Commission, Government Printer, 1962, p.22-23.
65. Tax Inquiry Report, 1964/65, Government Printer, 1965, op.cit.

regulations. Such guidance, coupled with a greater use of Central Government Inspectors, would secure a better standard of assessment, strengthen the hands of the local treasurers, and "remove some of the politics which at present leads local councils to blocking improvements."[66] Furthermore, it was essential that the Revenue Authorities, in cases of suspected malpractices, should avail themselves of the appeal procedures set out in S.67 under which any aggrieved person, whether a taxpayer or a tax official, could within 30 days challenge the assessment committee's decision. Thus a county chief had a right of appeal, if in his opinion the local assessment committee had made an assessment which was not commensurate with the income of the taxpayer. Further, there was a right of appeal in cases where an individual who ought to be assessed was not assessed or where an individual was unreasonably granted partial or complete exemption from taxation.[67]

Likewise, the taxpayer could, within 30 days, appeal and otherwise challenge the merits of the assessment committee's decision, provided he was a person:-

(a) assessed to pay a tax for which he was not liable under the law;

(b) assessed to pay a rate tax than the standard rate of tax;

(c) who was refused exemption from the payment of tax; or

(d) whose exemption or partial exemption from the payment of tax had been varied or revoked.[68]

66. Report of the Uganda Fiscal Commission, loc cit.
67. S.67 (3) (a), (b) and (c). The composition of the Appeal Committee was as follows:- (a) a judicial officer in the service of the Administration, as chairman, (b) two officers in the service of the Administration, (c) an elected member of the County Council; and (d) an unofficial member of the Finance Committee of the Administration elected by the Council's Finance Committee.
68. S.67 (2), S.58 (2).

The Appeal Committee, on receipt of an application, had the power to confirm or vary the assessment committee's assessment, and except in the "treaty states", its decision was final and conclusive - there was no further appeal. The atmosphere at the hearing was informal and the taxpayer was allowed to present his case, as he saw fit and without much interference from the bench. The tax authority's case was invariably put by the Muruka chief of the area from which the appeal arose, and in most cases he (the 'prosecuting' Muluka chief) was always a member of the assessment committee whose determination was in question. Indeed, the Appeal Committee itself was an integral part of the local authority's tax administration machinery, and in this restricted sense, was open to the charge of partiality, and despite the interposition of elected councillors, the Appeal Committee could not be said to be truly impartial. Indeed, these quasi-judicial assessment arrangements were contrary to the rules of natural justice, particularly the nemo judex rule, in that the tax assessors were, in reality, judges in their causes.

These arrangements were, however, from the point of view of the revenue authorities, indispensable - summary justice was dispensed inexpensively and expeditiously - a capital objective in any scheme of things tax administration; and indeed were a major advance on previous practices and procedures. The same could not be said of the tax itself, however. Despite graduation and the reforms noted earlier, the majority of the common people continued to pay a higher percentage of their incomes in taxes, partly because the tax was inherently regressive, and partly because of high tax rates.

> "The present system of the personal graduated tax cannot be said to achieve a fair and equitable distribution of the burden of taxation on the different classes of people. Unlike the case with progressive income tax, the burden of personal graduated tax is heavier in the lower income group, whilst the percentage of the imposition is higher on those in higher grades of income. Personal graduated tax is hence regressive, not only between the different grades of income, but also within each bracket of the graduated scale of tax, as the levy is not on the slab system as obtaining in income tax, which is progressive with the increase in income."[69]

In practical terms, this meant that the bulk of the tax revenue was paid by large numbers in small sums, the amount paid by each individual taxpayer representing a very large proportion of his money income and in many cases the whole of the annual income.

> "The personal graduated tax is regressive in the sense that looking at the scales as a whole, people with low incomes pay a higher proportion of their incomes in personal graduated tax. There are two root causes of this phenomenon. First, unlike the systems operating with the income tax, there is practically no tax free allowance. For example, an able bodied who manages to get just enough cash income to pay the standard rate of tax pays 100% of his income in tax, while a rich man in receipt of 60,000/- p.a. pays only 600/- in tax, that is 1% of his income.
>
> The second cause of the regressive character of this tax is that ....it has a ceiling of shs. 600/- stipulated by law and this is payable in most districts by people in receipt of shs 1000/- and above. Since a person's income increases beyond shs 1000/- he does not pay more graduated tax the percentage of his income absorbed by the tax tends to fall."[70]

In fact, it was the Government's policy towards income taxation that was the main cause of these anomalies. The nascent Administration, like its colonial prédecessor, was thus of the view that every person, including the "unemployed, the very poor and the lowly paid, should contribute his mite to the exchequer",[71] and that "no

69. Tax Inquiry Report, 1964/65, op cit.
70. Ibid., p.153.
71. Ibid., p.153.

able-bodied adult male should be a drag on society".[72] It was his duty, the Government maintained, "to secure work or find means to pay the tax to which he is liable".[73] Despite the foregoing, however, the graduated personal tax was a major source of local revenue; it provided more than 50% of the local authorities' revenues, and this may well explain the Government's reluctance, not withstanding its inherent defects, to do away with their only beneficial inheritance. And they, too, were not slow to extol its virtues, not least of which was the cultivation of the taxpayer's sense of responsibility for government services annd participation in the nation's economic development by selling his livestock, produce or his personal skills, both innate and acquired. Indeed, no better colonial bequest could have been devised and, not surprisingly, it has weathered the storm rather well. It is, as a matter of fact, the only unadulterated colonial institution still in force, and that is no mean achievement.

72. Tax Inquiry Report, op.cit., p.153.

73. Ibid., p.153.

CHAPTER NINE

THE MODERNISATION OF NATIVE TRIBUNALS

9.1.1 THE PLACE OF NATIVE COURTS IN LOCAL GOVERNMENT

> "With our limited European staff, at the most two, often only one officer in a district, we must work through the chiefs and admitting this it follows that the authority of the chiefs must, in reason be upheld and that they must have certain political powers with which in these countries it is impossible to disassociate a certain civil and criminal jurisdiction."[1]

Before the advent of colonial rule, each tribe in Uganda had its own arrangements for the settlement of disputes, and some of these traditional judicial systems were highly developed and fairly sophisticated. There existed in Bunyoro, for example, a well ordered system of indigenous tribunals which administered justice in accordance with well established and recognised local rites and customs. These tribunals, over which the local chief presided, were an integral part of the tribe's political organisation and collective security. Consequently, each chief in the administrative hierarchy had jurisdiction, civil and criminal, over his people; and his magisterial work was, in fact, the most important of his chiefly duties: the Banyoro were, indeed, a litigious people! There were no clearly defined forms of procedure or rules of evidence, and subject to the right of appeal to a higher court and ultimately to the King's Court, the chief's jurisdiction was unlimited. Thus each territorial chief had power to hear all cases, such as murder, cattle lifting, theft, and all manner of matrimonial causes, arising in his area of jurisdiction. The machinery of justice in Bunyoro was thus clearly well rooted and refined. Many early British officers were indeed

1. F.O. 2/858 Col. Hayes - Sadler to Lansdowne, 4.8.1904.

struck by its high degree of development, formalisation and efficiency: it was accessible and not infrequently used. Here as elsewhere, particularly in Ankole, Buganda and Toro, the administration of the lex loci was, to the outside observer, equally startling, and what is more, exceptionally good.[2]

It is not surprising, therefore, that the colonial power should, on the establishment of colonial rule, have left the administration of justice in the hands of the King and his Chiefs. The various indigenous legal systems found in vogue were, as a matter of course, recognised and simply incorporated in the new Native Agreements. Thus Portal's Provisional Agreement of 1893 implicitly recognised the existence and jurisdiction of the Kabaka, the Lukiko and the divisional chiefs; and, so too, did the Uganda Agreement, 1900. The latter simply stated that the Kabaka should exercise direct rule over his subjects, to whom he was to administer justice through the Lukiko and through others of his officials in the manner approved by the H.M. Commissioner.[3] Similar recognition was given to the Toro and Ankole judicial systems in 1900 and 1901, respectively.[4] The "Unyoro Native Courts Ordinance, 1905" gave similar statutory recognition to Bunyoro's chiefly courts, and the Native Courts Ordinance of the same year made provision for the establishment of Native Courts in the Central and Nile Provinces.

Similar arrangements were extended to the other parts of the Protectorate as and when these came under British control and by 1919

2. Vide, John Roscoe, The Northern Bantu, OUP 1915.
3. The Uganda Agreement, 1900, Article 6.
4. The Toro Agreement, 1900, Article 6, and the Ankole Agreement, Article 6 were in similar terms.

the administration of justice, outside the treaty states, was governed by a single ordinance - the Native Courts Ordinance, 1919, and the hitherto unlimited jurisdiction of the traditional chief defined and circumscribed. As in the pre-European days, however, the "tribal court" and the "supreme tribal Council" were inextricably integrated: the organisation of native justice was "an integral part - often the most effective of the administrative machine which the native authorities operated".[5] Instances of gross injustice were less frequent and indeed very rare among the more advanced chiefs, and many District officers, who exercised advisory and supervisory powers over them were generally satisfied with their work, and any attempts to divorce judicial administration from native administration was always discouraged, and indeed frowned upon by the Protectorate Authorities. For them the functions of the chiefs were "administrative, judicial and fiscal".[6] Indeed, there was at this time, considerable agitation, in administrative circles, that Native Courts should be placed under the exclusive supervision of the Executive branch rather than the Judiciary. Under the prevailing system of Indirect Administration, it was felt that any material interference with the traditional judicial processes would "deal a serious blow at the power and prestige" of the Chiefs, thus weakening the Native Administrations generally.[7] In any case, it was generally averred that the doctrine of "the separation of powers" was unknown to "primitive tribes", that the powers of the Chief were indivisible and that there was, in the eyes of the native, no distinction between a ruler and a judge. That, in a nutshell, was Sadler's judicial

5. Dr. H.F. Morris, "Native Courts: a corner-stone of Indirect Rule" in Morris, H.F. and Read, J.S. Indirect Rule and the Search for Justice, OUP 1972, pp.131-166.
6. Sir Charles Dundas, Native Administration in Uganda, 1941.
7. F.O. 2/858 Sadler to S/S, 4.8.1904.

policy, which, as it happened, was approved by the colonial office, and was subsequently adopted by his successors. It was felt that the development of Native Courts should be left in the hands of the District Officers rather than the Judiciary. Sadler's reasons for this were partly dictated by convenience and partly by the constraints of official policy on Native Administration.

> "I consider that the direct subordination to the High Court of the limited jurisdiction exercised by the Chiefs a measure to be much deprecated. They exercise their powers according to Native Law and Custom, and this part of the country is in too primitive a state to adapt to our laws and procedure; so long as the European officer can at any rate interfer, as he can at the weekly Baraza or on complaints received, and that substantial justice is done, this, I consider is all that we should at present require. Let us rather in the words of Sir Harry Johnston, "encourage the King or Chief to govern his people directly on humane principles, with only that amount of interference from the nearest European official as may protect the natives from injustice and cruelty."[8]

Native Courts, under the "sympathetic control" of District Officers, were thus regarded as having an administrative role and as such as agents of "administration and modernisation".[9] It follows, therefore, that any study of local government institutions in the colonial state, without an examination of the development of Native Courts would be misleading and, indeed, incomplete; hence this study. Its aim is to examine the salient features of the Native Courts legislation, the policy considerations underlying its introduction and implementation, the relationship between Native Courts, and the High Court and, in particular, the subsequent subordination of the former to the latter.

8. F.O. 2/858 Sadler to S/S op.cit.
9. F.O. 2/858/Wilson to S/S Inc. in Dispatch No. 218 of 4.8.1904.

To this end, the "Unyoro Native Courts Ordinance, 1905" is examined first - and in some detail - partly because it determined, once and for all, the main lines of Government policy on Native Courts, and partly because it was the first to give definite recognition to tribal judicial systems and thus set the pattern for future legislative developments; highlights the significance and place of Native Courts in the early days of British rule, the importance the British attached to them and their crucial and supportive role in the chief's exercise of his executive authority. Indeed, Native Courts were the core of the local institutions with which this thesis is concerned.

9.1.2 THE (B)UNYORO NATIVE COURTS ORDINANCE 1905

For reasons that are not readily apparent, the Kingdom of Bunyoro-Kitara was always regarded, by many administrative officers, as "a conquered country"[10] and in consequence, though the oldest kingdom in the Protectorate, no agreement was entered into with her rulers until 1933. Yet, it was always administered in the same way as Ankole and Toro as a matter of administrative convenience.

> "There is no reason why Unyoro should not be administered in the same way as Ankole and Toro - all three little kingdoms have their Kabaka, Lukiko and Saza chiefs - it is indeed being administered on the lines obtaining in those districts, but without sufficient warrant.

10. F.O. 2/858 Sadler to Lansdowne, 4.8.1904. "Unyoro was acquired by us by conquest, we have therefore a free hand in the matter." It is interesting to note that though both Kabarega and Mwanga were captured at the same time, Buganda, over which the latter ruled, was never considered a conquered country.

> Unyoro differs from Ankole and Toro in that it was acquired by force of arms, it is not therefore necessary to enter into any Agreement with the Kabaka, and the Chiefs of the district, and any settlement made would more conveniently take the form of a concession or an order."[11]

It was in the furtherance of this policy that in 1901 the Special Commissioner "decided to introduce a systematic civil administration into the country".[12] In late 1901, the Lukiko and the recognised Saza chiefs were allowed, by the Acting Commissioner, to exercise "certain powers, civil and criminal", but like Col. Sadler, "I have been unable to find any record of what was actually done".[13] It would appear, however, that the Acting Commissioner simply authorised the Saza chiefs to continue to exercise their traditional judicial powers, albeit under the general supervision of the local European officer in charge of the district. These powers were subsequently incorporated into a provisional agreement and the chiefs "told to follow its provisions for a couple of years, by which time they would be able to show if they were worthy of becoming parties to such an Agreement".[14] This arrangement was confirmed by the Acting Commissioner and for a time was sympathetically followed by successive officers, "but with several changes in officials and an unfortunate tendency to overlook records, the fact that the chiefs were in a progress of education [was] lost sight of, and a perfection of integrity - required of them as could more reasonably be expected in so long administered a country as Uganda".[15]

11. F.O. 2/858 Sadler to Lansdowne, 4.8.1904.
12. F.O. 2/858 Wilson to Sadler, 10.3.1904.
13. F.O. 2/858 Sadler to Lansdowne, 4.8.1904.
14. F.O. 2/858 Wilson to Sadler, 10.3.1904.
15. Ibid.

This, Wilson felt, was the cause of the difficulties - "The disputes and tension between the chiefs and the peasantry" on the one hand, and "the chiefs and Prendergast", the collector, on the other - which he enquired into in early March 1904.[16] Wilson's report, besides dealing fully with the matters in hand, gives an interesting summary of the country's political and social conditions and bears indirectly on the subject of civil and criminal jurisdiction under consideration. Of immediate interest are his proposals for reform of which the most important were:-

> "1. That, in addition to existing native Lukikos, open official Barazas be established at Hoima and Masindi, where due publicity can be given to administrative measures and where opportunity can be given for an open hearing of such appeals from the natives as should be received.
> 2. That the Kabaka proceed to Masindi every quarter to review the action of the chiefs of that station [and] to hear such appeals from the County Chiefs as has been difficult to deal with at Hoima.
> 3. That each native Lukiko should keep a book of registration of cases tried by it and this book should always be available for official review.
> 4. That natives be publically informed that appeals can be made from the native Lukiko to the official Baraza."[17]

Wilson's proposals were accepted by the Commissioner and incorporated into the (B)Unyoro Native Courts Ordinance 1905, the primary purpose of which was to enable the Commissioner "to formally authorise that justice in purely native cases in Bunyoro [should] continue to be administered by the Saza chiefs", ("some doing very well, others

16. F.O. 2/858 Wilson to Sadler, 10.3.1904.
17. Ibid.

being untrained")[18], under the supervision of the High Court and in accordance with the Uganda Order in Council 1902. The latter provided that the Commissioner could, in addition to the High Court, constitute "courts subordinate to the High Court and Courts of special jurisdiction".[19] The Order in Council thus envisaged the establishment of two types of inferior tribunals - "subordinate courts" and "special courts". Whilst the former were to be subordinate to the High Court, the latter's legal status was a moot point.

This question first came to a head in 1904 when the Commissioner proposed to regularise the Native Courts in Bunyoro and sought to place them under the control of the Executive rather than the Judiciary. It was his view that Native Courts were "courts of special jurisdiction", and as such, outside the purview of the High Court.[20] The Judiciary, on the other hand, held the view that Native Courts were "courts subordinate" to the High Court and not "Courts of Special" jurisdiction as contended by the Commissioner. It was pointed out that any other arrangement would contravene the terms of the Uganda Order in Council of 1902 by which full jurisdiction, civil and criminal, over all persons and matters throughout Uganda was

18. F.O. 2/858 Sadler to Lansdowne, 4.8.1904. Indeed Wilson's recommendations were implemented immediately by an administrative order; the Ordinance was a mere formality: "I have already, [Sadler informed the Foreign Office] instructed the Deputy Commissioner that in carrying out the reforms he suggested and of which I approved, care should be observed not to take any action which would imply the exercise by the Chiefs or the Lukiko of any jurisdiction beyond that we have hitherto more or less tacitly allowed."
19. Uganda Order in Council, 1902, Article 18(1).
20. F.O. 2/858 Sadler to Lansdowne, op cit.

vested in the High Court.[21] This point was emphatically made by Judge George Ennis, in his memorandum to the Acting Commissioner in the following terms:-

> "I submit, with the utmost deference, that [Native Courts] in so far as they exercise civil and criminal jurisdiction would be subordinate to the High Court. Article 15(i) of the Uganda Order in Council vests full civil and criminal jurisdiction in the High Court over all persons and all matters in Uganda. Article 18 gives power to constitute by Ordinance courts subordinate to the High Court; and, courts of special jurisdiction, while Article 22 provides that the High Court may, with the approval of the Commissioner make rules, subject to the provisions of any Ordinance, for regulating the practice and procedure of the High Court and all other courts which may be established in Uganda.
>
> Courts of special jurisdiction contemplated by Article 18 must necessarily be courts whose jurisdiction is neither civil nor criminal such as courts for the hearing and disposal of matrimonial causes, divorce causes, probate and administration and bankruptcy, the jurisdiction in all of which is essentially special."[22]

That, briefly, was the Judiciary's prima facie case, and so, when Ennis was asked to prepare a draft ordinance for the regularisation of Bunyoro's Native Courts, he ignored the Commissioner's wishes and left their supervision to Sadler's chagrin, in the hands of the High Court and the Judiciary. Sadler was livid. He was, in the words of a Foreign Office minute, "strongly averse to this and would rather have the Order in Council of 1902 altered".[23]

Sadler's objections were largely "based on the fear lest the High Court overturn the coach by overloading it with technicalities

21. F.O. 2/984 Ennis to Wilson, 3.1.1905.
22. F.O. 2/9841 Ennis to Wilson, 3.1.1905.
23. F.O. 2/9841 Bottomley to Risley, 12.4.1905.

unsuitable in native procedure".[24] He thus told the Colonial Secretary that:-

> "I consider that the direct subordination to the High Court of the limited jurisdiction exercised by the chiefs is a measure to be deprecated. They exercise their powers according to Native Law and custom, and this part of the country is in too primitive a state to adapt itself to our laws and procedure, so long as the European officer can at any rate interfere as he can at the weekly Baraza or on complaints received, and that substantial justice is done; this, I consider, is all that we should at present require."[25]

Besides, it was contended that the proposed subordination to the High Court of the limited jurisdiction exercised by the tribal authorities was contrary to the policy of Indirect Rule.[26] Thus Wilson reminded the Colonial Office that:-

> "I am fully alive to the fact that the authorised system of rule is that through the native chiefs, but I cannot help feeling that it is not fully conceived how very rapidly the main principle of that policy is being endangered by the tendency prevalent among officials unconsciously absorbed in magisterial routine to directly control domestic native affairs, oblivious to the fact that their administrative influence must in such matters be confined to the area round their stations and that to the detriment of government of their district on large lines."[27]

24. F.O. 2/858 Sadler to Lansdowne, op cit. Wilson was equally determined that the control of the Native Courts should be in the hands of the Administration. He thus, in the absence of the Commissioner on leave, told the Foreign Office that: "To begin with, my strong opinion, based upon actual experience is that the institution of High Court supervision over Native Courts in countries of crude conventions must inevitably lead to increased obtrusion of European interference into native methods of jurisdiction. In most new countries there has been a tendency to outrun the local native conditions in the application of legal technicalities in the early stages of judicial procedure. I therefore venture to again submit that the power to make rules of practice and procedure be placed in the hands of the Commissioner, confident that there will be thus secured a sympathetic bond between administrative officers and natives which is indispensable in promoting content among the people." (F.O. 2/9841/Wilson to Lansdowne, 20.3.1905).
25. F.O. 858/Sadler's Dispatch No. 218 of 4.8.1904.
26. Ibid, Wilson to Secretary of State, 20.3.1905.
27. F.O. 2/984 Wilson to Secretary of State, 20.3.1905.

The thinking behind Sadler's argument was that the people were "insufficiently advanced for a regular system of jurisdiction", that the chiefs' judicial powers were inseparable from their executive duties, and that the judiciary's interposition in "native affairs" would inevitably lead to confusion and friction in the general administration of the country,[28] and that Sadler was not prepared to accept, and he, accordingly, sought to reverse Ennis' decision "so as to allow of purely native cases ....remaining under the control of the Commissioner",[29] and duly enlisted the Secretary of State's support, and, as it happened, so placed the Foreign Office in a quandary. Here, as in Uganda, there was a division of opinion and, interestingly enough, along departmental lines viz, the Administrative versus the Legal officers. The former's arguments were essentially similar to Sadler's and were summarised by Read as follows:-

> "Col. Sadler spoke strongly to me on this subject and I concur in his views. The simpler the judicial machinery in these under-developed countries the better. If Mr. Innis' [sic] view is correct as to the interpretation of the O. in C., then the difficulty is at worst a technical one and can be got over by amending the Order in Council."[30]

To this end, Read sought counsel's opinion and received the following reply:-

> "I agree with Mr. Risley. I think it is essential that the Supreme Court should have powers of revision and control over native courts, otherwise, as in the Gold Coast, extortion and officerism will be liable to spring up in the native courts. The Commissioner's fears as to legal technicalities are natural but unfounded. Nothing could be less technical than the regulations proposed. Certain rules of law, e.g. that hearsay

28. F.O. 2/984/Wilson to S/S. Dispatch No. 48 of 10.2.1905.
29. Ibid.
30. F.O. 2/984/Read's minute of 1.5.1905.

> evidence is not evidence or that no man cannot be tried and condemned on a criminal charge in his absence are technicalities, but they are essential to ensure that justice is done. There are technicalities and technicalities and the Commissioner's watchful or suspicious eye upon them I do not think that judges or magistrates need be feared. Native Courts unrestricted and unrestrained are much more likely to be mischievous."[31]

Sadler's desired change was, however, shortly afterwards greatly enhanced and, almost met in full, by Risley's liberal interpretation of Article 22(i) of the Uganda Order in Council, 1902, the terms of which were as follows:-

> Subject to the provisions of any Ordinance, the High Court may, with the approval of the Commissioner, make rules for regulating the practice and procedure of the High Court and of all other courts which may be established in Uganda.[32]

This, Risley felt, did not mean, as Ennis had insisted, that the power to make rules was exclusively vested in the High Court. Indeed, Risley did not "see any legal necessity for the High Court to make rules for all the courts subordinate to it".[33] "My conclusion", [he went on] "is that the mere fact of these courts being subordinate to the High Court does not preclude provision being made by this Ordinance, as is contemplated by clause 22(i) of the O. in C., that rules of court shall be made by the Commissioner instead of the High Court."[34] Sadler was accordingly advised and told to redraft clause 14 "as he wishes without necessitating any amendment

31. F.O. 2/984 (Minute of 10.5.1905).
32. Uganda Order in Council, 1902, London Gazette, 15.8.1902.
33. F.O. 2/984 loc cit.
34. Ibid.

of the Order in Council".[35] The impasse was thus resolved and the way paved for the enactment of the "Unyoro Native Courts Ordinance, 1905",[36] and provision made for the constitution of the "Native Appeals Court, the Lukiko, the Saza Courts and the Sub-chiefs' Courts. At the apex of the new legal system was to be the Court of Appeal, consisting of the Collector, the precursor of the District Commissioner, as President, "the Kabaka and the Chiefs".[37] The court had power to hear and determine "all Banyoro cases" presented to it through the usual channels, or brought to it in open Baraza. This meant that the Court, not withstanding its designation, had original, revisionary and appellate jurisdiction. It was also provided that any person aggrieved by a decision or sentence of the court of the Lukiko, the County Court, or the Sub-chief's court, had a right to "present his case to the Native Appeals Court for consideration and further decision".[38]

Thus, for instance, a litigant aggrieved by a decision of the Sub-chief's court, the lowest court in the land, could directly bring his complaint to the Appeals Court, without having exhausted his local remedies in the lower courts. It may also be noted here that, under section 11, the Commissioner had power to transfer any case or class of cases from any of the new courts to any other court in the Protectorate as he saw fit.[39] Moreover, besides the supervisory

35. Risley's Minute of 17.5.1905. S.14 as amended, provided that the courts established by this Ordinance shall follow the rules of practice and procedure from time to time laid down by H.M. Commissioner for such courts, and shall decide all cases according to substantial justice without undue regard to technicalities of procedure and without undue delay..
36. "Unyoro Native Courts Ordinance, 1905".
37. Ibid.
38. Ibid. s.5.
39. F.O. 2/858/Sadler to S/S Dispatch No. 186 of 4.7.1905.

jurisdiction of the High Court, there was, in certain specified cases, a right of appeal from the Chief's decisions to "His Majesty's High Court of Uganda", at Entebbe.[40]

Below the Native Appeals Court was the Court of the Lukiko, which was, for all intents and purposes, the Court of last resort in the district. The Court consisted of the "Lukiko of Unyoro", that is to say, the Omukama, who when present presided over the court, the county chiefs and the sub-county chiefs. The court had full jurisdiction, civil and criminal over all matters and over all persons in the district. In particular the court had power to hear and decide the following cases:-

(a) All serious criminal cases including murder and manslaughter.

(b) All cases where the punishment awardable by the lower courts was inadequate for the offence.

(c) All cases where the amount or value of the subject matter in dispute exceeded 50 rupees.[41]

(d) All appeals from the Saza Courts and the Sub-chiefs' courts.

Appeal lay from the decisions of the court of the Lukiko to the High Court of Uganda, in criminal matters where a sentence of death or imprisonment in excess of 5 years or a fine of more than 1,500 rupees was imposed; and in civil matters in cases where the amount or value of the subject matter of the suit exceeded 1,500 rupees; whilst appeals in minor cases lay to the Native Appeals Court, at Masindi.

40. F.O. 2/858 Sadler's dispatch op.cit.
41. Unyoro Native Courts Ordinance, 1905, No. 5 of 1905 s.6.

Next, provision was made for the modernisation of the Saza Courts throughout the district. These courts as the name suggests were based on the old traditional administrative unit, the county, otherwise known as the Saza. A Saza Court consisted of the Saza Chief, the sole judge. He had a limited, civil and criminal jurisdiction, which was coterminous with the Saza over which he presided. The court had exclusive original civil and criminal jurisdiction over all matters and over all persons, aliens excepted, and could not impose "a greater punishment than 6 months rigorous imprisonment, or a fine of 30 rupees, or whipping of 12 lashes".[42] Nor could the court entertain any civil action in which the property in dispute or value of the subject matter was 30 rupees or less; and it had no appellate, supervisory or revisionary jurisdiction over the Sub-chiefs' courts within the limits of the county.[43] This was a departure from the indigenous arrangements under which appeals lay from the decisions of the minor chiefs to the courts presided over by their immediate superiors in the chiefly hierarchy; but was in accord with the new court structure. For the Saza chiefs were members of the court of the Lukiko to which appeals lay from the Sub-chiefs' courts. This, it would appear, was the rationale for not placing the jurisdiction of the Sub-chiefs' courts under the immediate supervision of the Saza Chiefs' courts. The experiment, however, was a failure and was subsequently abandoned, and the status quo ante restored.[44]

Finally, section 10 confirmed and reconstituted the Sub-chiefs' courts along the lines recommended by the Sub-commissioner.

42. Clause 9.
43. Clause 5.
44. See the Native Courts Ordinance, 1905.

The Sub-chiefs' courts were, under the Unyoro Native Courts Ordinance, 1905, the lowest courts in the land, and like the Saza Courts, they too, were held by the recognised chiefs; and their jurisdiction was likewise limited to causes arising in the administrative areas in which they were situate and over which the Sub-chiefs were in charge. Each court was empowered to hear and decide:

(i) All cases in which a native of Unyoro is accused of an offence, provided always that a greater punishment than 1 month rigorous imprisonment or fine of 5 rupees, or whipping of 6 lashes shall not be imposed.

(ii) All cases in which the amount, or value of the subject matter in dispute does not exceed 15 rupees.[45]

Appeal lay from the decisions of the Sub-chiefs' courts to the Court of the Lukiko, with a further appeal to the Native Appeals Court, at Masindi.

9.1.3 RULES OF PRACTICE AND PROCEDURE

The procedure for the hearing of cases was, as had been mentioned above, governed by the Unyoro Native Courts Rules, 1905, made under s.14 of the Unyoro Native Courts Ordinance, by the Commissioner in accordance with article 22(1) of the Uganda Order in Council, 1902. This Code, though "of the simplest kind"[46] was, in view of the state of development of the country, in fact, revolutionary. True, the

45. S.10.
46. Ennis' minute quoted above.

rules were based on the principles of natural justice, particularly audi alteram partem,[47] nevertheless, were a major advance on Bunyoro's "crude conventions"[48] of justice, which incidentally were the raison d'etre for the reorganisation of the indigenous tribunals and the promulgation of the rules of practice and procedure in question.

Whether or not these rules were, in fact, strictly observed by the Courts has not been, owing to a dearth of documentary evidence, easy to verify. It would appear, however, that many a chief paid scant attention, if at all, to the Code. Indeed, it seems, that many hardly knew of its existence. In any event, it is not clear what effect, if any, non-compliance with the Code of Practice would have had on the decisions of the Court. There were neither sanctions, nor remedies for failure to observe the Code. Indeed, these rules notwithstanding, the Courts were obliged to determine "all cases according to substantial justice without undue regard to

47. The "Unyoro Native Court Rules, 1905" gazetted on 15.1.1905 were as follows:
    1. The following rules of practice and procedure shall be followed by the Native Courts.
    2. The evidence in criminal cases must be heard in the presence of the accused.
    3. The accused must be given an opportunity of making a statement, of putting questions and of calling witnesses, should he so desire.
    4. Where imprisonment has been imposed a warrant must be issued by the Court distinctly stating the name of the court, the term of imprisonment, the date of the sentence, and the offence for which it was imposed.
    5. Civil cases may be heard in the absence of the defendant when due notice of the time and place of hearing has been given to the defendant.
    6. The parties in a civil case must be given an opportunity of making statements, putting questions and calling witnesses.
    7. These Rules may be cited as the Unyoro Native Courts Rules, 1905.
48. F.O. 2/984 Wilson to S/S. Despatch No. 48 of 10.2.1905.

technicalities of procedure and without undue delay".[49] Furthermore, it is remarkable that, when Native Courts on the Bunyoro model were established elsewhere in the Protectorate, none were required to follow similar rules in the exercise of their jurisdiction. Instead, provision was made that each of the Native Courts should exercise its civil and criminal jurisdiction "according to the procedure and practice heretofore followed by the tribal authorities in the district in which" the Court was situate.[50]

9.2.1 THE MACHINERY OF NATIVE JUSTICE IN BUGANDA

Having recognised the Kabaka "as the native ruler" of Buganda and determined the powers of his Government vis-a-vis the Commissioner, the Uganda Agreement, 1900 proceeded to define the judicial powers of the Lukiko or native Council, the Kabaka, and his chiefs.[51] It was provided that the Kabaka was to exercise jurisdiction, civil and criminal over his people "through the Lukiko and through others of his officers in the manner approved by Her Majesty's Government".[52] The Kabaka's jurisdiction over his people - he had no jurisdiction over non-Baganda - was, subject to the limitations noted below, almost unlimited.[53] In criminal cases, for instance, the Kabaka's courts were "entitled to try natives for capital crimes" such as murder and manslaughter,[54] save that no death sentence could be

49. S.14.
50. S.7 of No. 15 of 1909.
51. Article 6.
52. Ibid.
53. Art. 8 provided that: All cases, civil or criminal, of a mixed nature where natives of the Uganda Province and non-natives of that province are concerned, shall be subject to (the jurisdiction) of British Courts only".
54. Art. 6.

carried out by the Kabaka or his courts without Her Majesty's representative's approval.[55] Indeed, there was, in serious cases, a right of appeal to the High Court and from there to the Commissioner.[56]

Besides, any punishment or sentences imposed by any of the Kabaka's courts, which, in the eyes of the Administration, were "disproportioned or inconsistent with humane principles", the Commissioner could directly interpose:-

> "Her Majesty's Government in Uganda shall have the right of remonstrance with the Kabaka, who shall, at the request of the said representative, subject such sentence to reconsideration."[57]

This, it was thought, would enable the Commissioner, in the interests of justice, to interfere and exercise jurisdiction in cases where it was deemed just, expedient and desirable so to do. Such at least was the theory. It soon transpired, however, that Johnston's judicial arrangements were, contrary to anticipations expressed at the time of the Agreement, far from satisfactory. In particular the Agreement's provisions relating to appeals from the decisions of the Court of the Lukiko to the High Court; and those governing the supervisory jurisdiction of the Commissioner presented a number of thorny problems of interpretation and implementation.

First, there was the vexed question of whether or not there was, under the Agreement, a right of appeal from the Kabaka's courts to the High Court in both civil and criminal causes. Article 6, inter

55. Art.6
56. Ibid.
57. Ibid.

alia, provided that "there will be a right of appeal from the native courts to the principal court of justice in Uganda as regards all sentences which inflict a term of more than five years' imprisonment or a fine of over £100".[58] The use of the terms "sentences" and "fines", it was argued, implied that there was, in civil cases, no right of appeal from the Lukiko to the High Court. Yet, as noted earlier, in the case of appeals from the Lukiko to the Kabaka, the Agreement, in particular Article 11, did not differentiate between civil and criminal matters, thus giving the Kabaka appellate jurisdiction in both civil and criminal cases.[59]

Secondly, there was the matter of the Commissioner's supervisory powers in relation to the appellate jurisdiction of the Kabaka. Here the question was, what powers, if any, did the Commissioner have over the jurisdiction of the Lukiko and the Kabaka? Did the Commissioner, for instance, have the power to review the Kabaka's decision? If so, could the Kabaka be compelled to follow the Commissioner's advice? If not, could the Kabaka's judgement be carried out without the approval of the Commissioner? Thirdly, and more importantly, the Agreement, though largely based on the indigenous system of courts, did not recognise let alone regularise the judicial powers and jurisdiction of the inferior courts other than "the courts of First Instances held by the Chiefs of the counties".[60] Yet these inferior courts, over which the sub-county chiefs presided, were, in many

58. Article 6.
59. Article 11, inter alia, provided that: In all cases involving property or claims exceeding £100 in value or a sentence of imprisonment exceeding five years, or sentences of death, the Lukiko shall refer the matter to the consideration of the Kabaka, whose decision when countersigned by Her Majesty's chief representative in Uganda shall be final.
60. Article 11.

respects, the most important courts in the land; they heard the bulk of all the local cases and were, of course, very close to the people, and it was to remedy these defects that Sadler framed the Uganda Agreement (Judicial) 1905, under which the Kabaka, with the consent of the Commissioner, was empowered to establish courts for the trial of minor cases in which all the parties were Baganda.[61] These courts, like the court of the Lukiko and the Courts of Abamasaza established by the parent Agreement, were to exercise their jurisdiction under the supervision and control of the Administration. And, following the Bunyoro example, the Commissioner was given wide powers to transfer any case or class of cases, as he saw fit, from the Kabaka's courts to any established by or under the Uganda Order in Council, 1902.[62] Additionally, the principal Agreement was amended and provision made for a right of appeal from the Lukiko to the High Court, in both civil and criminal matters.

> "There shall be an appeal to His Majesty's High Court of Uganda (1) in criminal matters, from the courts established by or under this or the principal Agreement from the sentences of such courts where a sentence of death or imprisonment exceeding five years or of fine exceeding £100 or of whipping of over 24 lashes has been imposed, and (2) in civil matters, in cases where the amount or value of the subject matter of the suit exceeds £100; and nothing contained in the principal Agreement shall prejudice or affect such right of appeal as afore said."[63]

However, it was not until 1909 when the Buganda Native Courts Proclamation was issued that these changes were formally implemented.[64] The Proclamation began with a preamble stating that:

61. Revised Laws of Uganda, 1951, p.28: The Uganda (Judicial) Agreemment, 1905.
62. Ibid, Article 3.
63. Ibid, Article 4.
64. Proclamation: Native Courts in Buganda, 1909.

> "Whereas it is expedient and has been agreed by the Kabaka, chiefs and people of Buganda (1) that the Native Courts in Buganda should be organised and recognised, and their powers and jurisdiction defined; (2) that the supervision of the Native Courts by His Majesty's Government should be defined; now therefore I, Sir Henry Hesketh Bell, Governor of Uganda, by virtue of the said Agreement and in the exercise of the powers conferred upon me in that behalf hereby declare and proclaim that the following Native Courts have been established in Buganda with powers and jurisdiction following, that is to say:"[65]

Having constituted the courts of the Lukiko, the Courts of Abamasaza, and the Courts of the Sub-chiefs, and defined their powers and jurisdiction, the Proclamation placed them under the control and supervision of the Administration, particularly the District Commissioner. In him were vested wide powers, to call for records, to stay all illegal or improper proceedings, to direct the rehearing of any case as he saw fit, to terminate the proceedings of cases where the Court of the Lukiko, Saza or Sub-chief had no jursidiction and to refer such cases to a court having jurisdiction;[66] to hear and decide all offences committed in urban areas; civil and criminal cases in which the parties were in Government service as sailors, soldiers, police, post-runners, interpreters, clerks, process servers and office messengers; and all offences created by special legislation, such as Arms, Game, Forest, Fiscal and Mining Ordinances.[67] It was specifically stated, however, that in the exercise of his supervisory and revisionary powers over the Kabaka's Courts, the District Commissioner, should "not unduly interfere with their proceedings".[68] Indeed, he too, was to exercise his powers under the watchful eye of the High Court Judges. There can be little doubt, however, that the District Commissioner was in charge of

65. Proclamation: Native Courts in Buganda, 1909.
66. Article 2(6).
67. Article 6(a)(i), (ii) and (iii).
68. Ibid. 2(a)(iv).

whatever he surveyed. His powers were, in fact, in 1917, greatly extended and brought into line with those of his counterparts elsewhere in the Protectorate; and Buganda's judicial autonomy virtually brought to an end. The Lukiko, for example, lost its power to hear capital cases which, henceforth, were to be heard by the District Commissioner.

At the same time, however, the Kabaka's courts were, for the first time, empowered to hear and determine cases, civil and criminal, in which non-Baganda were parties, presumably in return for their loss of jurisdiction over capital offences. Unlike their jurisdiction over Baganda, however, the Kabaka's court's jurisdiction over "aliens" was fairly circumscribed and subject to stringent and detailed supervision and control, and was, in practice, infinitesimal. Even so, the Lukiko's new jurisdiction was a source of pride and gratification.

Indeed, its grant was considered a major concession and was the sop that induced the Kabaka to give his unqualified approval to the 1917 Proclamation and the concomitant surreptitious alteration of the "sacred Uganda Agreement, 1900".[69] No one, at any rate, on the Buganda side, seems to have fully appreciated the Proclamation's profound impact on their judicial powers; and yet, it was in some respects inconsistent with the terms of the Judicial Agreement of

69. The Agreement was "looked upon with almost superstitious reverence" per Sir Phillip Mitchell, at C.O. 536/195/40199 of 16.10.1937.

1905; and, indeed, was hardly in keeping with the maintenance of exclusive jurisdiction in the Native Courts: it conferred exclusive jurisdiction upon British Courts, but, paradoxically, it did not do so in the case of Native Courts.

Worse, the Proclamation, said to have been made with the agreement of the Kabaka, chiefs and people of Buganda, "would appear to override the Agreement of 1900 when the two are not consistent with each other".[70] Considering that the Kabaka and his people regarded the Agreement as their magna carta, that they were "very jealous indeed of any attempt to whittle down their rights under the Agreement", that "supplementary agreements were viewed with some suspicion", and that "any attempt at a comprehensive revision of the original Uganda Agreement would be a failure",[71] the 1917 Proclamation was, undoubtedly, a great coup. The problem with this interpretation, however, is that the Proclamation's legal status is far from clear. There are two contrasting views: the first, and the better view, is that the Proclamation had no legislative effect.[72] The second, and one which, in view of its great possibilities, would have appealed to the Kabaka and his people, is that the Proclamation had statutory force,[73] ostensibly because it was issued under the Courts Ordinance

70. Article 4(a)(b), for example, is not in conformity with Article 3 of the Uganda (Judicial) Agreement, 1905.
71. C.O. 536/195/40199 Draft dispatch to Mitchell, 16.10.1939.
72. C.O. 536/195/40199 "I am somewhat uncertain as to the effect of the Proclamation of 1917. What validity it has, and whence that validity is derived, I do not know, but I gather it has no legislative effect." (Roberts-Wray to Duncan 23.9.1937).
73. C.O. 536/195/49199 "If it should transpire that the Proclamation has legislative effect, then Article 7 gives the effect of statute to the Agreement of 1900, and Article 5 of that Agreement assumes considerable importance. It seems to require all laws to be read subject to the terms of the Agreement." (Roberts-Wray to Duncan 23.9.1937). This would have heartened many a Muganda.

of 1911 and, in that case, some believed, it had "statutory effect and ....equal validity with any other ordinances in existence".[74] This, clearly, would have put the cat among the pigeons and, as the issue at stake was "important and very political",[75] Bushe was forced to unreservedly retract his original opinion on this matter,[63] and was asked to write a private letter to the Attorney-General, "setting out the whole of the problems" of this "involved" question.[76] And so he did and, rather eloquently, too.

> "We have been in some difficulty in formulating a reply to the Governor's despatch No. 238 of the 12th of July, and I think it may clear the air a little if I tell you my own view on the question. In the first place, when you see the reply, you may feel that it is not really an answer to the question put, but the explanation of this is that the reference appears to be misconceived.
>
> We did not want to say all this as we realised the difficulty in which the court found itself having regard to the Secretary of State's decision of 1907. In these circumstances, the question which the High Court had to decide is not really a matter for us at this end, but the following reflections may be of use to you."[77]

74. C.O. 536/195/40199 Bushe to Flood, 1.10.1937.
75. C.O. 536/195/40199 Flood to Bushe, 9.9.1937.
76. C.O. 536/195/40199 "Sir G. Bushe's suggested reply is at No. 2 on the file and on reading it I was frankly puzzled as to what the people at the other end would think. I, therefore, addressed my further minute to him and I gather that he is of the opinion that the courts should be able to thrash the matter for themselves." (Flood to Sir C. Parkinson, 5.10.1937). See Bushe's letter to H.R. Horne, the Ugandan Attorney-General, of 1.11.1937. The question was whether or not the Kabaka had exclusive jurisdiction over his people, and arose out of the Rex v Besweri Kiwanuka case, Criminal Appeal No. 38 of 1937, of which the facts were these: The appellant, a Muganda, was convicted in the District Court of Kampala of the first class of stealing the sum of shs. 390, the property of the Native Government of Buganda, and was sentensed to 14 months' imprisonment with hard labour. He filed an appeal on the facts, but the High Court, a preliminary point of jurisdiction having been raised, declined to hear the case, and sought the opinion of the Secretary of State, under S.4 of the Foreign Jurisdiction Act, 1890.
77. C.O. 536/195/40199 Bushe to Horne, 1.11.1937.

The gist of these reflections was that Sir John Risley's view, which was overruled by the Secretary of State in 1907, was correct, and that the High Court had concurrent jurisdiction in Native Cases; and dealt at some length with the proposition that the Proclamation of 1917 gave legislative effect to the Uganda Agreement of 1900, in so far as it conferred jurisdiction on Native Courts. However, as this interpretation would have been "particularly awkward",[78] it was toned down and a shadow of doubt cast over it.[79] Mitchell was accordingly advised, and urged, under separate cover, to leave the matter well alone; but, since the colonial office could "not guarantee that his Judges would have the same view as that of their legal adviser",[80] he was duly forewarned:-

> "You will no doubt agree that, when the judges have considered the reply, the political implications, if any, will have to be most carefully reviewed in case any amendment of the law should be necessary to make the position clear."[81]

It was admitted, however, that this approach was "not very satisfactory", but there were, clearly, no easy solutions; indeed, as Flood put it, "the whole thing is considerably involved";[82] and as was usual in such situation, it was put in cold storage, sine die, and luckily, from the British point of view, the point was never raised, let alone noticed, by the other side. It was, as it happened, brutum fulmen - a harmless thunderbolt.

78. C.O. 536/195/40199 Flood to Parkinson, 5.10.1937.
79. C.O. 536/195/40199 Bushe to Mitchell, 2.11.1937.
80. C.O. 536/195/40199 Flood to Mitchell, 16.10.1937.
81. Ibid.
82. C.O. 536/195/40199 Flood to Parkinson, 5.10.1937.

9.2.2 THE ANKOLE AND TORO JUDICIAL SYSTEMS

The administration of justice in these "two little kingdoms" was governed by the terms of the respective Toro and Ankole Agreements of 1900 and 1901.[83] These Agreements, which were in similar terms, provided that "justice as between native and native" should be administered by the "Lukiko, the divisional native courts and the principal European officer in civil charge" of the district; and that all cases involving "natives and foreigners" should be heard by British magistrates and removed altogether from native jurisdiction".[84] Thus, the hearing of "purely native cases" was virtually left in the hands of the respective hereditary rulers and their territorial chiefs. Again the Administration's main concern was, in those days, to ensure that "substantial justice" was done:[85] the policy was "to encourage the King or Chief to govern his people directly on humane principles with only that amount of interference from the nearest European official as may protect the natives from

83. F.O. 2/858/Despatch No. 218 of 4.8.1904.
84. The Toro and Ankole Agreements of 1900 and 1901, the main features of which were modelled on the Uganda Agreement, 1900, were in similar terms and article 6 of the Ankole Agreement, set out below, will serve as an example:-
Justice as between native and native shall be administered direct by the recognised chiefs of the ten subdivisions. In all cases where a sentence of over three months' imprisonment, or a fine exceeding £5 in value, or where property of over £5 in value is concerned, an appeal shall lie from the divisional native courts to the Lukiko of the Kabaka of Ankole. In cases where the imprisonment exceeds a term of one year, or property involved exceeds the value of £100, an appeal shall lie from the decision of the Kabaka or his Lukiko to the principal European officer in civil charge of the district of Ankole. All cases between natives of the district of Ankole and natives of the other districts of the Uganda Protectorate, or between natives and foreigners, shall be tried by the British magistrates in the district of Ankole, and shall be removed altogether from native jurisdiction.
85. F.O. 2/858 Sadler to S/S, 4.8.1904.

injustice and cruelty".[86] This, with very little resources, as Sadler put it, "is all we should at present require".[87] That, at any rate, was the theory. Its practical implementation, however, soon ran into some local difficulties. Some of these first arose in Buganda as early as 1904, and as noted above, directly led to the promulgation of the "Uganda (Judicial) Agreement, 1905.[88] Despite its name, however, this Agreement was solely concerned with Buganda, and did not affect judicial administration elsewhere. Here, as the following material shows, the necessary changes were haphazard, piecemeal, confused and contradictory, and were brought in, particularly in Ankole and Toro, rather late in the day, partly because of apathy on the part of the District Officers, and partly because, the changes in Buganda notwithstanding, of the High Court Judges' attitude towards the Ankole and Toro Agreements: they believed, mistakenly as it happened, that "British Courts" had no jurisdiction in the Agreement areas, that their jurisdiction in these districts was subject to the "Native Agreements" and, indeed, limited to the hearing of "mixed cases", that is to say, cases involving "natives and non-natives".[89] The argument, briefly stated, was that the Ankole and Toro Agreements pre-dated the Uganda Order in Council, 1902, that the latter could not, subsequently and unilaterally, vary or modify the terms of the former, and that, despite the terms of that Order to the contrary, the rights of the "Native Rulers" to administer "justice between native and native"[90] could not be taken away without their consent.[91]

86. F.O. 2/200 Johnston to S/S, 12.3.1900.
87. F.O. 2/858/ Sadler to S/S, 4.8.1904.
88. Vide pp. supra pp. 349-352.
89. C.O. 536/2/33072 Ennis to Sadler, 11.8.1905.
90. 71 See section 6 of the Ankole Agreement, 1901.
91. C.O. 536/2/33072 Ennis to Sadler, 11.8.1905.

This point first came to the fore in 1905, when the Judiciary was asked by the Administration to prepare a draft ordinance for the establishment of "British Native Courts", for the trial of "native cases" which, in their view, and considering "the primitive state of the people", could not safely be left to "native jurisdiction".[92] Sadler's objective was to set up these courts throughout the Protectorate, but his efforts were frustrated by Ennis' insistence that such courts could not be established in the Agreement areas. He thus advised Sadler that:-

> "I recommend the establishment of such courts in every district of the Protectorate, except the Kingdom of Buganda, Ankole and Toro, in which districts the right to administer justice to natives by British courts has, for most purposes been done away with by the Agreements."[93]

Ennis' advice was accepted and "British Native Courts" duly set up in each and every district except Ankole, Buganda and Toro, and the matter would, presumably, have ended there.[94] But that was not to be, for shortly afterwards, the question of the "High Court's jurisdiction over the natives in the Agreement areas" was pointedly brought into focus by the locus classicus case of Katosi v Kahizi, of which the facts were, briefly, these:-[95]

The appellant was a Munyankole (and, so too, was the respondent), who, for undisclosed reasons, wished to impugn, in the High Court, the Omugabe's Court's decision. Despite its earlier decision to the contrary, however, the High Court declined to entertain Katosi's application and, in spite of his previous ruling on the matter, sought the Secretary of State's opinion, under section 4 of the

92. C.O. 536/2/33072 Sadler to S/S, 16.8.1905.
93. C.O. 536/2/33072 Ennis to Sadler. Op.cit.
94. Vide The Native Courts Ordinance, 1905.
95. Katosi v Kahizi, 1907. IULR 22.

Foreign Jurisdiction Act, 1890. It was submitted by the Judges that the High Court had jurisdiction under the Agreements in mixed cases only, and that in purely native cases the appeal was not to the British judiciary but to the executive administration, for it was considered that an Order in Council could not vary existing agreements, and that, consequently, the jurisdiction of the High Court under the Order in Council was subject to the terms of the agreements.[96] The Secretary of State agreed, albeit after some soul searching, and advised the Governor accordingly:-

> "I have had under consideration Mr. Hesketh Bell's despatch No. 447 of the 8th April last relative to an enquiry on the part of His Majesty's Judges in the Uganda Protectorate regarding the existence and extent of the jurisdiction of the High Court in Ankole and Toro. In ceding jurisdiction to His Majesty under the terms of the Toro Agreement, 1900 and the Ankole Agreement, 1901, it would appear that the respective chiefs of these districts reserved their right to try native cases. The validity of the Uganda Order in Council, 1902, in so far as it nullifies this reservation, is consequently open to question.
>
> In these circumstances, I am advised that the Uganda Order in Council, 1902 should be construed in such manner as not to impair the right thus reserved, and I accordingly concur in the view put forward by His Majesty's Judges in Uganda, that the jurisdiction of the High Court under the Order in question must be subject to the terms of the Agreements above mentioned."[97]

And so, though unenforceable, the Ankole and Toro Agreements were, rather ironically, given, at least in this matter, some semblance of inviolability. Their quasi legal status was, however, short lived, for, despite the Secretary of State's ruling, the Ankole and Toro Agreements judicial arrangements were, respectively reorganised, in 1911 and 1912, and brought under the Native Courts Ordinance, 1911, thus "confirming" the High Court's jurisdiction over "native cases",

96. See Katosi v Kahizi [1907]. IULR 22.
97. C.O. 536/13/17445 Lord Elgin to Bell, 31,7.1907.

and, ipso facto , invalidating the Secretary of State's decision. It was not until 1937, however, that this decision was irrevocably reversed by the Colonial Office, and Risley's 1905 legal opinion adopted and the Agreements' position vis-a-vis the Uganda Order in Council, 1902 definitely settled.[98] In the meantime, the Government's attitude towards these Agreements remained ambivalent.

The reorganisation of Ankole's Native Courts and the corrolary overturning of the Secretary of State's decision was triggered by Carter's findings, while on circuit at Mbarara, in 1908. His report makes interesting reading and, in some respects, is a telling commentary on "Administrative justice" and those responsible for its control and supervision; and reads as follows:-

98. C.O. 536/195/40199 Bushe to Flood, 28.9.1937. The actual words used were: "I attach the reply which I think should be sent. It is regrettable that it should reverse the Secretary of State's decision of 1907, but that decision was, I think, clearly wrong. Sir John Risley's view, which everybody ignored, contained the true doctrine and has been confirmed by the Privy Council". (The Privy Council's decision referred to is that of Sobhuza II v Miller, 1926, AC 516).
Sir John Risley's minute to Antrobus was as follows:-
"I do not think that H.M's jurisdiction under the Uganda Order in Council is limited, legally, by such Agreements as the Ankole and Toro Agreements. H.M's High Court has full jurisdiction, civil and criminal, over all persons and all matters in all the territories comprised in Uganda. When H.M. has entered into an Agreement with native chiefs providing for the administration of justice as between native and native, etc., by the chiefs, the High Court has in my opinion full Concurrent jurisdiction in native cases which, however, it should exercise at its discretion only in cases of gravity, leaving ordinary cases to be dealt with as provided by the Agreement." (Risley to Antrobus, 18.5.1907).
This exercise provides yet another colonial paradox: the Order in Council was "an act of state", and was, therefore, unenforceable. So too, were the "Native Agreements". But, rather surprisingly, both sides were inclined to construe them as if they were legally binding and subject to verbal interpretation.

> "While at Mbarara I took the opportunity of seeing the Kabaka of Ankole and, without myself expressing any views on the matter, of asking him what courts existed in Ankole and what were their powers. I gathered from him that there were only the Lukiko over which he presided, and the Saza courts, but he hoped that certain inferior courts of Batongole would soon be created. These would have a very limited jurisdiction and the powers of the Saza courts seemed also quite small. He further informed me that the Lukiko had never given a sentence of one year, but that that was the limit which he contemplated for that Court's and that all cases involving more serious punishment would be brought to the Baraza. The Acting Collector expressed to me a very decided opinion that the Bahima Chiefs in Ankole had little conception of the duties and responsibility of a judge and were not to be trusted to give impartial decisions, refusing to decide cases without large presents of cattle being given to them. These are in the nature of fees. In one case, Mr. Watson was informed and believed that 20 heads of cattle were taken and received by the chiefs trying the case and divided among them."[99]

Clearly, this was a most unsatisfactory state of affairs and Carter's instinctive response was, predictably, to make proposals for immediate reform.[100] Before these could be implemented, however, an internal inquiry was ordered and conducted by the resident Acting Collector, Ankole, and Carter's worst fears confirmed.[101] He, too, was inclined to view past practices with disfavour, and was not uncritical of his charges and was in favour of reform, albeit on a modest scale. His report, the relevant portion of which appears below, sheds some light on the machinery of justice in Ankole, its dismal record, state of development and the prospects for its reform. It is refreshingly frank and reads as follows:

99. C.O. 536/20/30072. Judicial Department Report for 1907 attached to Bell's dispatch No. 162 of 13.7.1908.
100. Carter's main proposals were the recasting of the Ankole Agreement, 1901, the establishment of "British Native Courts", and the reconstitution of the Lukiko and its subordination to the High Court.
101. C.O. 536/20/30072 Memorandum by the Acting Collector for Ankole, 10/6/1908.

"It is correct that there are at present only 5 native courts, namely (i) the Ankole Lukiko, (2) the Courts of four Saza chiefs - Mbaguta, Abdul Aziz, Abdul Effendi and Namwera. The remaining Saza chiefs have as yet no properly constituted Courts and any cases arising in their districts are at once brought before the Ankole Lukiko. The Saza courts at present constituted are limited as to their powers in criminal cases to sentences of four months - sentences beyond must go before the Ankole Lukiko. In civil cases they give their decisions regardless of the amount of the subject matter, only referring to the Ankole Lukiko in cases they cannot arrive at a decision or if the subject matter be cattle.

I agree that it would be advisable that the existing courts should be put on a proper footing and I am endeavouring to arrive at this end and purpose following the Baganda system. I do not consider the time is ripe for the institution of inferior (Batongole) courts as the Batongole system has only lately been introduced and is not yet complete and more especially as 6 counties are yet without properly constituted Saza courts. I do not think that it is necessary for a British Officer to sit in the Native Lukiko while cases are being heard unless some political importance is attached to the case under hearing.

I am in complete accord with the opening remarks quoting statements by my predecessor. The Bahima Chiefs, including the Kabaka have no sense of justice and are of a most grasping disposition and if left to themselves are not to be trusted to give impartial decisions. There is however, a large Baganda element which counteracts these shortcomings of the Bahima Chiefs and has certainly given me the impression that they, the Baganda members of the Ankole Lukiko, are anxious and willing to sift matters and to arrive at equitable decisions. Were it not for this Baganda element I should say that the chances of getting justice from the Ankole Lukiko without some sort of supervision would be very small."[102]

What is more, there was, as these extracts indicate, no provision for the hearing of minor Civil and serious Criminal cases, or the reviewing of "excessive", "inhumane" or long term prison sentences. There was, however, a right of appeal from the decision of the Lukiko to the District Collector, but he, admittedly, does not appear to have regularly, if at all, exercised his appellate jurisdiction.[103]

102. C.O. 536/20/30072. Edward Teffrey 10.6.1908. Apparently, "Although the Ankole Agreement 1901, was suspended in 1905, section 6 which dealt with the matter of justice between native and native was in practice followed as a guide, and was allowed to stand, subject to any orders from time to time made by the Commissioner."

103. ibid.

There were, in most areas, no properly constituted Saza Courts and their unlimited Civil and Criminal work was apparently carried out, contrary to the Agreement by the Lukiko.[104] Under the Agreement the Lukiko was an appellate court and had no original jurisdiction. In short the Agreement's judicial provisions had never been implemented.

Consequently, in March 1911, the Omugabe's courts were reconstituted, their powers defined and, without an Anglo-Ankole Judicial Agreement placed under the newly enacted Native Courts Ordinance, 1911.[105]

The reorganisation of Ankole's Native Courts was, a year later followed by the Toro Agreement (Judicial), 1912 by which Toro's "indigenous legal system was recast and "put on a regular footing."[106] Subject to the Governor's Consent, the Omukama was empowered to Constitute Native Courts, define and limit their jurisdiction and with a like consent and subject to the terms of the Agreement, from time to time, add to or abolish such Courts and, or revoke, amend or vary their jurisdiction.[107] But, it was also provided that:

> "Native Courts so established may also be established and constituted by the Governor as Native Courts under the Courts Ordinance, 1911, for the purpose of appeal to and supervision and revision by British Courts and to give them jurisdiction,

104. Teffrey's memorandum, op.cit.
105. Cd. 6007 (1913) Colonial Report, No. 748.
106. Cd. 7050 (1914) Colonial Report No. 787: Report for 1912-13. The Toro Agreement (Judicial) 1912, is said to have been framed on the lines of the Uganda Agreement (Judicial) 1905, with some modifications to allow the reorganisation in Toro to approximate to that of the Ankole Native Courts." (C.O. 536/52/37005 Inc. No. 2. Memo by Wm. Morris Carter, C.J.).
107. The Toro Agreement (Judicial) 1912, article 1(a), (b), & (c).

> should the Governor so direct, over natives of the Protectoratewho have been resident in the district of Toro for a period of at least five years, and in cases in which natives of the district are concerned. The Governor may with the consent of the Omukama transfer any case or class of cases from Native Courts established by the Omukama under this Agreement to British Courts established by or under the Uganda Order in Council, 1902, which British Courts shall exercise jurisdiction there in in accordance with the law for the time being in force in the Protectorate."[108]

The High Court's jurisdiction in Toro was thus formally recognised and the power or right of the Lukiko to hear and determine certain cases abrogated.[109]

> "At present the power of the Mukama of Toro extends only to the trial of natives of Toro, but in order that the Native Courts in Toro may have jurisdiction, similar to the Ankole Native Courts, over certain cases in which non-natives of the district are concerned, the draft Agreement provides for the establishment by the Governor, of the Toro Native Courts as Courts under the Native Courts Ordinance. In addition to their establishment by the Kabaka under the Agreement. In this respect the Toro Native Courts would have powers which were not enjoyed by the Native Courts in Buganda, on the other hand, under the draft Agreement, the Lukiko would not have as it has in Buganda, the power for trying case's punishable with death or transportation.[110]

108. see Article 3.
109. The cases reserved for trial by British courts were:

    1. Cases in which a person was charged with murder or in which the punishment available was death or transportation for life.
    2. Offences committed in urban areas.
    3. Civil and Criminal cases in which the accused, the complainant or any of the parties were regularly employed in Government Service.
    4. Breaches which were punishable as offences of Special law: e.g. Arms, Game, Forest, Fiscal or mining legislation.
    5. Cases in connection with marriage other than a marriage contracted under or in accordance with any native law.
    6. Cases relating to Witchcraft.

110. C.O. 536/52/37005 Memo by Wm. Morris Carter, C.J. 14.10.1912. This provision was similar to that with respect to Ankole, Busoga, Bunyoro and Mbale.

Apart from this, however, the powers and jurisdiction of the Lukiko remained wide and unlimited. On the other hand, however, the powers of the new Saza and subcounty Courts were precisely defined and respectively limited to the hearing of cases in which the maximum punishment available was a term of 9 months rigorous imprisonment, a fine of shs 80/-, or a whipping of 24 lashes; and, in civil cases where the amount or value of the subject matter in dispute did not exceed shs 400/-, ten cows, 100 sheep or 100 goats. The jurisdiction of the Courts of the Subchiefs was limited to the trial of criminal cases in which the maximum sentence which could be imposed was a term of one month rigorous imprisonment, a fine of shs 10/-, or a whipping of 6 strokes; whilst in civil cases their jurisdiction was limited to the hearing of cases in which the maximum amount or value of the property in dispute was shs 150/-; 5 cows, 50 sheep or 50 goats.[111]

In the exercise of their jurisdiction, the Lukiko, Saza and subcounty Courts were to follow the "Toro Native Courts Rules", or the procedure and practice hitherto followed by their predecessors, and were to administer and enforce Toro's Native Law and Custom, provided, of course, that the latter was not contrary to statute and that it did not offend the susceptibilities of the District Commissioner.

111. Revised Laws, Vol. VII (1951) p. 76.

9.3.1 THE EVOLUTION OF NATIVE COURTS IN THE NON TREATY DISTRICTS

Until 1909 the administration of justice outside the Agreement areas was largely in the hands of the chiefs and elders, and though carried out under the supervision of District Officers had never been statutorily defined. In the intervening years, however, the Administration had vigorously pursued a policy of installing "intelligent and reliable Baganda"[112] chiefs, with powers to administer civil and criminal justice on the Ankole, Bunyoro and Toro pattern. Indeed, in some cases, particularly, in the Northern and Eastern Provinces, the "Agents" were specifically recruited for the hearing of "native cases" and the "teaching of the indigenous chiefs to hold Courts and to settle disputes."[113]

These arrangements were made by individual District Officers as they saw fit. And, though, the Agents' jurisdiction was exercised under the supervision of the "British Native Courts", presided over by District Officers, and, ultimately the High Court it, nevertheless, had no statutory basis; and the same was true of the tribunals over which they presided, they were not statutorily constituted or legally recognised, and by 1909 were in serious need of reform. For, despite the British Native Courts' wide supervisory jurisdiction, the Agents powers were unlimited and undefined, and in consequence, some Agents werein the habit of "taking undue advantage of their position among the savage tribes" under them.[114] The most frequent abuses were: "bribery, extortion, excessive and inhumane punishments"; the Agency system was thus, albeit unwittingly, bringing British rule in these areas into considerable disrepute.[115]

112. C.O. 536/21/37925 Bell to S/S Despatch No. 200 of 11.9.08.
113. Ibid.
114. C.O. 536/21/47489 Despatch No. 254 of 20.11.08.
115. C.O. 536/21/37925 Bell to S/S op.cit.

Naturally, the Administration was well aware of these shortcomings but "owing to the absence of influencial indigenous chiefs to act as media between the Administration and the general mass of the population. The employment of "alien chiefs" was in their view "a necessary evil."[116]

Indeed, the Administration would appear to have been well satisfied with their Agents.

> "We have been fortunate, [Wrote Bell] in securing a number of really excellent men. In some cases, of course, we have fallen on unfortunate material but in most cases we have found in our Baganda Agents, helpers of amazing utility."[117]

Increasingly, however, the use of these Agents as magistrates in the non-Agreement areas became indefensible and was in due course abandoned. In the meantime, a number of palliative measures were instituted, the most important of which was the enactment of the Native Courts Ordinance, 1909, the main object of which was to enable the Governor to give definite recognition to the Agents' jurisdiction which, though tacitly allowed had never been defined. The Ordinance made provision for the establishment of Native Courts over which British Native Courts, held by District Officers, had appellate, supervisory and revisionary jurisdiction.[118] These Courts, which were based on the Buganda model, were to administer justice between "native and native" and were to conform to the rules made by the High Court, or subject to the District Officer's approval, the procedure

116. C.O. 536/21/37925 op.cit.
117. Ibid.
118. See the Native Courts Ordinance, 1909, sec. 10.

and practice, hitherto followed by the local traditional courts[119]. That was the theory. The actual setting up of these courts in the Eastern and Northern Provinces was still largely determined by the initiative of each individual District Officer, and was, as it happened, very slow and, indeed, piecemeal. Thus, though, the Bukedi and the Nile Districts, for example, were placed under British overrule as early as 1906, it was not until 1913, that their judicial machinery was brought under the current native courts legislation. It would appear, however, that the protectorate authorities were quite happy with the existing informal judicial arrangements, and many were strongly averse to any changes:-

> "The inhabitants of this district are mostly savages. Under our administration the district has been divided into subdivisions and a number of chiefs and elders whose authority supported by us extends over certain sections of the population now hold courts of various grades as follows:- the court of village elders; the court of the sub-chief; the court of the tribal chief; and the court of the tribal chiefs of a subdivision sitting together.
>
> These courts which are based on those in vogue in the more advanced parts of the Protectorate, have been instituted here very gradually and are in different stages of development, those sitting nearest government stations being as a rule the more advanced. The jurisdiction of these courts extends to all civil cases between natives of the district and to many offences triable under the Indian Penal Code which are for the present, I consider more advantageously dealt with by these courts. Instances of grave injustice are less frequent, and indeed very rare among the more advanced chiefs. In a few year's time regulations governing the native courts of the more advanced parts of the Protectorate might be introduced; mean while, I should be exceedingly sorry to hear of such an introduction or of any serious tampering with the present system"[120].

119. Section 14(i) provided that, "In this ordinance and the Native Courts Ordinance, 1905, the term "native of the district" shall include ... any native of the Protectorate or any native of any tribe on the confines of the Protectorate who has been resident in the district for a period of 5 years".
120. UNA/JMP/9325. DCs Report on the machinery of Justice in Bukedi, 1909.

The Administration was thus generally content with the unreformed system of Native courts.

The principal reason for this, as the preceding extract illustrates, was the belief held by District Officers that the indigenous judicial bodies were well adopted to the needs of the people over whom they had jurisdiction. This optimisum, however, was not shared by the judiciary. They believed that the powers of District Officers, over Native Courts, though wide in scope, could not be effectively exercised mainly because, the judiciary maintained, the Executive Officers, apparently, had no inclination nor the requisite expertise to exercise their statutory powers. Some District Officers, it was alleged, had

> "a tendency to take cases in an informal way without records; that is by way of "shauris": (informal arrangements) in which verbal orders were given, orders which unless made in accordance with the established law, had no legal authority."[121]

The Executive, on the other hand, still believed that any material interference with the powers and jurisdiction of the indigenous courts would deal a lethal blow to the status and prestige of the chiefs, to the detriment of British administration. Accordingly during the early years of British rule, the Executive resented any suggestion by the judiciary for the regular section of the tribal tribunals. In subsequent years, however, the Executive, too, albeit grudgingly became disenchanted with the unreformed arrangements for the hearing of cases, and by 1920, justice throughout the Protectorate was being administered within the general framework of the Uganda Order in Council, 1902. District Courts held by District

121. Ennis' memo. op.cit.

Officers had been in existence for several years, whilst "Additional District Courts", held by Stipendiary Magistrates, existed in a number of Townships, such as Entebbe, Jinja and Kampala. For the majority of people, however, the local chiefly courts were still the most important courts, for it was in such courts that the bulk of "native cases" were heard and all manner of disputes settled. The role of the Supervisory Courts was to ensure that the "Native Courts Rules"[122] were strictly adhered to

122 The London Gazette, 15.8.1902. The Uganda Order in Council, 1902, Art 22(1). Whilst these rules varied from district to district, the Kabale Native Courts Rules, issued on 9th June 1922, will serve as an example.

The Kabale Native Courts Rules

1. These rules may be cited as the Kabale Native Courts Rules.
2. The County and Sub-Divisional Courts shall sit weekly for the trial of cases.
   The Lukiko Court shall sit quarterly or oftener as may be directed by the District Magistrate.
3. All cases shall be instituted in the County or Sub-Divisional Court of the Chief of the accused or defendant if an native of the district, or in the Court of the County or Sub-division in which he usually resides or where the course of action arose if he is not a native of the district.
4. The Lukiko Court shall submit a return of all cases tried to the District Magistrate as soon as possible after the conclusion of each sitting.
   All other courts shall render returns monthly, provided that the files of all cases in which a sentence of imprisonment or whipping is imposed shall be submitted to the District Magistrate as soon as possible.
5. The fees specified in the schedule hereto shall be leviable in the Kabale Native Courts.
6. The fee leviable on execution shall be payable not by the plaintiff but by the defendant. All other fees shall be paid in the first instance by the Complaint or plaiantiff, but may be remitted when the court thinks fit, and may be ordered to be repaid by the defendant if judgment is given against him.
7. All fines and fees collected in any Court shall be paid into the Lukiko Fines Fund.
8. No person shall be imprisoned in any Gombolola lock-up.
9. Any person sentenced to not more than seven days imprisonment may be imprisoned in the Saza lock-up for such period. All persons sentenced to more than seven days imprisonment shall be sent without delay to the prison at Kabale.
10. Warrants of imprisonment shall accompany each prisoner and shall be signed by the Chief who presided at the Court which sentenced the prisoners.
11. Notice of appeal from any decision shall be given to the Appeal Court within one mouth unless the Court for any reason considers that such time ought to be extended.

and that "substantial justice was administered without undue regard to technicalities and without undue delay".[123] Many of these courts, however, had power, by virtue of the Proclamations creating them, to try cases arising from certain specified ordinances. Otherwise, Native courts were solely concerned with the administration of "native law" per simpliciter. There were, even here, however, very important qualifications: all courts were required, in the exercise of their powers, to comply with Article 20 of the Uganda Order in Council, 1902, the terms of which, in part, stated that:-

> "In all cases, civil and criminal, to which natives are parties, every court (a) shall be guided by native law so far as it is applicable and is not repugnant to justice and morality or inconsistent with any Order in Council or Ordinance, or any regulation or rule made under any Order in Council, ..."[124]

It would appear, however, that these statutory provisions were, in practice, largely redundant: witness the wholesale infringement, or rather, the non-observance, by the Native Courts, of section 306(i) of the Criminal Procedure Ordinance, 1919. The Native Courts and, evidently, the Executive were unaware that the limited

123. Uganda Order in Council, 1902, Art. 20. Needless to say that the expression "without undue regard to technicalities of procedure" did not mean that all forms of procedure were to be ignored. On the contrary, in the absence of any directions Native Courts were required to exercise their jurisdiction according to the procedure heretofore followed by the indigenous tribunals in which the court was situated. And the Supervisory Court had power to give directions as to practice and procedure to be followed by the courts under its supervision and control: Courts Ordinance (1919) s.39; and The Criminal Procedure Ordinance (1919) s.25.

124. Uganda Order in Council, 1902, Art. 20. The legislative powers of Native Councils were set out in the Native law Ordinance, 1919, whilst the powers of chiefs to make orders and regulations were contained in s.7 of the Native Authority Ordinance, 1919. In Buganda the powers of the Buganda Government to make laws governing the Baganda were recognised by and exercised according to the terms of the Buganda Agreement (Native Laws) 1910.

criminal jurisdiction exercised by the chiefs had to conform to the Criminal Procedure Ordinance, 1919, and the Uganda Order in Council, 1902. Thus, in 1926, Sir William Gowers, for example, unashmedly confided in the Secretary of State that:-

> "At the time of the chief justice's original report I had been less than three months in Uganda and the fact that women were beaten by Native Courts had not previously come to my knowledge. The Chief Secretary wishes me to add that he was wholly unaware, throughout his service in Uganda that the practice existed ..... I was not aware, until the point was made clear by the Chief Justice and the Attorney General that the practice was directly forbidden to Native Courts by Protectorate legislation. Native Courts administer native law and custom and it has never, so far as I am aware, been made clear to administrative officres that the procedure and punishment permitted to Native Courts are governed entirely by this Ordinance"[125].

In any case, this was, in Gower's view, a very minor issue; for him, the real problem facing judicial administration in rural areas was the subordination of Native Courts to the jurisdiction of the High Court. He firmly believed that the existing arrangements were illogical and unsatisfactory, and efforts were accordingly made to

125 C.O. 536/139/3288 Gowers to S/S 8.3.1926.

> On the 25th September 1925, following a meeting at which the Chief Justice, the Chief Secretary and the Attorney General were present and the legal position fully discussed a telegram was sent to all Provicial Commissioners informing them that the practice of flogging of women was illegal and inconsistent with the law of the Protectorate, and advised that the practice "must cease forthwith", and their attention drawn to the relevant terms of the Ordinance in question: C.O.S36/139/3288 E.B. Jarvis to Sir Charles Griffin, C.J. 7.11.1925. Enclosure No. 12. Conf. Memo. to P.C.S. Re: Flogging of Women. "From my knowledge [observed Gowers] of the social evolution of similar primitive communities I should, however, have been surprised to find that this form of punishment was unknown in Uganda. It is quite consistent with native public opinion, and I need not point out that European views regarding the treatment of women are quite foreign to primitive African tribes, among whom it often happens that the female is physically the equal of the male".

place the trial of "purely native cases" under the exclusive control and supervision of District Officers; and he, uncompromisingly so, told the Secretary of State. He wrote:-

> "Since I assumed the administration of this Protectorate, the System under which Native Courts are supervised and controlled has caused me considerable misgivings and anxiety. All Native Courts in the Eastern, Northern and Western Provinces are set up under the Courts Ordinance Part V and are Subordinate to and under the supervision of the High Court.
>
> In Buganda, Native Courts are recognised as having been created by the Principal Agreement or by the Kabaka under the Buganda Agreement (Judicial) 1905, but for purposes of supervision they are treated as courts established under the Courts Ordinance and accordingly as subordinate to the High Court.
>
> The defects of this system were first brought to my notice in 1926 .... The state of affairs revealed clearly indicated that a system of dual control and divided responsibility was likely to be ineffective and unsatisfactory. A report on the working of the Lukiko Court by a magistrate of the Judicial Department early in 1928 indicated clearly that the results of this dual system of control have been as unsatisfactory in Buganda as elsewhere. In my opinion responsibility for the control and supervision of Native Courts throughout the Protectorate should be vested in a single authority -that authority should be the Provincial Commissioner in his province, directly responsible to myself. For the supervision and training of the Native Courts in Uganda at their present stage only a moderate standard of knowledge of exotic law and legal procedure is required. A profound knowledge of the customs and an intimate familiarity with the habits of thought and the mental outlook of the particular tribe in which the courts are set up are, however, essential. Senior Officers of the Provincial Administration are expected to possess all the above qualifications, but it would be unreasonable to look for them in judges of the High Court. Further the training of Courts forms so important a part of the education in self-government of the various tribes of the Protectorate which is a primary duty of the officers of the Provincial Administration that it is impossible to contemplate the elimination of the Provincial Commissioner and his assistants from these duties.
>
> No tribe in this Protectorate has yet reached the stage in which it is possible for them to appreciate the desirability of a separation between the judicial and executive functions of government and a premature attempt to enforce this distinction must militate against the successful social and political education of these tribes. At the present stage, and for a number of years to come, it is essential that the authority which exercises executive control over chiefs and Native Councils should control and instruct them in all functions of Government without differentiation.

> I have had under consideration for some months a draft ordinance which would transfer control of those courts from the High Court to the Provincial Administration but action in this matter has now been anticipated by the recent enactment of a Native Courts Ordinance in Tanganyika Territory. This Ordinance follows precisely the lines which I had in contemplation for a Uganda Ordinance, the "objects and reasons" for the legislation which were published with the Tanganyika Bill are not less applicable to Uganda than Tanganyika and I desire very strongly to support Sir Donald Cameron's views which are embodied in the third and fourth paragraphs of this document. I accordingly ask for your authority to bring before my legislative council a Native Courts Ordinance on the lines of the Tanganyika Ordinance with such modifications as may be necessary to meet local conditions.
>
> I am aware that the enactment of the Ordinance in Tanganyika has evoked some criticism from members of the public who ignore or are ignorant of the fact that the system which they would condemn has operated admirably for many years in other dependencies such as Nigeria and Sudan. These criticisms appear to me to be based entirely on fallacious assumptions and a disregard of essential facts which render the system greatly preferable to any alternative which can be suggested."[126]

Despite its well known defects, the Nigerian judicial system, on which the Tanganyika Ordinance was modelled was yet again to be Gower's model for reform.[127] The fact that it was in vogue, or rather "operated admirably for many years in other dependencies" was, in his view, sufficient warrant for its adoption elsewhere. Gowers' Legal Advisers, however, did not exactly share their master's view; and attached to his despatch, to the Secretary of State for the Colonies, were two short crisp "minutes", one by the chief justice, Sir Charles Griffin, and the other, by Judge Guthrie-Smith, that were vehemently opposed to the proposed legislation. Guthrie-Smith's minute will serve as an example. It reads:-

126. C.O. 536/157/20405 Gowers to S/S. 21.6.1929.
127. C.O. 536/196/3548. Clearly Gowers' Nigerian experience had left an indelible mark on him. "The Government is endeavouring to introduce the Nigerian System of Native Courts supervised by Administrative Officers and not by the Judiciary. Sir Donald Cameron introduced the system in Tanganyika where he got it from Nigeria, and Sir William Gowers, as an old Nigerian Province official in Nigeria, naturally, was inclined to follow that model" (per Flood): Minute of 30.3.1933.

> "I have read the reasons in support of the Tanganyika Ordinance and cannot see that they have any application to Uganda. They lead to the inference that the Territory must be very many years behind Uganda in civilisation. The present system has worked for 25 years and in my opinion it would be a step backward to abolish it."[128]

The judiciary was thus "entirely opposed to the purpose sought to be achieved" by new Native Courts Ordinance. They strongly believed that the proposed changes, particularly, the abolition of the High Court's revisional jurisdiction, were inconsistent with the rule of law. They "did not feel confident [in those circumstance], that the rule of law [would] prevail".[129]

Besides, the judiciary, quite rightly, pointed out that the proposed legislation was contrary to the doctrine of the separation of powers, a retrograde step, and as such a measure to be deprecated.[130] Despite these scathing criticisms, however, Gowers' dispatch was favourably received, at the Colonial office, by Parkinson, the Assistant Secretary, and rather surprisingly, by the Secretary of State's Principal Legal Adviser, Sir John Risley. They too, like Gowers, erroneously argued that a system which had worked in Nigeria with success and which had recently been adopted in Tanganyika could hardly be said to be unsuitable for Uganda.[131] They suggested, however, that "proper provision should be made with regard to criminal proceedings for offences by or against non-natives to be strictly safeguarded" by providing that such cases should be heard by

128. C.O. 536/157/20405. Inclosure No.3, Cuthrie-Smith to Gowers 9.5.1929.
129. C.O. 536/157/20405. Inclosure No.1, Griffin to Gowers 15.4.1929.
130. C.O. 536/157/20405. Griffin to Gowers, ibid.
131. C.O. 536/157/20405. Risley's minute of 12.8.1929. Parkinson's minute of 8.8.1929 simply stated that: "I anticipated criticisms from Griffin, C.J. whose opinion of P.C.S. is low and whose opinion of the majesty of the law is high."

a District Court or the High Court.[132] Thus, though the proposed legislation was obviously inapposite for "non-natives", it was perfectly suitable for the "natives", and Gowers was advised accordingly;[133] and three months later a draft Bill on the lines of the Tanganyika Native Courts Ordinance was submitted to the Colonial Office for approval.[134]

However, despite the Secretary of State's previous decision, in favour of the new legislation, Gowers' final Draft Bill was unfavourably received by Grattan Bushe, the Assistant Legal Adviser, at the Colonial office, who, like the local judges, but unlike Risley, his immediate superior, took the view that the proposed Native Courts Ordinance, was inimical to good judicial practice and administration, and so caustically minuted, at some length, as follows:-

> "My task is simply to examine the terms of this Bill paying due regard to decisions taken on the question of principle. Since, in my view what was done in Tanganyika and is now being copied with avidity in Uganda is the only retrograde step in colonial administration which I have seen and the task is not an easy one. The executive gives the law and administers it. Political officers adjudicate upon their own orders and, if needs be, upon their own conduct. No court can control them, no lawyer is even allowed to watch them. A native may appeal from Caesar to Caesar, but is otherwise without redress. The result to my mind will be complete subordination of law to policy. We have built a sound proof wall round the administration of native justice and, since no echo can reach the outside world, the system of course "works satisfactorily".

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132. C.O. 536/157/20405 Risley's minute, op.cit.
133. C.O. 536/157/20405 Lord Passfield to Gowers 13.3.1930.
134. C.O. 536/160/2053 Gowers to S/S 11.6.1930: Initially, Gowers' Draft Bill was whole heartedly welcomed, Ingrams noting, for example, that "the new system ... is really one that should have been adopted years ago, but it has been difficult to get rid of the idea that English law was the best for people in any stage of development, and that it should be enforced willy nilly on the territories under British control, however, backward the inhabitants were".

> Even now I think that the worst features of the system might be alleviated by conferring upon the Supreme Court power in the last resort to hear an appeal by special leave, that is to say, there would be no right of appeal, but if a prima facie case of injustice would be shown the court would have to allow an appeal. In other words, clause 34(4) might provide instead of the ultimate appeal being to the Governor that it should be to the Supreme Court by special leave of the court. This would at least provide a vent, however, small."[135]

Additionally, he made proposals for some much needed amendments to be effected, including the recommendation for the making of periodic reviews and renewal of the entire ordinance. Bushes' proposals were unreservedly accepted by the Parliamentary Under-Secretary of State,[136] and Gowers ordered to prepare a fresh Bill along the lines indicated above.[137] Such a Bill was published in February 1931, and was about to be presented to the Legislative Council when the Uganda Law Society objected to it and presented a strongly worded petition against its enactment to the Secretary of State for the colonies.[138] The Law Society's petition against the Bill was, shortly afterwards, followed by an equally strongly worded petition from the Buganda Government deprecating the introduction of a measure which precluded the right of appeal to a Court of Justice.[139]

135. C.O. 536/160/20531 Bushe's Minute of 28.8.1930.
136. C.O. 536/160/20531 Dr. Drummond Sheils' Minute reads as follows: "I think [he minuted] I have made it clear all along that I think this series of ordinances is retrograde and not progressive. I agree entirely with Mr. Bushe's criticism of this recent new departure in our judicial system in the African colonies. It has as Sir Cecil points out led to disaster in Southern Nigeria. As Mr. Bushe rightly says policy and not justice will determine the line of judgement, and this spirit will persist right back to the final authority - the Governor. The principle is entirely wrong, and if the Supreme Courts are bad or imperfect, the remedy is not this arrangement but a revision of the personnel of the Supreme Courts".
137. 536/160/20531 S/S to Gowers 16.9.30 is in similar terms to the two minutes quoted above, i.e. Bushe's and Sheils' respectively.
138. C.O. 536/173/22188 Enclosure to Weatherhead's dispatch of 7.10.1932.
139. Buganda's Petition was signed by the Kabaka and his three ministers.

> "We note further [the petitioners went on] that finality under the Bill is reached when the matter has been dealt with by the Provincial Commissioner. The official, however, sits not as a Court but as a revising officer, and therefore the proceedings of a Court are not open to the Public and cannot therefore receive the publicity which is the first principle of British Justice."[140]

It was also argued that the draft Bill was racial and discriminatory - witness the submission, on behalf of the Uganda Chamber of Commerce, that "every native should have the right of appeal in matters both civil and criminal to the High Court and thence to all further Courts of Appeal in the same way as other subjects", namely, Asians and Europeans.[141]

Additionally, and perhaps more importantly it was pointed out that the proposed legislation was both unconstitutional and ultra vires the Uganda Order in Council, 1902.[142] Be that as it may, the Governor was not impressed. Indeed, according to the Ugandan authorities the Petition of the Buganda Government was "the result of representations made to the Kabaka by the Kampala Advocates who are naturally interested financially in the continuance of the existing practice under which certain cases originating in Native Courts may ultimately appeal to the High Court and be represented by Counsel",[143] whilst the Resolution of the Uganda Chamber of Commerce was "inspired by the legal members of the chamber, with the object of making more

140. Buganda's Petition was signed by the Kabaka, Katikiro, Omulamuzi and Omuwanika.
141. C.O. 536/160/20531 Enclosure to dispatch of 11.6.1930.
142. C.O. 536/171/22083 Enclosure to dispatch of 20.7.1932.
143. C.O. 536/173/22188 Weatherhead to S/S 7.10.1932. Buganda's petition opens thus: "We note with gratitude that this Ordinance does not expressly apply to Buganda, we still fear that it may in future be extended to this country and we would therefore earnestly request that this may not be considered necessary".

legal work for themselves".[144] Nevertheless, these representations afforded the opponents of the proposed legislation, particularly the Judicial Department, the opportunity to reconsider the policy to which they had reluctantly given their consent and in April 1933 the Secretary of State addressed a further dispatch to the new Governor, Sir Bernard Boudillon, "in which he receded entirely from his original approval of the Tanganyika principle".[145]

The rationale for this reversal of policy had several strands. Firstly, "the model, though it worked in the past, it was [by 1933] beginning to cause considerable anxiety" in Whitehall.[146]

> "If every remnant of the independent Judiciary [minuted Bushe] is excluded from the Province and the Provincial Commissioner exercises both executive and Judicial functions, and does that moreover under a condition where there is no publicity whatever, you get an autocracy which is as absolute as anything that can be imagined."[147]

Secondly, the point was made that the system under consideration placed "political officers in an impossible position" in that they had "to combine in themselves inconsistent functions", viz,executive, legislative and judicial.[148] Thirdly, the Colonial office was apparently not satisfied with "the adequacy of the control exercised [over native courts] by the Administrative Officers".[149] "In particular [noted Flood] it is often alleged that the review of the proceedings of a Native Court is perfunctory and tends to become more and more so with the increase in the work of the Native Courts and

144. C.O. 536/160/20531 Gowers to S/S 11.6.1930.
145. C.O. 536/183/23644 Bourdillon, Memorandum on Native Courts. April 1934.
146. C.O. 536/176/3548 Flood's Minute of 30.3.1933.
147. Ibid. Bushe quoted by Flood in the minute cited above.
148. Ibid.
149. Flood's minute of 30.3.1933.

with increased administrative work thrown on the District Officers".[150] Fourthly, and perhaps more importantly, the principle underlying the proposed legislation was, in Bushe's words, "entirely wrong"; it was "retrograde and not progressive*". The idea of "administrative justice" was increasingly becoming indefensible and outmoded; and as far as Uganda was concerned, "Any endeavour to exclude (the jurisdiction of) the High Court over all persons and matters in Uganda (would according to Abraham C.J.), "sooner or later, end in trouble".[151] For the jurisdiction of the High Court laid down in Article 15 of the Order in Council of 1902 was part of the Constitution of the Protectorate, and as Flood noted, since the High Court (had) exercised this jurisdiction in the past over the Native Courts, it would be a very difficult step to remove that jurisdiction and substitute administrative arrangements with the Governor as the final Court of Appeal.[152] "What (he went on) I should like to see would be an appeal from the Native Courts to the

* See Bushe's minute, op.cit.

150. C.O. 536/176/3548. Cf Abrahams (C.J.) observations on His Excellency the Governor's Memorandum on Native Courts, the relevant portion of which reads: "In compliance with the request of His Excellency I herewith submit such observations on his memorandum on Native Courts as I feel enabled to do so. Hitherto the High Court has had practically nothing to do with Native Courts outside Buganda although from time to time certain elementary Rules of Court have been made by it. Speaking for myself, I know practically nothing of the way in which these native courts perform their duties or of their potentialities for improvement". (Enclosure II to the Conf. despatch of 28.9.1934.) Indeed, this was the raison d'etre for the proposed legislation. One of the main arguments adduced in support of an appeal to the Governor was that the High Court had no interest, or time to exercise its supervisory powers effectively. "It is obvious [wrote Bourdillon] that the High Court cannot possibly exercise proper control over Native Courts which try something like 100,000 cases in a year unless the intermediate supervision by the Subordinate British Courts is adequate, and the real object to be aimed at is the adequacy of this supervision". (Boundillon: Memorandum on Native Courts, 1934).

151. C.O. 536/183/23644 Enclosure II to Dispatch of 28.9.1934.

152. C.O. 536/176/3548 Flood's Minute of 30.3.1933.

District Commissioner sitting as a Magistrate, or to the Provincial Commissioner sitting as a Magistrate also in more important cases, and from there to the High Court which would be final".[153]

Bourdillon was accordingly informed and in September 1934 the Acting Governor sought authority, from the Secretary of State, for the preparation of a revised Native Courts Bill, and in January 1938, Sir Philip Mitchell, the then Governor, received the following reply:

> "It is possible that you may wish to give this matter fresh consideration but on the material before me, I think I may express my concurrence in Sir Bernard Bourdillon's conclusion as to the effect of Article 20 of the Uganda Order in Council.
>
> With regard to the question of the rule-making power I do not feel that the requirement of approval by the Governor of the exercise of rule-making powers by the Chief-Justice, could be reasonably be held to involve an extension of the executive's control over the judiciary while on the other hand, I am advised that there is no objection in law to the power to make rules being conferred upon the Governor. Accordingly, a choice between the alternative procedures may well be made purely in the light of expediency, although I incline to the view that it would be preferable to follow the usual practice of conferring the power on the Chief Justice to be exercised with the

153. C.O. 536/176/3548 op.cit. This was accepted by the Secretary of State, and in April 1933, Bourdillon informed that: "You will understand that in the present circumstances I feel great difficulty in approving proposals which would have the effect of abolishing in Uganda, where it has been long established, the system which it is proposed to introduce and extend elsewhere". (C.O. 536/176/3548 S/S to Bourdillon 8.4.1933).

approval of the Governor."[154]

In April 1939, a fresh Native Courts Bill was prepared and having received the Secretary of State's approval was enacted and became law in April 1940.[155] As enacted, however, the Native Courts Ordinance, 1940, involved no major change of principle: it merely confirmed, "in legal form the procedure of the Native Courts as it had been

154. C.O. 536/183/23644 S/S to Governor 8.1.1938. It was hoped that the Chief Justice "would invoke the assistance of the Administration in formulating the necessary rules". Indeed judging from past experience, there could be no other course: "At the present moment, (wrote Bourdillon) the High Court has power to make, prescribe rules for the Native Courts in both civil and criminal cases. I think I am correct in saying that no rules have been issued which prescribe the procedure to be followed or lay down what form the record of the case should take". Hence the Governor's proposal. In response to this, Abrahams C.J. had this to say. "There has been, as His Excellency say, no exercise of the powers conferred on the High Court to make rules prescribing the forms and procedure to be used and observed by Native Courts. This is not surprising in view of what I have already said, that the High Court knows practically nothing about these courts. If I had to make such rules I should not know where to begin. It may be that I have misunderstood paragraph 8 of His Excellency's Memorandum, but I am unable to agree that if any procedure is prescribed we should make no attempt to bring Native Courts to conform with our own standard. After all procedure is only an attempt to formulate a method designed to produce the best results". (C.O. 536/183/23644 Enclosure to dispatch No. Conf. of 28.9.1934.)

155. No.3 of 1940. The objects and reasons for the Bill were set out by Mitchell in his dispatch to the Secretary of State in the following terms:

> "I am advised that the legislation from which they (Native Courts) derive their powers is in a most confused state and that the jurisdiction of the Courts is ill defined and in certain directions, unduly limited. The draft Bill is based on similar legislation in force in the Tanganyika Territory and Nigeria, with modifications to suit local circumstances, and, I believe, some improvement. The High Court is the final forum for aggrieved parties, and the power to make rules is given to the Provincial Commissioners subject to the approval of the Chief Justice. The proposals have his support and I feel confident that with his collaboration valuable progress will be achieved in developing the Native Courts as an essential and integral part of the judicial system of the Protectorate. Complementary to the British Courts."

(C.O.O 536/205/40249 Mitchell to MacDonald 19.4.39).

developed in practice since the enactment of the Courts Ordinance of 1911".[156] The only radical change in procedure was the limitation set to the chain of appeals.[157] A circular memorandum issued in June 1941, explains the practical implications of this provision rather well and is reproduced below for ease of reference.

"The warrants for the Native Courts of each district have been drawn up so as to interfere as little as possible with existing practice. It has been laid down that in no case tried under the Ordinance shall there be more than two appeals. No appeal therefore lies from the appellate decision of a Central Native Court dealing with a case originally tried in a Gombolola Court which has also been the subject of an appeal via County Court. On the other hand, where a case has originated in a County Court, an appeal can lie to the District Court from the appellate decision of a Central Native Court, as this will involve no more than two appeals. As this procedure in appeal might prevent cases in which important interpretation of native custom are involved, from reaching the District Court, a proviso has been added to the Warrants of Gombolola Courts that in cases involving a substantial question of native law or custom, appeals shall lie direct to the Central Native Court, provided permission for such an appeal is first obtained from that Court.

As this proviso is an innovation in native court procedure its application may first lead to difficulties. District Commissioners should therefore ensure with as little delay as possible, that Central Native Courts understand their new judicial function of

156. Hailey, Lord, Native Administration in the British African Territories HSMO 1951, Part 1 p.41.
157. See Section 25(2) of No.3 of 1940.

granting leave to appeal and that the new procedure in appeal is also understood throughout each district.

At present it is not proposed to issue written instructions from this office prescribing the manner in which cases should be tried but District Commissioners must ensure that all members of Native Courts fully understand and adhere to existing procedure, together with the powers conferred on them by their Court Warrants. In explaining the purpose of the new Ordinance and various changes involved, care should be taken not to give the impression that it is anything new or revolutionary. Any major change in procedure which it may be desired to introduced should first be referred to this office. If it appears desirable, written instructions under s.4(1) of the Native Courts Ordinance will be issued.[158] The new ordinance supplies a foundation upon which it should be possible gradually to build up a sound African judicial system. This however can only come about when Native Courts have developed a stronger sense of responsibility than is always apparant at present. Such development should be the constant care of every Administrative Officer who must not only supervise the Native Courts within his charge but also guide their progress". [159]

158. KDA No.104 Provincial Commissioner, Western Province to District Commissioner, Western Province, 19.6.1941 S.4(1) provided that: A Provincial Commissioner may prescribe by the warrant confirming the establishment of a Native Court or by directions given by him in writing, the Constitution of such Court, the order of precedence of the members thereof, the method of arriving at a decision if the members of the Court are in disagreement, the number of the members of the Court which shall constitute a quorum, the power of the court to sit with or withour assessors, the manner of trial with assessors and whether any penalty to be imposed is to be fixed by the Court as a whole or by any specified member or members of it. If any of the said matters are not prescribed by the Provincial Commissioner as aforesaid, they shall be regulated by any native law and custom applicable to such court.

159. KDA No.104 ibid.

In him were vested the power of supervision, revision and appeal. He had access to the native courts in the area of his jurisdiction and could "send for and examine the record of any proceedings before a court for the purpose of satisfying himself as to the correctness, legality or propriety of any judgment, sentence or order, recorded or passed, or as to the regularity of any proceedings, (and if necessary), revise, quash or order the case to be reheard de novo either before the same court or some other native or subordinate competent court of competent jurisdiction or report the matter to the High Court", as he saw fit.[160] In such cases the High Court could order the case to be reheard de novo by itself or any native or subordinate court of competent jurisdiction and in appropriate cases especially where there was a miscarriage of justice or where there was an error material to the merits of the case, the High Court could, revise any original or appellate proceedings of a native court as if it were a magistrate's court.[161] Such jurisdiction, however, was rarely exercised; local control, including appeals and revision, as indicated earlier, was in the hands of the District Commissioner, whilst ultimate control was vested in the Provincial Commissioner. He held very wide and extensive powers of revision, appointment, suspension and dismissal[162] and, subject to the concurrence of the Chief Justice, the power to make rules of practice and procedure to be followed by the Courts and for the carrying out of the Ordinances

160. No.3 of 1940, ss.23 and 24.
161. Ibid. s.26. However, the High Court could refuse to exercise its jurisdiction where the applicant had not exhausted his rights to appeal under s.25.
162. SS.3 and 5 of No.3 of 1940.

generally.[163] He was empowered to prescribe by the warrant confirming the establishment of native courts, their constitution, practice and procedure, the order and precedence of the Court holders, the method of reaching decisions, the extent and manner of trial with or without assessors including the determination of fines, sentences and punishments.[164] It was his duty to ensure that the chiefs fully understood the nature and the extent of their judicial powers, the practice and procedures and the applicable statute and local laws. The Executive, the Provincial administations in particular, were determined to take "away from the High Court all control over the Native Courts",[165]

163. In particular, s.28(1) empowered the Provincial Commissioner to make rules in respect of the following matters:

    (a) The practice and procedure of native courts in their original jurisdiction.
    (b) The causes or class of cases to be treated as of a criminal or civil nature.
    (c) The procedure relating to the swearing of witnesses.
    (d) The practice relating to the institution of criminal complaints.
    (e) The practice relating to the arrest of accused persons.
    (f) The provisions relating to bail.
    (g) The practice relating to execution and attachment in criminal and civil cases.
    (h) The provisions relating to the reward of accused persons.
    (i) The practice governing the imposition & administration of corporal punishment.
    (j) The procedure relating to the hearing of appeals in native courts.
    (k) The costs relating to the institution of cases both civil and criminal.
    (l) The Records to be kept by native courts.
    (m) The fees to be paid in native courts.
    (n) The disposal and application of fines and fees received by native courts.
    (o) The forms to be used.

164. SS. 3, 4, 5, 7, 8, 11, 12, 15 and 28.
165. C.O. 536/183/23644 Memorandum on Native Courts, 1934.

and the Native Courts Ordinance, 1940 was the first step towards that end.

As it happened, however, this legislation soon ran into difficulties and was subsequently repealed and replaced by the African Courts Ordinance, 1957; and provision made for the incorporation of the "African Courts" into the main judicial system thus enabling "their move to follow the practice and procedure of the Protectorate Courts",[166] the ultimate objective being the establishment of "one body of general law and one judicial system applicable equally to all persons";[167] and, as is shown below, the next five years - as it happened the last years of colonial rule saw a definite movement towards this goal. However, it was not until 1964 that complete integration was finally achieved.

9.3.2 THE MOVEMENT TOWARDS INTERGRATION

The colonial machinery of justice was, as noted earlier, organised a long racial lines. There were, on the one hand the "Protectorate Courts" the High Court and the Subordinate courts; and the "Native" or Tribal tribunals on the other. The former were, despite the name, solely concerned with "non native" matters whilst the latter, as the name suggests, were concerned with purely "native cases" and were, contrary to the Uganda Order in Council 1902, under the control and supervision of the Executive. Thus though the High Court had "full jurisdiction, civil and criminal, over all persons and overall matters in Uganda", the bulk of "native cases" were outside its purview.[168]

166. Annual Report, 1957.
167. Record of the Judicial Advisers' Conference 1953, p.5 para. 3.
168. Vide, Uganda Order in Council, 1902, Article 18(1).

In 1933, for example, out of 100,000 cases heard in native courts, the High Court, at the instance of individual litigants, made four revisional orders, one civil and three criminal; there was no original or appellate jurisdication. Indeed, despite its wide powers the High Court had never "ever exercised its revisional powers over native courts otherwise than the result of an application by an aggrieved person".[169] For, as Bourdillon, some what curtly put it:-

> "They have not the machinery for doing so. They do not receive returns of all cases tried by Native Courts and if they did it would obviously be impossible for them fully to scrutinise them".[170]

Worse, it was alleged, without demur, that the judiciary had no interest, nor the inclination to exercise its wide powers over Native Courts; and, as the following passage shows their attitude towards Native Courts was decidedly negative.

> "Hitherto (minuted the Chief Justice) the High Court has had practically nothing to do with Native Courts outside Buganda although from time to time certain elementary Rules of court have been made by it. Speaking for myself I know practically nothing of the way in which these Native Courts perform their duties or of their potentialities for improvement".[171]

It is not surprising, therefore, in view of this apathy, that the Executive, to put it mildly was inclined to leave "native justice" under their control and supervision. But as indicated earlier, the subordination of Native Courts to the executive was never complete, and despite official rhetoric to the contrary, the administration of

169. Bourdillon, Memo. on Native Courts, op.cit.
170. Ibid.
171. C.O. 536/183/23644 Abrahams, C.J. to the Acting Governor; Inc. II to confidential Dispatch of 28.9.34.

justice in these courts was perfunctorily supervised. The main problem for the indigenous litigant, however, was the existence of a dual legal order, consisting of "British" and "Native" courts administering "Protectorate" and "customary" law to "non-natives" and "natives" respectively. He was subject to both, but his access to the former, though quaranteed by the Order in Council, was fraught with insuperable difficulties; and, this state of affairs was, in the early 1940s, increasingly becoming intolerable, the question of the day was to find a link between the two legal systems by which a growing number of indigenous litigants could gain easy access to the "British judicial System" over which the British judiciary presided.

Initially, the link was found in the portfolio of the Judicial Adviser, the main functions of which were advisory and revisionary. The idea was to place, a legally qualified, person between the two judicial systems, thus doing away with "the foregoing curious mixture of appellate and revisionary jurisdiction by the High Court and the revisionary jurisdiction of the lay Administration".[172]

The Judicial Adviser or Judicial Commissioner would, it was hoped, in the case of Buganda for example, do all the revisions of the Lukiko cases in the name of the Kabaka whom he would advise that such and such an order ought to be made in respect of such and such a case. Again, as was usual, this principle, or rather device, was borrowed, root, stock and barrel, from the metropolitan legal system.

> "To compare very small things with great, (Mitchell Confided in Ormsby-Gore), the effect of the "advice" would be as in the case of the Judicial Committeee of the Privy Council, and would be operative as soon as it was given. In addition, the Judicial Adviser, with an Assistant or two, would be responsible for the inspection and general control and

172. C.O. 536/188/40080/1 Mitchell to Ormsby-Gore 28/8/1936.

> supervision of Saza and Gombolola Courts throughout Buganda vis-a-vis the High Court and would function as it were, as a Registrar for all Native Court cases on their way to the High Court."[173]

This, Mitchell opined, would strengthen the hand of the Judicial Adviser: it would, for example, "place him in a good position to establish contact rather than friction between" the British and the Native judicial systems; it would afford him ample opportunity to develop the Native judicial systems; and, of course, would enable him to bring the latter into close harmony with the former.[174]

He thus told Bottomley that:-

> "I have invented a plan which I tried on Hailey and found that he thought well of it and I have therefore tried it since on Hall and Cox and they both incline to like it and if therefore it is acceptable at your end, with such modifications as you consider desirable, I should go ahead with it, putting it up of course in official form. I assume that a native judicial system with such extensive powers as that of Buganda, and the British judiciary cannot continue to function indefinitely side by side, under two divergent procedures and involving a number of things in which the weaker (native) is incompatible with, or unacceptable to the stronger. On the other, hand, the Buganda Agreement, whatever it may be called is in fact a treaty and since it is quite certain that the Baganda will never consent to any whittling down of what their courts enjoy under it, the stage is set for an increasing measure of friction between the two, unless a bridge can be formed between them. It seems to me that that bridge may be a Judicial Adviser in place of the not legally trained Administrative officer in the Provincial Commissioner's office who now deals with Lukiko cases and petitions."[175]

Mitchell's proposals were subsequently modified and embodied in the Buganda Courts Ordinance, 1940, and the office of Judicial Adviser, which in fact, had already been established, formally constituted.[176]

173. C.O. 536/188/40080/1 Mitchell to Ormsby-Gore, 28.8.1936.
174. C.O. 536/188/40080/1 Mitchell to Ormsby-Gore, 28.8.1936.
175. C.O. 536/188/40080/1 Mitchell to Bottomley 3.4.1936.
176. Supplement in the Uganda Gazette Extraordinary of 8.4.1940. S.24.

Mitchell's idea was adopted by the colonial secretary, and , in 1946, formed the core of the latter's circular despatch, on Native Courts, of which the pertinent part was as follows:-

> "I believe that judicial Advisers will be required in all the main African territories and, broadly speaking, I consider that their functions should be as follows:-
>
> (a) to advise generally on all questions connected with the operations and procedure of native courts;
> (b) to keep under review the tendencies of the native law and to guide its growth, where necessary, in close relation to the developing social and economic needs of African society;
> (c) to study the relationship of African and European law and to keep under review the future development of this relationship;
> (d) to keep under review, and where necessary suggest modifications in the composition and organisation of native courts, bearing in mind the developing needs of the community and the necessity for the progressive development of the law;
> (e) to organise and direct research on problems relating to African law and native cours and their exisiting operations and procedure."[177]

The Secretary of State's despatch concluded by urging the colonial governments without Judicial Advisers to endeavour to make such appointments and to take an increasing interest in the problems of African law and its relationship with European law.[178] The Secretary of state was, at long last, not unwilling to abolish the existing racist laws and their administration. He was thus anxious to promote integration "in close relation to the developing social and economic needs of African Society".[179] Many of his subordinates, however, were not ready for some of these changes and a significant minority of District Officers were, for the following reasons, averse to complete integration:

177. Despatch from the S/S to the Governors of the Africian Territories 10.4.46.
178. Ibid.
179. Ibid.

(i) That the final appeal from native courts would, in most cases, "be to judges without adequate knowledge of native law and customs and local conditions".

(ii) That integration would almost certainly lead to the introduction of "too many legal technicalities and too much English law into the body of native law and native courts procedure".

(iii) That fusion would inevitably give rise to intractable problems "regarding the admission before appellate courts of legal practitioners".[180]

These arguments though understandable were as the following extract shows by no means incontravertible.

> "The weight to be given to these three objections is a matter of opinion. None of them can be lightly brushed aside, but they can be met as progress is made in the process of integration. The last one does not seem to have much substance. In territories where an appeal lies to the Supreme Court, advocates may be allowed to appear in that court and little if any criticism has been heard. It does not follow that they should also be permitted in lower courts, though they may in fact be heard, in some territories, on appeal to a magistrates court presided over by an administrative officer."[181]

Thus, though understandable, these objections were virtually without substance, and were largely based on antiquated "native" policy considerations. In any event the case for integration was, arguably, unanswerable; indeed, the duality of judicial administration was, sooner or later, destined to disappear. It was inevitable; the die was cast. It was not until 1953, seven years after the initial decision was made, however, that irrevocable steps towards complete integration were finally taken. In that year, the

180. Record of the Judicial Advisers' Conference, 1953, p.4.
181. Ibid.

merits of the existing two-tier court structure and its concommitant racial laws, were carefully examined by a group of eminent officers, including seven substantive Judicial Advisers and conclusively rejected. This gathering, over which the Secretary of State's Legal Adviser, presided, having examined the constitution, jurisdiction and personnel of native courts; the functions of Judicial Advisers; and the "vitally important question of integration"[182] resolved that:

(i) In principle, any country should have one body of general law and one judicial system applicable equally to all persons;

(ii) Just as, with insignificant exceptions, that state of affairs (which represents complete integration) was achieved by Western countries centuries ago, so also it must be the ultimate objective in African territories;

(iii) No doubt in more backward areas this process will take a long time, but steps, however small towards that objective should be taken as soon as conditions permit;

(iv) The development of the necessary conditions should be encouraged and the situation should be continually under review.[183]

These objectives were, having been accepted by the Protectorate Government, given formal expression in the "African Courts Ordinance, 1957".[184] By this Ordinance, the African courts, as Native Courts, were now called, were reorganised, placed directly under the jurisdiction of the High Court; empowered "more closely to follow the practice and Procedure of the Protectorate Courts";[185] enjoined to administer native law, bye-laws, orders or directives of the

182. Record of Judicial Advisers Conference, 1953, p.5.
183. Record of Judicial Advisers Conference, 1953, p.5.
184. No.1 of 1957: "An Ordinance To Make Better Provision For The Constitution Of African Courts And For The Administration Of Justice By Such Courts".
185. SS. 26(1) and 27(1).

Legislative, District and Local Councils; and in the hearing of criminal cases, to follow the Criminal and Penal Codes, the practice and procedure of the sub-ordinate courts, and in certain cases, the Evidence Act, 1909.[186]

Rather strangely, however, failure to comply with these provisions had no legal effect; it could not invalidate the court's ruling, decision, or order.[187] The provisions were declaratory rather than mandatory. Justice, "as between native and native" was still crude and elementary, and so too was the machinery of justice. Hence, legal representation in the African courts was for example, expressly prohibited.[188] The reasons for this blanket ban were many and various and almost all stemed from previous illiberal judicial and educational policies. Most courts were mainly concerned with petty cases and were presided over by semi-literate chiefs. There were no indigenous lawyers and the few foreign lawyers in private practice were unfamiliar with native law and, of course, none could speak the vernacular tongue. The courts' practices and procedures were too informal, their jurisdiction over enacted law extremely limited, and had no jurisdiction over "non-natives". Consequently, the admission of counsel was, under these circumstances, generally discouraged, considered inadvisable and, indeed, a ticklish issue. Such a move was thus fraught with many difficulties and would have necessitated several fundamental changes, many of which were unacceptable to many District Officers.

186. SS. 9,10,11,12,13 and 14.
187. S. 15 stated that: "The fact that an African Court has not been guided or properly guided by the provisions of any Ordinance referred to secitons 12, 13 and 14 of this Ordinance shall not of itself entitle any person to be acquitted or any order of the court to be set aside".
188. S. 23 provided, inter alia, that: "No advocate or legal practitioner may appear for any party before an African court; ...."

The advent of foreign lawyers they maintained, would for example, have necessitated strict adherence to the Criminal Code, the Penal Code, and the Evidence Act, 1909, the interpretation of which was in their view beyond the ken of many a chief. Besides the appearance of lawyers would, they felt, deal a lethal blow to some of the courts' virtues, such as accessibility, informality and cheapness, and would most certainly require translation facilities with their attendant problems. Having said that however, the appearance of legal representation had its virtues. It would, doubtlessly, in most cases, have served the ends of justice better than the existing arrangements, it would have encouraged law reform and the training of indigenous lawyers; and most importantly, justice required it, particularly where imprisonment or excessive fine, or where the citizens' liberty or fundamental rights were in question. It is elementary in such dire circumstances, that the accused be given ample opportunities to present his case in the best possible way, and arguably, he can only do so by hiring the services of a skilled lawyer. As noted earlier, the advent of legal representation would have had a salutary effect on the courts' practices and procedures, and there is no doubt that that in itself would have been a major step towards judicial integration; it would have led to the early development of the local bench; local magistrates and judges; the establishment of the local bar, and the growth of the legal profession. Unfortunately, however, these advantages were given short shrift treatment; they were sacrificed at the altar of administrative convenience and practical expediency, and it was some time before these vital and necessary reforms were implemented. In the meantime, however, the training of local magistrates was stepped up and elementary short and long courses in law mounted at the Nsamizi Training Centre. Judicial Advisers were appointed to each

region with a Senior Courts Adviser formulating judicial policy and overseeing its implementation.[189]

In 1961 the Nsamizi Training Centre was designated a Law School and provision made for the legal education of the 2nd and 3rd class magistrates and their supporting staff. At the same time the right of appointments, promotions and dismissals which, hitherto had been in the hands of the Local Appointments Boards, was placed in the hands of the newly appointed Judicial Service Commission. In 1962, the African Courts Ordinance, 1957, and the Sub-ordinate Courts Ordinance, 1902, were amended and the "African Courts" structure streamlined: the "saza divisional courts" were abolished and the three tier court structure reduced to two tiers, to wit, the sub-county courts and the District Courts;[190] and provision made for the Chief Justice to appoint any "African Court" or any particular person presiding over such a court, a subordinate court, or magistrate of the 2nd or 3rd class. Inter alia, this meant that certain "African Courts" in addition to sitting as such, were also acting as "Central Government Courts" that is to say, as "Subordinate Courts" under the "Subordinate Courts Ordinance, 1902". That however, was not integration: the "African Courts" as the name suggests were still essentially "African Courts" pure and simple; integration had yet to come, but the tempo was rapidly quickening. Indeed, later that year the Government announced that the integration process was to be accelerated, and that the "African Courts" staff were to be integrated with the Central Government Courts. It agreed to improve their terms of service and pay structure; to meet all the costs and

189. These appointments were formally mentioned in No.1 of 1957 SS. 26(1) and 27(2).
190. Vide the Subordinate Courts Amendment Ordinance, 1962, and the African Courts Amendment Ordinance, 1962.

expenses of integration; and was, in return, to receive all the courts' receipts and revenues. With these arrangements the scene was thus set for the complete unification of the "African" and the Central Government court systems. However, the "Native Courts" in Buganda were still governed by the Buganda Courts Ordinance, 1940,[191] and were clearly in need of urgent reform. However, no legislation could be enacted without the consent of the Kabaka and as this was not forthcoming, the Government's planned changes were put aside and the existing Ordinance allowed to stand intact. It was hoped however, that the Buganda Courts would, in the near future, with the Kabaka's consent, of course, be reorganised along the lines obtaining elsewhere in the country.[192] Here, as elsewhere, the necessary reforms involved the abolition of the existing dual legal system and its panoply, to wit, the dual courts, the dual laws and the dual supervision. Emphasis was to be placed on the development of "local courts", the extension of their jurisdiction, both civil and criminal, over all persons and over all matters within their respective areas; the appointment of professional magistrates; the extension of legal representation to all the local courts; the codificaiton of customary civil law was eschewed on account of its enormity and complexity; the separation of the judicial and executive functions in the local courts; the ending of unofficial arbitral tribunals, including the settlement of minor disputes out of court. The ultimate objective was for the "new local courts", their future,

191. S. 1(2) of No.1 of 1957 provided that: "This Ordinance shall not apply to Buganda".

192. Schedule 7 to the constitution of Uganda part II paragraph 7 provided that the Uganda Parliament had exclusive power to make laws relating to "Courts, other than courts dealing with Buganda clan cases, including -
(a) the jurisdiction, powers, practice, procedure and organisation of such courts;
(b) persons entitled to practice before the courts".

nomenclature was under active consideration, to become an integral part of an independent judiciary exercising jurisdiction over all persons and over all statutory laws on a non-racial basis. Some of these changes were hurriedly effected shortly before independence,[193] but many more, and in many ways the most important were stalled and left in limbo and, to this day, they are still awaiting retrieval and implementation.

Arguably, there are several explanations for this, but none is more apt and convincing than the colonial heritage itself. The mish mash of colonial policies, the main features of which sufficiently appear in the preceding pages, could hardly be expected to elicit anything other than this sort of response; in this case, not even the "Lancaster House Juju"[194] could perform miracles. The damage was almost irreparable. The further under-development of the pre-independence constitutional changes is thus a vindication of the former policies of the decamping colonial power, and their subsequent neglect and demolition is the most fitting epitaph to British Colonial rule.

193. The Uganda (Independence) Order in Council, 1962, and the Uganda Constitution provided that no man, two years after independence, was to be convicted of a criminal offence that was not statutorily defined. The former provided that "subject to the provisions of this order, the constitution of Uganda ... shall come into effect ... at the commencement of this order: Provided that S 24(8) of the constitution shall come into effect on 9th October 1964 ...". Article 24(8) of the constitution provided that "No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law ...". (Vide Statutory Instruments 1962 No. 2175.)

194. Vide, Lancaster House Juju, The Economist, London, December 3rd 1960, pp. 999-1000.

CHAPTER TEN

10.1.1. THE OUTLOOK FOR REFORM: THE PRELUDE

The basic assumptions underlying the main principles of local administration, with which this study is concerned, were, throughout the colonial period, fairly elementary and pragmatic in nature. Basically because the colonial authorities had limited objectives and limited resources, and let it be said, both were self-imposed limitations. Thus, the colonial power, with such a narrow programme, was "forced" to recognise the local chiefly hierarchies, and, where non-existed, to set them up, and then proceeded to endow them, both the new and the old, with unlimited and undefined powers to make and unmake laws, to hear and decide cases and to assess and collect taxes for imperial purposes. It was felt in officialdom circles that the traditional chiefs, including the new recruits, were natural rulers with immense authority and following and that it would be folly, therefore, so the argument went, to fail to exploit such resourceful assets. However, this commonsense approach to "native administration" was by no means flawless. The fallacy of this reasoning "lay in its naive view of the nature of the authority possessed by rulers, who were credited with a claim to total obedience equivalent to that of a modern dictator but not requiring the machinery of a modern police state to enforce it".[1]

This, not withstanding, however, the colonial authorities were overly committed to the establishment of a self-supporting administration and, even if they wanted to, they could not have devised a more

1. Mair, L.P., Representative Local Government as a Problem in Social Change. Journal of Africa Administration, January 1958, p.13.

expeditions, efficacious and cheaper apparatus than the chiefly - the so called indirect rule - system they so avidly and indiscriminately installed everywhere throughout the Protectorate. Theirs was therefore, not to quibble with some nabulous academic arguments.

Sir Gerald Portal, the first Briton to advocate this approach to colonial rule in Buganda had no difficulty in rationalising his pet strategem to his paymasters in London. For, in Buganda, the indigenous political institutions were at their zenith: there was a king, a Lukiko, a chiefly hierarchy and a homogenous intelligent people. There was, already in existence, therefore, a tailor-made indigenous bureaucracy to meet Portal's immediate requirements, administrative and otherwise. And, under these circumstances, it would, he argued, have been not only bad policy but sheer waste, not to recognise the Kabaka and his chiefs.[2] And so it was done. Unfortunately, however, the rest of the Protectorate, the eastern, the northern and some western districts, in particular, had no highly developed political systems and when Portal's successors came to establish British rule in these areas and proceeded to administer the doctors prescription, they soon found that some of the elixir's most important ingredients were missing. The indigenous political systems were, in these areas, still in their infancy and the colonial nabobs had to be content with the "loudest-mouthed ruffians", who put themselves forward as their peoples' leaders and rulers.[3] And, where non-offered themselves, they were soon found, installed and adorned with all the traditional trappings of power and authority, including chiefly titles, rights and privileges, on the Buganda pattern. And,

2. Portal, Sir Gerald, Mission to Uganda, op.cit. passim.
3. Cameron, Sir Donald, quoted by N.U. Akpan in "Have Traditional Authorities A Place in Modern Local Government Systems"? Journal of African Administration Vol. VII No. 1, 1955 p.110.

indeed, many of the new recruits were Baganda themselves; "for who better, the British reasoned than the Baganda to teach the intricacies of the Buganda System".[4] And so began the Bugandanisation of "native administration and all that it brought in its train, not least of which was the distortion and corruption of Portal's principle of "indirect rule".[5] As, Fred Burke mused, "indirect rule" in its original sense was replaced by an indirect style of indirect rule".[6] This, notwithstanding, however, the district officers' proteges were, in 1919, statutorily confirmed and their executive legislative and judicial powers definitively defined.[7] This consolidating legislation was, subject to the "Native Agreements", applicable to the three treaty states and was largely modelled on that in force elsewhere in Africa and other British Colonial dependencies, with scant regard being had to local conditions and circumstances. And not surprisingly, therefore, most of this legislation and the numerous bye-laws issued there under, made very little impression on many a citizen, his welfare and material progress. Indeed, most of the provisions remained dormant and disused; nevertheless, they were an integral part of a formidable array of executive authority and an important part of the main legal framework within which British rule was, throughout the interwar years, exercised through the Chiefs, both ancient and modern. This

4. Burke, F.B. Local Government and Politics in Uganda, Syracuse University Press, New York, 1964, p.34.
5. Thus, Burke writes: "Although some of the expatriate Baganda agents were honourable, others regarded themselves as conquerors and superior to their backward subjects. They arrogantly confiscated for themselves choice lands, women and food; needless to say Baganda chiefs were not overly popular". Burke, ibid., p.35. See also M. Twaddle, Politics in Bukedi 1900-1939 (PhD thesis, London, 1967 pp.255-276; G.W. Kanyeihamba, Constitutional Law and Government in Uganda, EALB, Kampala 1975, pp. 301-302; and pp. 147-153 supra.
6. Burke, loc.cit. p.34.
7. See Native Authority Ordinance, 1919; Native Law Ordinance, 1919; and Native Courts Ordinance, 1919.

set up, however, was far from ideal. Inter alia, it set bad precedents, the most notorious of which were "petty tyrannies", corrupt practices and despotic rule which, in Buganda, led to the 1945 and 1949 riots. These outbursts of political protest, though directed at the Buganda Government were, in fact, aimed at the Colonial authorities for their failure to democratize the former regime. The lack of participation, by the educated elite, in the internal management of their local affairs, the Central Governments total reliance on the traditional chiefs and their illiberal policies were the primary causes of these upheavals. Yet, regretably, though not surprisingly, the official inquiries which looked into these disturbances paid little attention to these political demands; instead emphasis was placed on the Government's repressive measures used to suppress the riots; the need for more effective security measures; and, though they recognised the need for reforming the procedures relating to the selection of chiefs, they nevertheless summarily dismissed the much needed political reforms, and thus so missed many of the fundamental issues raised by the movement's leaders. And, though the riots were swiftly and ruthlessly smashed without any concessions whatsoever, the rioters did not suffer in vain, for within a few years a number of the important changes demanded by the "agitators" were conceded.

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Thus the composition of the Lukiko was made more representative and democratised; the procedures for the selection of chiefs were streamlined and the position of the chiefs redefined; major economic reforms, including the reorganization of the cotton and coffee industries were instituted; and the provision of technical, further and higher education considerably extended, with some salutory results, in and outside Buganda. In the latter areas, however, the

impetus for change was largely prompted by the now famous dispatch from the Colonial Secretary, Arthur Creech-Jones, dated 25 February, 1947. The main theme of this confidential dispatch was the development, in each British African dependency, of "an efficient and democratic system of local government",[8] which, the Colonial Secretary believed, was the "Key to the Success" of the many political, social and economic programmes that were in the pipeline. And, though he insisted that "these had been the aims of our policy over many years", there is little doubt that Creech-Jones' dispatch was unprecedented and, indeed, a departure from the existing British Colonial policy and practice. At least, the verbiage was refreshingly new. His understanding and formulation of the key words, "local", "efficient" and "democratic", for example, was not only novel, but it seemed to herald the beginning of the end of indirect rule, including the genus of the chief and the corollary autocratic rule.

That, at any rate, was the theory, its implementation, however, remained for the future, and, to be sure, the necessary preconditions for success were ominously lacking. Nor did the terms of the dispatch offer an easy passage. It was, obviously, the work of many individuals including Africanists, purists and the diehard imperialists and, not surprisingly, was littered with sophistry, highfalutin and many irreconcilable inconsistencies: its terms were too vague, too general and gingerly stitched together.[9] Thus it advocated local democracy, but eschwed the participation of the most important elements in society; its strong accent on local government - that it "must not only find a place for the growing class of

8. For details see p. 177-186 supra.
9. Robinson, Cohen and the Transfer of Power, 1940-51. op.cit. pp. 50-72.

educated men, but at the same time command the respect and support of the mass of the people",[10] is illuminating.

Clearly, these verbal subtleties, apart from revealing their authors' indifference to women's political rights, were not easy to reconcile, let alone, translate into action: they resemble declarations of intent for later, rather than, immediate implementation. Indeed, that much can be deduced from the language of the dispatch itself.[11] But given the Government's previous policy of deconcentrated devolution could these aims be simultenously achieved? Moreover, though, the emphasis on "efficiency" is understandable, it is well to remember that the insistence on that illusive ideal by the Protectorate Authorities had already caused a lot of havoc; witness the strict supervision and control exercised by District Officers over the various local administrations, the lack of meaningful functional decentralisation, and the resultant underdevelopment of the existing Native Authorities. Thus, the call for both "efficiency" and "democracy" was, in these circumstances, unrealistic and, indeed, disingenuous, because the political framework which the dispatch presupposed, simply, did not exist. Furthermore, the dispatch overlooked the fact that "efficiency" and "democracy" do not always much hand in hand, indeed, experience elsewhere suggests that democratic institutions are not always efficient and that efficient organisations are not always democratic;in other words, there is no correlation between the two concepts. It is, of course, good policy

10. Creech-Jones' dispatch op.cit. p.1.
11. Thus paragraph two states, inter alia, that "the general policy must be applied differently in different areas; the broad aims of securing an efficient and democratic of local government will, however, be the same everywhere". And paragraph four adds: "where conditions are still primitive they cannot be transformed except through a laborious process of evolution".

to always strive for the best, but given the colonial governments previous track record, the Colonial Secretary's dispatch, in spite of its good intentions, was incapable of immediate implementation in its entirety: it was a manifesto, a declaration of intent and, as it happened, this is the spirit in which it was received by the Protectorate Authorities.

> "And needless to say, the Secretary's dispatch did not immediately effect a political revolution. Local, democratic and efficient local government still do not exist in Uganda, although the trend is clearly in that direction."[12]

That was written ten odd years after the Colonial Secretary's dispatch was issued, and the same is true to-day - some twenty years later - save that in the present circumstances, Fred Burke's optimistic remarks have a hollow ring about them. The opportunities for reform unleashed by the dispatch were, as is now well known completely missed; and the resulting legislation, the Local Governments Ordinance, 1949, despite its name, was, as has been mentioned, an anticlimax. It merely regularised the existing "Native Authorities" as organs of local government,[13] and that was a far cry from the aims and aspirations vividly set out in 1947 by the Secretary of State for the colonies.

Worse of all, it established the district as the basic local government unit, and as the administrative districts, including the treaty states were corterminous with the major tribes, "the 1949 Ordinance in effect provided a legal basis for the institution-

12. Burke, Local Government and Politics in Uganda, op.cit. p.38.
13. Section 3 of the African Local Government, 1949 states: In each district there shall be an African Local Government which shall consist of chiefs, a District Council and such other councils as may be established under Sections 5 and 7 of this Ordinance.

alization of parochial tribally oriented local government",[14] with some dire consequences; it sharpened the latent tribal differences - it was a classic example of divide et impera - and its ghost has yet to be exorcised. Needless to say, the Ordinance led to disenchantment and was, in 1955, superseded, but not repealed, by the District Administration (District Councils) Ordinance, 1955, which, despite the nomenclature was, rather ironically, more in keeping with the 1947 dispatch than the inaptly named Local Government Ordinance, 1949! And, though, not flawless, the 1955 Ordinance was on paper, at least, a gigantic leap forward towards the establishment of a genuine system of local and democratic local government throughout the Protectorate.

Its main drawback, however, was that it was permissive rather than mandatory; it was an enabling and adoptive legislation and sadly many District Administrations did not adopt it, and, of course, it did not apply to Buganda; thus further exacerbating the cleavages between the "Native Government" and the District Administrations. And more importantly, it retained most of the paternalistic and petti-jogging controls that were a common feature of previous illiberal enactments. Thus, though the ordinance provided for the devolution of authority to District Councils, it at the same time, subjected them to new and more sinister strigent central government controls. Lurking behind this apparent contradiction was, of course, the hackneyed notion of training so frequently espoused but infrequently carried out by many a British proconsul. Indeed, the main factor underlying these provisions was the realisation, rather late in the day, that no training programme had, hitherto, been instituted by the colonial

14. Burke, op.cit. p.39.

authorities. Nevertheless, the contradiction remained and it was not long before its full implications came home to roost. The new District Councils were placed in a false position and subsequent events in Teso and Bukedi Districts merely served to highlight their predicament. In both cases, albeit for different but somewhat genetically similar reasons the councils had failed to reconcile their conflicting powers - the Central Government had to directly intervene in the management of the Councils' internal affairs, thus virtually nullifying the ordinance and, in effect, undercutting the councillors' authority. Indeed, shortly afterwards the ordinance and the constituent Constitutional Regulations were altered and some of the most important devolved powers withdrawn and the status quo ante reimposed. In other words, the student, after 57 years of colonial tutelage and control had yet to muster the art of local self-government, implying that there had been inadequate or no tuition, at all, let alone proper parental guidance. And subsequent events exposed a gaping lacuna in the "preparation" programme. And as the Teso fiasco graphically illustrated, the Protectorate Authorities, owing to their previous policies and the belief in "the plenty of time ahead" were not ready to slacken their tight grip on their charges: Query, how was the apprentice to acquire the necessary knowledge and administrative skills?

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The Government's unwillingness to allow the pupil to make mistakes cut both ways; it implicitly acknowledged the failure of the existing control mechanisms and yet sought their continuation thus prolonging the pupil's naivete and the concomitant under achievement. The moral of this cruel dilemma was that the District Administrations, their staff and councillors could never stand on their own feet. However, the colonial authorities never grasped the import of this elementary

maxim and their inability to come to terms with it, is one of the reasons why their belated efforts to transform "Native Authorities into efficient and democratic local government institutions ended in failure.

The Governments approach to local government in the townships was even more revealing. Here, the main concern was the creation of salubrions conditions for European habitation. The problems of the largely uncontrolled peri-urban areas, mostly inhabited by alien migrant labourers were left in the hands of the Buganda Government;[15] and, so, racial segregation in townships was born. The inner circle of the township - the Boma - which catered almost exclusively for Asian and European interests was, as might be expected, administered by central government officials and was wholly financed out of Protectorate funds. And, though the local people were always in the majority, numerically, their interests were not catered for nor, indeed, represented on the various townships' governing bodies. Racial considerations appear to have been the main policy determining factors and the results were not wholly unexpected. The most serious upshot was, of course, the underdevelopment of local government institutions in urban areas. The Government could not introduce local democracy, ostensibly, fearing that such a move might set a bad precedent outside the townships; whilst the transient European and Asian Communities were not keen to press for it, partly because they were well satisfied with the free existing local amenities, and partly because they did not want to saddle themselves with township rates. The old adage "no government no taxation" aptly captures both the prevailing mood and the practical realities of the situation.

15. Southall, A.W. and Gutkind, P.C.W. Townsmen in the Making: Kampala and its suburbs. EASR, Kampala, 1956.

This cosy relationship between the Centre and the urban communities was, however, detrimental to the development of proper local government institutions; based, as it was, on racialism, it led to the differentiation between town and country and to the continuation of urban administration as a central government service, with, as has been mentioned, some disastrous results.

Finally, mention must be made of the origins and causes of the dual legal system. Again, there is little doubt that the invisable hand of racism was largely responsible for this duality of laws and courts. In this case, however, there were other forces at work, particularly the Government's policy of indirect rule. The colonial power, having decided that the chiefs' executive and judicial powers were inseparable, had no choice but to maintain this little farce, and then, rather characteristically, proceeded to make virtue of necessity. The arguments for the preservation of native courts as an integral part of the administrative apparatus which the chiefs operated were many and various; they ranged from the artificial to the absurd, and a typical assortment of those most commonly rehearsed ran as follows:-

> "District officers of the inter-war period conscious of the importance of the native court system as part of the native administration organisation and not unjustifiably proud of the success they had achieved in its development, were loud in extolling its virtues. The native courts were, they maintained, part of the indigenous society, and were accepted as such by the bulk of the population, while the law they administered was known to, and accepted by, the people. The procedure in these courts was simple and understandable by all, and was not complicated by the intrusion of advocates. Native courts were, by reason of their situation and number, easily accessible to the public, and the justice they dispensed was cheap and, certainly when compared with that provided by the High Court, rapid. The chief who presided over the court was well known to the litigants and was, it was presumed trusted by them: if he abused his authority then this would be remedied, and if necessary the chief replaced, by the district officers, who, it was likewise presumed, would also be well known and

> trusted by the local population. It was accepted that the union of executive and judicial functions in the same person was contrary to British theory and practice, but, it would be maintained, this had always been a feature of African life and the African public saw nothing wrong in it: moreover, the district officer would argue, it would not have been practicable or advisable, in the interests of good government, to have attempted to separate the two."[16]

Needless to say, this is a formidable list, and few would question it, save to note the self-righteous paternalism it exudes. This does not mean, however, that these arguments are necessarily conclusive, or that there are no alternative arguments, nor, indeed, that the virtues of native courts could not, otherwise, be achieved, as the apologists of these arguments imply. On the contrary, the case for the chiefly native courts is flawed and can be criticised on several grounds: most of the arguments are unprincipled, oblique and are solely based on convenience and expediency rather than conviction. That the native court system was cheap, few would deny; but that is not the issue, the question is, who were the main beneficiaries - the local population or the colonial authorities? Moreover, was this gain bought at too high a price and at whose expense? The whole argument is riddled with ambiguities and tainted by suprious considerations. Take the penultimate argument, for example, the first limb of that argument ignores or rather neatly exposes the colonial moral pretentions plainly embodied in the theology of the dual mandate and begs the inevitable question: How many sacred African customs, rites and rituals were swept away, in the name of European civilization, by the colonial authorities? Was this - the chiefly court - the holy of the holies? And the second part of the argument under consideration, likewise, calls for a rhetoric

16. Morris, H.F., Native Courts: A cornerstone of Indirect Rule in Morris, H.F. and Read, J.S., Indirect Rule and the Search for Justice, Oxford University Press, London, 1972, pp.131-1.

question: Did they have any choice? And, as a rider, it is pertinent to remember that the "relics of slavery or barbaric punishments",[17] for example, were swiftly excised from the customary law in the native courts; that the law and procedure incorporated the rules of "natural justice" - and nothing could be more technical than that - and that, in all cases, all the courts administering native law had to ensure that it was not repugnant to justice and morality" - presumably European - or "inconsistent with any order in council or ordinance", or rule made under any order in council or ordinance".[18] It is inconceivable that it was beyond the ingenuity of colonial administrators to set up a separate cadre of local worthies to administer justice to their fellow country folk, thus leaving the chiefs, who, were, incidentally drawn from the same pool, free to concentrate on their administrative duties. The new cadre of magistrates would have met all the requirements of District Officers, whilst the new style of native courts would have retained all the virtues of local knowledge, cheapness, informality accessibility and acceptability, without the disadvantages associated with the old chiefly native courts. However, there were, evidently, "strong grounds of expediency" for the preservation of that quaint, though by no means unique African institution - the chief's inseparable

17. Morris, op.cit. p.131.
18. The Uganda Order in council, 1902, article 20, The London Gazette, August 15, 1902, p.5307 at 5210.

executive and judicial authority.[19] And that, rather than the standard litany of rationalisation, was the real reason for concentrating all the executive, legislative, and judicial powers in the same hands;[20] native courts were cheap to run and, more importantly, they were the chassis of Native Administration.

In sum, many of the administrative difficulties identified in this section and, indeed, throughout this study were the natural and direct result of Government policy and were perpetuated by the colonial authorities for their selfish ends. And, it is against this dismal colonial record that the following proposals for reform must be considered. But, first, it is pertinent to state the need for change and the case for reform respectively.

19. Some of these may be gleaned from the following extract: "The task of guiding and directing the development of the native courts lay, in practice, almost exclusively in the hands of district officers men who, although they had practical experience of magisterial court procedure, were unlikely to possess formal legal qualification. The district officer carried out his duties of supervision and control of the native courts largely in the course of his periodic tours of inspection of rural areas. During these inspections the whole native administration machine was brought under his watchful eye, but it was to the standard and nature of the chief's court, so essential apart of the apparatus of indirect administration that he usually devoted most attention. Here the chief's ability and effectiveness could well be judged." Morris, op.cit, p.131.
20. It is noteworthy that similar powers were possessed and enjoyed by the Administration, from the Governor through to the District Commissioners.

THE OUTLOOK FOR REFORM: THE CASE FOR AUTONOMOUS LOCAL AUTHORITIES

10.1.1. THE NEED FOR CHANGE: THE PROBLEM STATED

The setting up of British rule was from the outset beset with some awkward and cruel dilemmas. There was, for example, the dire dearth of resources, financial and human; the former, thanks to the chief's tax gathering efforts, was easily and rather surprisingly quickly solved, while the latter was largely overcome by the device of 'Indirect Rule', under which, subject to British supervision, the mundane chores of local government were left in the hands of "black civil servant" chiefs. This pragmatic approach, however, though understandable and, indeed, inevitable, did not bode well for the future. The Government's over dependence on the chiefs, for example, meant, among other things, that meaningful devolutionary policies could not be instituted, for the chiefly hierarchies were undemocratic and unrepresentative. And when the time for reform eventually arrived, the chief and his attendant paraphernalia decidely became a stumbling block; their anomalous position could not be easily fitted into the new structure and the result was the mishmash of policies and legislation documented above. Worse, the growing number of budding nationalists, who were virtually debarred from active participation in local affairs, were alienated and in consequence began to view the evolving local institutions with some suspicion. Their attitude towards local government was thus rendered negative and, regretably, many leaders have never recovered from that posture. In their view, the Government's obsession with the chiefly hierarchies and "native administration" was a deliebrate ploy or gimmick designed to forestall the necessary political changes at the centre, thus postponing the end of British colonial rule. And as might be expected the nascent nationalists were, on the assumption of

political power, already set against the further development of the newly established local government institutions; and many did not lose much time in dismantling them, and, not surprisingly, they had plenty of supporters and ample missiles to hurl at them. Of these arguments, the most important, and certainly, the most frequently cited were:-

(i) that local government was devisive, anti-nation building and wasteful of meagre national resources - that "with so many varied interests and ideas pertaining to local administrations, resources and manpower which should be directed at one common purpose of Government policies are likely to be diversified to the detriment of development".[1]

Of course this is true, if local government is viewed as a unit and in total isolation from the central government; otherwise the argument cannot be taken too seriously. For a nation consists of several constituent parts and their individual betterment, socially, politically and economically, means the development of the whole and whether this is through national or local endeavours is, therefore, neither here or there. Admittedly, this is a widely held view and those with long memories will remember that the colonial authorities used ethnicity and local differences to divide and rule, but that is some twenty to thirty years ago. And though the argument is a pragmatic one, it raises more questions than it solves, and it completely ignores the accumulated experience of the last twenty years: centralisation has been tried and found wanting and its dismal record does not augur well for the future; there

1. Kanyeihamba, G.W., Constitutional Law and Government in Uganda, EAPH, Kampala, 1975, p.300.

is a strong case for an alternative approach, viz, meaningful decentralisation. The periphery and the centre are one and the same organisation.

(ii) that local government does "not always attract the right kind of officers"; that "in many cases councils are dominated by small cliques of local persons often with selfish motives in mind"; that "this often results in lack of active participation by the local inhabitants"; and that "with the exception of some important issue of local policy on which the elections, where these are permitted, are characterised by low polls".[2]

Again this argument glosses over some fundamental and complex issues. It, for example, concentrates on the symptoms rather than the causes and thus avoids the real issue, namely apathy. And the question which suggests itself is what are the causes of this malaise? The culprit, to be sure, is not the institution of local government, but rather the legislator; in other words, the causes of apathy are to be found in constitutional instruments designed by autocratic rulers and their legal advisers; to wit the trivialising of local government (by refusing to devolve ample financial, executive and legislative powers). The problem of apathy, the béte noir of local government is thus man made; it is not institutional, it is solely due to the fallibility of man, and is, therefore, not beyond his wit to remedy.

(iii) that "there is more incompetence in local administrations than there is in the Central Government", and that "consequently,

2. Kanyeihamba, Constitutional Law and Government, op.cit. p.300.

there is little planning and much wastage on petty projects".[3] Clearly, this argument is directly related to the last two, and is, likewise, untenable. It might have been plausible immediately before independence, but, thanks to the untold incompetence of the post independence bureaucracies, it is no longer credible. Besides, what is, in this context, a "petty project"? What is the essence of local government?Admittedly, it is about local issues and per force "petty projects"! Indeed, it is tantalisingly tempting to quote the "small is beautiful" slogan to highlight the corpus of local interests with which local government is concerned.

(iv) that local government officers "are easily corrupted"; that "since many of them are local men the temptation to benefit their friends and those from whom they expect some sort of return benefit, by way of gratitude, is greater than at the national level"; and that the perks which "legitimately accrue to local officials are so small compared to those that accrue to national officers, that they", the argument goes, "are often supplemented by illegitimate means. It is interesting to note that the exponents of this view do not deny the existence of corruption at the national level. Admittedly, corruption is a national rather than a local disease, and, regretably, may very well be away of life. If so, why pick on local government? True, two wrongs do not make a right. But the fact that corruption permeates public life does undermine the thrust of the argument; unless, of course, it is to be argued that all corrupt institutions, local or national, should be

3. Kanyeihamba, op.cit. p.300.

abolished! In that case, few, if any, would extol the virtues of a corrupt local government system. But as things stand at the moment it may well be more profitable to try and understand the causes of corruption - and if need be to tolerate it - than to use it as an excuse for the abolition of local government institutions.

(v) that local government is susceptible to ceaseless pressures from the centre, that there is too "much active participation in local administration by national political leaders", and that "they have used ruthless persuasion, political blackmail and nepotism to gain favour with the local people, that local issues have been abandoned in favour of political propaganda and advantage".[4]

The premise of this argument can be countered on several grounds. Firstly, it presupposes that local government is an island and that it can be cacooned from the hurley-burley of national party politics. But, in the real world, that is not possible. Secondly, and this follows from the foregoing, this argument, the former pet of British District officers, erroneously assumes that party politics have no part to play in local government. Nothing could be farther from the truth however. The idea of local government is to facilitate the provision of local services, the allocation of resources, and the meeting of local needs and interests. In turn this involves the making of choices and the reconciliation of competing and sometimes conflicting local interests, and nothing could be more political than that.

4. Kanyeihamba, op.cit. p.300.

> Thirdly, the argument seems to assume that there are "local issues", and a priori, "national issues" which are the respective preserve of the lower and upper tiers of government. Such a demarcation, however, is, with a few exceptions, far from easy. For instance, is primary education a local or a national issue? What about the police and the maintenance of law and order? And the list can be extended ad nauseam. The division of functions between the centre and the periphery raises, as noted below, practical rather than theoretical considerations many of which are largely dictated by opportunism and, of course, convenience and expediency.

However, there are several factors which, in addition to these negative criticisms have, since independence militated against the building of more meaningful local government institutions. There is, for example, the need for stimulating economic and social development the unification of the various disparate and, not infrequently mutually suspicious, local communities, the efficient utilization of the nation's meagre resources and the maximisation of the economies of scale. This does not mean, however, that local government has no role to play in the furtherance of these noble objectives.[5] On the contrary, local government can play a decisive role in the fulfilment of these laudable aims and indeed there are several meritorious advantages to be had through the proper use of local government bodies to justify their further development and reform. Some of these virtues stem from the pre-colonial social political and

5. That many of these aims have not been realised may very well be due to the non-involvement of local government, or rather the Central Governments reluctance to develop and use local authorities to their full potential. Indeed, it will be argued, later on, that the Government's failure to mobilize local bodies, is one of the causes of the present chaos.

societal differences. Most of the present day local government units - the provinces, districts, counties and sub counties, for example, existed in some form or other long before the advent of British Colonial rule.

> "The disparity in local conditions, local needs, local resources and local aspirations and hence local priorities points up the importance of establishing an effective means of transforming central policies into local programmes in a responsive and a responsible manner. The handicaps inherent in running the array of services of a variety of local communities directly from the ministries headquartered in a distant state capital are almost insuperable. Moreover, many of the officials in the state bureaucracy have as little understanding of the diversity of local conditions as most local residents have empathy with the state capital."[6]

Furthermore, the close councillor - citizen relationship which local government fosters provides ample opportunities for the promotion of better and "specific understanding of local needs, greater flexibility in mustering resources and allocating priorities and increased possibilities of involving" the local citizenry.[7] In turn, this means that meaningful decentralisation "is likely to be more efficient in responding" to local issues, particularly in large and sparcely populated districts with very poor transportation facilities.[8] It is also most likely to "make better use of local

6. Humes, S., and Martin, E., The Structure of Local Government, A Comparative Survey of 81 countries, International Union of Local Authorities, The Hague, 1969, p.32. A somewhat similar point has recently been made by Nelson Kasfir. He writes: "Nevertheless, a powerful case for decentralisation can be mounted. Physical and social conditions in Africa favour it as a pragmatic response to problems of government. The inability of central government to reach its citizens effectively suggests that something else is necessary. The continuing strength of the democratic norm in the city and countryside demonstrates the persistent desire of people to participate in the management of their own affairs". See "Designs and Dilemmas: an overview". Nelson Kasfir, in Mawhood, P. (ed) Local Government in the Third World, John Wiley and Sons, Chichester, 1976.
7. Humes and Martin, The Structure of Local Government, loc.cit. p.32.
8. Ibid., p.32.

knowledge", and more importantly, it is bound to "draw forth [local] leadership which might otherwise have remained unutilized".[9] Indeed, local government is the best training ground for budding national leaders.

> "Decentralized administration provides less scope for the central government bureaucracy to make mistakes and spreads the risk of learning how to administer. Local units with some measure of homogeneity in population simplify the task of satisfying the populace. Smaller units provide a greater opportunity to co-ordinate the various services of government and allow local people to control their own bureaucracy. Moreover, the use of local government provides more opportunity for local residents to have contact with, to take an interest in and have understanding of, to complain about, to exert influence upon and to participate in public affairs than does the use of central government. It provides a means for involving local residents who otherwise might be apathetic to, alienated from or even antagonistic to the total government system."[10]

Thus the advocates of local self-government see it as a school of "political capacity and general intelligence".[11] Political education is, indeed, the sine quanon of local representative bodies. It is here that the individual imbibes the cannons of democracy, the rudiments of government, the use of power and authority and the art of tolerance and responsibility. It is interesting to note, for example, that many past and present national and international political personalities in the Western Democracies, the United Kingdom excepted, began their political careers, either in Local or Regional governments. Notable examples include Konrad Adenauer, Willy Brandt, Kurt Georg Kiessinger, Wilson Ronald Reagan, James Earl Carter Jr., M.M. Debre, Chaban-Delmas, Mauroy and Mitterand. Even in Uganda, "local government" has had some famous alumni, including Sir Edward Mutesa and Sir Wilberforce Nadiope, the first President and

9. Humes and Martin, op.cit., p.32.
10. Ibid., p.33.
11. Mill, J.S. On Representative Government, 1861, Ch.XV.

Vice-President respectively. Both were, on assuming national responsibilities, Heads of their respective tribal governments. The real value of local government is thus political, it is to be gauged in terms of its contribution to the Country's political life and not solely in terms of its administrative skills and achievements. Moreover, the need for a semi-autonomous system of local government can hardly be overstressed. "It is obvious", wrote Mill "that all business purely local - all which concerns a single locality - should devolve upon local authorities".[12] True, the division of functions between central and local governments along these lines, in a modern state with up to date communications and management techniques, is not an easy one, but it is not impossible either. Thus, for example, there is the question of what constitutes "local" and "national" services. There are, arguably, functions and services, especially the so called "personal" or "social" services, that are basically the concern of the local communities into which the state is divided. The state's interest in these services is no more or less than that it has in the welfare of the individual citizen. Yet, there are services, such as the police, the administration of justice and the provision of education which, though normally left in the hands of local authorities, "cannot be said to be matters of local as distinguished from national importance".[13] It follows, therefore, that the devolution of power is largely a matter of political expediency and tradition. The value of local government is, thus largely political, and it is upon this basis that the central government is obliged to delegate some of its powers and authority to an institution, the importance of which depends upon other considerations, rather than on the "local" - "national" service

12. Mill, op.cit.
13. Ibid.

dichotomy, or on its administrative capacity per simpliciter. Moreover, there is the dilemma of reconciling the need for optimum uniformity in local service throughout the land, and the desire for the maintenance of local autonomy, without which true local government cannot exist. Thus, areas endowed with natural resources cannot be allowed, for example, to possess excellent educational and medical facilities, while similar services in the less fortunate districts are inadequate. This means that ways and means must be sought for establishing an efficient and benevolent system of central control that does not sacrifice local autonomy at the altar of efficiency and economy.

These arguments are of universal application and have been instrumental in fashioning local government institutions in both developed and developing countries. It is now generally accepted, however, that the case for autonomous local authorities in the latter countries can, with equal force, be made on other grounds, the most important of which are developmental - economic and political.

> "There are many development schemes where success, in whole or in part, depends on the active co-operation of the people, and that co-operation can best be secured through the leadership of local authorities. Local government has an equally important part to play in the sphere of political development. An efficient and democratic system of local government is in fact essential to the healthy political development of the African Territories; it is the foundation on which their political progress must be built. In [Uganda] the term local government must not be interpreted narrowly; it covers political questions .... financial questions .... and economic questions, [including] land usage and the evolution of systems of land tenure."[14]

14. Creech-Jones, Despatch to the Governors of the African Territories, 1947. It is a matter of regret that these noble ideals were never relentlessly persued. It is not always easy to tell as to whether these utterances were genuine or mere propaganda to placate the critics or just plain self-righteous tosh.

The question, to put it bluntly, is what contribution can a reformed system of local government make in the sphere of economic, social and political development. These, it is generally accepted, are the main problems facing most African Governments today. The post-independence centralists thought that the quickest possible way of forging a nation was to be found in a highly centralised system of government. It was felt that this would enable the centre, not only to force the pace of economic and social development, but that it would also enhance the ends of national unity. The slogan was: "One President, one nation and one People". It was vigorously argued that "we cannot afford the luxury of local government or its expense; that local government was divisive and wasteful of financial resources and manpower; that local authorities were susceptible to corruption and manipulation and that they were potential centres for harbouring dissidents and malcontents. In short, they argued, that local government was inimical to national unity. Interesting arguments were made and, in particular, insufficient public funds and trained administrators were duly cited to support and substantiate their claims. Consequently, the pre-independence arrangements imposed upon them were, in the name of national unity, economic and political development, usually placed under strict controls and generally treated as mere extensions of the Central Government. As it happened, however, none of these goals have, after twenty years, been achieved, and there are positive signs that the era of centralisation is soon coming to an end.

It is now generally accepted that the case for centralisation was overstated, and efforts are being made to revive the idea of "an efficient and democratic system of local government"; for the absence of strong local government institutions, it is now fully appreciated,

has been the rock on which many political leaders, their Governments, policies and aspirations have foundered.

Once again, the development of "an efficient and democratic" system of local government is being vigorously advocated as the best means of political, social and economic advancement. It is felt that

> "a system of decentralised administration in which the greatest possible freedom of choice is allowed to local communities will arouse and nourish a wider and more lasting interest and support for the aims of national unity and economic development".[15]

Inter alia, the Indian experience, vividly shows that local government can play a very significant and decisive part in the processes of national and economic development. So, too, does the Yugoslav experience. In both countries, local government bodies - at all levels - form an integral part of the state development apparatus and actively participate in both the planning and implementation of all development programmes.[16] Moreover, and, perhaps more importantly, recent local government reforms in Ghana, Nigeria and Sudan, for example, strongly suggest that there is widespread disilllusionment with the results of centralisation which characterised the 1960s, and, indeed, indicate the realisation that "better than anything else an intelligent policy of decentralisation will serve the purpose which Africa's political leaders generally regard as most essential, namely political unity and economic development".[17]

15. Vide, Report on Local Government in Basutoland, - "Restricted" - by N. Kaul, a U.N. Expert in Community Development. 13.6.66.
16. Ibid.
17. ECA Paper E/CN 14/UAP/37; Robert K.A. Gardiner, Executive Secretary of ECA.

It is now clear that the failure to associate and involve local government bodies in these vital processes was a serious omission. Perhaps the best formulation of the case for the utilisation of local representative institutions for developmental purposes was made by the 1961 Cambridge Summer School Conference, the relevant part of which reads as follows:

> "(1) Local Government is the strongest link between the few and the many in planning economic development. In the execution of plans it is the best means of providing supporting facilities. Every one agrees that popular participation in economic development is essential to success. If community development is the most likely method of arousing popular interest local government offers the best means of holding it.
>
> (2) Local Government is the best means of promoting unity. At every point it is opposed to separatism and to exclusiveness of any kind whether of racial, tribal, religious or other origin. By stressing the unity of the state it counteracts any pull to turn local authorities into tribal governments."[18]

This does not, of course, mean that local government authorities are to be left to their own devices. Quite the contrary. The hub of any scheme of local autonomy is a healthy relationship between the two tiers of government.

The onus is on the centre to ensure that the periphery follows the guidelines laid down by the legislature, and that it has ample resources to carry out its tasks within the national framework. And the success of the enterprise will largely depend on how the centre exercises its advisory and supervisory powers. The aphorism "as the school master is, so will be the school" is as pertinent here as it is in the world of public education. Thus, "A government which attempts to do everything (in the name of efficiency) is aptly

18. Report of the Summer School Conference, 1961.

compared by M. Charles de Remusat to a schoolmaster who does all the pupils' tasks for them; he may be popular with the pupils, but he will teach them little".[19]

It was partly a recognition of this that led the then Governor, Sir Charles Dundas, among others, to seriously consider the reform of local government, with special reference to democratic and representative institutions. These changes were, however, shortlived, and their reversal is the raison d'etre for the current debate about local government and its role in the field of economic and political development. The Uganda Peoples Congress manifesto, for example, freely acknowledges the importance of local government in handling the problems of rehabilitation and reconstruction, and indicates that District Councils will be the means by which the peoples "hopes and aspirations for National Unity, National Independence, Stability and Prosperity" will be translated into reality.[20]

19. Vide, Mill, op.cit.
20. The Uganda Peoples Congress, Manifesto, 1980. The manifesto devotes a page to Urban Authorities and Local Councils and, the relevant part is couched in the following terms:
    "While recognising the need for a strong Central Government as essential in spearheading planned, orderly and rapid progress, UPC strongly believes that the people themselves must be directly involved in political and socio-economic activities at grass-root levels.
    UPC recognises that district councils are the key units of Local Administrations.
    We shall review the existing local councils establishments and structures with a view to making them more democratic and more effective."
    This, as it happened, turned out to be no more than electioneering propaganda; very little, if any, was done to implement this part of the Party's manifesto and there is no doubt that the Government's unpopularity and its eventual downfall can be traced to its failure to secure - through local government - the co-operation of the masses.

Whether this is mere political propaganda or whether it is, following several false starts in the 1950s and 1960s, a genuine fresh start towards local government reform is a very nice question. The sceptic may well say that this is a piece of electioneering rhetoric, while the diehard enthusiast will, no doubt, see the declaration of intent, in the Party's manifesto, as a possible watershed. It hardly needs to be said, however, that the Government's successful implementation of its rehabilitation programmes and, the extent to which it succeeds in securing the co-operation of the masses will largely depend on how the vexed question of participatory democracy at the periphery is handled by the Centre.

The first step, to that end, is to recognise the need for local self-government and all its attendant machinery; the second is to accept local government's need for an adequate system of local taxation: for a certain amount of financial independence is the mainstay of local autonomy; the third is to tolerate local government as a self-governing institution, and, to appreciate that "no lesson can be learnt at all unless people are allowed to make mistakes" (and that) there is no substitute for this process of trial and error in the acquisition of political wisdom";[21] the fourth is to understand the issues involved; the fifth is to develop ideas and evolve techniques and procedures for handling them. It is to be borne in mind, however, that the road ahead is a maze and not a motorway: it is potholed, slippery and, to be sure, the going is anything but plain sailing. So it should be. For the importance of local government, in any scheme of nation building, can hardly be overemphasised; the plethora of ordinances examined here is indicative of the importance

21. Hinden, op.cit. p.8.

attached to local government institutions by successive Protectorate Administrations; and any Government, particularly, one which is desirous of promoting "National Unity, National Independence, Stability and Prosperity", and neglects the development of strong and quasi-autonomous local government bodies, does so at its peril. For the realisation of these aims will largely depend on the active co-operation of the local people, and local government is the most effective instrument for mobilising the masses in carrying out such programmes of political, social and economic advancement.[22] It follows, therefore, that the key to success lies in democratic decentralisation, and if the conditions outlined above, were satisfied the public would understand the value of local government not only as a provider of services but also as an essential part of the fabric of a democratic and responsible government, and that in itself would be a great advance towards the ultimate goal.

10.1.2. THE NEED FOR CHANGE: SOME ARGUMENTS FOR REFORM

> "The primary function of a local government body is to provide civic services and though it must have legislative powers, these should be regarded in the main as incidental to the provision of these services. Local government bodies should never be set up for their own sake as an administrative exercise, or to be important agents of central government, but should always be built around the administration of at least

22. "I do not believe there is any better training ground for the art of self-government than participation in local administration. Our own history shows that our constitutional government, developed at Westminster, has owed a very great deal to our experiences in local administration. I regard the extension of local government as one of the quickest and certainly the surest methods of making certain of the extension of central government." Per Colonel Stanley, House of Commons, 13.7.1943.

one service in autonomous fashion".[23]

The conciliar system and its attendant machinery, the main features of which this study is concerned, were largely fashioned on the indigenous models found in vogue immediately prior to the advent of British Colonial rule and, for this purpose, were generally regarded, and, indeed, treated as local government along the lines of their Metropolitan model. But nothing could be farther from the truth.

In the colonial context, however, the term local government had no fixed meaning, it was, throughout the colonial period, indiscriminately used, inter alia, to denote: Native Authorities, Native Governments, Regional Administration, District Administration; and, not infrequently, the epithet Indirect Rule was used to mean local government. Thus local government meant different things to different people, but this confusion did not end here, it is to be found in the frequent changes of policy on local government detailed above. It is also remarkable that some of these ill-chosen terms were, depending on the occasion and circumstances, insultingly or rhetorically used. In all cases, however, each term was used as a euphesmism for a system of "local administration" otherwise known as deconcentration, under which the District Commissioner, a Central

23. Proceedings of the Cambridge Summer School Conference, 1951. Thus, as has been mentioned above, the main defects of the African Local Governments Ordinance, 1949, were that the "African Local Governments created by that Ordinance had no functions or responsibilities other than those arising from the Native Administrations (Incorporation) Ordinance, 1938; that the Councils had no responsibilities, for their bye-law making powers were subject to central government approval, and so, too, were their annual budget resolutions. Similarly, the county, sub-county and village councils had no positive functions other than their triennial duty of electing members of the higher councils. And, as the preceeding chapters show these criticisms can, with equal force, be levelled at any subsequent local government legislation considered in this thesis.

Government official, was in charge of all he surveyed.

> "In discussing the organisation of local government in colonial territories, we must learn to distinguish between the substance and the shadow in this way. Administrative bodies, "boards", "committees", call them what you will are not local government authorities within the proper meaning of the term if they are set up by a central government, composed of a number of local inhabitants nominated for this purpose, and given a sum of money to spend on the poor, the roads, or slum clearance. Local government may originate in this way, and this may well be an excellent first step in the evolution of a system of local government, but it does not give us the finished product until a long process of evolution has been gone through.
>
> Neither on the other hand, do we get a system of local government if a machinery of election is established, a number of councillors elected who, when meeting together, formulate a series of "demands" or "complaints" concerning the activities of the central government, in the manner described in Mr. Edward Thompson's classic study of colonial society; "A Farewell to India".[24] Local government, if it is to be anything at all, must be responsible government. Those who represent the people in the town and district must accept a measure of responsibility for the formulation of policy and its execution in relation to a given service, and it is the duty of electors and the citizens at large to see that they discharge their responsibilities properly. As a corollary, they must possess a sufficient degree of authority to plan their services as they will (within reason), and a sufficiency of money to maintain them at a satisfactory level of efficiency. In other words, the local government body must possess enough freedom and power to give it an independent life of its own."[25]

Thus, it follows, that the so-called "Native Governments and District Administrations" were, even at their zenith, no more than Central Government Agents, and very poor agents at that; for they did not, especially in the interwar years, have any of the attributes of local government bodies referred to in the above extract. Indeed, they did not enjoy any executive powers of their own. Their main duties were still the maintenance of law and order, the hearing of "purely native cases, the assessment and collection of central government taxes and

24. Cf. The Bennett's Commission Report on the Disturbances which broke out in certain areas of the Bukedi and Bugishu Districts of the Eastern Province of Uganda during the month of January, 1960.
25. Hinden, R., (Ed) Local Government and the Colonies; Report to the Fabian Bureau, London, George Allen & Unwin, Ltd. 1948, p.7.

the interpretation and implementation of Government policies as laid down by the Legislative Council.

It was consistently argued that the "Native Authorities" were incapable of carrying out any duties or responsibilities without detailed Central Government intervention. The arguments advanced were many and various. In particular, there was the fear of loss of administrative efficiency and the occurrence of malpractices. Many officers felt that many a chief still needed constant stimulation and controlling; that the "Native Authorities" were insufficiently advanced, and that the time was not ripe for the development of "an efficient and democratic system of local government". These arguments, together with many other short-term considerations, were repeatedly and effectively used against any proposals for building up local government bodies; and, as might be expected, there were few critics of these arguments; and, in consequence, the development of true local government institutions was held in check for several decades. Indeed, as has been mentioned, it was not until 1955 that concerted efforts were made towards functional and meaningful devolution of power. Unfortunately, however, the 1955 legislation was doomed to failure. It was far ahead of its times, the Central Government was not ready to hand over power and the local authorities, having been underprepared, were not ready to receive it; and worse, the ordinance was too closely modelled on the English pattern of local government, albeit without the prerequisite infrastructure. It was like sowing some exotic seeds in the Sahara desert in mid-summer!

That this approach might not, under the prevailing circumstances be the most suitable, was summarily brushed aside, and its virtues

extolled.[26] The reasoning behind this was mainly that "the legislation in force is basically English legislation"; that, "it is the system we understand"; and that, "You cannot expect us to teach the French system"; even though it might be the ideal solution.[27] It has since been conceded, however, that Wallis's assumptions were erroneous and subsequent events gave support to this belief.[28]

> "In our former overseas possessions the story has been quite different. Our patterns were adopted because neither we as colonisers nor the colonised themselves had any experience of any other form of local government. Indeed, the people on the spot, colonial administrators like myself, had precious little knowledge even of British local government. We had, after all, spent most of our adult life outside England. So it will come as no surprise to learn that the record of attempts at local government in our former colonies have not always been successful."[29]

There were, of course, no critics and Wallis's proposals were accepted by the Government and, incorporated into the District Administrations (District Councils) Ordinance, 1955. But, as is now well known, this ordinance, though a model instrument, was in actual practice, a flop, its antecedents were ominous.[30] For example,

26. There's no space here (wrote Wallis), to argue the merits of the British, French, American, Irish or other kinds of local government. I must content myself with the practical arguments that no principles other than British can be imported into Uganda by an administration composed of British officials. Wallis's Report p.15.
27. Comments by District Commissioners on the Wallis Report, November 1952.
28. In this connection, the following observations by a District Commissioner are illuminating. He wrote:
    "I think the basic assumptions of the Report sound: namely that local government in Uganda must progress in the English rather than the continental pattern, although Wallis's reasoning which leads him to this decision is not itself conclusive. I, for one, must admit that until I had spoken to him, I was not at all sure what constituted the essential difference between the two systems." (Comments by D.C.s on the Wallis Report, November, 1952).
29. Jacobs, B.L., A short talk on "Local Government in Other Places", delivered on 23.11.73, at the Village Hall, Beckley, Sussex.
30. For details see page 207-213 supra.

having had no previous administrative and political experience, the District Councils which adopted it were, for reasons given below, soon forced to give up their newly acquired powers and responsibilities. As a Secretariat paper poignantly observed, the problem was "how to relate the system of Native Administration, which had been built up under a hierarchy of Chiefs, to executive local councils, and how to relate the purely African local government bodies in rural areas to the local authorities in Municipalities and Townships.[31]

There were, however, other contributing factors, not least of which was the manner and the speed, after several years of neglect and deconcenration, with which decentralisation was introduced and implemented. It has been suggested, for example, that having done "too little or nothing" the Colonial State "went too far too fast" in promoting an English type system of local government, regardless of the local conditions or the state of political and administrative development and experience.[32]

Moreover, the main factors determining the central-local financial relationship, which, it will be recalled, had a built in presumption that District Administrations were incapable of running their own internal affairs remained the same. The inflexibility of the grant system and the lack of adequate and independent sources of local revenue, for instance, were largely responsible for the arbitrary distribution of services between the centre and the periphery and worse still, to an indefensible distinction between "mandatory" and

31. Vide, the Wallis Report p.11.
32. E/CN. 14/UAP/39. Unesco, Local Authorities and Training for National Development - by Prof. B.L. Jacobs, 14.4.1965.

"permissive" devolved powers. The result was a most unsatisfactory state of affairs which, in many cases, gave rise to misunderstanding or maladministration which, in turn, in certain districts such as Bukedi and Bugishu, culminated in wide spread civil disturbances which broke out in early January, 1960.[33]

Furthermore, and perhaps more importantly, owing to past Government policies, was the Councillors' lack of administrative skills and political experience. They had had no training in operating democratic institutions, and, not surprisingly, many councils had no appreciation of their new responsibilities. Thus the Bennett Commission, which enquired into the disturbances in the Eastern Province in early January, 1960, reported that:

> "Numerous witnesses, many of whom are district councillors, have complained to us particularly about the level of taxation which their own council has imposed, and, being at a loss to explain how the necessary majority was ever obtained to impose it....
>
> We are far from saying that there can be no criticism of the Council's Conclusions and we do not expect that a member who has opposed a measure within the Council Chamber should support it outside. But we do criticise most strongly the attitude of witnesses and council members who seemingly deny the possibility of the Council as a body doing anything which later proves unpopular and who at the same time castigate their Chiefs and the District Commissioner for implementing or even supporting the decisions. The overwhelming impression we have gained from this evidence is that Bukedi is not ready for representative local government, but we are not saying that the attempts to prepare them should be lessened or that the existing position should be changed".[34]

Elsewhere, the Commission categorically states "that neither the enfranchised nor the elected have yet any proper appreciation that "democracy" does not solve anything by its own inherent qualities".[35]

33. See the Report of the Commission of Inquiry into Disturbances in the Eastern Province, 1960 - otherwise known as the Bennett Commission.
34. The Bennett Commission, para. 109.
35. Ibid. para. 235.

It is pertinent to recall, however, that until 1958, it was, Government policy to keep politics out of "Native Administrations". Hitherto, the chiefs, who were the virtual "local authority", were mere Civil Servants - they were appointed, paid and dismissed by the District Commissioner and were under his control and supervision. "Local Government" was no more than a central Government Service and was under the closest supervision of "Administrative Officers bureaucratically concerned with efficiency and material progress"[36] as opposed to political advancement of the people and, under these circumstances, there was no room for local politics. It is against this background that the catalogue of failures identified and detailed in the Bennett's Commission Report must be considered and evaluated. Thus viewed, the findings of the Commission are quite intelligible; and the inescapable conclusion is that virtually all the mistakes were the direct result of past policies and practices, and the authorities' unwillingness to allow the people to learn by their mistakes. It was naive, therefore, to expect that raw Councillors would grasp the whole gamut of local democracy at one swoop. Experience elsewhere suggests that the lesson has to be learned the hard way - by trial and error; and obviously over a long period of time. Equally, the mistakes committed by others can easily be avoided, whilst their successful innovations can be profitably emulated.

The moral is, however, that there is no simple magic wand; the art of government, be it at the local or national level, can only be acquired through practical experience; and the overwhelming evidence elsewhere suggest that there is no better kindergarten than the village council.

36. The Bennett Commission, op.cit. para. 235.

The lack of personnel and financial resources have often been held up as bugbears. Some aspects of the latter problem have been noted already and, it is widely acknowledged that local government finance is, even in the Western democracies, a thorny issue.[37]

Local Government will always depend on central government grants; but the maxim: he who pays calls the tune need not be blindly followed. The central authorities have to "recognise that a reasonable measure of financial independence is an essential element in local democracy - and that each central control weakens the sense of local responsibility".[38] The essential point, therefore, is for the state, first to delimit the boundaries of local government and then equip it with a buoyant system of local taxation.

As regards the former, viz, the lack of personnel, the prospects are somewhat blighter. Indeed, in view of the growing number of unemployed college leavers, including some university graduates, the "lack of personnel" is no longer a major obstacle to functional and democratic decentralisation. The question, therefore, is merely one of manpower planning and effective utilisation. In particular, there is a strong case for setting up a single "civil service" embracing central and local government departments. This would enable local authorities to secure their full complement of professional staff; would greatly increase interest in matters of local government; would standardise working conditions and remuneration; and would free individual officers from "undue local political pressures and oppressive decisions" handed down by their local masters.

37. Vide, The Royal Commission on Local Government in England, 1966-1969, Vol.1 Ch.XIII; and the Royal Commission on Local Government Finance, 1974.
38. Cmnd.4040 (1969) The Redcliffe-Maud Report on Local Government in England, para. 532.

Indeed, this arrangement would open up opportunities for the transfer of staff between different districts and, in appropriate cases, between central and local government departments. It is contended that such a move would enable local authorities to recruit and retain highly trained and highly experienced officers to serve their local communities. The local government structure, too, is in many ways, far from satisfactory. The existing local government units are either too large or too small. There is, while acknowledging the advisability of disturbing as little as possible the existing tribally based local government units, a very strong case for the rationalisation of the present arrangements. The idea would be to create optimum local government units for personal and environmental public services. Some sacred cows would, inevitably, have to be slaughtered, but local susceptibilities would, as far as possible, be honoured. There are, of course, in delimiting these local government units, no universally accepted guidelines. There is no doubt, however, that different local services require, for their optimum effective operation, different local government areas. Ideally, personal services, and arguably, representative local government demand small and intimate operating units, while environmental functions, and the concomitant revenue considerations, require larger local authority units. And the problem, in the real world, is to reconcile these competing and conflicting aims and objectives. The definitive and prerequisite factors - the size of the country, population, including its density and sparsity; financial resources, tribal and linguistic affinities, and communication facilities - are clear enough, however. Thus particular local authority areas would be created to suit particular functions, and the size of each would, inter alia, be dictated by the number of its inhabitants and financial resources; and in turn this would mean a two-tier local

government structure, on the British model, consisting of county and district councils. And to complete this pattern, each local authority - the upper and the lower tier - would have its separate legal personality, name, budgetary autonomy functions and policy making powers. This, it is argued, would most effectively meet the aims, needs and aspirations of both local and national leaders thus facilitating the development of an efficient unitary and democratic state. Indeed, the fact that the country is a cogeries of ethnic communities unthinkingly put together by the colonial authorities in itself provides much incentive and strong arguments in favour of decentralisation: this rich diversity must be positively and constructively, rather than negatively utilized, as is often the case, for the benefit of all concerned; in other words it must be harnessed to promote the goal of political, social and economic development. The idea is to turn the country's so called negative attributes - the cultural, ethnic, linguistic and religious differences and, indeed, the nascience of the masses, to good use. The current deficient infrastructure, potholed roads, inadequate transportation facilities, likewise, support the case for semi-autonomous local government bodies. For, "as a general rule, the worse the communications in a given area the greater the need for decentralisation through devolution".[39] Thus the country's penury far from being inimical to decentralisation is, in fact, concordant and conducive to such a policy. It is imperative that these negatives should be turned into plusses; they are the bricks and mortar for nation building. Moreover, their existence, recognition and proposed utilisation is not a matter of theory or doctrine, but

39. Wraith, R., Local Administration in West Africa, Allen and Unwin, London, 1972.

reality; and any scheme of government which eschews them is, as the experience of the last twenty-three years vividly and graphically illustrates, doomed to failure. The abject lessons of post-independence centralisation need not be rehearsed here, they are too evident. Suffice it to say that the case for parternalistic deconcentration can no longer be taken for granted, partly because it has miserably failed to deliver the promised millennium, and partly because, the case for devolution is, of course, overwhelming.

Firstly, decentralisation is more likely to enhance consent for political decisions, to alleviate discontent with central government, and more importantly, to promote rather than threaten national unity. Secondly, meaningful devolution would give rise to a more responsive, representative and efficient system of government, both at the centre and the periphery. Thirdly, the importance of local government - the kind advocated here - is that it can prevent the powerful central bureaucratic machine from running amok, and in so doing stall the egocentric and sectarian interests of those in positions of authority and influence at the centre. In sum, devolution of power is the locomotive of good government and administration: it provides the necessary "checks and balances". It is an instrument of change, the nursery of participatory democracy and the cornerstone of nation building.

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